# Public Law 103-182

H.R.3450 As finally approved by the House and Senate (Enrolled)

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One Hundred THIRD Congress of the United States of America

**AT THE FIRST SESSION**

Begun and held at the City of Washington on Tuesday, the fifth day of January, one thousand nine hundred and ninety-three

## An Act

To implement the North American Free Trade Agreement

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

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### The House Ways & Means Committee Report

103d Congress Rept. 103-361
HOUSE OF REPRESENTATIVES
1st Session Part 1
NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT
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November 15, 1993.--Ordered to be printed
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[Jump to MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE]

Mr. Rostenkowski, from the Committee on Ways and Means,submitted the following
R E P O R T
[To accompany H.R. 3450 which on November 4, 1993, was referred jointly to the following committees for a period ending not later than November 15, 1993: Ways and Means, Agriculture, Banking, Finance and Urban Affairs, Energy and Commerce, Foreign Affairs, Government Operations, the Judiciary, and Public Works and Transportation]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3450) to implement the North American Free Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

## SUMMARY

H.R. 3450, the "North American Free Trade Agreement Implementation Act," approves the North American Free Trade Agreement (NAFTA) transmitted by the President to the Congress on November 4, 1993. The draft bill contains in six titles the provisions which are necessary or appropriate to implement the Agreement in U.S. domestic law.

Sections 1 and 2 set forth the short title, a table of contents, and definitions of terms used in the Act.

## Title I.--Approval of, and General Provisions Relating to, the North American Free Trade Agreement

Title I contains general provisions concerning approval and entry into force of the NAFTA and the relationship of the Agreement to U.S. laws. Congress approves the NAFTA and the Statement of Administrative Action transmitted by the President on November 4, 1993; conditions are set forth for entry into force of the Agreement on or after January 1, 1994.

Title I establishes a Federal-State consultation process concerning NAFTA obligations affecting State laws. U.S. laws prevail over the Agreement if there is a conflict; the Agreement prevails over inconsistent State or local law. No person other than the United States has a cause of action or defense under the Agreement.

Changes in U.S. law necessary or appropriate to implement modifications to the Agreement will be subject to standard legislative procedures, except for provisions of the Act authorizing implementation of certain actions by Presidential proclamation are subject to prior consultation and 60 calendar day Congressional layover requirements.

Institutional provisions include authorization of a U.S. Section of the NAFTA Secretariat, requirements relating to selection of dispute settlement panelists, and a preliminary process for considering possible future country accession to the NAFTA, subject to Congressional approval.

## Title II--Customs Provisions

Title II implements in U.S. domestic law the customs provisions of the NAFTA. The President is authorized to proclaim the modifications in U.S. duties to implement the scheduled phaseout and elimination of all tariffs required under various provisions of the NAFTA, and to maintain the general level of concessions. The rules of origin in the NAFTA to ensure application of preferential tariff treatment only to goods originating in Mexico or Canada are enacted in the statute.

Title II implements U.S. obligations under the NAFTA to eliminate customs merchandise processing fees, restrict duty drawback, and revise country of origin marking requirements; amends penalties and recordkeeping requirements to enforce NAFTA rules of origin and other customs requirements; and requires monitoring of television and picture tube imports.

## Title III--Application of Agreement to Sectors and Services

Title III implements in U.S. domestic law various provisions of the NAFTA relating to particular economic sectors. Title III includes procedures and criteria for applying bilateral and global import relief measures on Canadian or Mexican articles; implements NAFTA obligations that apply to certain agricultural commodities, intellectual property right protection, temporary entry of business persons, standards and sanitary and phytosanitary measures, and corporate average fuel economy; and authorizes the waiver of discriminatory government purchasing restrictions on NAFTA-covered procurement.

## Title IV--Dispute Settlement in Antidumping and Countervailing Duty Cases

Title IV implements in U.S. domestic law the institutional provisions of the NAFTA establishing binational panel and extraordinary challenge committee review of final antidumping and countervailing duty determinations, in lieu of domestic judicial review, including procedures and criteria for the selection of panelists appointed by the United States, and special procedures for the selection of Federal judges for panels and committees. Objectives for future negotiations with NAFTA countries on subsidies and special procedures for industries facing subsidized competition pending development of subsidy rules are also included.

## Title V--NAFTA Transitional Adjustment Assistance and Other Provisions

Title V establishes a NAFTA transitional adjustment assistance program of comprehensive benefits, including training and income support, for workers who may be laid off due to increased U.S. imports from Mexico or Canada or a shift of production to Mexico or Canada, and authorizes State self-employment assistance programs.

Other provisions of Title V relate to performance under the NAFTA, including a comprehensive report by the President on the operation and economic impact of the Agreement after three years; response to actions affecting U.S. cultural industries; a report on the impact of the NAFTA on motor vehicle exports to Mexico; response to discriminatory tax measures; and authorization of a Center for the Study of Western Hemisphere Trade.

Changes in customs user fee levels and amendments to the Internal Revenue Code offset the budgetary costs of the NAFTA.

With respect to supplemental agreements to the NAFTA, Title V authorizes U.S. participation in, and appropriations for, the Commissions on Labor Cooperation, Environmental Cooperation, and Border Environment Cooperation. It also includes provisions relating to U.S. membership in the North American Development Bank.

## Title VI--Customs Modernization

Title VI includes numerous provisions to streamline and automate the commercial operations of the U.S. Customs Service, including authority to establish the National Customs Automation Program. Title VI also improves compliance with customs laws, and provides safeguards, uniformity, and due process rights for importers.

### BACKGROUND AND PURPOSE

The North American Free Trade Agreement submitted to the Congress by the President for approval on November 4, 1993, is the culmination of an initiative launched over three years ago. In a Joint Statement issued in Washington on June 11, 1990, President Salinas and President Bush endorsed the objective of a free trade agreement as the best means for attaining the agreed objectives of a vigorous economic relationship, maintaining sustained growth, and expanding trade and investment between the two countries. The Presidents directed their respective trade ministers to undertake consultations and to do the preparatory work needed to initiate negotiations on such an agreement, and to report back to them as soon as practicable.

On August 8, 1990, the U.S. Trade Representative, Carla A. Hills, and the Mexican Secretary for Commerce and Industrial Development, Jaime Serra Puche, jointly recommended to the Presidents the initiation of formal negotiations, in accordance with each country's domestic laws, on a comprehensive free trade agreement, following preliminary consultations with private sector representatives and Members of Congress.

In a letter dated August 21, 1990, President Salinas of Mexico formally proposed to President Bush the initiation of formal negotiations as soon as possible for a free trade agreement between the United States and Mexico.

On September 25, 1990, President Bush notified the Chairman of the Committee on Ways and Means, pursuant to section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988, of trade negotiations with Mexico. The letter also informed the Committee of the expressed desire by the Government of Canada to participate in the negotiations with a view to negotiating an agreement or agreements among all three countries, and of the interest of the three governments to consult on this possibility.

On February 5, 1991, President Bush notified the Chairman of the Committee on Ways and Means that he, President Salinas, and Prime Minister Mulroney had agreed, on the basis of the trilateral consultations and consultations with the private sector and Members of Congress, to seek a three-way free trade area. Although recognized as not necessarily technically required by section 1102 of the 1988 Act, the President formally notified the Committee of trade negotiations with Canada.

On March 1, 1991, President Bush requested the Congress to extend the fast track procedures for implementation of multilateral or bilateral trade agreements for two years ending June 1, 1993, to enable completion of the GATT Uruguay Round of multilateral trade negotiations and the proposed North American Free Trade Agreement. A number of Congressional concerns about free trade with Mexico were conveyed in letters during March to the President jointly from the Chairmen of the House Committee on Ways and Means and the Senate Committee on Finance and from the Majority Leader of the House.

On May 1, 1991, the President responded with a set of detailed action plans for addressing these issues, including labor and environmental concerns, as well as views on the economic impact of the proposed free trade agreement (WMCP: 102-10). The fast track procedures were automatically extended for the additional two-year period for trade agreements entered into before June 1, 1993, when neither House of Congress passed by May 31, 1991, a resolution disapproving extension.

On March 8, 1993, the Speaker of the House reconstituted a Trade Agreement Coordinating Group, originally established in the 102nd Congress, chaired by the Chairman of the Committee on Ways and Means and consisting of the chairmen and ranking minority members of committees of jurisdiction over matters involved in trade negotiations or likely to be affected by trade agreement implementing legislation, the Majority and Minority Leaders, and co-chairs of the Democratic Trade Task Force. The corresponding coordinating group at the staff level, chaired by the Chief Counsel and Staff Director of the Committee on Ways and Means, was also continued. This group was the primary coordinating mechanism in the House for monitoring the progress of the NAFTA negotiations and later the informal consultation process with the Administration on developing the draft implementing legislation.

Under the auspices of the Coordinating Group, frequent briefing sessions were held at the Member and staff level with Administration negotiators on all subjects under discussion, beginning in June 1991 and continuing until the NAFTA and supplemental agreement negotiations were concluded. Given the broad interest of Members generally in a free trade area with Mexico, the briefings were open to Members and staff at large, in addition to those on committees of jurisdiction.

In addition, the Committee on Ways and Means and other committees of jurisdiction, as well as various Member caucus groups, held Member and staff- level meetings with Administration officials, particularly the USTR, throughout the negotiations on issues of their particular interest.

On August 12, 1992, President Bush announced the completion of negotiations for a comprehensive North American Free Trade Agreement between Mexico, Canada and the United States. At that time, the Administration issued various documents, including a negotiated summary of the Agreement.

On September 18, 1992, President Bush officially notified the Speaker of the House and the President of the Senate, in accordance with the 90-day notice requirement under section 1103(a)(1) of the 1988 Act, of his intent to enter into a NAFTA with the Governments of Mexico and Canada. The notice was accompanied by the reports of 38 private sector advisory committees on the draft Agreement as required by section 135 of the Trade Act of 1974. The President committed to work closely with the Congress to develop appropriate implementing legislation. The Administration also issued a report at that time on the benefits of the NAFTA and actions taken to fulfill the commitments made by the President on May 1, 1991 on worker adjustment, labor rights, and environmental protection.

On October 7, 1992, President Bush, President Salinas, and Prime Minister Mulroney met in San Antonio, Texas, to discuss plans for implementing the NAFTA and affirmed their shared commitment to adopt the agreement in 1993, to take effect on January 1, 1994. The three trade ministers who negotiated the agreement--U.S. Trade Representative Carla Hills, Secretary Jaime Serra, and Minister Michael Wilson--initialed the NAFTA draft legal text.

On December 17, 1992, the expiration date of the 90-day minimum notice period, President Bush, President Salinas, and Prime Minister Mulroney signed the NAFTA in their respective capitals. On that day, President-elect Clinton reaffirmed his support for the NAFTA but reiterated his campaign pledge that three supplemental agreements would be required before proceeding with the implementing legislation. These three supplemental agreements would cover the environment, workers, and special safeguards for unexpected surges in imports.

On August 13, 1993, U.S. Trade Representative Michael Kantor announced agreement by the three governments on supplemental agreements to the NAFTA on labor cooperation, on environmental cooperation, and on import surges. He also announced a basic agreement on a new institutional structure for funding environmental infrastructure projects in the U.S.-Mexican border region. The NAFTA side agreements were signed in a White House ceremony on September 14, 1993.

Informal staff-level consultations began in February 1993, between the USTR and committees of jurisdiction, and with House and Senate legislative counsel on those changes in U.S. statutes or additional authorities necessary to implement NAFTA obligations. Beginning in June, the Coordinating Group at the staff level held periodic meetings to coordinate the development of agreed draft texts between committees of joint jurisdiction as well as provisions in the jurisdiction of other committees for inclusion in a consolidated draft bill. House and Senate legislative counsel drafted the text of the proposed implementing bill, initially from drafts supplied by the Administration.

In a letter to the Speaker of the House dated September 28, 1993, the President emphasized the importance of Congress voting on a NAFTA implementing bill before adjournment in 1993, to enable the Agreement to take effect on January 1, 1994, as scheduled. To meet that timetable, the President proposed the completion of informal consultations between the Administration and all Congressional committees of jurisdiction on the joint drafting of an implementing bill by November 1 to permit introduction at that time.

On November 2, 1993, the Speaker of the House and the Majority Leader of the Senate transmitted to the U.S. Trade Representative

proposed implementing legislation for the NAFTA, and proposals for inclusion in the Statement of Administrative Action as developed through informal consultations between House and Senate committees of jurisdiction and the Administration. The legislation noted the few items on which informal consensus could not be reached between the House and Senate and for which the Administration would have to make the final judgment with respect to inclusion in the bill.

On November 4, 1993, President Clinton sent two letters of transmittal to the Congress covering: (1) transmittal of the text of the NAFTA, together with the draft implementing bill, Statement of Administrative Action; and supporting documents as required under section 1103(a) of the 1988 Act for Congressional approval (House Document 103-159, vol. 1 and 2); and (2) transmittal of supplemental agreements to the NAFTA on labor, the environment, and import surges, and additional agreements and documents (House Document 103-160). The supplemental agreements and the other agreements are Executive agreements that do not require Congressional approval but are part of the entire NAFTA package to be considered by Congress in deciding whether to approve the implementing bill.

As provided under section 151 of the Trade Act of 1974, the implementing legislation was introduced as H.R. 3450 in the House on November 4, by Mr. Rostenkowski (as designee of the Majority Leader) for himself and Mr. Archer (as designee of the Minority Leader), by request, and jointly referred to eight committees of jurisdiction: Ways and Means; Agriculture; Banking, Finance, and Urban Affairs; Energy and Commerce; Foreign Affairs; Government Operations; and Public Works and Transportation. The bill was introduced in the Senate on November 4 as S. 1627 and referred to the Committee on Finance.

## BENEFITS OF THE AGREEMENT

The North American Free Trade Agreement is the most comprehensive trade agreement ever negotiated and creates the world's largest integrated market for goods and services. At the same time, the Agreement does not create any new trade barriers with third countries and provides a solid framework for the liberalization of trade barriers throughout the Western Hemisphere. Moreover, it should also provide the catalyst for negotiations to liberalize trade barriers on a multilateral basis.

Canada and Mexico are the United States' first and third largest trading partners, and NAFTA will lead to a continued expansion of that trade. In 1992, bilateral trade between the United States and Canada amounted to almost $200 billion while bilateral trade between the

United States and Mexico reached nearly $76 billion. With NAFTA, the United States, Canada, and Mexico will create the biggest integrated market in the world--a combined economy of $6.5 trillion and 370 million people. NAFTA is the U.S. opportunity to respond to, and compete with, burgeoning trade alliances in Europe and Asia. By creating export opportunities, NAFTA will enable the United States to take advantage of U.S. economic strengths and remain the world's biggest and best exporter.

The cornerstone of the Agreement will be the phased-out elimination of all tariffs on trade between the three countries. With respect to Canada, all tariffs in our bilateral trade will be eliminated by 1999, as was agreed in the earlier United States-Canada Free Trade Agreement. As for Mexico, most tariffs in our bilateral trade will be eliminated by 2004, although a few U.S. tariffs on potentially import-sensitive items will not be completely eliminated until 2009. Mexican tariffs on U.S. dutiable exports presently average 10 percent, compared to an average U.S. tariff of 4 percent on dutiable imports from Mexico. The NAFTA also reduces a number of nontariff barriers to trade, liberalizes restrictions on investment and services, sets forth strong and comprehensive rules on intellectual property, and extends to the three countries the international system established under the U.S.-Canada Free Trade Agreement for review of national determinations on unfair dumping and subsidy practices. Moreover, NAFTA and its supplemental agreements will help ensure that economic development takes place in a way that protects and improves the environment and promotes improved labor conditions. As described in the statement accompanying the President's submission of the draft implementing bill, the expanded market access under the agreement should result in substantial benefits for the U.S. economy.

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

The NAFTA is the latest in a series of free trade agreements entered into by the United States beginning with the U.S.-Israel Free Trade Agreement in 1984 and followed by the U.S.-Canada Free Trade

Agreement in 1988. The Caribbean Basin Initiative authorized by the Caribbean Basin Economic Recovery Act (Public Law 98-67) generally provides one-way duty-free entry into the United States but does not meet the criteria of a reciprocal free trade area.

## LEGISLATIVE AUTHORITY

The North American Free Trade Agreement was negotiated and entered into under the trade agreement authorities of section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418). Section 1102 authorizes the President to enter into multilateral or bilateral trade agreements, before June 1, 1993, (extended until April 15, 1994, only for the GATT Uruguay Round of Multilateral Trade Negotiations) to reduce or eliminate tariff or nontariff barriers and other trade-distorting measures. The authorities provide the means to achieve U.S. negotiating objectives set forth under section 1101 of the 1988 Act.

The President is authorized under section 1102(a) to implement trade agreement modifications on U.S. tariffs by proclamation within specified limits. Agreements regarding nontariff barriers entered into under section 1102(b) or bilateral agreements entered into under section 1102(c) to eliminate or reduce U.S. duties and nontariff barriers are subject to consultation requirements with Congressional committees of jurisdiction under sections 1102 and 1103 of the 1988 Act and Congressional approval of implementing legislation under special "fast track" procedural rules of the House and Senate under section 151 of the Trade Act of 1974.

The negotiation of bilateral trade agreements under "fast track" authority is also conditioned upon additional procedural requirements being met:

(1) The foreign country requests the negotiation of a bilateral agreement;

(2) The President provides at least 60 legislative days advance notice of negotiations to the House Committee on Ways and Means and the Senate Committee on Finance and consults with these Committees regarding negotiation of such an agreement; and

(3) Neither of the two Committees disapproves of the negotiation of such an agreement before the end of that 60-day period.

Trade agreements negotiated under section 1102 authority cannot enter into force for the United States and become binding as a matter of domestic law unless the President meets certain requirements for consultation with the Congress and implementing legislation approving the agreement and any changes in U.S. statutes are enacted into law:

(1) Before entering into an agreement, the President must consult with the appropriate committees of jurisdiction over subject matters affected by the agreement, especially regarding issues of implementation.
(2) The President must give the Congress at least 90 days advance notice of his intention to enter into the agreement.
(3) After entering into the agreement, the President must submit a copy of the agreement to the Congress, together with a draft implementing bill, a statement of any administrative actions proposed to implement the agreement, an explanation of how the bill and statement change or affect existing law, and a statement of reasons the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate.
(4) The implementing bill is introduced in both Houses of Congress on the day it is submitted by the President and referred to the committee or committees of jurisdiction. Fast track rules give the committees up to 45 legislative days in which to report the bill; a committee is discharged automatically from further consideration after that period. (The Speaker of the House limited referral of H.R. 3450, introduced on November 4, to November 15, 1993.)
(5) Each House votes on the bill within 15 legislative days after committee consideration. A motion in the House to proceed to consideration of the implementing bill is highly privileged and not debatable. Amendments or motions to recommit are not in order, and debate is limited to not more than 20 hours.

The purpose of the approval process is to preserve the constitutional role and fulfill the legislative responsibility of the Congress with respect to agreements which generally involve substantial changes in domestic laws. The consultation and notification requirements provide the opportunity for Congressional views and recommendations with respect to provisions of the proposed agreement and possible changes in U.S. law or administrative practice to be fully taken into account and any implementing problems resolved prior to entry into the agreement and introduction of the implementing bill. At the same time, the process ensures the Executive branch and foreign countries of expeditious action on the final agreement and implementing bill without amendments. This process was used successfully in approving the GATT Tokyo Round multilateral trade agreements in the Trade Agreements Act of 1979, the United States-Israel Free Trade Area Implementation Act of 1985, and the United States-Canada Free Trade Agreements Implementation Act of 1988.

**COMMITTEE ACTION**

The Committee on Ways and Means and Subcommittee on Trade held several series of hearings related to the NAFTA and the supplemental agreements beginning in 1990. The Subcommittee held background hearings on United States-Mexico economic relations on June 14 and 28, 1990 (Serial No. 101- 108), immediately following the Joint Statement by President Bush and President Salinas endorsing the objective of a free trade agreement. On February 20, 21, and 28, 1991, the Subcommittee held hearings on the proposed negotiation of a free trade agreement with Mexico (Serial No. 102-19), in response to the notices to the Committee from President Bush of proposed negotiations with Mexico and Canada.

On completion of the NAFTA negotiations, the full Committee began a series of hearings, with Administration witnesses, on September 9 and 15, 1992, which the Subcommittee continued on September 17 and 22, with private sector witnesses (Serial No. 102-135). The Subcommittee held hearings on the three proposed supplemental agreements to the NAFTA on March 11, 1993 (Serial No. 103-8). The full Committee began a series of hearings on the provisions and economic implications of the NAFTA and the three supplemental agreements and their implementation with Administration witnesses upon the signing of those agreements on September 14, 1993. These hearings were continued by the Subcommittee with private sector witnesses on September 15, 21, and 23.

Extensive testimony was received during these hearings and in written statements submitted for the printed record from Administration officials who negotiated the NAFTA and supplemental agreements on behalf of the United States, Members of Congress, and representatives of the broad range of private sector interests affected by the Agreement, both in support and in opposition. Private sector interests included national business organizations, trade associations representing particular industry or agricultural interests, labor unions, individual companies, research institutes and academicians, environmental groups, importers and exporters, and consumer interests. Many of these concerns were addressed in the course of the negotiations on the NAFTA and side agreements or in the implementing bill or Statement of Administrative Action.

As background information for these hearings and to assist Members in evaluating the impact of a NAFTA on the U.S. economy, the Committee requested three series of investigations by the International Trade Commission under section 332(g) of the Tariff Act of 1930. The first study provided a review of trade and investment liberalization measures undertaken by Mexico and the prospects for future U.S.-Mexican relations (USITC Publication 2275, April 1990). The Committee on Ways and Means and the Senate Committee on

Finance jointly requested a study by the Commission of the likely impact of a free trade agreement with Mexico on the United States (USITC Publication 2353, February 1991). The Committees jointly requested, on September 22, 1992, an updated study by the ITC of the potential impact of the NAFTA on the U.S. economy overall and specific sectors (USITC Publication 2596, January 1993) to provide a basis for Congressional assessment of the actual Agreement.

On September 30, 1993, the Subcommittee considered in informal markup session a draft proposal in conceptual form for NAFTA implementing legislation, concerning matters within the jurisdiction of the Committee on Ways and Means. The proposal as amended in Subcommittee was transmitted informally in spreadsheet form to the full Committee on October 5, 1993, and made available to the public.

The full Committee met in informal markup session on October 13, and completed consideration on October 19, 1993, of the draft implementing proposal as recommended by the Subcommittee. The Committee adopted several amendments in conceptual form to the proposal and a number of recommendations for inclusion in the Statement of Administrative Action, including an Administration proposal to establish a transitional adjustment assistance program for NAFTA-impacted workers.

The draft implementing proposal, as amended, was prepared in legislative form, together with proposals of other committees of jurisdiction, in a consolidated House proposed bill as a basis for an informal conference with Senate committees. The House Ways and Means and Senate Finance Committees issued a press release on November 9 that summarized their joint recommendations on the implementing legislation and accompanying Statement of Administrative Action with respect to provisions within their jurisdiction.

On November 9, 1993, the Committee on Ways and Means ordered reported H.R. 3450, to implement the North American Free Trade Agreement, submitted by the President to the Congress on November 4, by a rollcall vote of 25 yeas, 12 noes.

With respect to the provisions in Title VI, Customs Modernization:

On January 27, 1993, Mr. Gibbons and Mr. Crane introduced H.R. 700, the "Customs Modernization and Informed Compliance Act," which was referred to the Committee on Ways and Means. H.R. 700 as introduced was the verbatim text of Subtitle C of Title VIII of the conference report on H.R. 11, the "Revenue Act of 1992" (H.Rept. 102-1034).

On March 29, 1993, the Subcommittee on Trade approved, by voice vote, H.R. 700 with an en bloc amendment.

On October 19, 1993, the full Committee on Ways and Means approved for inclusion in the NAFTA draft implementing bill the text of H.R. 700 as introduced with an en bloc amendment. The amendments included revisions to the sections on remote location filing, drawback, unclaimed merchandise, and authority to settle claims. In addition, the amendment added new sections authorizing administrative duty exemptions, customs accounting treatment for bonded aviation fuel, cartage, and reconciliation of suspended antidumping and countervailing duty entries.

## [Letters between the Chairmen]

Included herein is an exchange of letters between the Chairmen of the Committee on Ways and Means and the Committee on Merchant Marine and Fisheries concerning provisions of H.R. 700, within the jurisdiction of the Committee on Merchant Marine and Fisheries:
House of Representatives,
Washington, DC, November 10, 1993. Hon. Gerry E. Studds,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC. Dear Mr. Chairman: Thank you for your letter of October 18, waiving sequential referral of those sections of H.R. 700, the "Customs Modernization and Informed Compliance Act," within the jurisdiction of the Committee on Merchant Marine and Fisheries.

As you may know, the text of H.R. 700, with additional amendments, was included in H.R. 3450, implementing legislation for the North American Free Trade Agreement (NAFTA), as Title VI. On November 9, the Committee on Ways and Means ordered H.R. 3450 favorably reported to the House. At your request, the Committee report will include this exchange of letters regarding your jurisdictional interest.

I want to thank you for the close cooperation of your staff in drafting the provisions relating to the vessel clearance and documentation laws of the United States. Sincerely yours,
Dan Rostenkowski, Chairman.
Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, DC, .

Dear Mr. Chairman: It is my understanding that the Committee on Ways and Means will today be marking up the text of H.R. 700, the "Customs Modernization and Informed Compliance Act," as part of its informal mark up of NAFTA legislation. H.R. 700 legislation includes a number of provisions amending or repealing laws that fall within the

jurisdiction of the Committee on Merchant Marine and Fisheries including amendments to the Act to Prevent Pollution from Ships and the vessel clearance and documentation laws of the United States.

To assist you and the House leadership in considering this legislation as expeditiously as possible, and with the understanding that the Committee on Ways and Means will not make any changes to the pertinent sections without the concurrence of the Committee on Merchant Marine and Fisheries, I agree not to ask for a sequential referral of these provisions. At the same time, H.R. 700 does not amend some provisions in the Customs laws, which use obsolete terminology and do not reflect current agency authorities. I am hopeful that our staffs can work together to develop amendments to the Customs laws to reflect changes the Committee on Merchant Marine and Fisheries has made over the last decade to modernize the U.S. maritime laws.

This agreement is made, of course, without prejudice to the jurisdictional interests of the Committee on Merchant Marine and Fisheries over the provisions specified in this letter. I would request, in addition, that our correspondence on this matter be included in your Committee report on H.R. 700 and NAFTA legislation.

With kind regards.

Sincerely, Gerry E. Studds, Chairman.

**SECTION-BY-SECTION ANALYSIS, JUSTIFICATION, AND COMPARISON WITH PRESENT LAW**

H.R. 3450 was referred jointly to eight committees in the House. The following analysis covers only those provisions of the bill as ordered reported by the Committee on Ways and Means within its jurisdiction.

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## The House Energy & Commerce Committee Report

103d Congress Rept. 103-361

NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT

November 15, 1993.--Ordered to be printed

Mr. Dingell, from the Committee on Energy and Commerce, submitted the following

[To accompany H.R. 3450 which on November 4, 1993, was referred jointly to the following committees for a period ending not later than November 15, 1993: Ways and Means, Agriculture, Banking, Finance

and Urban Affairs, Energy and Commerce, Foreign Affairs, Government Operations, the Judiciary, and Public Works and Transportation]
The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3450) to implement the North American Free Trade Agreement, having considered the same, report the bill without recommendation.

## Purpose and Summary

On December 18, 1992, former President Bush and the heads of state of Canada and Mexico signed the North American Free Trade Agreement (NAFTA), providing for the elimination or reduction in tariffs and other barriers to trade between the three NAFTA countries. If implemented by the Governments of the United States, Mexico and Canada, NAFTA would create the biggest consumer market in the world, with a combined economy of $6.5 trillion and 370 million people.
President Clinton stated that he could not support the NAFTA negotiated by former President Bush without additional side agreements. Upon taking office, President Clinton, therefore, initiated negotiations with Mexico and Canada to add provisions to NAFTA that deal with the environment, worker rights, and import surges. Negotiations on supplemental agreements covering these three topics were concluded on August 13, 1993. The supplemental agreements were signed at Mexico City, Washington, and Ottawa on September 8, 9, 12 and 14, 1993.
On November 4, 1993, President Clinton submitted to the Congress H.R. 3450, a bill to implement the North American Free Trade Agreement. H.R. 3450 would approve only the basic agreement and the accompanying Statement of Administrative Action. The supplemental agreements on the environment and on labor, together with side letters having to do with sugar and other agricultural products, are not approved by the legislation.
Under the provisions of the bill, the President is authorized to enter the NAFTA into force with respect to Canada or Mexico, as long as specific conditions are met, on or after January 1, 1994. The provisions of NAFTA would take effect over a 15-year period, during which tariffs and other barriers would be reduced or eliminated.

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**NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT** ----------
November 18 (legislative day, November 2), 1993.--Ordered to be printed ----------
Mr. Moynihan, from the Committee on Finance and on behalf of Mr. Leahy, from the Committee on Agriculture, Nutrition, and Forestry; Mr. Hollings, from the Committee on Commerce, Science, and Transportation; Mr. Glenn, from the Committee on Governmental Affairs; Mr. Biden, from the Committee on the Judiciary; and Mr. Pell from the Committee on Foreign Relations filed the following
J O I N T  R E P O R T
[To accompany S. 1627]
The Committees on Finance, Agriculture, Nutrition, and Forestry, Commerce, Science, and Transportation, Governmental Affairs, the Judiciary, and Foreign Relations, to which was jointly referred the bill (S. 1627) to implement the North American Free Trade Agreement, having considered the same, report thereon.
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## The House Energy & Commerce Committee Report

### I. Background and Need for the Legislation

The NAFTA as negotiated by the United States, Mexico, and Canada requires changes to the statutory laws of each of the parties. H.R. 3450 sets out the changes required in U.S. statutory laws.

The following is a discussion of provisions of H.R. 3450 that affect matters within the jurisdiction of the Committee on Energy and Commerce. This discussion also covers some of the subjects within the jurisdiction of the Committee for which no statutory provisions were required.I. Entry Into Force

NAFTA is a broad and comprehensive trade agreement. It provides not only for tariff reductions, but would require Mexico, and in some cases Canada, to change its laws and regulations having to do with a broad range of matters affecting foreign commerce, such as: health and safety standards; telecommunications; financial services; competition policy; intellectual property; and investment.

The President determines that Mexico or Canada has implemented the statutory changes necessary to bring that country into compliance with its obligations under the Agreement: The President transmits a report to the Congress certifying that Canada or Mexico has fulfilled its obligations to implement the agreement; Mexico and/or Canada

exchanges notes with the United States providing for the entry into force of the environmental and labor side agreements.
The Administration, after thorough consultation with the congress, would provide notice of withdrawal under the NAFTA, and cease to apply that Agreement, to Mexico or Canada if either country withdraws from a supplemental agreement. The preceding would not apply in any instance in which the withdrawal by another government is consensual in nature--for example, where that government and the United States withdraw from a supplemental agreement in order to enter into a superseding agreement in the labor or environmental area.

## II. Relationship to Federal and to State Law; Environmental and Sanitary and Phytosanitary Measures

(2) Title XIV of the Public Health Service Act (popularly known as the (3) the Clean Air Act (42 U.S.C. et seq.); (5) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.); seq.); (8) The Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 Note /1/ This law is amended in Title V solely for the purpose of implementing essentially technical, but important, changes regarding fuel economy. /1/ (10) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); (12) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); Liability Act of 1980 (42 U.S.C. 9601 et seq.); Law 99-499; 100 Stat. 1613); 1972 (popularly known as the "Ocean Dumping Act") (33 U.S.C. 1411 et (16) The Environmental Research, Development, and Demonstration (17) The Pollution Prosecution Act of 1990 (42 U.S.C. 4321 note); and 106 Stat. 1505); the "Refuse Act") (33 U.S.C. 2701 et seq.); (21) The Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.).
The Statement of Administrative Action addresses the fact that such U.S. laws are not affected by the NAFTA. For example, the Statement specifically confirms the ability of each NAFTA party to take necessary actions to ensure food safety, such as through the inspection of food products. The Statement provides: "* * * Article 712(2) states explicitly that each government may establish those levels of protection for human, animal or plant life or health that the government considers to be appropriate." In particular, the Statement makes it clear that the "Delaney Clauses", which prohibit the addition of food additives, color additives and animal drugs to foods or feeds if the substance is found to induce cancer in humans or animals, are completely protected under the NAFTA.

## III. Corporate Average Fuel Economy; Automotive Content Level

Section 371 of H.R. 3450 amends section 503(b)(2) of title V of the Motor Vehicle Information and Cost Savings Act which is the title establishing the Corporate Average Fuel Economy (CAFE) standards. It does not provide any changes in title V other than this limited amendment.
The Free Trade Agreement would eliminate Canada's export-based duty 1988 for exports to all other countries. Canada's production-based 1996.
an important share of the auto industry; namely, the auto parts is the failure of the Agreement to reach a 60 percent content level, workers. As a result, the Administration has made a commitment to entities and workers. For example, the Administration has stated in the level of customs personnel at the border to ensure that the new, fully enforced.
an agreement with Canada to raise the North American content 50 percent to 60 percent, which is what the U.S. position in the has committed to support the need for a greater percentage. The duty remission program, which under the Agreement would be allowed to investigation should be initiated under title III of the Trade Act of joint and cooperative efforts by this Committee and the Committee on the legislation to Congress, as well as extensive Committee The Committee notes that despite these commitments and authority, the North American Content requirement under the CFTA was not raised to 60 percent.

## IV. North American Development Bank and Related Provisions

Section 541 provides for the establishment of the North American Development Bank and stipulates that this institution is exempt from U.S. securities laws. The exemptions provided under this Section are virtually identical to other exemptions that have previously been provided to multilateral lending institutions over the years (e.g., the Inter-American Development Bank, the International Bank for Reconstruction and Development, the Asian Development Bank, the African Development Bank, etc.). From time to time, the Securities and Exchange Commission (SEC) has issued rules regarding periodic and other reports to be filed with the Commission by such entities (e.g., SEC International Series Release No. 297).

## V. Energy and Basic Petrochemicals

Self-generation: U.S. firms can, build, own, and operate power plants plants to supply themselves or other Mexican industrial customers with independent power plants to supply industrial customers, the Mexican

sell to the Mexican government procurement market, which includes the directly to end users in Mexico, with PEMEX as a third party to any as well as build, own, operate, and sell in Mexico.
users in Mexico, with PEMEX as a third party to any agreements.
The following is a brief summary of the major articles in Chapter Six.
SCOPE AND COVERAGE

**IMPORT AND EXPORT RESTRICTIONS; EXPORT TAXES**

This provision binds all NAFTA parties to the GATT provisions on prohibitions or restrictions on trade in energy and basic petrochemical goods. The relevant GATT provisions prohibit minimum or maximum export-price and import-price requirements. Significantly, the relevant GATT provisions are made part of the NAFTA without the limitations and exceptions provided in the GATT. This means that only limitations and exceptions provided in NAFTA are allowed. This provision does allow for the administering of a system of import and export licensing for energy or basic petrochemical goods, if it is operated in a manner consistent with the provisions of the NAFTA.

**OTHER EXPORT MEASURES**

other country; sales;

**ENERGY REGULATORY MEASURES**

**SECURITY AND MISCELLANEOUS PROVISIONS**

critical defense contract; (3) Implement national policies or international agreements relating to (4) Respond to direct threats of disruption in the supply of nuclear RESERVATIONS

**OIL AND PETROCHEMICALS**

NATURAL GAS
ELECTRICITY

**OTHER ENERGY PRODUCTS**

**ENERGY-RELATED GOODS AND SERVICES**

Chapter Ten, the Government Procurement provisions of NAFTA, should be read together with Chapter Six, because it provides large potential new markets to U.S. energy equipment and contracting

companies. This chapter will give U.S. energy equipment and service suppliers immediate access to the Mexican government procurement market, including the state-owned energy companies, PEMEX and CFE. When the NAFTA enters into force, 50 percent of PEMEX and CFE's purchases of goods and services over $250,000 and purchases of construction services over $8 million will be immediately opened to U.S. firms; nearly all purchases will be opened within 10 years.

**TARIFF AND NON-TARIFF BARRIERS**

**VI. Telecommunications**

**VII. Financial Services**

Hearings and Briefings

**Committee Consideration**

**Committee Oversight Findings**

**Committee on Government Operations**

**Committee Cost Estimate**

Congressional Budget Office Estimate
U.S. Congress, Washington, DC, November 15, 1993.
Chairman, Committee on Energy and Commerce, Robert D. Reischauer, Director.

**1. Bill number:**

H.R. 3450.

**2. Bill title:**

North American Free Trade Agreement Implementation Act.

**3. Bill status:**

As ordered reported by the House Committee on Energy and Commerce on November 9, 1993.

**4. Bill Purpose:**

H.R. 3450 would approve the North American Free Trade Agreement (NAFTA) entered into on December 17, 1992, with the governments of Canada and Mexico. It would provide for tariff reductions and other changes in law related to implementation of the agreement. The bill also would create a transitional adjustment assistance program for affected workers, require the use of an electronic fund transfer system for collecting certain taxes, and increase certain customs user fees. It also would authorize appropriations for a number of agricultural and other programs.5. Estimated cost to the Federal Government:

The following tables summarize CBO's estimate of the budgetary impact of H.R. 3450. Table 1 shows the impact of the bill on direct spending and revenues. Table 2 details the estimated costs that depend on future appropriation actions.

TABLE 1. CBO ESTIMATES OF CHANGES IN REVENUES AND DIRECT SPENDING

[By fiscal year, in millions of dollars] /1/ This table does not include any discretionary spending that would be /1/ **Five-**

**year 1994 1995 1996 1997 1998 total**

CHANGES IN REVENUES (NET)

Reduction in tariff rates -214 -489 -547 -609 -672 -2,531 /2/

On-budget 49 262 272 371 1,207 2,161

Off-budget 23 116 135 146 701 1,121 17 22 22 23 23 107 -3 -3 -3 -3 -3 -15

Increases in Customs fees (offsetting receipts) -93 -203 -221 -241 0 -758

assistance program/3/ Trade adjustment assitance (TAA) for training costs is currently limited by law to a maximum of $80 million a year. This estimate assumes that this cap is maintained. If it were raised or eliminated, CBO estimates that TAA costs resulting from NAFTA would be a total of $25 million higher over the 1994-1998 period than shows above./3/

10 25 25 20 25 105/4/ Less than $500,000./4/

7 8 9 9 33 -64 -86 -66 -1 33 -184 0 54 2 0 0 56 -5 -5 -5 -5 -5 -25

EFFECT ON DEFICIT On-budget -1 0 -1 0 -493 -495

Off-budget -23 -116 -135 -146 -701 -1,121

**TABLE 2. CBO ESTIMATES OF AUTHORIZATIONS OF APPROPRIATIONS**

[By fiscal year, in millions of dollars]

**Five- year**

**1994 1995 1996 1997 1998 total**

Agriculture programs:

| | | | | | | |
|---|---|---|---|---|---|---|
| Estimated authorizations | 96 | 22 | 22 | 22 | 22 | 184 |
| Estimated outlays | 18 | 61 | 34 | 37 | 22 | 172 |
| North American Development Bank: | | | | | | |
| Estimated Authorizations | 0 | 0 | 56 | 56 | 56 | 168 |
| Estimated outlays | 0 | 0 | 56 | 56 | 56 | 168 |
| Other authorizations: | | | | | | |
| Estimated authorizations | 21 | 16 | 11 | 11 | 11 | 70 |
| Estimated outlays | 16 | 18 | 10 | 11 | 11 | 66 |
| Total authorizations: | | | | | | |
| Estimated authorizations | 17 | 38 | 89 | 89 | 89 | 422 |
| Estimated outlays | 34 | 79 | 100 | 104 | 89 | 406 |

**Basis of Estimate:**

Tariff Rate Reductions. Under NAFTA, all tariffs on U.S. imports from Mexico would be eliminated by 2008. Tariffs would be phased out for individual products at varying rates according to one of six different timetables ranging from immediate elimination to elimination over 15 years for some goods. Based on the composition of imports from Mexico in 1991, tariffs would be eliminated on about 60 percent of dutiable goods on January 1, 1994, and tariff revenue would be reduced by about 65 percent in calendar year 1994. By 1998, duties on about 70 percent of goods that are currently subject to duty would be eliminated, and tariff revenue would be about 85 percent lower than under current law.

**Electronic Federal Tax Deposit System.**

The new federal tax deposit system would electronically transfer tax deposits to the Treasury, eliminating the need for banks to process paper coupons and checks. The change, which would be phased in gradually over several years, would allow deposits to be credited to the Treasury on the day of deposit instead of the day after deposit. Adoption of this system would not change the amount of taxes paid by taxpayers, but would shift the receipt by the Treasury of certain tax revenues from the beginning of one fiscal year to the end of the preceding year. The Joint Committee on Taxation has estimated that these changes would increase on-budget receipts by $2.2 billion and off-budget receipts by $1.1 billion over the fiscal years 1994 through 1998.

**Customs Enforcement Initiative.**

The bill would allow Customs Service auditors to access IRS income tax return information. This would allow auditors to use businesses' tax information on the valuation of imports and is expected to result in higher customs duty audit assessments. CBO estimates, net of income and payroll tax offsets, that the access to the information would result in increased receipts of $107 million over fiscal years 1994 through 1998.

**Customs Modernization.**

Title VI of H.R. 3450 would expand the base of goods eligible for customs duty drawbacks and would allow increased exemptions from duty on certain personal articles, decreasing customs duties by $7 million each year. Title VI also would require payment of interest on merchandise revaluations after entering an item through U.S. Customs, increasing receipts by $4 million each year. CBO estimates, net of income and payroll tax offsets, these provisions would decrease receipts by $3 million each year.

**CHANGES IN DIRECT SPENDING**

**Customs User Fees.**

H.R. 3450 would make several changes to user fees charged by the U.S. Customs Service, which are recorded in the budget as offsetting receipts. For the fiscal years 1994 through 1997 only, the current $5 passenger fee would be increased to $6.50 and the exemption granted to passengers arriving in the United States from Canada, Mexico, and the Caribbean would be removed. For fiscal years 1999 through 2003, customs user fees would be extended at the current $5 rate. (Under current law, these fees sunset at the end of fiscal year 1998). CBO estimates that the $1.50 passenger fee increase and the removal of the exemption would result in additional fee collections of $758 million over the fiscal years 1994 through 1997.Current Trade Adjustment Assistance (TAA) Program.
Under current law, the TAA program provides cash assistance and training to workers who can demonstrate that increased imports contributed importantly to the loss of their job. If NAFTA were to be approved, CBO estimates that approximately 4,500 additional workers annually for fiscal years 1995 through 1998 would become eligible for TAA. The additional workers would not qualify for TAA immediately because workers must exhaust their unemployment benefits prior to collecting TAA. The fiscal year 1994 estimate assumes approximately 1,000 workers would qualify for TAA, assuming that NAFTA becomes

effective January 1, 1994. Under current law, TAA recipients are required to participate in job training unless they receive a waiver. Currently, about 60 percent of the recipients train and 40 percent receive waivers. The average training cost is approximately $4,000 per person. Based on an average cash benefit of $4,800, CBO estimates the additional TAA cash assistance would be $5 million in 1994 and $20 million each year for fiscal years 1995 through 1998, and we estimate the additional TAA training benefits would be $5 million in 1994 and $10 million each year for fiscal years 1995 through 1998, if all newly eligible workers were to receive their full training benefit.

**New Trade Adjustment Assistance Benefits.**

The bill would add a new sub- chapter to the TAA program to allow workers who lose their job because their firm shifts production to Mexico or Canada to qualify for TAA. In addition, workers would be required to enter a job training program by their sixteenth week of unemployment or their sixth week of TAA certification, whichever is later, to be eligible for benefits. Unlike the current TAA program, beneficiaries under this sub-part could not receive a waiver from training and still collect cash assistance. TAA cash and training benefits under this amendment would be available to those who are displaced from their jobs between January 1, 1994, and September 30, 1998. CBO estimates that fewer than 1,000 workers annually would qualify for TAA payments under this provision. The average training benefit would be $4,000 per person, and the average cash benefit would be approximately $6,000 per person. CBO estimates that total TAA payments under this new sub-part would be less than $500,000 in fiscal year 1994, $7 million in fiscal year 1995, $8 million in fiscal year 1996, and $9 million each of the fiscal years 1997 and 1998.

**Effects on Agricultural Price Support Programs.**

Gradual reductions in tariff and non-tariff barriers on agricultural products under the North American Free Trade Agreement are expected to result in increased trade between the United States and Mexico. An estimated net increase in U.S. exports of commodities currently supported by agriculture programs would result in higher market prices and a reduction in government support payments. While lower acreage reduction program (ARP) requirements (to compensate for increased demand) would mitigate some of the price increase, the ARP level could not be reduced in some years.

**North American Development Bank.**

Section 542 would authorize the President to accept membership in a North American Development Bank. The bank would be a multilateral bank with stock held by member states. The bill would authorize the United States to subscribe to 150,000 shares of capital stock and the appropriation of $1,500 million to purchase the stock. It would appropriate $56.25 million in 1995 for the first paid-in stock subscription, and would provide an authorization of appropriations for the remaining amount without fiscal year limitation.

**Customs Modernization.**

H.R. 3450 would make several changes in the administrative procedures of the Customs Service. Customs would be allowed to release unclaimed merchandise for sale or destruction after six months rather than the one-year period mandated by current law. CBO estimates that this provision would decrease storage costs by $6 million annually. In addition, the number of entries that could be filed informally would be increased.

## SPENDING SUBJECT TO APPROPRIATIONS ACTION

**Agriculture.**

Sections 321 and 361 of the bill would authorize a number of program changes that could increase federal outlays in agricultural programs by an estimated $172 million over the 1994-1998 period. The majority of costs would reflect authorizations for assistance to farm workers in markets adversely affected by increased trade with Mexico ($20 million per year) and the construction of a containment facility for agricultural products from Mexico. Other provisions would require the Secretary of Agriculture to provide information and reports on various agriculture markets and to monitor end use certificates.

**North American Development Bank.**

Beyond the amount appropriated for 1994, H.R. 3450 would authorize additional appropriations of $168 million for paid-in capital of the bank.

**NAFTA Secretariat.**

Title I would authorize the appropriation of up to $2 million to fund the United States section of the secretariat established by the agreement. These funds would be used to pay for the activities of the secretariat,

as well as the commission, several committees and subcommittees, and various working groups subordinate to the secretariat. It also would allow the U.S. section to retain and spend reimbursements from the Mexican or Canadian section. We assume that the U.S. section of the secretariat would be established within the International Trade Administration of the Department of Commerce (DOC), and that the secretariat and the various committees under its jurisdiction would use the full $2 million authorized to pay for personnel and other costs.

**Commerce Department Fees.**

Title III (subtitle E) would require the DOC to make available to the public certain information relating to sanitary procedures and would permit the DOC to charge reasonable fees for this information. Such fees would raise $1 million to $2 million annually and would be available for spending under existing authority.

**Customs Automation Program.**

H.R. 3450 would establish the National Customs Automation Program, an automated and electronic system for processing information on commercial imports. We estimate that this program would cost $3 million in fiscal year 1994, assuming appropriation of the necessary funds.

**Tax Collection Expenses.**

The bill would authorize the Harbor Maintenance Trust Fund to use, for the first time, up to $5 million annually to cover the administrative costs of collecting the harbor maintenance tax. We estimate that this would result in costs of $5 million annually, assuming appropriation of the necessary funds.

**Commissions.**

Section 532 would authorize an annual appropriation of $5 million for 1994 and 1995 for the United States contributions to the annual budget of the Commission for Environmental Cooperation. This commission is described in article 43 of the North American Agreement on Environmental Cooperation; its purpose is to address environmental issues affecting the continent. Section 533 would authorize annual appropriations of $5 million, starting in 1994, for the Border Environment Cooperation Commission (BECC) that is established by the Border Environment Cooperation Agreement. This commission

would assist in developing solutions to environmental problems in the U.S.-Mexico border region. The BECC would certify environmental construction projects for the North American Development Bank (established by section 451) and other financial institutions.

**International Trade Commission.**

Various provisions of the bill would require the International Trade Commission to monitor certain imports and to investigate and determine petitions for relief from imports benefiting from the agreement. Based on information supplied by the commission, CBO estimates that these duties will require an additional authorization of less than $1 million per year.

**6. Pay-as-you-go considerations:**

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 3450 would affect direct spending and receipts.

| | 1994 | 1995 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|
| Change in outlays | -152 | -208 | -257 | -218 | 62 |
| Change in receipts | -151 | -208 | -256 | -218 | 555 |

**7. Estimated cost to State and local governments:**

None.

**8. Estimate comparison:**

None.

**9. Previous CBO estimate:**

On November 4, 1993, CBO prepared an estimate, based on draft language, of the direct spending and revenue effects of the North American Free Trade Agreement Implementation Act. That estimate of revenues and direct spending is identical to the estimate for H.R. 3450.

**10. Estimate Prepared By:**

Kim Cawley, Mark Grabowicz, Mary Maginniss, Eileen Manfredi, Ian McCormick, John Webb, and Robert Sunshine, Cory Oltman, Melissa Sampson, Linda Radey, and Joseph Whitehill.

**11. Estimate approved by:**

C.G. Nuckols, Assistant Director for Budget Analysis.

# Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

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**Agency Views**

U.S. House of Representatives,
Committee on Energy and Commerce,
Washington, DC,
February 20, 1991.
Hon. Carla A. Hills,

## U.S. Trade Representative,

Washington, DC.

Dear Ambassador Hills:

On February 5, 1991, President Bush announced that the United States will pursue a trilateral free trade agreement with Mexico and Canada to establish a North American Free Trade Zone. The goal of this agreement, as stated by the President, is to "progressively eliminate obstacles to the flow of goods and services and to investment, provide for the protection of intellectual property rights, and establish a fair and expeditious dispute settlement mechanism."

As you know, in the past I have expressed to you a number of concerns regarding negotiations for a free trade agreement with Mexico, which has now been superseded by this new trilateral negotiation. These concerns still stand. I must also emphasize, as we have discussed before, that free trade zone negotiations involving Mexico must be comprehensive, and must address not only the matters stated by the President in his announcement this week, but also to ensure fairness and competitiveness in other critical matters

such as environmental issues, labor issues, energy issues, and vehicle theft issues.

In the recently enacted Clean Air Act Amendments (Section 811), Congress explicitly recognized the linkage between international competitiveness of United States manufacturers and less stringent environmental standards of our trading partners. Pursuant to Section 811, the President is required to develop a "strategy for addressing such economic effects through trade consultations and negotiations" and submit a report to Congress containing that strategy. These economic effects, including job loss, are exacerbated by the movement of United States firms to other countries to avoid environmental regulatory problems--a phenomena recently noted by Administrator Reilly of the Environmental Protection Agency.

Concerns have been raised not only about less stringent environmental standards in Mexico and lax enforcement of such standards, but also about pollution from the many U.S. maquiladora facilities which may affect public health and the environment on both sides of the border. I do not discount Mexico's expressed desire to pursue environmentally sound economic development. However, I believe it is essential, for both U.S. industrial competitiveness and environmental protection, that environmental issues are included as an integral part of the free trade negotiations.

I understand you have suggested the possibility of a separate bi-national agreement on the environment to address these concerns in lieu of including environmental matters in the free trade agreement negotiations. I disagree except where such separate negotiations are specifically contemplated by existing law. For example, section 815 of the Clean Air Act amendments also authorizes the EPA, in cooperation with the Secretary of State, to negotiate with Mexico a separate and independent program to monitor and improve air quality in regions on both sides of the border. The Committee, through its oversight functions, will be following the EPA efforts to use this authority. As you know, EPA believes that pollution from Mexico adversely affects visibility at the Grand Canyon National Park.

As you begin these negotiations, there are some specific questions as to the impact of a North American Free Trade Zone Agreement (NAFTA) on U.S. trade with Mexico and Canada and on the U.S. economy that I ask you to address, as follows.

1. What analysis, other than the February 1991 report of the International Trade Commission under section 332 of the Tariff Act of 1930, has the Administration done to measure the volume and types of U.S. exports to, and trade expansion with, Mexico that it hopes would increase as a result of establishing an NAFTA? Please provide a copy of such analysis. Is the increase expected to be significant?

2. What analysis, other than the report referred to in question number 1, has the Administration done to ascertain the volume and type of Mexican imports to the U.S. resulting from an NAFTA? Please provide a copy of such analysis. Which U.S. manufacturing sectors would be hardest hit by increased import competition resulting from the agreement, and what would be the employment effect, sector by sector? Please explain the basis for your reply.
3. What analysis has the Administration done to measure the volume and type of U.S. investment in Mexico that would result from an NAFTA? Please provide it. What impact would that capital outflow have on the domestic economy?
4. Does Mexico have comparable environmental laws which provide a level of environmental protection equivalent to the following U.S. Statutes: Clean Air Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Safe Drinking Water Act and Comprehensive Environmental Response, Compensation and Liability Act (Superfund)? To what extent are environmental laws in Mexico being aggressively enforced? Describe the nature of the penalties authorized and assessed for violation of such laws? Please explain the basis for your reply to these questions.
5. Does the Administration plan to discuss debt relief for Mexico in these negotiations? Does the Administration plan to offer foreign assistance to Mexico as part of the agreement? To what extent will such relief and assistance be conditional to ensure protection of the environment and to avoid adverse impacts on U.S. labor?
6. One way of assessing the impact of a NAFTA would be to examine patterns of U.S./Mexico trade and investment over the last ten years. Has the Administration conducted a study of companies that have transferred production to Mexico, such as furniture manufacturers transferring from Southern California to Mexico for labor or environmental regulation reasons? Has the Administration determined how many workers, in which industries, have been adversely affected by this trade and investment relationship? Has the Administration determined how many U.S. workers have received trade adjustment assistance benefits because of trade with, or investment in, Mexico? If the answer is yes, please provide the studies and determinations. If the answer is no, please explain why not.
7. Has the Administration examined the impact of Mexico's Auto Decrees (since the 1960's) on U.S. auto industry investment employment, and trade with Mexico? Please explain. What are the requirements of these decrees and what is their effect on U.S. automakers? Will you seek modifications of the decrees if they are not beneficial to U.S. interests? Are any U.S. auto-related companies subject to any private contracts or agreements related to the Mexican

Auto Decrees that have been negotiated between the Government of Mexico and those companies?
8. Does the Administration believe that additional auto assembly capacity in Mexico would come at the expense of existing U.S. production or production in other countries? On what basis is this assessment made?
9. Do the workers at auto-related production facilities in Mexico actually have the real right and opportunity (as opposed to a paper, "legal", right) to form unions and join labor federations of their own choosing?
10. Do workers in the maquiladora plants in Mexico have the right to form unions of their own choosing and to bargain a contract with the employer? Are workers from affected worksites directly involved in developing goals and strategies for collective bargaining over their own terms and conditions of work?
11. Has the Administration examined changes in labor legislation and labor policy in Mexico over the past twenty years? If so, has the legal framework or condition of Mexican workers improved or worsened in that time? Why? Are Mexico's legal and constitutional provisions related to labor enforced by the Mexican Government?
12. If common norms of labor laws and practice were adopted as part of the NAFTA, how would such measures be enforced? Would U.S. parties have the right to intervene in Mexican procedures, even if the aggrieved Mexican party failed to act? Would a tri-national panel rule on all disputes, on only those which directly affected each signatory, or on no such disputes?
13. In replying to this question and questions 5 thru 10, please consider to what extent these labor issues were or were not a concern in the free trade negotiations with Canada and indicate to what extent these issues and problems potentially create an uneven playing field for negotiations that did not exist with Canada.
14. Energy issues are a major part of the U.S./Canada Free Trade Agreement. Mexico has repeatedly stated that it will not discuss questions concerning petroleum in any negotiation and has apparently asserted that this position is based on provisions of the Mexican Constitution. Please identify those provisions and explain why they preclude such discussions. Does the Administration, nevertheless, intend to insist that energy issues be addressed in an NAFTA? What is the basis for this decision? What is the impact?
15. Enclosed is my recent correspondence with the Administration regarding auto theft issues involving Mexico. Please explain whether the negotiations will address the issues discussed by the Customs Service that give rise to the theft problem.

Additionally, I note that the U.S. and Canada are likely to sign later this month at a meeting of the Economic Commission for Europe (ECE) a Convention on Environmental Impact Assessment in a Transboundary Context. Both countries have previously signed an ECE protocol on transboundary nitrogen oxide pollution and are participating in ECE negotiations regarding transboundary volatile organic compounds. Also, the U.S. and Canada have a draft of a bilateral on transboundary pollution. I understand that Mexico is not a participant in these matters, yet these concerns are not unique to the Canadian-U.S. border. What efforts will be made to urge Mexico to either join the U.S. and Canada in these international efforts or to include those agreements in these negotiations? Please explain.

Finally, please clarify for us the extent to which these negotiations may, or will not, affect or change the U.S.-Canada Free Trade Agreement. I presume it will not be changed by these negotiations. Is that your understanding?

I am providing a copy of this letter to the Council of Economic Advisors because I believe they need to be aware of my concerns. I request that you reply to the above questions by April 10, 1991. If you cannot respond to all of these questions by this date, please respond to the extent possible and provide a date certain for the completion of your response.

With best wishes.

Sincerely,

John D. Dingell,

Chairman.

Enclosures.

The United States Trade Representative
Executive Office of the President,
Washington, DC, April 10, 1991.

Hon. John D. Dingell,
Chairman, Energy and Commerce Committee,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter dated February 20, 1991, concerning the North American Free Trade Agreement (NAFTA). I greatly appreciate your comments on the proposed agreement.

Participation in trade agreements such as the proposed NAFTA will substantially enhance U.S. competitiveness and contribute to the growth of our economy and employment opportunities. Expanded trade and investment opportunities are essential to our economic well-being. In 1990, for example, exports rose by over 8 percent and accounted for 88 percent of U.S. GNP growth.

Furthermore, as President Bush stated in his March 1 letter to you, the continuation of fast track procedures is essential for our

participation in trade negotiations leading to such market-opening agreements. Preserving fast track procedures--and the partnership between Congress and the Executive Branch that fast track represents--will keep on course our joint efforts to liberalize trade and open markets through trade negotiations.

Mexico has undertaken impressive liberalization of its trade and investment regime under the leadership of President Salinas. However, U.S. goods remain subject to trade barriers that in many cases are higher than our own, and Mexico remains closed to certain U.S. investments. A North American Free Trade Agreement would create an enormous market, encompassing some 360 million consumers and total output of $6 trillion. The progressive elimination of barriers to the flow of goods, services and investment, and strengthened protection of intellectual property rights would benefit a broad spectrum of businesses, workers, farmers and consumers. Moreover, a NAFTA would help cement the extensive historical, familial, cultural and language links the United States has with both Mexico and Canada.

As you know, the Administration shares your goal of enhancing protection of the environment and of improved standards for workers. I firmly believe that the NAFTA negotiations will help us make progress not merely in trade but along our broader agenda, including the environment and labor standards.

In addition to the comments you provided in your letter, you included fifteen numbered questions (and two questions that were not numbered) relating to various trade and non-trade issues that might be raised in the context of the negotiations. We have prepared responses to these questions; because of the length of these responses, we have enclosed them with this letter.

Again, Mr. Chairman, I appreciate your taking the time to share your thoughts with me.

Sincerely,

Carla A. Hills.

Enclosure.

1. What analysis, other than the February 1991 report of the International Trade Commission under section 332 of the Tariff Act of 1930, has the Administration done to measure the volume and types of U.S. exports to, and trade expansion with, Mexico that it hopes would increase as a result of establishing a NAFTA? Please provide a copy of such analysis. Is the increase expected to be significant?

Answer. In the past year two comprehensive studies, in addition to the ITC study, have been conducted on the effects of an FTA with Mexico. All three studies conclude that the U.S. economy would benefit--in terms of exports, output and employment.

THE CLOPPER ALMON STUDY

Commissioned by the U.S. Department of Labor, Industrial Effects of a Free Trade Agreement Between Mexico and the USA is a joint study by groups at the Universities of Maryland and Guanajuato (Mexico). Dr. Clopper Almon of the University of Maryland was the project director.

The study, released in September 1990, uses linked input-output models for the U.S. and Mexican economies. There are over 70 sectors in each of the two models. Each model forecasts employment, production, prices, exports and imports in all sectors for the period 1989 to 2000. The effects of a U.S./Mexico FTA are expressed as the difference between a baseline forecast (excluding an FTA) and forecasts of two FTA scenarios (tariff elimination alone and the elimination of tariffs and major non-tariff barriers).

The Clopper Almon study concluded that ten years after the agreement on tariff and non-tariff barriers went into effect, U.S. exports to Mexico would be $6.7 billion higher (at 1977 prices and purchasing power) than if liberalization did not take place. Expressed in constant 1990 dollars, this represents a roughly $10 billion increase in U.S. exports to Mexico. Real exports to Mexico would be roughly 28 percent higher in the year 2000 due to an FTA. Export expansion will be particularly strong in agriculture and many manufacturing sectors (e.g. motor vehicles, computers, communication equipment, plastic and metal products, non-electrical machinery, and electrical industrial apparatus).

MARWICK STUDY

The U.S. Council of the Mexican-U.S. Business Committee recently contracted for a study of the effects of a U.S.-Mexican FTA from the accounting firm of KPMG Peat Marwick (Policy Economics Group). An executive summary of this study reporting broad conclusions of the analysis has been released, though the full study is not yet available.

The Peat Marwick study takes an approach different from that employed by Clopper Almon. Taking 1988 as a base year, the study examines how employment, wages, incomes, rates of return, exports and imports would have been different in 1988 had an FTA been in effect that year. The effects of the FTA in the Peat Marwick study are, therefore, the difference between 1988 as it was in fact and 1988 as it might have looked with an FTA in operation and all the long-term adjustments to free trade completed.

The executive summary reports results on the basis of two scenarios, one not allowing for additional invested capital in Mexico and one that assumes that $25 billion of additional capital has been fully put to work in useful ways in Mexico as a result of an FTA.

The executive summary of the Peat Marwick study does not provide a dollar figure for the increase in U.S. exports to Mexico under either

of the two scenarios. It reports the increase on a percentage basis instead. In 1988, had an FTA been in effect, the study estimates in the no-additional-capital scenario that U.S. exports to Mexico would have been 5.4 percent higher. Under the additional capital scenario, U.S. exports increase somewhat less (actual figure not reported in the executive summary).

COMMENT

The U.S. export expansion reported in the Peat Marwick study is smaller than in the Clopper Almon study. One reason for this is that Clopper Almon considers changes in U.S. exports over time (to the year 2000) while Peat Marwick just considers the hypothetical change to exports in a base year.

Also with reference to the Peat Marwick study, the balance-of-payments effects of increased capital outflows from the United States to Mexico should strengthen rather than weaken U.S. exports to Mexico. The Peat Marwick study, using a "comparative static" framework is not designed to capture such balance-of-payments effects on U.S. exports in the additional capital scenario.

There are other ways in which these studies tend to underestimate the potential for export (and output) expansion arising from a NAFTA. First, the models capture the possibilities for expanded trade between product sectors. They do not measure the important opportunities for trade expansion within various product sectors. Second, these models do not capture the "dynamic" gains from liberalization. These dynamic increases in output come about as a result of higher levels of savings and investment associated with the "static" output gains of the FTA. Third, these models also miss the beneficial effects of economies of scale and increased product innovation and R&D. When these effects are added, they amplify both static and dynamic components of gains from an FTA. Fourth, a NAFTA will likely address many more Mexican barriers than could be modeled in either the Clopper Almon or Peat Marwick study. And finally, the NAFTA should improve overall economic efficiency in the Mexican economy by advancing and solidifying market- oriented reforms and disciplining government distortions and private cartel behavior that act as brakes on economic growth.

Besides the ITC, Clopper Almon and Peat Marwick studies, others are in the works. A listing of such work in progress was reported in the ITC study to the Congress. In addition, the Department of Commerce is contracting for a study to be done outside of government on the effects of a NAFTA on long-term labor demographics in the United States. This study, which should be completed in July, will focus on key U.S. manufacturing sectors. We will be pleased to share the results of this study with you.

Study designs vary significantly and different studies highlight different effects of trade liberalization. The studies completed to date, however, all concur in the view that a NAFTA would significantly expand U.S. exports. Copies of the executive summary of the Peat Marwick study; the Clopper Almon study and erratum and summary of the Clopper Almon study done by the U.S. Department of Labor are enclosed.

2. What analysis, other than the report referred to in question number 1, has the Administration done to ascertain the volume and type of Mexican imports to the U.S. resulting from a NAFTA? Please provide a copy of such analysis. Which U.S. manufacturing sectors would be hardest hit by increased import competition resulting from the agreement, and what would be the employment effect, sector by sector? Please explain the basis for your reply.

Export, import and employment effects of a NAFTA are drawn out of the same economy-wide studies. The same studies referred to in answer to question number 1 will be reported here.

THE CLOPPER ALMON STUDY

Clopper Almon reports that, 10 years after liberalization, U.S. imports from Mexico would be about $1.8 billion higher (1977 dollars) than they would be if trade liberalization did not take place. this is equivalent to about $3.1 billion in constant 1990 dollars.

Because the Mexican economy is so small compared to the U.S. economy (4 percent), and U.S. barriers to the entry of imports from Mexico currently so low, the employment effects--even on a sectoral basis--are extremely small. For example, the manufacturing sector with by far the largest increase in imports due to an FTA is apparel. The Almon study estimates that by the year 2000 an FTA would add $898 million (1977 dollars) to U.S. apparel imports from Mexico, an amount equal to slightly more than half of the total increase in U.S. imports from an FTA. The U.S. job loss effect associated with these additional textile imports are estimated to be very small. After 10 years, the study estimates that apparel employment will be reduced by 7,200 jobs, a job loss which averages 720 a year or less than one-tenth of one percent of projected average annual U.S. apparel employment over the decade. This rate is surely far below the normal attrition rate in the industry. This is the worst case. Data for other manufacturing industries are shown in the appendix tables of the study.

It is important to note that the Clopper Almon study finds that an FTA with Mexico would on net be job creating for the United States and that the U.S. manufacturing sector will be the principal beneficiary. Of the product sectors in the model losses in declining sectors reach 24,300 jobs after 10 years while gains in gaining sectors total 87,900.

The net job increase is 63,600. The manufacturing sector, at 48,100 new jobs at the end of 10 years, accounts for the largest share of the net employment increase. Agriculture adds 11,700 new jobs due to an FTA.

THE PEAT MARWICK STUDY

The Peat Marwick study finds that U.S. imports from Mexico would rise by 4.2 percent in the scenario with no additional capital in Mexico and by 12.9 percent in the scenario with additional capital.

The Peat Marwick study did not analyze the overall impact of an FTA on aggregate employment but instead analyzed sectoral shifts. These shifts tend to be very small, a result consistent with the findings of the Clopper Almon study.

In the scenario with additional capital in Mexico, the U.S. manufacturing sector with the largest percentage gain in employment (optical instruments and miscellaneous manufactures) increases employment by 0.9 percent while the manufacturing with the largest percentage loss in employment (electronic components) loses 0.8 percent of employment. A breakdown of employment changes for all sectors is shown in Table 8 of the executive summary of the Peat Marwick study.

The Clopper Almon and Peat Marwick studies thus confirm a finding reported by the ITC that while an FTA should have significant trade effects, those effects are likely to be too small relative to U.S. production to have a significant short to medium term effect on U.S. industry overall or even sector by sector.

3. What analysis has the Administration done to measure the volume and type of U.S. investment in Mexico that would result from a NAFTA? Please provide it. What impact would that capital outflow have on the domestic economy?

Answer. The three studies already completed on the impact of an FTA and, to the best of our knowledge, other economy-wide, econometric studies in progress are not specifically designed to quantify the impact of a FTA on foreign investment in Mexico. (The Peat Marwick study assumes $25 billion in additional capital in Mexico, 40 percent of which is assumed to come from foreign investors). The problems of formally assessing the impact of a NAFTA on foreign investment in Mexico appear to be ones of both modeling and data availability. We nevertheless have proceeded with an assessment of the issue which is on-going and report our current findings below.

The capacity of Mexico's economy to absorb new capital is limited. The net inflow of capital--portfolio investment as well as direct investment--into Mexico from all countries has risen to roughly $5 billion a year (after falling to zero during the 1980's debt crisis). This inflow is in part the result of Mexico's unilateral liberalization of trade

and investment, which has begun to restore foreign confidence in the Mexican economy, and to remove barriers to investment. As a result of these economic reforms, little prevents U.S. or other foreign firms that choose to invest in Mexico for the purposes of exporting from Mexico to the United States or elsewhere from doing so now.

However, economic studies of Mexico's economy find that its capacity to substantially increase foreign borrowing in the medium term is limited. For example, the James Capel study (copy enclosed), and a study done for Morgan Stanley (copy enclosed) suggest that under best of circumstances--continued economic reform in Mexico and an FTA with the United States--foreign investment in Mexico will rise to not much more than $9 billion or $10 billion per year over the next 5 years--an increase of $4-$5 billion per year over current levels. If the total were to reach $9 billion or $10 billion per year in 5 years' time, perhaps only one half of this amount would be direct investment.

In 1989, the stock of U.S. direct investment in Mexico totaled $7.1 billion and new flows of direct investment totaled $1.6 billion. In contrast, the stock of all U.S. direct investment abroad totaled $373 billion and new flows of direct investment totaled $31.7 billion. So, even if U.S. investment in Mexico were to double or triple, it would still remain small relative to U.S. investment in other countries.

In short, even under the most extreme of circumstances, an FTA with Mexico will not cause a large capital outflow from the United States. First, only some of the projected increases in foreign investment in Mexico will be from the United States. Second, while the numbers are large compared to the size of Mexico's economy--3 percent to 4 percent of Mexican GNP, they are tiny compared to the total amount of annual U.S. domestic investment, currently running at $750 billion a year. Third, much of any additional U.S. investment in Mexico will come from the increased profits that U.S. firms earn in a strengthened Mexican economy. In 1989, over 70 percent of new U.S. investment in Mexico came from the reinvested earnings of U.S. subsidiaries on profits earned in Mexico.

Fourth, some of the new investment will be diverted from other developing countries. The types of investments that can be profitably undertaken in Mexico are the types which U.S. firms already are making in other developing countries. Investments in Mexico is much less likely to substitute for investments for which a highly educated labor force and highly developed infrastructure are needed. Fifth, increased efficiency and growth will generate new investment funds. Expanding the investment pie can increase investment in Mexico without decreasing it in the United States. And sixth, as noted above, there are few barriers to prevent investment in Mexico now, so long as

the output is intended for export markets in the United States or elsewhere.

Moreover, some aspects of a NAFTA may work to decrease the rate of U.S. investment in Mexico. For example, current Mexican performance requirements compel some U.S. firms to invest in Mexico to gain access to the Mexican market. If such requirements were eliminated in a NAFTA, firms could reduce such investments and service the Mexican market with increased exports from the United States.

Finally, given the relative magnitudes involved and the highly integrated global capital markets in existence today, the effect of an FTA with Mexico could be expected to have little or no effect on the total amount of investment taking place in the $5.2 trillion U.S. economy.

The new U.S. investment which does flow to Mexico will benefit the U.S. as well as the Mexican economy. U.S. investment in Mexico tends to take place in sectors where the competition from Asia is fiercest, (e.g., autos, electronics).

Investment in production sharing in Mexico has the effect of displacing U.S. imports from Asia, or displacing investment in Asia for example, in response to a poll conducted by the ITC, a large majority of 900 U.S. companies located in Mexico responded that location in Mexico helped them to compete against imports into the United States.

Also, in a free market environment many U.S. firms would prefer to invest in Mexico rather than in Asia. Proximity, opportunity and knowledge of economic environment will attract U.S. firms that otherwise would look elsewhere to rationalize their production.

Workers and firms in the United States benefit from "rationalizing" production between the two markets. In looking to co-production arrangements between the United States and Mexico, U.S. firms would be seeking the same advantages which Japanese firms are finding in Asia and German firms in Spain to improve competitiveness against their party suppliers. Home country workers--be they Japanese, German or American--benefit from the gradual shift toward more productive, better paid and more secure employment which is induced by such co-production arrangements. The firms, by rationalizing their production internationally, tend to "grow the market," creating jobs, and raising incomes and living standards in both their home and host countries.

Mexicans are far more likely to source capital goods and components from the United States. 70 percent of all Mexico's imports are now from the United States, and 74 percent of Mexico's imports of capital goods are from the United States.

The macroeconomic effects of new capital flows to Mexico will be to stimulate U.S. exports to Mexico, creating thousands of new jobs in the United States. Exports of capital provide Mexico with the dollar purchasing power needed to buy U.S. products.

In developing countries, like Mexico, that face serious foreign exchange constraints limiting imports, any additional foreign capital inflows result in increasing imports of nearly the same amount. Since 70 percent of Mexico's imports now come from the United States (an even greater fraction could come from the United States under a NAFTA), increased capital inflows into Mexico could result in almost offsetting increases in U.S. exports to Mexico.

The United States, with its strong export advantage in capital equipment and many agricultural products will be well positioned to supply Mexico's development needs. If net capital inflows to Mexico increased by $5 billion annually in the next half decade and 70 percent of the associated increase in Mexico were from U.S. suppliers, an additional 70,000 export-related jobs would be created in the United States.

4. Does Mexico have comparable environmental laws which provide a level of environmental protection equivalent to the following U.S. statutes: Clean Air Act; Resource Conservation and Recovery Act; Toxic Substances Control Act, Safe Drinking Water Act and Comprehensive Environmental Response, Compensation and Liability Act (Superfund)? To what extent are environmental laws in Mexico being aggressively enforced? Describe the nature of the penalties authorized and assessed for violation of such laws. Please explain the basis for your reply to these questions.

Answer. The Environmental Protection Agency has been assessing Mexico's environmental laws and regulations. While its work is ongoing, at this stage of its review, EPA concludes that Mexico's General Law on Ecological Balance and Environmental Protection ("General Ecology Law") provides a comprehensive legal framework for protecting the environment and addressing pollution problems. As appears from a review of the statute, Mexico has adopted many of the same general approaches to protecting the environment as have been applied in the United States, such as a program of licensing and permitting individual facilities and the establishment of emissions limitations. In addition to the law, subsequent steps taken by Mexico show that programs are being developed to address air, water and soil pollution, hazardous wastes and materials, development, and the management of natural resources. EPA will continue to monitor and assess Mexican laws and regulations.

The General Ecology Law, which updates earlier environmental statutes, became effective on March 1, 1988. Structurally, the General

Ecology Law is a broad and comprehensive statute that covers, among other things, air, water and soil pollution, contamination by hazardous materials and wastes, conservation of ecosystems and the "rational use" of natural resources. Unlike much of U.S. environmental law, the General Ecology Law refrains from prescribing how Mexico's Department of Urban Development and Environmental Protection ("SEDUE", EPA's Mexican counterpart) should implement it. Rather, it gives SEDUE broad authority and provides general criteria and policy guidance for developing the specific protection regimes, relying heavily on SEDUE's discretion to develop the details of Mexico's program.

Like the United States, Mexico has created legal authority to control development, address air, water and soil pollution, and manage hazardous materials and wastes, pesticides and toxic substances. For example, both countries require an analysis of the environmental impact and advance authorization of environmentally significant development projects. Both require the adoption of ambient air quality standards, emission limits and technology-based standards for sources of air pollution. Both regulate air pollution caused by automobiles. Both the U.S. and Mexico control sources of water pollution through a system of effluent limitations and water quality standards. Both provide for the management of hazardous waste and for oversight of pesticides and potentially risky activities.

Both countries apportion some responsibilities for environmental protection between the federal and state and local governments. Management of pollution- causing activities occurs through a system of licensing, registrations, and/ or permitting for products or facilities. The two systems also differ in some respects, and in particular in the methods used to implement laws and regulations. This difference is not surprising, given that the United States has a common law tradition and Mexico a civil law system.

With respect to enforcement, the Government of Mexico has made it clear that it wants to have "clean growth" and is not prepared to have Mexico become a pollution haven for North America. It is taking important steps, including increased funding for enforcement and increased enforcement activities, to ensure that companies operating in Mexico comply with relevant environmental laws and regulations. As an example that Mexico is prepared to make hard choices, last month President Salinas announced the permanent closure of Mexico's largest oil refinery. This PEMEX refinery, which accounted for 8 percent of Mexico's distillation capacity, was responsible for up to 15 percent of Mexico City's industrial air pollution emissions. The estimated cost of the shutdown is $500 million and up to 5000 jobs.

EPA has just completed a week-long trip to Mexico involving extensive consultations and information exchange with SEDUE officials

over U.S. and Mexican environmental rules and regulations. I will provide a supplementary response as soon as we have assimilated this information.

5. Does the Administration plan to discuss debt relief for Mexico in these negotiations? Does the Administration plan to offer foreign assistance to Mexico as part of the agreement? To what extent will such relief and assistance be conditional to ensure protection of the environment and to avoid adverse impacts on U.S. labor?

Answer. Bilateral official debt issues between the United States and Mexico will be dealt with through the debt component of the President's Enterprise for the America's Initiative, not the free trade negotiations. If Mexico meets eligibility criteria for debt reduction under the Initiative (IMF/World Bank programs, significant investment reforms and a commercial bank debt reduction package), we would be prepared to sell a portion of Mexico's Eximbank and Commodity Credit Corporation (CCC) obligations to facilitate debt-for-nature, debt-equity or debt-for-development swaps. Such sales of non-concessional debt would depend on gaining authority from the Congress, which we have requested in the proposals transmitted by the President to the Congress on February 26. Mexico has little outstanding concessional debt with the United States, so we do not foresee significant concessional debt reduction under the Initiative.

The Government of Mexico has not expressed a desire for additional foreign assistance, nor is it to be a topic for the NAFTA negotiations.

6. One way of assessing the impact of a NAFTA would be to examine patterns of U.S.-Mexico trade and investment over the last ten years. Has the Administration conducted a study of companies that have transferred production to Mexico, such as furniture manufacturers transferring from Southern California to Mexico for labor or environmental regulation reasons? Has the Administration determined how many U.S. workers have received trade adjustment assistance benefits because of trade with, or investment in, Mexico? If the answer is yes, please provide the studies and determinations. If the answer is no, please explain why not.

Answer. The following table sets out U.S.-Mexico trade patterns since 1980:

[In billions of dollars]

| | U.S. exports to Mexico | U.S. imports from Mexico | Trade balance |
|---|---|---|---|
| 1980 | 15.1 | 12.6 | 2.6 |
| 1981 | 17.8 | 13.8 | 4.0 |

| | | | |
|---|---|---|---|
| 1982 | 11.7 | 15.6 | -3.8 |
| 1983 | 9.1 | 16.8 | -7.7 |
| 1984 | 12.0 | 17.3 | -6.0 |
| 1985 | 13.6 | 19.1 | -5.5 |
| 1986 | 12.4 | 17.3 | -4.9 |
| 1987 | 14.6 | 20.3 | -5.7 |
| 1988 | 20.6 | 23.3 | -2.6 |
| 1989 | 25.0 | 27.2 | -2.2 |
| 1990 | 28.3 | 30.2 | -1.8 |
| January 1990 | 2.2 | 2.4 | -0.2 |
| January 1991 | 2.4 | 2.5 | -0.1 |

What the table shows is that following the 1982 debt crisis, U.S. exports to Mexico diminished sharply, while Mexico's exports to the United States continued to grow, as Mexico's exports to the United States continued to grow, as Mexico sought to earn much-needed foreign exchange. Since Mexico began to open its economy to imports in 1986, there has been continued strong growth in U.S. exports to Mexico. The result has been a two-thirds reduction in our trade deficit with Mexico. And excluding petroleum, the United States ran a trade surplus with Mexico of over $2.5 billion in 1990.

On investment, the stock of U.S. direct investment in Mexico rose from $4.5 billion in 1979 to $7.1 billion in 1989 (the most recent year available), an increase of 58 percent. In comparison, the total stock of U.S. investment overseas doubled during the same period, rising from $186.7 billion to $373.4 billion. As a result, Mexico's share of the total stock of U.S. foreign direct investment fell from 2.4 percent in 1979 to 1.9 percent in 1989.

The Administration has not done a study of plants that have transferred production to Mexico, as specific data to perform such a study are not collected.

With respect to trade adjustment assistance, for the reasons outlined below, the Administration has not determined the extent to which trade assistance benefits have been provided because of trade or investment with Mexico.

The Office of Trade Adjustment Assistance (OTAA), within the Employment and Training Office, U.S. Department of Labor, is responsible for implementing the Trade Adjustment Assistance program. One of the key responsibilities of this office is conducting the required investigations to certify whether workers are eligible to receive TAA benefits.

Under current law (the Trade Act of 1974, as amended) the test that has to be met for eligibility for TAA is that increased imports must have contributed importantly to decreased sales and production and to worker separations in a particular company or subdivision. The origin

of the imports themselves is not relevant to the injury determination. Accordingly, the Trade Adjustment Assistance Office uses aggregate data and does not relate eligibility determinations to origin of imports.

However, with respect to the TAA program as a whole, from the beginning of the program (April 3, 1975) through March 31, 1991, there have been 1,748,060 workers certified to apply for TAA benefits. The four principal industries in which these workers were employed were (in descending order) automobiles, apparel, steel and footwear. In FY 1991, $269 million was appropriated for TAA.

7. Has the Administration examined the impact of Mexico's Auto Decrees (since the 1960s) on U.S. auto industry investment, employment, and trade with Mexico? Please explain. What are the requirements of these decrees and what is their effect on U.S. automakers? Will you seek modification of the decrees if they are not beneficial to U.S. interests? Are any U.S. auto- related companies subject to any private contracts or agreements related to the Mexican Auto Decrees that have been negotiated between the Governments of Mexico and those companies?

Answer--

A. Impact on the U.S. auto industry

The impact of Mexico's auto policy on the U.S. auto industry investment, employment, and trade has changed with each iteration of the successive decrees (a total of five decrees since 1962). In general, it can be said that the first two decrees had little effect on U.S. employment, as models assembled and produced in Mexico were sold in Mexico. As the Mexican market expanded over time, the effects on U.S. investment in Mexico (induced by local content requirements, bans on the importation of completely assembled engines and requirements that certain parts be produced in Mexico) were of growing significance. Due to various economic forces, Mexico's automotive imports rose dramatically and Mexico began to look towards export markets in order to relieve balance of trade and pressing balance of payments problems.

Before 1977 Mexico's auto exports to the United States were extremely low. Exports of engines and cars have risen since 1977 but the engine and assembling plants constructed to fulfill the performance requirements of the 1977 (and later) auto decrees are highly capital-intensive facilities. They employ only about 15,000 workers in total. In addition, in the absence of Mexican auto decrees, some of the production that takes place in these plants--most obviously the assembled sub-compact cars--would most likely have taken place in the Far East. Far Eastern production would have used fewer products of U.S. parts manufactures than are being used in Mexico. In sum, the

net effect of Mexican auto decrees on U.S. employment has so far been small and possibly positive.

Beginning with the third decree in 1977, increased incentives were offered to the five auto assemblers (GM, Ford, Chrysler, VW, and Nissan) in an attempt to restructure Mexico's inefficient industry and to balance its automotive trade by increasing exports. New content definitions and requirements necessitated additional investment in Mexico. The 1983 decree continued this trend. Emphasis was placed on the export of auto parts, particularly engines. As domestic Mexican sales increased, vehicle exports increased. In 1989, Mexican export and domestic vehicle sales were at an all- time high, with Mexican exports of automotive parts accounting for a higher dollar value than vehicle exports. At the same time, U.S. exports of automotive parts to Mexico more than doubled from $1.8 billion in 1986 to $4.5 billion in 1990. This resulted in a reduction in the U.S. parts deficit with Mexico from $1.0 billion in 1989 to $0.003 billion in 1990. The U.S. trade deficit in finished motor vehicles increased from $1.2 billion in 1989 to $2.1 billion in 1990.

While the first four auto decrees increased Mexican motor vehicle exports, they had limited impact on balancing automotive trade, and the Mexican industry was still uncompetitive in certain areas. The 1989 decrees were an attempt to modernize the industry and to allow it to achieve economies of scale necessary to achieve international competitiveness. Certain provisions under the old decrees were liberalized (e.g., reduction in local content requirements, elimination of mandatory local sourcing of specific parts and renewal of the ability to import finished vehicles if assemblers have positive trade balances) but new definitions of the parts industry may have unintentionally made Mexican parts sourcing more onerous than under previous decrees.

B. Provisions of the 1989 auto decree

The 1989 decrees contain the following basic provisions:

Local Content--Mexican regulations require vehicle and parts manufacturers in Mexico to meet the following local content requirements if they wish to produce and sell in the Mexican market:

36 percent for manufacture of cars and light trucks;
40 percent for heavy duty trucks and buses;
30 percent for parts manufacturers.

These provisions are a liberalization over previous requirements which were significantly higher and implemented on a per vehicle/per part basis. Local content is now figured on a company-wide basis but the fact that parts purchases must now be from companies with at least 60 percent Mexican ownership (who must sell at least 60 percent of their products to the vehicle assemblers in order to count towards

the 36 percent content requirement) may force additional parts investment in Mexico if the assembler wishes to sell in the Mexican market.

Trade balancing/performance requirements--Mexico continues to maintain trade balancing/performance requirements under the two automotive decrees issued in December, 1989. For vehicle assemblers to import new motor vehicles into Mexico, the company must subtract for each dollar of imported value (of whatever unit of currency used) from their trade balance at the following rates: Model Year (MY) 1991, $2.5; MY 1992 and 1993, $2.0, and during MY 1994 and thereafter, $1.75. For example, for MY 1991, if a vehicle assembler imports a car worth $10,000, $25,000 would have to be subtracted from the assembler's trade balance.

In order to be able to import new vehicles into Mexico, manufacturers must export more than they import. Vehicle manufacturers with positive trade balances may use this "surplus" to import new vehicles. Positive trade balances not used in prior years may be carried over to the following year starting for the MY 1992 or sold to other automotive manufacturers wishing its investment in fixed assets (purchased Mexican machinery, etc., intended for increasing production capacity) in its trade account balances.

These provisions are a liberalization over earlier limitations. Vehicle imports were restricted to border zones. Vehicle manufacturers may be able to complement their model lines in Mexico with imports from the United States, depending on their trade balance. Vehicle manufacturers will also have greater leeway in parts sourcing decisions, since they no longer must purchase specific parts locally. This could have a positive effect on U.S. employment by offering new export opportunities for both U.S.-made vehicles as well as U.S. parts.

Import restriction for motor vehicle--Mexico restricts the importation of both new and used motor vehicles and import licenses are required. The restriction on imports of new motor vehicles is based on trade balancing and local content requirements. Under the Auto Decree, Mexico allows vehicle manufacturers to import new cars equivalent to 15 percent of their local sales for MY1991 and MY1992 with an increase to 20 percent of MY1993 and MY1994.

Heavy duty vehicle manufacturers (buses, truck tractors, heavy trucks) are allowed to import vehicles of the same class as they produce in Mexico. However until 1993 for truck tractors and 1994 for other heavy trucks, the total value of imported vehicles cannot exceed the value of local content used in a company's total Mexican production each year. Restrictions on buses ended January 1, 1991 and restrictions will be totally eliminated by 1994 for truck tractors and heavy trucks.

Used car imports are restricted to certain areas along the border (border zones). These imports are intended to minimize illegal importations.

The import liberalizations in the 1989 auto decrees should have a positive effect on U.S. vehicle assemblers and parts producers because imports of new finished vehicles previously were prohibited. However, due to the constraints on new vehicle imports mentioned under the trade balancing section, the magnitude of the effect is difficult to quantify. There is pent-up demand for U.S. models in Mexico and increased exports of U.S. models are likely if further liberalization occurs.

Investment restrictions--Mexico's investment restrictions are part of the 1973 Foreign Investment Law but are reinforced in the automotive decrees. Foreign investment in the auto parts sector has been limited by Mexico to 49 percent except under a 20 year investment trust provision where 100 percent ownership is allowed. Although foreign-equity shares up to 49 percent are allowed in the parts sector, purchases from companies with foreign-equity above 40 percent apparently do not count towards the 36 percent local content requirement. Purchases from these companies do count towards trade balancing requirements. One hundred percent foreign ownership of parts operations is allowed in the maquila zones.

Foreign investment restrictions, including those contained in the automotive decrees, have effectively forced U.S. parts producers to enter into minority ownership agreements with Mexican companies if they wish to produce in Mexico. The effect is loss of management and quality control as well as diseconomies of scale for some U.S. parts manufacturers.

Standards--The decrees require that manufacturers comply with existing safety and emission standards in Mexico, These requirements have no negative effects on U.S. manufacturers.

C. Seeking modifications to automotive decrees

The administrations committed to seeking the removal of auto decree provisions that distort trade and investment flows.

D. Private agreements between auto-related companies and the government of Mexico

The Administrations not aware of any private contracts or agreements between any U.S. auto-related companies and the Government of Mexico.

8. Does the Administration believe that additional auto assembly capacity in Mexico would come at the expense of existing U.S. production or production in other countries? On what basis is this assessment made?

The most likely models to be produced in Mexico are sub-compacts. The administration does not believe that additional auto assembly capacity will come at the expense of existing U.S. production because the United States currently does not wholly produce any sub-compact models domestically. The United States has not been competitive in the production of sub-compact cars because of demand conditions and the resulting lower profit margins made on these models. Consequently, U.S. companies have chosen to "buy" such models from their Asian competitors. In addition, there currently exists excess capacity for large model production in the United States. This excess capacity reflects large capital investment tied up in large/luxury model production. When these factors are added to costly lay-off clauses in union contracts, it is unlikely that it would make economic sense to move existing auto assembly capacity to Mexico.

The movement of U.S. production capacity also would be limited by the fact that although labor costs are lower in Mexico, they are a decreasing component of automotive manufacturing costs and are only one component in the total cost of production. Overall costs of operating in Mexico must take account of such factors as higher infrastructure costs and the relatively lower productivity of Mexican workers.

It is not possible to determine whether additional Mexican auto assembly capacity would result as a consequence of a NAFTA without detailed knowledge of U.S. assemblers' future investment, production and marketing plans. These plans could be directly affected by the outcome of several legislative proposals under consideration in Congress. The effect of the Administration's National Energy Strategy proposals, current legislative proposals on CAFE, as well as new environmental and safety regulations under consideration are factors which companies will need to consider in making future investment decisions. Once the outcome of these legislative proposals and implementing regulations is known, the companies will be in a better position to make these decisions.

Auto industry analysts have suggested (e.g., James P. Womack, MIT) that "Big Three" production in the Far East might be moved to Mexico (e.g., Ford Festiva). The incentives to move this production to North America (most likely to Mexico) include some of the same incentives that fostered small car production in the Far East. The prospect of including Mexico in a NAFTA would certainly provide additional incentive for such a move as well as an added incentive for increased U.S. parts sourcing to build these models.

Production location decisions will also be a function of several variables including currency valuations, interest rates, availability of

capital, gasoline prices, and the ultimate regulatory environment on both sides of the border.

Finally, two econometric analyses suggest that a free trade agreement with Mexico would result in a positive impact in terms of employment for the U.S. auto industry. Both the Clopper Almon and the KPMG Peat Marwick analyses indicate that an FTA with Mexico would boost U.S. employment in the automobile industry by a small amount.

9. Do workers in auto-related production facilities in Mexico actually have the real right and opportunity (as opposed to a paper, "legal" right) to form unions and join labor federations of their own choosing?

The right to organize and bargain collectively is guaranteed under Article 123 of the Mexican Federal Constitution and affirmed in Mexican labor law. These rights apply to workers in all industries, including auto-related production. There are few, if any, restraints on unionization. A petition by 20 workers in a plant is necessary to call for a vote to organize workers and select a union to represent workers in a plant. At present, almost twice as much of the workforce is unionized in Mexico as compared to the United States: about 30 percent of the Mexican workforce is unionized, compared to a U.S. figure of about 16 percent.

To the best of our knowledge, these rights exist in the auto sector in practice as well as in law. Beginning in the 1980s, the auto industry, along with many other industries in Mexico, has undergone substantial restructuring. These changes have led to some labor conflicts between union leadership factions advocating alternative responses to company demands or government economic policy. The Mexican government has basically left it up to workers to resolve these conflicts and make decisions about union representation.

10. Do workers in the maquiladora plants in Mexico actually have the right to form unions of their own choosing and to bargain a contract with their employer? Are workers from affected worksites directly involved in developing goals and strategies for collective bargaining over their terms and conditions of work?

All of Mexico's labor laws and regulations, including the guarantee of the right to organize and bargain collectively noted in an earlier response, apply equally to all workers in all parts of Mexico, including the maquiladoras. Workers in maquiladora plants thus have the right to form unions of their own choosing and to negotiate with their employers. As one moves from west to east along the northern Mexican border, the share of maquiladora firms that is organized increases. Nearly all of the maquiladoras in the northeastern state of Tamaulipas are organized. Local and regional labor leaders in the state

of Tamaulipas take an active part in and promote the organization of maquiladora workers.

We do not have specific information about the extent to which workers in affected worksites are directly involved in the collective bargaining process, but they are free to do so.

11. Has the Administration examined change in labor legislation or labor policy over the past twenty years? If so, has the legal framework or condition of Mexican workers improved or worsened over that time? Why? Are Mexico's legal and constitutional provisions related to labor enforced by the Mexican government?

Many of the rights of workers flow directly from Title VI of the Mexican Constitution, entitled "Labor and Social Security," also referred to as Article 123. For example, Article 123 guarantees workers the right to form unions and join professional associations of their own choosing. Workers are protected against anti-union discrimination. Other provisions specify rights regarding such issues as the length of the work day, maternity leave, minimum wages, overtime pay, strikes, child labor, and forced labor. The applicable provisions of the Constitution function as a series of statutes that authorize the government to take many actions on behalf of workers.

In 1931, the Federal Congress enacted Mexico's first comprehensive Federal Labor Code and established the Federal Labor Court to resolve labor disputes. Today, labor relations in Mexico are governed by the Federal Labor Law (Ley Federal del Trabajo) of May 1, 1970, and its subsequent amendments. This Act is comprehensive and regulates labor contracts, minimum wages, hours of work and legal rest days, paid vacations, employment of women and minors, labor unions, collective bargaining, strikes, labor courts, occupational risks, apprenticeship, profit sharing, dismissal compensation, and conditions of work in specified fields.

In 1978 the Mexican Government promulgated a revision of the federal labor law, citing Mexico's adherence to various international labor treaties (Mexico has now signed 79 International Labor Organization conventions) and the obsolescence of previous statutes due to new technologies. This legislation contained a number of improvements related to occupational safety and health, regarding, e.g., inspection of machinery, and handling, transportation and storage of materials. Employers must provide workers with all proper personal safety and health equipment.

At the same time that the Government of Mexico revised the Federal Labor Law, it enacted the General Regulations for Occupational Health and Safety, an updated version of previous statutes. This comprehensive set of regulations covers virtually all aspects of occupational health and safety for industries, including standards for

buildings and worksites; fire prevention; the operation and maintenance of industrial equipment; the handling, transportation and warehousing of flammable, combustible, explosive, corrosive irritative or toxic substances noise; labeling of radioactive materials; workplace temperature, ventilation and lighting; personal safety equipment for head, ears, face, eyes, body and limbs; respiratory protection; workplace hygiene; the establishment of health and safety committees in each workplace; the establishment of a national consultative commission on health and safety; and administrative procedures for the enforcement of labor regulations.

Labor laws are enforced by States as well as by Federal Authorities. However, under the Mexican constitution, the Federal government has jurisdiction over federally-operated enterprises and industry-wide bargaining in the following industrial sectors: textiles, electricity distribution, motion pictures, rubber, sugar, minerals and mining, hydrocarbons, railway, petrochemicals, cement, and steel.

Mexican labor law is administered by the Secretariat of Labor and Social Welfare (Secretario del Trabajo y Prevision Social). Enforcement is supplemented by tripartite commissions, including representatives of government, business, and labor. The Secretariat sets and enforces provisions relating to industrial health and safety, employment of women and minors, and minimum wages. In addition, offices of the Federal Board of Conciliation and Arbitration operate in each of the 31 Mexican states. The government can, and has imposed fines or closed down plants for violations of health and safety standards (most cases are resolved through negotiation).

12. If common norms of labor laws and practices were adopted as part of a NAFTA, how would such measures be enforced? Would U.S. parties have the right to intervene in Mexican procedures, even if the aggrieved Mexican party failed to act? Would a tri-national panel rule on all disputes, on only those which directly affected each signatory, or on no such disputes?

We recognize the need to deal with labor practice issues in the context of U.S.-Mexican relations, but have not made any decisions on how this should be done. Mexico has agreed to include labor issues in the agenda for the U.S.- Mexico Binational Commission (BNC). At our request, Mexico has agreed to begin a dialogue on labor issues between the U.S. Department of Labor and the Mexican Ministry of Labor.

We do not expect that a NAFTA will include common norms on labor laws. One reason is that on a legal, statutory basis, Mexico's labor standards are comparable to--and, in a few cases, exceed--those in the United States. For example, as noted in the answers to previous questions, Article 123 of the Mexican Constitution guarantees workers

and employees the right to form unions and professional associations of their own choosing. Workers are protected against anti-union discrimination and about 30 percent of the workforce is organized. Mexican occupational safety and health laws are also quite extensive, covering virtually all aspects of occupational safety and health for industry.

Another problem is that Mexico would view an attempt to adopt common labor norms as a violation of its national sovereignty, particularly if these norms allowed U.S. officials to intervene in Mexican procedures, or inspect Mexican manufacturing facilities. It should be recalled, that in the negotiation of the U.S.-Canada Free Trade Agreement, the United States strenuously opposed Canada's proposal to establish a joint commission to make determinations in subsidy-countervailing duty cases.

While drafting specific common standards may not be possible, other options are being considered. One possibility is to seek the inclusion in the NAFTA of a principle to the effect that all three governments should promote improvements in labor standards. It is also possible that through our dialogue With Mexico on labor practices we may be able to develop ways to help Mexico improve enforcement of its labor laws.

13. In replying to this question and questions 5-12, please consider to what extent these labor issues were or were not a concern in the free trade negotiations with Canada and indicate to what extent these issues and problems potentially create an uneven playing field for negotiations that did not exist with Canada.

Labor standards issues were not addressed in the free trade area negotiations with Canada. However, there were some labor concerns relating to employment impact, which were addressed by allowing up to ten years for phasing-in concessions, depending on the import sensitivity of the product, and including a safeguard mechanism to deal with import surges.

Differences in labor law and practice between the United States and Mexico may create some issues that did not exist in the case of the U.S.-Canada FTA. As noted in the response to question 12, Mexican labor law is comprehensive and, on a legal, statutory basis, Mexico's labor laws compare favorably with those in the U.S. Mexico, for example, has very detailed occupational safety and health regulations. Mexico also has procedures for enforcing its standards, including joint commissions on which labor is represented.

As also noted in the answer to question 12, Mexico has agreed to begin a dialogue on labor issues between the U.S. Department of Labor and the Mexican Ministry of Labor. We hope that this dialogue will serve to address areas of concern between the United States and

Mexico, particularly in the areas of adequacy and enforcement of health and safety standards and worker rights.

14. Energy issues are a major part of the U.S./Canada Free Trade Agreement. Mexico has repeatedly stated that it will not discuss questions concerning petroleum in any negotiation and has apparently asserted that this position is based on provisions of the Mexican Constitution. Please identify those provisions and explain why they preclude such discussions. Does the Administration, nevertheless, intend to insist that energy issues be addressed in a NAFTA? What is the basis for this decision? What is the impact?

Answer. Several provisions of the Mexican Political Constitution of 1917, as amended,Note /1/ Quotes are from an English Language version published in Doing Business in Mexico (Matthew Bender), Statutory Volume, Appendix E2, the Mexican Constitution (English Text) (1990). Current amendments are recorded in *Constitucion Politica Mexicana con Reformas y Adiciones al Dia, Tomo Primero, Apendices*, Ed. M. Andrade (looseleaf) (Ediciones Andrade 1969). /1/ expressly pertain to petroleum. Article 27 addresses state ownership of oil and gas resources. Article 27, Paragraph 4, vests direct ownership of "petroleum and all solid, liquid, and gaseous hydrocarbons" in the Nation of Mexico. Paragraph 4 of Article 27 reads in part:

To the nation belongs the ownership of the continental shelf and of the submarine bases of the island; of all the minerals or substances in veins, layers, masses or beds that constitute deposits whose nature may be distinct from the components of the land, such as * * * petroleum and all solid, liquid and gaseous hydrocarbons. * * *

Article 27, Paragraph 6, provides that the Mexican Government's ownership interest referred to in Paragraph 4 of Article 27 are "inalienable and imprescriptible." Paragraph 6 states that private activity is permitted with regard to these ownership interests if the Government grants a concession. But a 1939 amendment specifically prohibits all concessions and contracts with regard to oil and gas. Paragraph 6 of Article 27, as amended, reads, in part, as follows:

In those cases to which the two preceding paragraphs refer, ownership by the Nation is inalienable and imprescriptible, and the exploitation, use, or enjoyment of the resources concerned, by private persons or by companies organized according to Mexican laws, may not be undertaken except through concessions granted by the Federal Executive, in accordance with rules and conditions established by law, * * * In the case of petroleum, and solid, liquid, or gaseous hydrocarbons * * * no concessions or contracts shall be granted nor may those that have been granted continue, and the nation shall carry

out the exploitation of these products, in accordance with the provisions indicated in the respective regulatory law.

Finally, Articles 25 and 28 reserve certain "strategic areas" to the State. Paragraph 4 of Article 25, added in 1983, says that:

The public sector shall, in an exclusive manner, be in charge of strategic areas defined in section IV of article 28, of the Constitution; the Federal Government always maintaining the ownership and control over the institutions it establishes in such cases.

Article 28, Paragraph 4, exempts state enterprises in "strategic areas" from prohibitions on "monopolies." Article 28, Paragraph 4, added in 1983, provides that:

The functions of the state which it manages exclusively in strategic areas shall not constitute monopolies, these include: * * * Petroleum and other hydrocarbons. * * *

However, notwithstanding these constitutional provisions which preclude private ownership of petroleum reserves by both domestics and foreigners, we do not understand the Mexican Government to have refused to "discuss questions concerning petroleum," nor is there any apparent reason why these constitutional provisions should "preclude such discussions" of energy issues, which of course are far broader than ownership of petroleum reserves. We consider that all questions bearing on our mutual commerce are open to discussion by Governments.

Article XXIV of the General Agreement on Tariffs and Trade (GATT), under which free-trade areas are permitted, defines a free-trade area, in paragraph 8(b), as a group two or more customs territories in which all duties and, with certain exceptions, other restrictive regulations of commerce, are eliminated on "substantially all the trade between the constituent territories in products originating in such territories." Clearly, energy trade is an important component of our bilateral trade and it will need to be addressed in a manner consistent with this definition.

15. Enclosed is my recent correspondence with the Administration regarding auto theft issues involving Mexico. Please explain whether the negotiations will address the issues discussed by the Customs service that give rise to the theft problem."

In the negotiations toward a free trade agreement, the Administration intends to address the leading causes of auto theft. Restrictions on auto and truck imports, bans on imports of used autos, high Mexican import duties on U.S.-made cars, and high prices for cars manufactured in Mexico have created strong incentives for smuggling stolen vehicles into Mexico. Because Mexico's market continues to be very protected, Mexican manufacturers are able to charge higher prices for the cars they produce. The great differential in prices

between the U.S. car market and the Mexican car market is a significant factor in creating demand for stolen cars in the U.S. Under the terms of a free trade agreement, we will seek to eliminate quantitative limits on automotive imports, import tariffs, performance requirements, and prohibitions on the import of models not made in Mexico. As trade barriers are dismantled, legally imported and domestically manufactured cars should become more affordable for Mexican consumers. In addition, a wider variety of models will become available on the Mexican market. The impact of a free trade agreement will thus go a long way toward curbing the theft of vehicles in the United States.

Because auto theft does not arise solely because of trade restrictions, the Administration is continuing other efforts to resolve the problem. The U.S.- Mexico Convention on the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft has led to the recovery of hundreds of vehicles since it entered into force in 1983. The American Embassy and Consulates monitor Mexico's compliance with the Convention and report that Mexico is making an effort to abide by its terms. For example highway police in Guadelajara frequently stop Mexican citizens driving U.S. registered motor vehicles and query the Consulate as to whether the vehicle has been reported stolen. As Assistant Commissioner Hensley noted to you, U.S. law enforcement agencies along the border also maintain informal contacts with their Mexican counterparts as part of their efforts to retrieve stolen vehicles. Finally, the U.S. Customs Service has conducted special operations to intercept stolen vehicles at the border.

Additionally, I note that the U.S. and Canada are likely to sign later this month at a meeting of the Economic Commission for Europe (ECE) a Convention on Environmental Impact Assessment in a Transboundary Context. Both countries have previously signed an ECE protocol on transboundary nitrogen oxide pollution and are participating in ECE negotiations regarding transboundary volatile organic compounds. Also, the U.S. and Canada have a draft of a bilateral on transboundary pollution. I understand that Mexico is not a participant in these matters, yet these concerns are not unique to the Canadian-U.S. border. What efforts will be made to urge Mexico to either join the U.S. and Canada in these international efforts or to include those agreements in these negotiations? Please explain.

Answer. As you note, the agreements and negotiations with Canada to which you refer, including the nitrogen oxide protocol and the transboundary volatile organic compounds negotiations, have occurred in the context of the Economic Commission for Europe (ECE). Canada, or course, is a member of the ECE. Since Mexico is not a member of the ECE, our relationship with Mexico with respect to

environmental matters is not governed by ECE principles. However, the 1987 agreement of cooperation with Mexico on transboundary air pollution and its five annexes do signal our commitment to addressing transboundary pollution, as do our efforts in the International Boundaries and Water Commission.

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House of Representatives,
Committee on Energy and Commerce,
Washington, DC, April 4, 1991.
Hon. Lynn Martin,

## Secretary, Department of Labor,

Washington, DC.

Dear Secretary Martin: In the March 23, 1991 issue of the National Journal, an article written by Bruce Stokes asserted that the Department of Commerce had done an unpublished study of the projected job losses that would result from a free trade agreement with Mexico. The analysis, which the article states has now been referred to the Labor Department's Bureau of International Affairs, allegedly concluded that a free trade agreement would result in a 40 percent loss of jobs in some key industries. A copy of the article is enclosed.

As you can well imagine, any such documents or departmental analysis would be of critical interest to Congress in assessing whether a free trade agreement with Mexico is in the interests of the United States. There has been growing concern that we have inadequate information on which to decide this important issue. At the same time, there is an uneasiness about numerous rumors of studies done by the Administration which predict serious adverse consequences for the U.S. economy if there is an agreement with Mexico--and that these studies have not been published or otherwise shared with Congress.

I therefore request that you determine whether the Department of Labor has done or has in its possession any study or analysis such as described in the National Journal article, and that you provide copies to me.

Please provide me with a response to this letter no later than April 12, 1991.

Sincerely,
John D. Dingell, Chairman.

Enclosure.

## *Jobs and the Mexico Deal (By Bruce Stokes)*

An unreleased Commerce Department study projects job losses of more than 40 per cent in some key industries if the United States signs a free-trade agreement with Mexico, according to Bush Administration officials.

The analysis of more than three dozen industries found that the most severely hurt would be manufacturers of automobile parts, steel, shoes and textiles. Some sectors would be unaffected, and a few would gain employment.

The White House argues that the real income of unskilled U.S. workers would rise if there were a free-trade pact with Mexico. But organized labor has long contended that such an agreement would encourage U.S.-based firms to relocate south of the Rio Grande, throwing tens of thousands of Americans out of work.

The report, if it ever sees the light of day, could fuel labor's efforts, now picking up steam on Capitol Hill, to place constraints on the Administration's negotiating authority with Mexico. The two governments hope to begin bargaining this summer and to wrap up a trade deal next year.

The Commerce analysis now rests with the Labor Department's Bureau of International Labor Affairs, which is preparing an assessment of how the potential jobs losses under a free-trade-pact might break down between unionized and nonunionized workers.

The impact "probably is disproportionately" heavy for unionized workers, an Administration official admitted. But the White House wants a clearer picture to more fully assess the potential political fallout from a Mexico deal. Some Labor Department economists are resisting such analysis, saying the data cannot be used to predict such outcomes with any certainty.

"From a traditional analysis, those are surprisingly large changes in employment opportunities," said C. Michael Aho, the former director of foreign economic research at Labor who's now with the Council on Foreign Relations. "The more important effect of employment opportunities might come over time as firms change their production patterns in response to trade liberalization. And that could mean larger job losses in some sectors and more-dramatic job gains in others."

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Department of Labor,
Secretary of Labor,
Washington, DC, April 12, 1991.
Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter of April 4, 1991, regarding the National Journal article by Bruce Stokes.

In that article, Mr. Stokes asserts that the U.S. Department of Commerce had done an unpublished study on projected job loss in the United States that would result from a North America Free Trade Agreement. He also asserts that the Labor Department had received this data, which projected a 40% job loss in some industries, and was studying the data to determine the disparate impact of potential job loss on union and non-union workers.

I have asked the Deputy Secretary of Labor and the Deputy Under Secretary for International Affairs, who coordinate all research related to international trade issues, to conduct a thorough investigation of this matter. They have informed me that the Bureau of International Labor Affairs is in the initial phases of contracting with private sector consultants to study aspects of a possible free trade agreement--but none of these correspond to the research described in Mr. Stokes' article. These studies would examine the experience of the European Community in integrating lesser developed countries into their free trade partnership, and study several sectors of the U.S. economy in terms of potential jobs created by export growth related to a free trade agreement. This is the only authorized research the Department of Labor is undertaking which relates to the employment impact of a free trade agreement.

My staff believes the source of the Bruce Stokes article might have been a spread sheet that a member of the International Labor Affairs Bureau was preparing on his own. I am told this spread sheet listed union membership in the United States since 1983 by industry and occupation, and apparently there was some attempt to cross reference this data with information contained in a U.S. Chamber of Commerce study showing how various industries in the United States might be affected by a free trade agreement. This cross referencing was not completed because the two sets of data could not be correlated. (A copy of this information is enclosed.) For your information, the U.S. Chamber of Commerce study showed a potential .40%--four-tenths of one percent-- average job loss in some industries which my staff believes might have been misinterpreted by the source of the National Journal article to mean a 40% job loss. As you know, the size of the Mexican economy is not sufficient to produce a job loss of that magnitude in the United States.

To summarize, the Department of Labor is not conducting research to show the impact of a North American Free Trade agreement on union versus non-union jobs. In addition, we know of no U.S. Commerce Department study showing job loss in the United States resulting from a free trade agreement, and the only document we could find that may relate to the research described in the Stokes article is a U.S. Chamber of Commerce study showing a potential

.40%-- four-tenths of one percent--average job loss in some industries. That study, prepared by the consulting firm of Peat Marwick, is entitled "Analysis of Economic Effects of a Free Trade Area Between the US and Mexico." It has been made public and is available from the U.S. Chamber of Commerce.

I hope this information meets your concerns and puts to rest the uneasiness and rumors which have been circulating on this matter. The North American Free Trade Agreement is indeed an important initiative, and I hope we can work together to resolve any differences we have concerning this crucial agreement. I would like to make available to you the Deputy Secretary of Labor, Roderick DeArment, to talk with you about this--or any other matter-- concerning the North American Free Trade Agreement. I recently sent Rod and a team of Labor Department officials to Mexico to look at issues raised by those concerned about working conditions in that country. I think you will find their insights and findings valuable to your deliberations.

Please do not hesitate to call me if I can be of any further assistance.

Sincerely,

Lynn Martin.

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## Secretary of Commerce,

Washington, DC, May 3, 1991.

Hon. John D. Dingell,

Chairman, Committee on Energy and Commerce,

House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter requesting any Department of Commerce study as described in the National Journal concerning a free trade agreement (FTA) with Mexico

The report from the National Journal is erroneous. After a careful review of the Department's files, we have been unable to locate any such document. To our knowledge, the Department has undertaken no study which examines the potential job loss of a U.S.-Mexican FTA. The Department's only jobs analysis related to the free trade agreement has been directed at the job creation related to export sales. Enclosed is a copy of our publication, North American Free Trade Agreement: Generating Jobs for Americans. There are also studies by the Universities of Maryland and Texas; Peat Marwick; Dallas Federal Reserve; and the Department of Labor--all of which show job gains for U.S. workers. Also enclosed is a copy of the letter to Lloyd Bentsen, Dan Rostenkowski and Richard Gephardt from the President. Please note the enclosed copy of a letter to John Sullivan, Publisher of the

National Journal from the Under Secretary for International Trade, J. Michael Farren regarding the study.

We are commissioning a private study of the effect of a North American FTA on long-term labor demographics in the United States. This initial study, expected to be completed in July, will focus on key U.S. manufacturing sectors. When the results of this independent analysis become available this summer, we will be pleased to share them with you.

I would welcome the opportunity to discuss this matter with you further, please contact me or have your staff contact Roger W. Wallace, Deputy Under Secretary for International Trade.

Sincerely,

Robert A. Mosbacher.

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Department of Health and Human Services,

## Food and Drug Administration,

Rockville, MD, October 21, 1991.

Hon. Cardiss Collins,

Chairman, Subcommittee on Commerce, Consumer Protection, and Competitiveness,

Committee on Energy and Commerce,

House of Representatives, Washington, DC.

Dear Ms. Collins: This is in response to your letter of September 17, 1991, in which you asked several questions about the volume of fruit and vegetable imports from Mexico and the Food and Drug Administration's (FDA's) pesticide inspection program for those products.

The following responds to your question in order:

1. (a) What pesticides, if any, are banned in the U.S. but permitted for use on fruits and vegetables in Mexico?

We should first explain that information on the use of U.S. banned pesticide chemicals in foreign countries is not directly available to the Federal Government. The laws that control pesticide usage in the United States do not extend to foreign countries. Therefore, FDA can only ascertain if U.S. banned pesticides are being used in agriculture in Mexico or other foreign countries by obtaining this information voluntarily from the government of the country, by purchasing the information from private commercial sources, or by finding residues at levels suggesting use of banned pesticides in imported fruits, vegetables, and other foodstuffs.

The Pesticide Monitoring Improvements Act (PMIA) of 1988 requires FDA to seek from foreign countries information on pesticides

used on foods exported to the U.S. FDA has received PMIA requested information voluntarily from the Mexican Government. Because FDA's legal authority under the Federal Food, Drug, and Cosmetic (FDC) Act is concerned with whether there is an Environmental Protection Agency (EPA) established U.S. tolerance for pesticide residues in imported food, our review of this information is focusing on residues of pesticides that may be used in Mexico on foods exported to the U.S. and that may not be covered by U.S. tolerances. Based on our preliminary review of this information, as well as information from other FDA sources, it appears that 19 pesticide chemicals approved for use in Mexico have no U.S. tolerances for any food commodity. This means that these pesticides are also not registered for food use in the U.S. This does not mean, however, that all, or even some of, these 19 pesticide chemicals have had their registered uses cancelled in the U.S. by the EPA. Because of the subcommittee's inquiry, however, we have requested EPA's assistance in reviewing this preliminary list of chemicals to determine which ones (if any) have been cancelled (i.e., banned) in the U.S. The result of this determination will be forwarded to you as soon as it becomes available.

Finally, there are 59 other Mexican approved chemicals that have U.S. tolerances for a variety of food commodities. According to information available to FDA, however, these chemicals might also be used in Mexico on foods for which there are presently no U.S. tolerances for these particular chemicals.

(b) If there are such pesticides, what procedures at the border will be used to ensure that fruits and vegetables contaminated with these substances do not enter the U.S.?

The FDC Act authorizes FDA to refuse entry of shipments into the U.S. of food found to contain pesticide residues in excess of U.S. tolerances or for which there are no U.S. tolerances. FDA has an extensive regulatory monitoring program in place for sampling imported food at ports of entry to assure compliance with this provision of the law (see enclosed reprint for detailed information on the FDA program). Because Mexico exports a relatively large volume of fresh fruits and vegetables to the U.S. each year, the FDA program gives much more attention to Mexican imports than foods imported from other countries. In fact, FDA typically samples three to five times more shipments of Mexican produce than the next closest sampled foreign country.

In fiscal year 1990, FDA examined 19,146 samples of domestically produced and imported foods for possible residues of 268 different pesticide chemicals. More than half of these pesticides can be detected by the analytical methodology most frequently applied to imported Mexican produce. This method is capable of detecting the presence of

residues of many of the pesticide chemicals previously cancelled (i.e., banned) by EPA. For example, all chlorinated pesticides that were cancelled by EPA because of potential public health or environmental concerns can be detected by the FDA methodology. EPA has also revoked the tolerances for these pesticides. In instances where banned pesticides are persistent in the environment and may continue to contaminate food, EPA has recommended that FDA adopt action levels for expected unavoidable residues. Residues in excess of action levels may be indicative of intentional use and may subject the food to enforcement action. For a number of years, however, the Agency has not encountered shipments of imported Mexican fruits and vegetables with actionable levels of these or other U.S. banned pesticides. It is important to add that, in any given year, the kind of violation most frequently encountered by FDA involves pesticide residues in food not having a U.S. tolerance, but for which U.S. tolerances exist for residues of the same pesticide in other foods.

2. How many tons of fruits and vegetables grown in Mexico have entered into the U.S. in each of the last five years?

According to data published by the USDA (as obtained from the U.S. Customs Service), the following volumes of fresh and processed fruits and vegetables from Mexico were imported into the U.S. over the last five years:

| Year: | Tons /1/ One metric ton is 220 pounds./1/ |
|---|---|
| 1987 | 2.0 million |
| 1988 | 1.9 million |
| 1989 | 2.1 million |
| 1990 | 2.2 million |
| 1991 (projection only) | 2.0 million |

What percentage of all fruits and vegetables grown in Mexico (and exported to the United States) are tested by U.S. officials to determine compliance with U.S. pesticide, health and safety standards?

Based on information FDA has obtained from the U.S. Customs Service, there are about 190,000 formal entries of food commodities from Mexico to the U.S. each year. Most of these entries are comprised of fresh or processed fruits and vegetables. In the last several years, FDA has averaged sampling about 3,500 shipments per year for pesticide residue analyses. Therefore,based on available data, FDA checks between one and two percent of food import entries from Mexico for pesticide residues.

4. (a) In each of the last five years, what percentage of fruits and vegetables that have been tested at the [Mexican] border were found to be in non-compliance with U.S. standards governing pesticide usage on fruits and vegetables?

Violation rates for Mexican commodities imported into the U.S. in the years 1987 through 1991 sampled on a surveillance basis are given below:

| Year: | Percent |
|---|---|
| 1987 | 3.7 |
| 1988 | 4.7 |
| 1989 | 3.5 |
| 1990 | 4.7 |
| 1991 (data received through 9/27/91) | 2.5 |

(b) Of the Mexican fruits and vegetables found not to be in compliance with our standards, what percentage were identified as containing pesticides that have been banned in the U.S?

As we explained in our response to question (1a), FDA's regulatory concern is whether there are U.S. tolerances established for the pesticide residues found in imported Mexican produce. The fact that a pesticide has been banned in the U.S. is not directly relevant under the FDC Act. FDA enforcement action is also not possible until after EPA has revoked the tolerances for the banned pesticide. Generally, there is an intentional delay by EPA in revoking such tolerances in order to allow for purging of the marketplace of foods treated with banned pesticide when its use was still legal. We can state with certainty, however, that for at least the past five years, FDA has not found shipments of fruits and vegetables imported from Mexico to contain residues from the intentional use of the U.S. banned chlorinated hydrocarbon pesticides such as DDT and BHC. When we receive from EPA the information requested under question (1a), we will also review our data files to ascertain whether violative residues of other banned pesticides have been found. This information will also be given to you.

5. How many full time employees are currently involved in conducting inspections at the border of fruits and vegetables entering our country from Mexico?

Mexican fruits and vegetables enter the United States primarily through border ports in FDA's Los Angeles and Dallas Districts. There are currently four inspectors located at Dallas ports of entry and nine at Los Angeles ports. These inspectors cover all types of products (food, drugs, devices, etc.,) for entry from Mexico. Samples collected by these inspectors are transported to our laboratories in Los Angeles and Dallas for analysis for pesticide residues.

6. In your view, how, if at all, should inspections of Mexican fruits and vegetables by U.S. officials be altered under a free trade agreement with Mexico?

At the present time, the North American Free Trade Agreement discussions are just beginning and the basic components of such an agreement are not known. Still, FDA has for some time had a

Memorandum of Understanding (MOU) with the Mexican government that pertains to the control of pesticide residues in food. FDA and Mexican officials have been working together to understand each other's pesticide use and residue control systems, and how these systems may be utilized better to protect the public health, while diminishing disruptions to trade. These efforts are ongoing. We would be happy to provide more detailed information on the implementation of this MOU, if requested.

I would also like to point out that in the "Response of the Administration to Issues Raise in Connection with the Negotiation of a North American Free Trade Agreement," provided to Congress on May 1, 1991, it was emphasized that the United States would not agree to weaken environmental and health laws or regulations, and would not agree to weaken existing pesticide or health and safety standards. FDA is integrally involved in the negotiations, which are proceeding in accordance with these principles.

We hope this is responsive to your questions. We will provide additional information to you as it becomes available. If we can be of further assistance, please let us know.

Sincerely yours,

Kay Holcombe,

Acting Associate Commissioner for Legislative Affairs.

Enclosure.

## IMPORTS AND FDA

During any given week, the United States may import coffee from Colombia, fruit from Mexico, shrimp from India, egg noodles from Korea, perfume from France, vitamin supplements from Denmark, x-ray machines from Germany, cosmetics from Taiwan, and drugs from Hong Kong.

With the exception of meat and poultry, which are regulated by the U.S. Department of Agriculture, all food, drugs, cosmetics, medical devices, and products that emit radiation are subject to examination by FDA when they arrive in the United States.

By law, FDA-regulated products must meet the same standards as domestic goods. Imported foods must be pure, wholesome, safe to eat, and produced under sanitary conditions; drugs and devices must be safe and effective; cosmetics must be safe and made from approved ingredients; and all labeling and packaging must be informative and truthful.

The number of imports subject to FDA regulation has increased steadily during the past 20 years--and continues to increase at a rate of 2 percent to 5 percent a year. In 1971, 500,000 shipments of FDA--

regulated products were imported. Currently, more than 1.5 million shipments arrive annually. Approximately 86 percent are food. The rest are drugs and cosmetics (6 percent); medical devices and products that emit radiation, such as televisions, microwave ovens, and x-ray equipment (7 percent); and veterinary medicines (0.5 percent).

Not only has the number of imports to the United States increased over the past 20 years, but the nature of the products has changed. Fifteen years ago, many of the food imports were bulk raw materials which were later processed into consumer products. Most of these raw materials were inspected by FDA on the docks and again during inspections at domestic processing plants. More and more of today's imports, however, arrive ready-to-use and are marketed directly to consumers.

An increasing number of today's imports are being shipped in smaller quantities in multi-product containers. Whereas in the mid-70s on any given day an FDA inspector might inspect one of two bulk shipments, today's inspectors might inspect 5, 10 or 15 smaller, individual shipments. This has made rapid sampling and surveillance more difficult..

## INCREASED SURVEILLANCE

To meet the growing volume of imports, FDA has doubled its import operations over the past decade--by increasing the number of staff assigned to imports and expanding the amount of surveillance activity. Since 1979, FDA's import operations staff has increased from 218 person years to 330 person years--an increase of more than 51 percent. This boost in strength was accomplished--despite an overall reduction in agency resources--by shifting staff from lower-priority domestic activities.

To maximize its resources, FDA:

Increased training of its inspectors.

Began targeting certain problem products--such as hard cheese, chocolate candy, and preserved fruits--for sampling.

Initiated automatic detentions when a single sample of a product revealed the product to be a health hazard.

Increased follow-up of products that were refused entry to the country to insure they were exported or destroyed as required.

As a result of these and other measures, over the past six years wharf exams increased 114 percent, samples collected increased 84 percent, and detentions increased 73 percent.

Through its district offices and resident posts, FDA is directly or indirectly involved in surveillance at each of the approximately 500

U.S. Customs Service points of entry in the country, including major airports. At the many remote crossings along the Canadian and Mexican borders. FDA relies on the Customs Service for assistance in detaining suspicious products.

On a normal workday, about 200 to 300 FDA, inspectors, laboratory analysts, and compliance officers handle imports. In a crisis, such as the Chilean grape scare in 1989, up to 800 field staff may be involved. Each of FDA's 22 district offices, with the exception of Newark, NJ., have import operations. Newark is combined with the Port of New York for import coverage.

Every food (other than meat and poultry), drug, or other FDA-regulated entry is screened in some way by the agency. Although it is physically impossible to personally inspect each of the 1.5 million shipments a year. FDA does review records for every entry into the country. Based on this review, a product may be immediately released for distribution, physically examined, or sampled and analyzed in a laboratory. Ten percent of the entry records reviewed are marked for further coverage.

## INSPECTIONS

Out on the docks, FDA inspectors look for signs of filth, spoilage, contamination, or mislabeling. For instance, in a shipment of canned green beans, they check to see if the manufacturer is registered with FDA; look at the labels to make sure they are printed in English and conform with other FDA requirements about weight declaration, contents, etc.; and spot-check for swollen, leaking or rusty cans, wet cases, or swarms of fruit flies around cases, which may indicate damaged cans. In a shipment of coffee, inspectors look for damaged containers, moldy beans, and insects. When examining fresh produce, they check for spoilage and insects and sample for illegal residues of one or more of the 256 most widely used pesticides. When checking seafood, most of which arrives frozen, they look for signs of parasites and for evidence of thawing and decomposition.

If a problem is found or suspected, the product is not released, and a sample may be collected for analysis. Products with a history of violations or those that are known or suspected health hazards are targeted in advance for sampling or detention. Approximately 3 percent of all shipments reviewed are physically sampled. Weekly import alerts and detention lists are used to determine which entries in particular should receive close FDA attention.

In 1989, FDA detained 25,740 entries--an increase of 54 percent over 1985. As in previous years, the vast majority of products detained were foods. Of those, 15 percent were fruits, 23 percent were

vetegables, 18 percent were seafood, 6 percent were spices, and 3 percent were grains. The other 35 percent included a wide range of items, such as dairy products, beverages, desserts, soups, and salads.

When a product appears to violate FDA laws or regulations, the importer is given an opportunity to bring the article into compliance through reconditioning or relabeling. For example, a shipment of rice found to contain insects could be fumigated and processed by the importer (using FDA- approved methods) to eliminate the insects. Food containing sulfites (preservatives to which some people are allergic) but not identified as such on the label could be relabeled to include that information. An import that can't be reconditioned or relabeled must be exported or destroyed by the importer.

Perishable products--such as fresh fruit, vegetables and seafood--that could spoil on the docks are given priority handling. Samples are collected and examined by district laboratories, usually within 24 to 36 hours. If a product is violative and the importer has distributed it, any distributed product must be recalled.

## AUTOMATIC DETENTION

Imports that consistently violate FDA standards or are known or suspected health hazards are automatically detained. For example, the diet supplement L-tryptophan is being automatically detained because it has been linked to ecsinophilia-myalgia syndrome, a blood disorder. Other imports being automatically detained include: swordfish from all countries because it repeatedly has been found to contain high levels of mercury; canned mushrooms from the People's Republic of China because they have caused several outbreaks of staphylococcal food poisoning; the abortion drug RU486 from France because its use has not been approved in the United States; and, most recently, European wines that were found to contain the fungicide procymidone, which is approved for use on grapes in Europe but not in the United States. As of October 1990, 106 products were on FDA's automatic detention list.

Once a product is placed on automatic detention, importation can resume only after the shipper or importer has produced evidence showing the product consistently meets all FDA standards.

Drugs entering the country for sale must be registered products from an approved supplier and must be listed with FDA. In addition, they must meet U.S. requirements for purity and strength. When drugs enter a port, they are randomly checked and sampled by FDA. On the wharf, inspectors check labels and look for signs of possible contamination, such as cracked vials and broken bottles. As with other imports, potential problem drugs are targeted in advance for sampling and detention.

## DRUGS FOR PERSONAL USE

Noncommercial drugs and other products not available domestically and not approved by FDA may at the discretion of FDA, be released for personal use. This "personal use" policy has existed within FDA informally and with varying interpretations for many years. However, under growing pressure from people with AIDS, cancer, and other serious diseases who want access to drugs approved in other countries but not available in the United States, FDA in 1988 reviewed its policy and issued formal guidance.Under this guidance. FDA uses its discretion to allow the importation of certain drugs if they meet certain criteria:

The drug must have no known health risk.

It must be for personal use only (generally not more than a three-month supply).

It must not be promoted commercially to people living in the United States.

Dextran sulfate, which was promoted for treating AIDS, is an example of a drug FDA has allowed under its "personal use" discretion to be imported by individuals in the United States.

## IMPORT ALERTS

To facilitate its surveillance of imports. FDA issues import alerts to its district offices. These alerts contain the names and descriptions of products that have repeatedly been found to violate FDA laws or regulations. The import alert signals FDA inspectors to pay special attention to a particular product when it arrives in port and, in certain cases, to automatically detain it. FDA currently has 237 import alerts on products and importers.

To further expedite surveillance FDA has entered into agreements with foreign governments. Through memorandums of understanding (MOUs), these governments agree to insure that their countries' products are manufactured under sanitary conditions, meet U.S. standards for quality, and are tested and sampled in a specific way before leaving the country. For example, FDA has nine MOUs with countries that export seafood to the United States. These MOUs help insure that the seafood is processed, packaged and shipped property.

FDA is currently in the process of negotiating other cooperative agreements with major food exporters in 37 countries to obtain information on pesticide use in those countries.

Under certain conditions, FDA also inspects foreign plants to ensure that manufacturing practices meet U.S. requirements. Foreign inspections may also result after products have been detained and the

manufacturer wants advice on how to produce goods that meet FDA requirements.

The number of imports to the United States is expected to continue to grow. To meet the increasing demands for surveillance and to streamline its operations, FDA is working to automate its import operations. As a first step, in 1991 the agency will initiate a pilot project in the Seattle district linking FDA's import operations there to the Customs Service's nationwide computerized information system. The agency is also developing a computerized internal import support and information system that will track all FDA import activities.

These steps will further insure that food, drugs, and other FDA regulated products brought into this country for use by American consumers meet the same high standards as domestic items.

## 9-73-00 Purpose

To provide the districts with guidance of the uniform handling of import shipments of those perishable foods including fresh fish and seafood and fresh produce, which have a shelf life of seven days or less, that have been sampled by FDA.

This chapter does not apply to frozen foods or other foods with a shelf life longer than seven days, or to specific programs or assignments containing different instructions. This chapter does not apply to foods covered by automatic detention provisions.

## 9-73-00 Background

The 1986 GAO report "Pesticides Better Sampling and Enforcement Needed on Imported Food," criticized FDA for allowing imported perishable foods containing illegal levels of pesticides into domestic commerce and not vigorously pursuing bond forfeiture against the importer of record in all cases where the illegal products could not be recovered.

Experience shows importers can temporarily hold perishable shipments without spoilage and that many analyses can be completed within 24 hours of sample collections. While some sample analyses may not be expected to be completed within 24 hours, a 24 to 32 hour delay in final distribution of the shipment increases the likelihood that a lot will be recovered when redelivery is requested.

Under the Federal Food, Drug, & Cosmetic Act (FFD&C Act), importers bear the primary responsibility for assuring the compliance of products they distribute to consumers. To exercise their responsibility, they may, among other things, inspect foreign manufacturers or growers, enter into agreements with the foreign

exporters, and make arrangements to have products privately tested or examined prior to distribution. Any product distributed, whether or not it is held temporarily, remains under bond and is subject to a claim for liquidated damages.

## 9-73-20 Objectives

To minimize the distribution and consumption of adulterated perishable foods and fresh fish and seafood and to minimize product deterioration and spoilage.

## 9-73-30 Approach

The following procedures and designed in recognition of FDA's authority under section 801 of the FFD&C Act and 21 CFR 1.90, to require that sampled imported food be held pending results of sample analysis, and to acknowledge the importers objective of distributing nonviolative fresh products to consumers in as expedient a manner as possible.

Section 1.90 of FDA's import regulations (21 CFR 1.90) provides that when an import shipment, including a shipment of perishable food, fresh fish or seafood, or fresh produce, is sample by FDA, it may not be distributed until FDA releases it. This RPM section related to the exercise of FDA's enforcement discretion in deciding when to pursue liquidated damages against importers who distribute perishable food prior to its release by FDA.

A district should recommend the maximum liquidated damages if an importer fails to hold until released by FDA imported perishable foods there are suspect. A shipment is considered suspect if current information or past experience indicates that the product may be violative. Conversely a shipment is considered nonsuspect if there is no current information or past experience to indicate that the product may be violative. Where samples of nonsuspect shipments are found to be violative the district should consider subsequent shipments by the same shipper as suspect.

The district should consider recommending automatic detention for violative shippers or products, where appropriate. See RPM 9-25 for recommendation criteria.

The agency may use its enforcement discretion to not recommend a liquidated damages action against in importer of nonsuspect shipment of imported perishable foods, including free fish and seafood and free produce, if those goods:

Have a shelf life of seven days or less (Note: As a general guide, districts may use Agriculture Handbook Number 66, USDA/ARS to determine shelf life. Since

this handbook reflects ideal storage conditions it may or may not reflect the conditions found in the individual districts. For that reason districts may be guided by their own experience in identifying which products have a shelf life of seven days or less.see note below)

Were maintained under the control of the importer until at least 5:00 p.m. on the day following sample collection (An importer could retain such control, after sample collection, at or in transit to a inland storage facility); and

Are not found to be violative

With both suspect and nonsuspect shipments, the redelivery bond remains in place until the release notice (FD-717) is issued. If distribution of violative merchandise occurs the district may also use its discretion in deciding whether to recommend to Customs that up to triple damages be assessed for the portion of the shipment that is not redelivered.

Note: When a nonsuspect shipment, controlled for the prescribed period, is subsequently found violative, districts may recommend mitigation of damages after the importer demonstrates that a reasonable effort was made to redeliver the product. Under such circumstances damages recommended should not be less than the value of the unrecovered product.

FDA should attempt to arrive at a decision by 5:00 p.m. on the day following sample collection as to whether to release such a product. If, however, FDA has not communicated with the broker and/or importer of a nonsuspect shipment by this time, the shipment remains subject to redelivery, recall, seizure, injunction, state embargo, etc.

## 9-73-40 Regulatory procedure

## Nonsuspect samples

Process the sample and its paperwork in the usual manner. In addition to the statement in the Notice of Sampling (Form FD-712) which reads: "The merchandise must be held intact pending further written notice from the Food and Drug Administration upon completion of examination of samples" add the following:

If analytical procedures will allow it, FDA will attempt to communicate to you the status of the sample prior to 5:00 p.m. on (insert date of the day following sample collection) and will regard distribution of this entry prior to 5:00 p.m. to warrant assessment of liquidated damages of up to three times the value of the merchandise. This shipment remains under redelivery bond and all distribution of merchandise prior to release by FDA is at your risk.

If complete analysis (original and check) of a nonsuspect sample is not finished by 5:00 p.m. on the day following collection, but initial results suggest the shipment is violative, contact the importer and/or broker at once. The importer must be advised that "The merchandise must be held intact pending further written notice from the FDA upon completion of examination of samples." When complete analysis is furnished by 5:00 p.m. and the sample is violative, notify the importer and/or broker at once not to allow distribution to consumers. The importer or broker should be requested to retrieve any product that was distributed. Detain the shipment and issue Notice of Detention and Hearing (Form FD-718).

## Suspect samples

Process the sample and its paperwork in the usual manner. Issue a Notice of Sampling (Form FD-712), with the standard language that "The Merchandise must be held intact pending further written notice from the FDA upon completion of examination of samples." If the sample is actionable, notify the importer of record and/or broker not to allow distribution to consumers. The importer or broker should be requested to retrieve any product that was distributed. Detain the shipment and issue Notice of Detention and Hearing (Form FD-718).
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Department of Health and Human Services,

## Food and Drug Administration, [part 2]

Rockville, MD, December 9, 1991.
Hon. Cardiss Collins,
Chairman, Subcommittee on Commerce Consumer Protection, and Competitiveness,
Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Ms. Collins: Our response of October 21, 1991, to the questions raised in your letter of September 17, 1991, about imported Mexican produce, indicated that we needed certain information from the Environmental Protection Agency (EPA) to be fully responsive to your inquiry. This additional information has been received. For your convenience, we have repeated the questions below with the additional information we had promised you.

1. (a) What pesticides, if any, are banned in the U.S. but permitted for use on fruits and vegetables in Mexico?

We indicated in our earlier letter that according to information the Food and Drug Administration (FDA) received from various sources, it

appeared that 19 pesticide chemicals were approved for food uses in Mexico, but have no U.S. tolerances or were not registered for any food use in the U.S. The information EPA subsequently provided to us indicated that none of these 19 pesticide chemicals has been banned or severely restricted by EPA. EPA also informed us that four of these pesticides were identified by chemical names different from those used by Mexico and that these four pesticides do have U.S. tolerances for their residues in various foods.

This new information reduces the number of pesticides approved for us in Mexico and not having U.S. tolerances to 15. These pesticides may or may not be used on foods that Mexico exports to the U.S. FDA's analytical methods cover seven of the 15 pesticides on EPA's updated list of these chemicals.

Of the seven pesticides that could have been detected, only residues of omethoate were found in imported Mexican produce in 1990. Because there are no U.S. tolerances for residues resulting from the use of omethoate on any food, these omethoate findings constituted violations and shipments of these foods were refused entry into U.S. commerce. FDA also invoked automatic detention to prevent subsequent shipments of the violative produce from entering the country.

4(b) Of the Mexican fruits and vegetables found not to be in compliance with our standards, what percentage were identified as containing pesticides that have been banned in the U.S.?

Based on the information we received from EPA, none of the pesticides have agricultural uses in Mexico have been banned from use in the U.S.

Again, we appreciate your interest in this FDA program area, If we can be of any further assistance, please let us know.

Sincerely yours,
Kay Holcombe,
Acting Associate Commissioner for Legislative Affairs.

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House of Representatives,
Committee on Energy and Commerce,
Washington, DC, March 31, 1992.
Hon. Nicholas F. Brady

## Secretary, Department of the Treasury,

Washington, DC.

Dear Secretary Brady: Recent press reports (e.g., "Mexico Wants Exemption From Banking Laws," Washington Post, Wednesday, March 25, 1992) indicate that Mexico, pursuant to negotiations on a North

American free trade agreement (NAFTA), is calling for "complete exemption" from certain Glass-Steagall, Bank Holding Company, and International Banking Act prohibitions on banking entities and their activities (see attached). The article states that, while U.S. negotiators maintain that they are resisting such demands, the February 21 draft containing Mexico's wish list was released on the final day of a negotiating session at which U.S. negotiators claim major progress occurred.

We would like to register our strong disapproval of any provision of NAFTA that exempts any banks or bank affiliates from federal statutory limitations on securities activities and affiliations with commerce. Compelling public policy considerations led to the enactment of the laws from which Mexico proposes to exclude its banks. Notwithstanding the fact that other countries may have laws at variance with those on the books in the U.S., no legislative consensus exists in this country as to whether or in what ways to modify the U.S. laws.

Indeed, the House of Representatives last year considered comprehensive banking legislation that would have both changed the powers of banks and carefully controlled the manner in which those powers could be exercised. While H.R. 6, the "Financial Institutions Safety and Consumer Choice Act of 1991," was ultimately defeated, attempts to strip out the safeguards in Title IV were turned back in three separate votes. It was clear that the House as a whole supported granting new powers to banks only if strong firewalls and other safeguards, along with enhanced regulatory requirements, were also part of the package. In addition, Administration proposals to allow commercial enterprises to affiliate with banks were soundly rejected.

For the administration to permit a group of banks to engage in the very activities and affiliations that the House repeatedly refused to authorize would flout the demonstrated will of Congress. Moreover, to do so on a discriminatory basis would knowingly place U.S. banks at a competitive disadvantage. Additionally, an exception of this importance and magnitude would necessarily expand over time. Since numerous other countries with which the U.S. is or will be conducting trade negotiations are more permissive than this country in the matter of bank powers, it would be difficult to limit such exemptions to the NAFTA context.

Because congressional ratification will ultimately be required of any agreement reached within the confines of NAFTA, it is essential both to this body and to the process as a whole for us to be kept apprised on a current and ongoing basis of the status of negotiations and of key developments such as those outlined in the attached article. We would appreciate your keeping us so informed.

Thank you for your attention to this matter.
Sincerely,
John D. Dingell,
Chairman.
Edward J. Markey,
Chairman Subcommittee on Telecommunications and Finance.
Enclosure.

## Mexico Wants Exemption From Banking Laws

(By Stuart Auerbach)

Mexico is demanding complete exemption from a wide range of U.S. banking laws in a proposed free-trade agreement, according to a draft text that was circulated yesterday by a coalition of organizations opposed to an accord between the United States, Mexico and Canada.

At the same time, the draft shows that Mexico is trying to maintain as much control as possible over its banking, insurance and stock brokerage industries within the confines of a North American free-trade agreement (NAFTA).

According to the draft, which is dated Feb. 21, Mexico wants to exemptions from federal laws that allow states to restrict interstate banking, keep banks from selling stocks and insurance and forbid ownership of banks by brokerages, insurance companies or industrial corporations.

Banking has emerged as one of the knottiest sectors in the negotiations for a free-trade agreement because U.S. domestic laws are more restrictive than those in either Canada or Mexico.

The draft text reflects what has happened in the negotiations as of Feb. 21 and shows that the United States is resisting Mexican demands on these issues. It illustrates the difficulties in reaching a free-trade agreement between three countries with widely divergent national interests.

President Bush has ordered U.S. negotiators to push for an agreement this year in hopes of winning a quick congressional ratification, but White House aides and senior trade negotiators fear that the complexities of the negotiations may prevent that.

The release of the draft text undercuts the strategy of Bush administration negotiators, who along with their Mexican and Canadian counterparts have been keeping the contents of the talks private because of political sensitivities in all three countries.

U.S. lawmakers' access to the draft text has been restricted, prompting House Majority Leader Richard A. Gephardt (D-Mo.) to complain about the secrecy to U.S. Trade Representative Carla A. Hills.

The draft text was released yesterday by the Ralph Nader organization Public Citizen under the headline "Citizens' Groups Capture Copy of Secret NAFTA Text." The group's initial analysis found the draft wanting in the areas it is most concerned with: the environment, workers' rights in Mexico and the export of U.S. jobs to low wage factories there, agriculture and health and safety.

Administration trade negotiators, while declining to comment on the substance of the draft, called it an "out of date" text.

"It's not the text we're working on. It's a constantly changing text," said Assistant U.S. Trade Representative Kathy Lydon.

Nonetheless, the date on the draft released by Public Citizen was the final day of a week long negotiating session in Dallas during which senior negotiators said major progress was made. Public Citizen said the draft incorporates the decisions made in Dallas.

Much of the draft text is in brackets, indicating that no agreement has been reached on those sections. Frequently, sections are composed of one bracket after another, detailing each country's proposal and showing the lack of agreement.

And entire chapters are missing in two of the most contentious areas-- energy, where Mexico is firm on protecting its vast oil resources from foreign investment, and autos, where U.S. union leaders are fearful of accelerating the opening of production facilities in Mexico at the expense of U.S. workers.

Further, the text in another key area, agriculture, is so riddled with blanks that it is impossible to know which products are to be protected and which are not.

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Department of the Treasury,
Washington, DC, May 5, 1992.
Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Secretary Brady has asked me to respond to your letter of March 31, regarding the financial service negotiations in the North American Free Trade Agreement (NAFTA) and the related story in the Washington Post dated March 25.

I wish to assure you that the Treasury does not intend to use the NAFTA as a back door to financial reform in the United States or as a vehicle to give rights to Mexican (or Canadian) firms that U.S. firms are denied. We do not view a Free Trade Agreement as the appropriate vehicle for financial reform. Our negotiators have made it clear to Mexico that financial reform in the United States will come as a direct action by the Congress.

The Washington Post story was based on a draft text of an agreement. This text is undergoing continuous revision. Perhaps more to the point, the leaked text represents a Mexican proposal that should in no way be interpreted as implying U.S. agreement with the Mexican proposal.

We have attempted to keep the staffs of key Congressional Committees, including the House Commerce Committee, informed of the ongoing status of the negotiations. We remain ready to brief you at your convenience and have requested meetings with the Energy and Commerce Committee staff to give them an update.

Sincerely,
Mary C. Sophos,
Assistant Secretary, (Legislative Affairs).

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## Office of the U.S. Trade Representative,

Washington, DC, August 14, 1992.
Hon. John D. Dingell,
House of Representatives, Washington, DC.

Dear Congressman Dingell: This is to acknowledge receipt of your letter, dated August 7, 1992, concerning the automotive sector provisions of the NAFTA.

We are looking into this matter, and a full response will be forthcoming.

Sincerely,
Mary Tinsley,
Assistant U.S. Trade Representative
for Congressional Affairs.

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## U.S. Department of Commerce,

Under Secretary for International Trade,
Washington, DC, August 31, 1992.
Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: This responds to your letter to Secretary Franklin regarding a rule of origin for the automotive sector and other automotive provisions of the North American Free Trade Agreement (NAFTA).

Your letter focuses on the details of the automotive rule of origin under the NAFTA. As John P. Simpson, the Treasury Department's

Deputy Assistant Secretary for Regulatory Tariff and Trade Enforcement, was the U.S. negotiator for this particular issue, we defer to the Department of Treasury, to which you have also written, for a response to your detailed questions. Commerce was involved in the overall automotive negotiations, however, and we are enclosing a brief factsheet which provides a general overview of the automotive rule. Also enclosed is a summary of the automotive provisions of the NAFTA for your information.

Sincerely,

Timothy J. Hauser, Acting.

Enclosures.

## Summary of NAFTA Rules of Origin for Automobiles

### Regional value-content

To qualify for NAFTA preferential tariff treatment cars and light trucks, as well as engines and transmissions for these vehicles, must contain at least 62.5% North American content, calculated on the basis of net cost. Heavy trucks and most other parts are subject to a 60% regional value-content requirement. The percentage requirement will be phased in in two steps, rising from 50% to 56% after four years and to 62.5% after a second four-year period. A similar transition period will apply to goods subject to the 60% content level (55% after four years, then rising to 60% after a second four- year period).

### Tracing

In order to ensure that the regional value-content calculation is accurate, most auto parts will be "traced" through the production chain. If these parts are imported, assemblers will count the cost of these parts as non- originating when they calculate the content of the motor vehicle.

### Averaging

Motor vehicle manufacturers and parts producers have several averaging options that enhance their operational flexibility. Assemblers may average annually their production by model line or class of vehicle produced in the same plant, or by model line produced in any one country. Parts producers may average their production according to specified categories of parts; after- market producers may use their fiscal year to average, while OEM producers may either use the assembler's fiscal year or a quarterly or monthly average. CAMI may

average its production with that of its joint-venture partner, GM of Canada, subject to several conditions. CAMI cars shipped to Mexico may not qualify for tariff preference by being average with GM cars.

## New/refitted plants

New plants will receive a five-year grace period during which the regional value-content requirement will be 50%; after that the regional value-content must rise to 62.5% to qualify for NAFTA preferences. This grace period applies to a new plant, with new machinery, producing a motor vehicle of a class, marque, or size and floor pan not currently produced anywhere in North America. This provides an incentive for new investment in North America by giving a new producer time to shift from traditional suppliers to North American sources. Refitted plants (with a similar condition regarding new production) will be eligible for a two-year grace period.

## De minimis rule

The de minimis rule cannot be used to reduce the effectiveness of the value-content test.

## NAFTA AUTOMOTIVE BENEFITS

The NAFTA establishes free trade in automotive products in a decade. A transition period ensures an orderly adjustment for current manufacturers in Mexico.

Mexican Auto Decree terminated in ten years, the import/sales ratio limit immediately.

Mexican restrictions on U.S. trade and investment phased out, creating significant U.S. export opportunities for car and parts manufacturers: local content requirement reduced immediately and made easier to meet using existing suppliers; companies may reduce their required local content in event of disruptions in production or sales; trade balancing requirement reduced dramatically by only requiring 80 cents (declining to 55 cents) of exports for every dollar of imports (current requirement is $2 of exports for every $1 of car imports); other credits make trade balance requirement easier to meet--companies have automatic right to apply $150 million in previously earned foreign exchange to their trade balance; all trade balance and local content requirements terminate in ten years

No new trade or investment restrictions may be imposed during or after the transition.

On U.S. exports to Mexico, light truck and car duties halved immediately and eliminated over five and ten years; 75% of parts duty free in five years. Tariffs on car and engine exports to U.S. eliminated immediately, tariffs on light trucks eliminated in five years.

Large quota opened for U.S. commercial truck exports, no import limits after 5 years.

No restrictions on new U.S. investment in Mexico. U.S. firms can acquire existing Mexican firms within five years.

Mexican automotive goods may be considered as domestic (like Canadian goods are currently) if they meet the rules under CAFE.

Strong rule of origin at 62.5% for autos and light trucks, engines and transmissions (60% for trucks and other parts), deep tracing of parts to produce an accurate accounting of origin, and corporate averaging by model line.

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House of Representatives,
Committee on Energy and Commerce,
Washington, DC, June 2, 1992.

## Hon. Nicholas F. Brady,

Hon. Barbara H. Franklin, Hon. Carla A. Hills, Dear Secretaries Brady and Franklin and Ambassador Hills: Last week representatives of your agencies kindly provided a briefing for Members and staff regarding proposals for the automotive sector provisions of the North American Free Trade Agreement (NAFTA) now in negotiation. Unfortunately, I was unable to attend the briefing because of Committee conference reports under consideration on the House Floor. Nevertheless, I understand it was helpful. The written information provided, however, was skimpy and marked "confidential," similar to previous documents that we have received. Despite this, the enclosed article in the May 20, 1992 edition of the Journal of Commerce regarding the negotiations appears to reveal (apparently from people involved in those talks) much of the information that was treated as "confidential" during briefings for Members and staff. It is unclear to me why such confidentiality is required, particularly if there is no restraint on Administration personnel talking to the media.

As I understand the matter from staff reports of the briefing regarding a new rule of origin and other issues, the Treasury Department is placing great stock on the concept of "tracing" which its spokesman admits will be burdensome to suppliers and manufacturers. (Indeed, it is not clear to me how it will work.) At the same time, the Treasury official hopes to move from the "direct cost of processing" to

a so-called "simpler" approach that includes administrative overhead in determining value. The enclosed article comments on that as follows: Under net cost, U.S. officials have estimated that the local content of U.S. and Canadian cars would rise 5%, to 7%, through adding costs now excluded by present U.S. rules.
Canadian officials say the number is more like 1% to 2%, and have rejected the U.S. demand that the North American local content requirement be raised to more than 60%, from the 50% now called for in the 1988 U.S.-Canada Free Trade Agreement.

The Treasury official at the briefing placed great emphasis on raising the 50 percent North American content level with Canada and applying that same level in Mexico. However, he never mentioned an actual level and he indicated that it would be from 6 to 8 years, or possibly longer, before we would see a higher level in Canada even though a 60 percent content level was to have occurred by now under the U.S.-Canada Free Trade Agreement. (That was the congressional understanding when the agreement was approved in 1988.)

Under the Treasury approach in this negotiation, a 60 percent or higher level may not be in effect for more than 12 years after 1988. It is my belief that in 1992, 60 percent is far to low. In addition, that official kept mentioning the need for the United States to accommodate Canada on the Honda audit and interpretations (which relate to past entries) and on the Cami matter. These comments, coupled with the above remarks by Canadian officials, do not provide me with the feeling that this is a politically sound "deal" or good policy for the United States in general or, in particular, for my constituents.

I thought that this was primarily a negotiation for an agreement with Mexico, not Canada. Such a "gift" or apparent capitulation to Canada to get a 55, 60, or even 65 percent content level in the year 2000 or later with a burdensome tracing program causes me to question whether there are any benefits for the United States. Such a low content level now of only 50 percent, with a small increase in the distant future, would also not appear to be beneficial to the United States.

The negotiations should focus on Mexico. We need to understand the issues and differences with Mexico and the proposed solutions developed by both countries. The emphasis on Canada is inappropriate.

I request that you provide a written summary of all the auto issues regarding NAFTA, including the Mexican and Canadian proposals, the U.S. proposals, and a discussion of the differences and problems in reaching a resolution that is truly in the interest of the U.S. economy, including the U.S. job market.

In the case of the rule of origin, I want to learn more about tracing, including about how it would work and how it would be enforced. I want to learn what the actual benefits will be for the U.S., including U.S. industries and jobs, and the administrative benefits for the Treasury. Is it primarily designed to resolve a perceived or actual administrative problem for Treasury or will it actually result in a more effective rule? Please explain. Why and how would it avoid the need for audits?

I also want to understand all other changes in the rule of origin, including a comparison of the benefits, problems, and disadvantages under the FTA and in the Treasury proposal. Finally, I want to learn more about the content percentage and its timing. Starting at 60 percent or less is really not appealing to me.

As to the Honda matter, that issue is under investigation by the Subcommittee on Oversight and Investigations. I do not support a proposal that seeks to placate Canada through some "deal" on the Honda audit and on other unrelated matters, such as one involving Cami, even though it might be beneficial to one or more U.S. firms. Both relate to the existing free trade agreement and its implementation and enforcement. They are not directly relevant to these negotiations for NAFTA. If the rule of origin is to be changed, I believe it should be for the future. It should not be retroactive.

In addition, I continue to be concerned about the adequacy of the entire agreement from the standpoint of the environment and jobs. No one in the Administration has talked to us about these issues.

I request your reply by June 20, 1992.

Before closing, I want to express my appreciation to your staff for their efforts and their briefing. They are clearly capable and knowledgeable. You should be pleased.

With every good wish.

Sincerely,

John D. Dingell, Chairman.

Enclosure.

House of Representatives,
Committee on Energy and Commerce,
Washington, DC, August 7, 1992.

## Hon. Nicholas F. Brady,

Hon. Barbara H. Franklin, Hon. Carla A. Hills,

Dear Secretaries Brady and Franklin and Ambassador Hills: Since writing to each of you on June 2, 1992 regarding proposals for the automotive sector provisions of the North American Free Trade Agreement (NAFTA) now in negotiation, I received the enclosed July

28 letter from the Assistant Secretary (Legislative Affairs) of the Treasury Department offering an "opportunity to arrange a confidential briefing" at my convenience about these matters.

While I appreciate that offer and welcome it, I do not find it responsive to my inquiry or adequate, particularly because of the present demands on my time and that of the other Committee Members and because the offer is made almost two months after the date of my letter. Most importantly, I do not find such briefings to be adequate. In this case, I have made a request for a written response after receiving an oral briefing for Members and staff. Another oral briefing will not suffice. Indeed, I am troubled that you have delayed providing this response and are making the offer to brief me so late, particularly in light of reports from your agencies that an agreement is almost complete.

As I understand the matter from staff reports of the briefing regarding a new rule of origin and other issues, the Treasury Department is placing great stock on the concept of "tracing" which its spokesman admits will be burdensome to suppliers and manufacturers. (Indeed, it is not clear to me how it will work.) At the same time, the Treasury official hopes to move from the "direct cost of processing" to a so-called "simpler" approach that includes administrative overhead in determining value. The enclosed article comments on that as follows:
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The Treasury official at the briefing placed great emphasis on raising the 50 percent North American content level with Canada and applying that same level in Mexico. However, he never mentioned an actual level and he indicated that it would be from 6 to 8 years, or possibly longer, before we would see a higher level in Canada even though a 60 percent content level was to have occurred by now under the U.S.-Canada Free Trade Agreement. (That was the congressional understanding when the agreement was approved in 1988.)

Under the Treasury approach in this negotiation, 60 percent or higher level may not be in effect for more than 12 years after 1988. It is my belief that in 1992, 60 percent is far too low. In addition, that official kept mentioning the need for the United States to accommodate Canada on the Honda audit and interpretations (which relate to past entries) and on the Cami matter. These comments, coupled with the above remarks by Canadian officials, do not provide

me with the feeling that this is a politically sound "deal" or good policy for the United States in general or, in particular, for my constituents.

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In addition, I continue to be concerned about the adequacy of the entire agreement from the standpoint of the environment and jobs. No one in the administration has talked to us about these issues.

I request your reply by June 20, 1992.

Before closing, I want to express my appreciation to your staff for their efforts and their briefing. They are clearly capable and knowledgeable. You should be pleased.

With every good wish.

Sincerely,

John D. Dingell, Chairman.

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House of Representatives,

Committee on Energy and Commerce,

Washington, DC, May 25, 1993.

Hon. Ronald H. Brown,

## Secretary, Department of Commerce, Washington, DC.

Dear Mr. Secretary: I want to express my appreciation for your recent briefing for our Committee Members under the auspices of Subcommittee Chairwoman Cardiss Collins. The frank and open discussion of the Bush Administration's negotiated North America Free Trade Agreement (NAFTA) and various other trade and non-trade issues was quite helpful. Your responses to our questions were very useful, particularly in regard to your assurances that the Administration is intent about opening up Japanese markets to U.S. exports and your understanding, in regard to the negotiations for a future so-called "clean car", of my concerns that the Administration assist the auto industry, not push or force them. I applaud your assertiveness on trade issues and your speaking for the needs of American business as a way to create and protect American jobs.

In the case of NAFTA, I note you recently emphasized support for the Bush agreement contingent upon obtaining supplemental agreements in these areas: (1) the possibility of sectoral surges; (2) the environment; and (3) workers' rights. As I indicated to you at the briefing, I have trade related questions as follows:

1. As you know, in January 1992 the prior Administration obtained a series of commitments from the Japanese under the "Global Partnership Plan of Action." In many areas of this plan progress has been slow, in part because the past Administration was not, in my view, as aggressive and demanding as it should have been.

On March 26, 1993 you and U.S. Trade Representative Michael Kantor wrote to the Japanese Ministry of International Trade and Industry (MITI) regarding automotive trade. The letter was critical of Japan's failure to meet these 1992 commitments and referred to Japan's pledge to implement the commitments. (In this regard, enclosed is a Journal of Commerce article indicating that Toyota

contends that it has increased auto parts purchases. However, the article also points out that less than a third of the increase was exports to Japan.) The April 2, 1993 edition of Inside U.S. Trade reports that the MITI Minister, Mr. Yoskiro Mori, allegedly said that the commitments expressed in January 1992 did not constitute a "pledge" by the Japanese Government to press the Japanese automakers to meet the commitments. What is your understanding of his reply?

Please also provide an up-to-date report on the status of these commitments in the format provided to us in the past by your Department.

The May 20, 1993 edition of the Wall Street Journal reports that the Administration plans to unveil a "new strategy in Japan with the goal of increasing Japanese purchase of foreign goods and services as well as denting Japan's large trade surplus." I applaud that and would like to learn more details about that strategy. However, I am always skeptical about talks with Japan. They seem to go on endlessly with progress measured in extremely small increments. I hope you and others in the Administration will achieve greater results on a faster schedule.

2. Last year, I corresponded with your Department about barriers to U.S. products, including vehicles in other countries and the need for the Commerce Department to work to remove such barriers. According to the May 10, 1993 edition of Automotive News, South Korea has begun a campaign under the guise of curbing corruption that has had the effect of drying up sales of imported vehicles, including vehicles produced by the "Big Three." I would appreciate your examining the matter and advising me what can and will be done to encourage South Korea to remove this and other barriers. Please also provide an up-to-date report on barriers in other Asian countries to U.S. products.

3. In the case of autos, when the Canadian Free Trade Agreement (CFTA) was adopted in 1989, Congress expected both countries to quickly increase the Rule of Origin percentage from 50 to 60 percent. Canada refused and the increase never occurred.

Under NAFTA, the percentage is changed for Canada and Mexico to 62 1/2 percent regional content. However, even that low percentage does not take effect until 2002, or over 12 years after the CFTA. While the "tracing" requirement could be helpful, the "net cost" measure may be too liberal. Further, the agreement, as noted by labor, apparently does not address the high level of imports of vehicles and parts from outside North America and the low level of local content in vehicles assembled here by non-North American companies.

The agreement also provides a change in the Corporate Average Fuel Economy (CAFE) law to allow each company in Mexico to choose, (after the 3rd year of a 10 year phase-out period) to have its Mexican

value counted as "domestic." A company can, however, continue to have its Mexican production count as "foreign."

Both of these changes benefit Mexico and/or Canada and foreign vehicle manufacturers. As I understand it, the U.S. auto industry did not seek the CAFE change and the industry and labor supported a higher Rule of Origin percentage. There was no discussion with our Committee about the CAFE change.

Please explain the benefit of this low 62 1/2 percentage in light of statements by many foreign companies, especially those with transplants in the U.S., that they meet or exceed this percentage on one or more of their vehicle lines. Why is the percentage so low and deferred until the next Century?

If the CAFE law is amended at any time, will those amendments apply equally to any company that chooses the domestic or foreign classification or will the agreement have to be revised? What is the impact on the U.S. industry of the five year phase-out of the 25 percent truck tariff and the inclusion of Mexican value in the CAFE definition of "domestic"?

4. Recent testimony by the American Automobile Manufacturers Association (AAMA) contends that the current Mexico Auto Decree places serious constraints on auto manufacturers in Mexico and that NAFTA will eliminate or moderate those constraints, which I applaud. AAMA adds that NAFTA will permit U.S. producers to rationalize production which will mean "new orders for U.S. auto plants, more secure jobs for U.S. workers, and the opening of a major new export market for U.S. automotive products." The AAMA witness said that to keep "this potential in perspective," he refers to a "Conference Board of Canada which predicts that Mexico will replace Canada within 30 years as the U.S.' largest trading partner."

While I certainly favor results that could help the "Big Three" be more competitive because that should be good for U.S. workers, I am concerned about what will happen in a much shorter time frame than 30 years. I am also concerned that rationalization could cause a loss of jobs in the U.S.

To what extent have each of the Big Three and the transplants provided assurances that U.S. production will not be transferred in this decade to Mexico or Canada under NAFTA if it will result in a loss of U.S. automotive jobs? What is the nature of those assurances? Recognizing that there is excess production capacity in the U.S., could there be a loss of a significant share of U.S. production of small cars and light-duty trucks to Mexico? Would that have a significant adverse effect on U.S. automotive jobs?

5. The Bush agreement on import surges was designed, as I am told, to give U.S. producers time to adjust to increased imports by a

competitor. However, when a multinational firm transfers production from one country to another, there is generally no "foreign competitor." In such a case, this single firm decides whether to use American, Canadian or Mexican workers to make the product. I am concerned that NAFTA increases the ability of such firms to concentrate production in a single location, which creates competition among existing workers in the three countries. Does the agreement provide relief to American workers of such a firm who lose their jobs in a production transfer? What does it do for Mexican or Canadian workers?

I understand that the United Auto Workers union proposes that the import surge negotiations focus on preventing surges of imports that represent irreversible transfers of production in industries that have been subject to national industrial policies and programs and in which production is dominated by firms that have extensive operations in each of the three NAFTA countries. In these industries, the restructuring and consolidation of production that will take place will be a function of the success of the national policies, not market forces, putting countries lacking national policies at a disadvantage.

Given the continuation of the Canadian Auto Pact "safeguards," the Mexican Auto Decree phaseout and Mexico's new protection for auto parts production that takes into account vehicle imports, how and to what extent will the U.S. in the supplemental negotiations on "import surges" ensure that U.S. production as a share of total North American production does not decline as a result of NAFTA?

6. If trade in one direction, U.S. to Mexico, affects jobs in the U.S., will trade in the opposite direction, Mexico to the U.S., have an effect on such employment? What is the estimate of the number of American jobs created by U.S. exports to Mexico? What is the estimate of the number of jobs lost due to imports from Mexico? To what extent do U.S. exports to Mexico that are processed in Mexico and shipped back to the U.S. for sale create American jobs?

7. I generally support the negotiation of supplemental agreements on labor and on the environment, although I must reserve final judgment until I see their details and understand their impact on the U.S. as well as on Canada and Mexico. I am concerned that in reality, they may have greater practical impact in this country than in Canada and Mexico because of our system of monitoring, enforcement, openness, and citizen suits. Most importantly, I am concerned that those agreements will not affect, change, or even address the deficiencies of the Bush-negotiated agreement, including those identified in these questions. Rather, they seek to establish a broad set of labor and environmental objectives and statements. They also appear to provide a rather complicated organizational structure to help

achieve and enforce these objectives, which raises further questions about staff and costs. I remain skeptical about their adequacy and usefulness in improving and correcting the Bush agreement. I would like your explanation of the purpose and effectiveness of these supplemental agreements, in the case of Mexico and Canada, particularly in regard to the labor and other issues raised in previous questions.What specific deficiencies in the original text of the Bush agreement are being addressed and remedied or mitigated by the two supplemental agreements? Please also keep our Committee informed about the substance and process of these negotiations.

I look forward to your early response to these matters. I am providing a copy of this letter to the U.S. Trade Representative so that he may contribute to your response as necessary and so that he is aware of our concerns and interest.

With every good wish.

Sincerely,

John D. Dingell, Chairman.

## Toyota Officials Defend Statistics on Purchases of U.S. Components

(By Kevin G. Hall)

Long Beach, Calif.--Dismissing as "total nonsense" criticism that Japanese carmakers do not import enough U.S. components, Toyota Motor Corp. officials countered that their commitment is reflected in greater overall purchases of parts from U.S. suppliers.

Toyota used a suppliers' conference in Long Beach, Calif., earlier this week to announce a 40% increase in the amount of U.S. parts it purchased during the Japanese fiscal year that ended March 30, 1993.

The carmaker announced that purchases grew to $4.43 billion during the 12- month period, well above the $3.14 billion posted in fiscal 1992, but also well below the $5.28 billion targeted for next year.

However, of the $4.43 billion purchase figure, some $3.3 billion was local procurement for Toyota auto plants in Georgetown, Ky., and Fremont, Calif. About $1.13 billion of the total figure was actually exports to Japan for manufacturing.

The distinction is significant because critics in Washington have said the true mark of Japan's willingness to open its markets is the amount it actually imports rather than procures locally in plants abroad.

The same distinction is currently being hotly debated in the computer industry, with Japan touting its total purchase of U.S.

computer components and the United States arguing the benchmark should be limited to capital- affiliated companies.

Groups like the Northeast-Midwest Institute, a research center set up to assist Congress on regional economic development issues, are telling President Clinton not to take Japanese auto parts purchases at face value.

"I think it would be fair to say they are listening to this concern and voicing it on occasion," said Eric Hartman, a senior policy analyst for the group who specializes in international trade issues.

Iwao Okijima, a Toyota senior managing director in charge of parts purchasing, appeared annoyed when asked during a news conference if the growing local procurement masks the much smaller proportion of U.S. auto part exports and suggests Japan's market remains largely closed to U.S. suppliers.

"I think it's nonsense," said Mr. Okijima, asking why the closed market question is not put to the United States in dominant sectors like aerospace and agriculture. "We don't conclude that those areas where Japanese industries are in total deficit to American businesses in that sector are closed" markets.

Japanese auto parts companies are more successful, he said, because they have traditionally offered better quality and enjoy the benefit of market proximity.

In contrast, critics have long complained Japan's "keiritsu" system of affiliated business groups working together for a common goal shuts out U.S. suppliers. They note the numbers released by Toyota Monday do not break down how much of the carmaker's purchases are from transplanted Japanese suppliers in the United States.

"A crucial piece of information is missing and it does have a material consequence, too," said Mr. Hartman.

Toyota's figures indicated only that about half of the auto parts purchases are from wholly owned U.S. companies or joint ventures with one partner being a wholly owned U.S. firm. There are no data breaking down the dollar value of parts procured from U.S. firms versus transplants.

Auto parts account for about 75%--or $49 billion--of the U.S. trade deficit with Japan, so the issue is expected to come to a head with a new administration that has shown a proclivity for talking tough about trade with Japan.

Japanese automakers agreed to an overall goal of $19 billion in purchases in the year ending March 1995, but it is not clear what action the Clinton trade team will recommend if the industry as a whole falls short.

A reluctant Mr. Okijima, when asked of the potential row, said "we're hopeful rather than fearful." Other Toyota officials indicated they expect some policy move by Mr. Clinton shortly.

"I think they'll press things early, I think they're already beating the drums, said James R. Olson, Toyota Motor Sales, U.S.A. Inc. group vice president of external affairs in Torrance, Calif. "I think this is an issue they will bring up before the G-7 meeting (Group of seven industrialized nations) and try to take it to the meeting."

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Department of Commerce,

## The Secretary of Commerce,

Washington, DC., July 13, 1993.

Hon. John D. Dingell,

Chairman, Committee on Energy and Commerce,

House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter regarding the North American Free Trade Agreement (NAFTA) and other trade issues. I share your view of the usefulness of our meeting and the helpful exchange of ideas that we enjoyed. Enclosed are detailed answers to your questions.

You are quite right that I support the NAFTA for all the reasons we discussed during our meeting, and I hope the President can count on your support once we have completed the supplemental agreements.

Sincerely,

Ronald H. Brown.

Enclosures.

1. The Government of Japan (GOJ) has on a number of occasions stated that the announcements made in January 1992 regarding purchase of U.S. auto parts are goals established by the individual Japanese automakers and not commitments made by the Japanese Government. Ambassador Kantor and I wrote to Minister Mori to stress the importance of the companies meeting these goals and the need for the GOJ to encourage company efforts leading to these results. Since that time, Department staff members have met with representatives of the three largest Japanese auto makers who have assured us that they are on track in meeting their voluntary target purchases.

The Japan Automobile Manufacturers Association has just issued its seminannual report of U.S. auto parts purchases. Total purchases for Japan's fiscal year 1992 are reported to have been slightly more than $13.5 billion. The figure represents a $3.1 billion increase from the 1991 total. If this rate of increase is maintained over the next two years, the Japanese automakers will meet their announced goals. Our

staff is currently updating the statistical tables that we provided to your office in the past. I will send you a copy of the data packet as soon as it is completed.

The Clinton Administration has proposed a framework which will be used to negotiate the removal of barriers to trade between the United States and Japan. The Administration shares your interest in real results and is committed to advance a program to achieve that goal. I understand that Timothy J. Hauser, Acting Under Secretary for International Trade; Paul Rosenberg, one of my senior advisors; and Marjory Searing, Deputy Assistant Secretary for Japan, met with members of your staff and the Committee to brief them on the status of these negotiations.

2. The motor vehicle tariff rate in South Korea was 17 percent in 1992. It is currently 15 percent, and it is scheduled to be reduced to 5 percent by 1995. In addition to the tariff, the Government has an eight-level cascading tax for automobiles. Consequently, an imported automobile costs approximately 27 percent more than an comparable domestic vehicle.

Historically, the Republic of Korea Government (ROKG) has discouraged the importation of automobiles and has instituted various nontariff barriers. The "anti-corruption campaign" cited in your letter is a renewal of a continuing campaign that started in 1990 as the "anti-consumption/import" campaign and proceeded in 1991 as the "frugality" campaign. The new "anti-corruption" campaign could well lead to a new anti-import campaign. We recognize that these campaigns are thinly veiled efforts by the ROKG to keep imports out of Korea.

The ROKG has repeatedly assured the U.S. Administration that the "anti- import" campaigns have ended. In Korea, however, just the threat of a new Government-sponsored "anti-consumption" campaign is enough to frighten potential customers from import showrooms. We continue to receive reports of informal efforts by the ROKG to discourage the purchase of imported automobiles and sales of imported automobiles continue to fall.

We are working with the Big Three companies and the American Automobile Manufacturers Association to develop a strategy for a renewed effort to open the South Korean automobile market. This effort will build on bilateral Cabinet-level dialogue held with the ROKG on this issue over the past several years.

The report you requested concerning barriers in other Asian markets is attached to this enclosure.

3. We understand and share your disappointment that the rule of origin under the U.S.-Canada Free Trade Agreement (CFTA) was never increased to 60 percent. However, the CFTA as adopted by Congress

contained no definitive obligation for Canada to agree to such an increase. The U.S. implementing legislation instructed the President to "seek to obtain an increase" which former President Bush did attempt to do.

The NAFTA, on the other hand, contains a specific obligation for all three countries, including Canada, to the 62.5 percent requirement. I should emphasize that this requirement is subject to audit by the U.S. Customs Service. As I understand it, the 62.5 percent figure (combined, of course, with the improvements regarding tracing and the base for valuation) is a negotiated result. I believe the U.S. negotiators tried very hard to achieve a 65 percent level. The outcome is the result of their intensive efforts. While every negotiating partner would prefer to achieve their initial position, that is rarely the case. The purpose of the rule of origin is to ensure that the benefits of duty-free trade under NAFTA accrues to those producers that make a significant manufacturing commitment to North America. NAFTA ensures that companies cannot use Canada or Mexico as sites for "screwdriver" operations (simple assembly operations with little or no use of North American content) with their production aimed at the United States.

The NAFTA is a trilateral trade agreement and only addresses non-North American imports in the context of how they are to be treated in the rule of origin. Clearly, foreign-produced products will not count towards the regional content requirement for duty-free trade benefits. However, as the NAFTA is not a customs union, all three countries retain their sovereign right to determine their external trade policy. Only trade policy relating to trilateral trade is addressed in the NAFTA.

The level of local content in vehicles assembled in North American by non- North American companies is addressed only in the context of the level of regional content required for duty-free, trilateral trading privileges. However, if these companies, producing in any of the three countries, do not wish to take advantage of duty-free trading privileges under NAFTA, there is nothing to force them to achieve any level of content.

Because the NAFTA has not been implemented, assertions by any company located in the United States that its production meets the rule of origin are speculative. It may be true that transplant producers are meeting or exceeding the 62.5 percent on one or more of their vehicle lines. However, until that claim is audited under the NAFTA procedures,we will not have a definitive answer. Pressure from the United States on Japanese transplants to increase their purchases of North American parts has shown some results, even though they may not be taking place as quickly as we would like nor be at the level we would like. The yen/dollar exchange rate has also aided in increased

sourcing of parts in the United States, whether from traditional U.S. suppliers or from transplant Japanese parts producers. Just because some model lines meet or exceed the requirement does not mean that 62.5 percent is an inadequate percentage.

After 10 years, all Mexican content will count as "domestic" for CAFE purposes. There is no choice involved. The choice is only when to count Mexican content as "domestic" in the 1997 through 2004 period. During this period, companies producing in Mexico (prior to model year 1992) may make a one-time election to count their Mexican content as "domestic" or keep it as foreign. They may not switch back and forth. All vehicles which are sold in the United States must currently be classified as being in either the "domestic" or "foreign" fleet for CAFE purposes. This will not change. Vehicles with 75 percent or more U.S./Canadian/Mexican content will be classified in the "domestic" fleet; vehicles with less than 75 percent U.S./Canadian/Mexican content will be classified in the "import" fleet. It does not matter where these vehicles are produced; they are classified as being in a fleet based on the percentage content achieved in each model line.

We do not believe this change benefits Canada, because Canadian content has been included in the "domestic" fleet definition since CAFE's inception in 1975. If anything, it puts Mexico on equal footing with Canada by granting Mexican content equal status with Canadian content. We also do not believe this change benefits foreign vehicle manufacturers. Except for Mazda, no transplant producers currently has a "domestic" fleet. If a foreign vehicle manufacturer wishes to source more parts from Mexico, it will now have to count them as "domestic." As most foreign producers do not want to have a "domestic" fleet, the inclusion of Mexican content as "domestic" does not help them. To date, all imports of passenger cars from Mexico by the Big Three have been classified in their "domestic" fleet.

Any subsequent changes to CAFE legislation involving the fuel economy standard will apply to all vehicles sold in the United States just as it does today, regardless of whether the vehicles are classified as being in the "domestic" or "foreign" fleet. The agreement will not have to be revised unless the United States changes the content definitions of the two fleets. The text of the Agreement reads,

4. Nothing in this Appendix shall be construed to require the United States to make any changes in its fuel economy requirements for automobiles, or to prevent the United States from making any changes in its fuel economy requirements for automobiles that are otherwise consistent with this Appendix.

My staff informs me that the subject of the CAFE change was discussed at numerous briefings by U.S. negotiators attended by representatives of the Energy and Commerce Committee staff.

4. The Big Three companies and U.S. labor have not been asked to provide assurances regarding their future options. Given the current economic realities, it is difficult to comprehend why a company would significantly expand capacity in North America. I do not foresee a loss of a significant share of U.S. production of small cars and light-duty trucks to Mexico as a result of NAFTA. As opposed to the real effect of the Mexican auto decree which is forcing investment and production in Mexico, the NAFTA reduces immediately and eliminates those forces.

5. The safeguard provisions of the NAFTA are designed to prevent injury or threat of injury to a domestic industry from increased imports. In essence, U.S. import relief law (section 201) is carried over into the NAFTA. Except in certain very limited situations involving the licensing of the U.S. Government-funded or owned inventions. I know of no provision in U.S. law that would permit the U.S. Government to control a firm's decision where to locate production facilities. While I appreciate your interest in a United Auto Workers union proposal to ensure job retention, I firmly believe that adopting the NAFTA is the best means for assuring that jobs can be retained in the United States. The current Mexican auto decree, as you know, is forcing U.S. auto assemblers and parts manufacturers to produce products in Mexico that they would otherwise prefer to make in the United States. The NAFTA eliminates these requirements, permitting manufacturers in the United States to decide where to produce their goods. General Motors, Ford and Chrysler have all indicated that the NAFTA's market opening provisions will enable them to export significantly greater amounts to Mexico than they would be able to do otherwise and will enable them to add employment in the United States that might otherwise go to Mexico. Any attempt to further manage production decisions in North America, no matter how well intentioned, will place that additional employment and exports at risk.

The Canadian "safeguards" have had no practical effect for years, because production has remained well above the levels agreed to in the auto pact. Assemblers would have to alter considerably their production patterns to fall below them. The NAFTA also incorporates the obligation under the CFTA that production and export-based remission orders provided to recipients who did not qualify for duty-free access under the auto pact be eliminated by 1996 and 1998, respectively. The NAFTA will further diminish what little value the safeguards have left, because assemblers will be able to import parts, components and vehicles from the United States and Mexico duty-free without meeting the safeguard requirements or needing the duty waivers for such imports. (We understand that over two-thirds of the imports of automotive assemblers in Canada are from the United States and Mexico.) Last, as noted above, the increase in the rule of

origin, combined with the tracing and other improvements, will further influence Canadian assemblers to purchase components from the United States and Mexico to sell in the free trade area duty-free. The result is to lessen the value of the duty waivers as an incentive to maintain specific levels of production and in so doing reduce what little remaining value (mostly optical at this point) the "safeguards" may have.

6. NAFTA provides the proverbial level playing field that so many critics of trade agreements profess to want and will result in increased jobs in the United States and Mexico. We can look back at our trading relationship with Mexico since 1987 to see how expanded trade can benefit both economies. In 1987, the United States exported $14.5 billion to Mexico, had a $5.9 billion trade deficit, and could attribute only 309,000 jobs to exports to Mexico. By 1992, our exports to Mexico had reached $40.6 billion. We had a $5.2 billion surplus, and exports to Mexico supported 700,000 U.S. jobs. Clearly, the United States is benefiting from exports to Mexico. Yet Mexico was enjoying significant economic benefits as well. Exports to the United States in this period expanded from $20.5 billion in 1987 to $35.2 billion in 1992, contributing to GNP growth in 1990-1991 of 4 percent. Trade liberalization resulted in significant economic expansion on both sides of the border in spite of significant remaining Mexican tariff and nontariff barriers, including the auto decree. NAFTA will ensure that this positive trend continues through the further liberalization of Mexico's trade regime.

It is obviously impossible to estimate the number of jobs "lost" due to imports. Trade is not a win-lose game. Imports can be attributed to many factors, including the fact that the good is not, or cannot be, produced in the country. If it cannot be made here, no job could be "lost" through its importation. Every credible economic study on the effects of the NAFTA on the U.S. economy has concluded that the agreement will result in a net increase in U.S. jobs. The U.S. International Trade Commission estimates that NAFTA will result in a gain in aggregate U.S. employment of one percent within ten years of implementation.

Nonetheless, job losses in certain sectors are predicted. These job losses will be offset by larger job gains in other areas of the economy. The ITC in its January 1993 "Potential Impact on the U.S. Economy and Selected Industries of the North American Free Trade Agreement" provides its assessment of potential job dislocations. The study also notes offsetting employment gains under NAFTA. Overall, NAFTA will create more jobs in the U.S. economy than will be lost.

Mexico uses a higher value of U.S. components in production-shared exports to the United States, 50 percent in 1991, than any

other country except the Dominican Republic. By contrast, Japan uses only 3 percent, and Germany uses only 2 percent. Production-shared imports from the rest of the world average only 19 percent U.S. content. Obviously, production sharing with Mexico and Canada translates directly into U.S. jobs.

The ITC has studied the maquiladora program four times since 1970. When it examines the question, it has found that the likely economic effects of the elimination of production sharing--which is what the maquiladora program is-- would be that the United States would continue to import most of the products made in the maquiladoras, but they would likely be of wholly foreign origin, likely from the Far East. It is a false assumption to expect that Mexican assembly-related jobs would migrate to the United States if production sharing were eliminated. On page xxxvii of the 1988 report on "The Use and Economic Impact of TSUS Items 806.30 and 807.00," the ITC states, "Therefore, the prospect of any increased employment in the United States from removal of item 807.00 with respect to imports from Mexico is remote. . . ."

Under those circumstances, U.S. and Mexican exporters would lose out to Far Eastern exporters. There would be fewer U.S. jobs producing components and fewer Mexican jobs assembling those components into final products. In a worst case scenario, considering 1990 employment data for the maquiladora industry, the United States would risk losing the estimated 135,000 jobs producing components for assembly in Mexico ("Jobs Supported by U.S. Merchandise Exports to Mexico," U.S. Department of Commerce, May 1992, page 6.), and Mexico would risk losing the approximately 447,000 jobs doing the assembly. (Camara Nacional de Comercio de la Ciudad de Mexico, Mexico 1992, "Compendio de Datos y Estadisticas de Mexico," page 110.)

7. From the Administration's perspective, the NAFTA text adequately addresses the trade objectives and concerns of the United States. Hence, we do not seek to renegotiate the text as written. However, the NAFTA does not address related concerns generated by perceived inadequate Mexican enforcement of labor and environmental laws. The president has indicated that he believes the NAFTA must be supplemented with good agreements that will ensure the national enforcement of national laws in the area of labor and the environment. In both cases, Mexico has strong laws on the books, but enforcement in the past has been inconsistent. Mexico's enforcement record in the labor and environmental areas has improved markedly under the Salinas Administration, a trend that NAFTA and the supplemental agreements will help encourage.

The stress on national enforcement of national laws respects the sovereignty of the three nations, while the focus on a pattern of nonenforcement by governments (not on individual violations) ensures that the Commission does not harass individual companies or industry sectors. The Commissions will bring transparency to the enforcement efforts of all three countries, encouraging better enforcement.

The Commissions will also work towards the development of more stringent, trilaterally-agreed labor and environmental standards, facilitating a steady upward movement of such standards.

Attachment.

## Import Barriers in Asia

Burma.--There are no local content regulations or import restrictions. Customs duties ranging from 30-300 percent are levied on imported automobiles.

China.--An import license is required, and only ten organizations are authorized to import automobiles Note /1/ The following companies are authorized to import automobiles into China: China National Automotive Import & Export Corp., China National Technology Import & Export Corp., China International Trust & Investment Corp., Everbright Enterprise Corp., Jiefang Automotive Industry Corp., Dongfeng Automotive Industry Corp., China Global Leasing Company, Ltd., China Leasing Company, Ltd., China Foreign Trade Leasing Company, Ltd., and Oriental Leasing Company, Ltd. /1/. However, foreign joint ventures can often bring in cars duty-free and justify imports on the basis of the needs of the joint venture. Domestic content and export requirements are enforced for all joint ventures. Foreign exchange restrictions and incentives to export-oriented investments may also be viewed as indirect export requirements. Tax relief and other incentives are available to ventures that export 70 percent or more of their production. Joint ventures frequently have no alternative to earning whatever foreign exchange they need to cover imported parts/kits and to repatriate profits. The import duty is 120 percent for passenger cars and 50 percent for light trucks (loading capacity of 8 tons or less). Until recently, passenger cars and light trucks were also subject to an import regulatory tax of 80 and 50 percent, respectively. Since April 1, 1992, the import regulatory tax has been abolished, but duty rates for certain passenger cars have been raised. Some of these rates now reach as high as 220 percent.

GM is cooperating with the Chinese in a number of areas, including a joint venture operation in Shenyong. Chrysler has a Jeep Eagle manufacturing operation. Ford is planning to open a R&D center for

future component manufacturing. VW, Peugeot, Suzuki, Daihatsu, Isuzu, Steyr, and Nissan all have joint venture assembly operations.

India.--Foreign investment and technology agreements are now approved automatically. Industrial licenses are not required for the manufacture of commercial, public transport and jeep-type vehicles, automotive components, spare parts, and ancillaries. Additionally, 51 percent foreign equity participation is now permitted in these industries. Though local content requirements have been abolished for new investments in these industries, foreign equity must cover the foreign exchange requirement for imported capital goods, and imported inputs must be based on foreign exchange earnings. Exports are further encouraged by basing dividend and profit repatriations on export earnings.

Import licenses are issued on a limited basis for commercial vehicles. Customs and auxiliary duty rates total 100 percent with an excise tax of 25 percent that is levied on the total of the two duties. Import licenses are not normally granted for consumer products, including passenger motor vehicles. Automobile manufacturing still requires the issuance of an industrial license, and 51 percent foreign equity participation is not normally available.

There are 13 motor vehicle manufacturers in India: Ashok Leyland, D.C.M. Toyota, Allwyn Nissan, Swaraj Mazda, Hindustan Motors, Eicher Motors, Mahindra & Mahindra, Premier Automobiles, Standard Motors, Tata Engg. & Loco. Co. (Teleco), Maruti Udyog, Sipani Automobiles, and Bajaj Tempo. Approvals have been granted to Ford Motor Company for a joint venture agreement with Maruti Udyog to make aluminum car radiators with Ford holding a 56 percent equity and to General Motors with Hindustan Motors to develop automobile components for export, and ultimately to manufacture a fuel efficient passenger car.

Malaysia.--In 1983, a joint venture by Mitsubishi and the Malysian Government launched the Proton Saga with local content calculated to be 70 percent and plans to increase it to 90-95 percent. Aside from the Proton Saga national car company, all other vehicle makers are assemblers working in conjunction with overseas suppliers with a minimum local content of 20 percent. Malaysia levies tariffs ranging from 140 to 300 percent on imports of assembled automobiles in addition to a 10 percent sales tax, and charges 40 percent duty on imports of CKD kits. The import of new or used cars into Malaysia is subject to an import permit called "AP" which is issued by the Ministry of International Trade in Kuala Lumpur on an ad hoc basis.

No export requirements or quantitative restrictions on car imports are known to exist. Malaysia has recently streamlined its system of investor incentives, and a few of them include exemption from

corporate income tax and investment tax allowances. Recent liberalization allows foreign investors to retain up to 100 percent equity, if the firm either exports 50 percent of its output or employs 350 Malaysians full-time.

Nepal.--An import license is required. Import duties on minibuses and public carriers are levied at around 154 percent (including 70 percent regular customs duty and 55 percent additional duty and 20 percent sales tax). Import duties on other vehicles are 201 percent (including 70 percent regular customs duty and 55 percent additional duty and 20 percent sales tax).

Pakistan.--Pakistan's Ministry of Industries requires 75 percent local content for motor vehicles. Motor vehicles can only be imported by individual Pakistani expatriates, who must pay in foreign currency earned overseas, or by authorized local motor vehicle assemblers. Tariffs on trucks, buses, light commercial vehicles, passenger cars, 4x4 vehicles and station wagons range from 5 percent (for CKD vehicles) to 435 percent ad valorem for CBU vehicles. In some cases, imports are also subject to a 12.5 percent sales tax, 10 percent import surcharge and 5 percent education tax. The tariff rate of duty (ad valorem) on passenger cars is based on engine size. Cars less than 1000 cc's pay a 100 percent duty, while cars more than 1600 cc's must pay a 435 percent duty. Buses and coaches under 69 passengers pay a 20 percent duty, while buses with capacity for 70 people are duty-free. Station wagons and 4x4's pay a 100 percent duty, while trucks and pickups pay a 20 percent tariff. The Japanese manufacturers (Suzuki, Mazda, Isuzu, and Hino) control over 85 percent of domestic production and imports. Right hand drive vehicles dominate the market.

Private and public companies assemble Bedford, Isuzu, Hino, Suzuki, Mazda, and Nissan cars.

Thailand.--The following products are banned through import restrictions: buses, 6-wheel type, with 30 seats and over; cabs and body assembly parts; and used motor vehicles. Passenger cars with an engine capacity under 2300 cc's have a 150 percent ad valorem import duty; passenger cars with an engine capacity over 2,300 cc's have a 100 percent import duty; pickups and vans have a 100 percent ad valorem import duty; and trucks and buses have a 40 percent ad valorem import duty. In addition, for passenger cars, there is a tax on profits of 26 percent of the import value; a 40 percent business tax; a municipal tax of 10 percent on the business tax; and a surcharge of 20 percent on the import duty for cars with engines 2300 cc's and above and 50 percent for cars with engines smaller than 2300 cc's. Trucks, buses, pickups, jeeps and vans must also pay a 9 percent business tax and a 10 percent municipal tax. Pickups, jeeps and vans must also pay

an additional 20 percent surcharge on the import duty. Import duties on CKD passenger cars, pickup trucks and vans is 20 percent, while the rate for buses and large truck chassis is 10 percent.

Toyota, Nissan, Isuzu, and Ford produce cars, trucks and buses. Hino produces trucks and buses. Fiat, British Leyland, and Volvo produce cars and buses. Mitsubishi, Mazda, Daihatsu, Subaru, GM, Volkswagen, Peugeot, Renault, BMW, Alfa Romeo, Citroen, and Lancia produce cars.

Australia.--The tariff rate on automobiles and components is currently 35 percent. Post 1992 reductions in passenger car tariffs are currently being reviewed by the Australian Government. Light commercial and four-wheel drive vehicles have an 18 percent tariff and will be reduced to 15 percent by the end of 1992. Under the manufacturers' content program for automobiles, automobile manufacturers are assessed a 35.0 percent duty on imported components exceeding 15 percent of automobile content by value. Automobile exporters may, however, earn up to 15 percent local content plus an additional 5 percent (valued at 50 cents on the dollar) for exports of automobiles. General Motors, Ford, Toyota, Mitsubishi, Volvo and Nissan produce vehicles in Australia.

Hong Kong.--There are no local content requirements, quantitative restrictions or import duties on motor vehicles. Cars must pass a strict emissions test. However, the Hong Kong standard is not as stringent as U.S. emissions regulations. Only right hand drive passenger cars are allowed. The exception is for buses and some commercial vehicles.

Japan.--Japan maintains no local content requirements or quantitative restrictions. Import duties on motor vehicles have been waived indefinitely since 1978. Japan currently levies a 4.5 percent consumption tax on vehicles over 660 cc's. Although the tax was scheduled to be reduced to 3 percent in April 1992, the Japanese Ministry of Finance has stated that it will probably continue to charge 4.5 percent for at least two years. In addition to the consumption tax, there is an annual automobile tax which increases by engine size, ranging from 7,200 to 148,500 yen, and an acquisition tax for automobiles, 5 percent on automobiles for private use and 3 percent on mini vehicles and automobiles for business use. U.S. original equipment parts suppliers have found the unique quality and supply conditions of Japanese automakers challenging. Close relationships among major suppliers and auto firms make it difficult for United States firms to join supplier networks.

Honda, Daihatsu, Fuji, Hino, Nissan, Suzuki, Mazda, Isuzu, Mitsubishi, and Toyota have manufacturing operations in Japan.

New Zealand.--New and used completely built-up (CBU) vehicles can be imported into New Zealand without hinderance subject to a

tariff charge, plus a goods and services tax (GST) levied on all goods purchased in New Zealand. The tariff rate is currently 35 percent on the ad valorem value, reducing to 30 percent by 1995. GST at 12.5 percent is applied to the price paid by the purchaser after entry into New Zealand. CKD vehicle kits enter free of tariff but are subject to requirements to use local components such as batteries, tires, seat belts, wheels and interior trim. The tariff on imported used vehicles is currently at 35 percent based on ad valogrem/FOB value, or NZ $1,300 to $1,500 depending on engine rating. The higher amount is applied. Left-hand drive vehicles are not permitted entry for resale, but they may be sold if converted to right-hand drive. Vehicle standard requirements are based on common international standards such as ECE, FMVSS and ADR.

Ford/Mazda, General Motors/Isuzu, Toyota, Nissan, Honda and Mitsubishi maintain local vehicle assembly plants in New Zealand.

Philippines.--There is a 40 percent local content requirement for passenger cars and a local content requirement for trucks that ranges from 13.7 to 55 percent. There are also foreign exchange requirements for CKD kits (50 percent for passenger cars and 25 percent for commercial vehicles). Importation of CBU vehicles is strongly discouraged.

Nissan, Toyota, and Mitsubishi assemble passenger cars.

Singapore.--The Government of Singapore has implemented a strict quota system. As of mid-1990, any prospective car owner must first obtain a "certificate of entitlement" (COE) before purchasing a vehicle. Only a limited number of COE's are granted each month, to the highest bidders. The COE doesn't apply towards the purchase price at the car. Left hand drive vehicles are not allowed to be registered for use in Singapore. An import duty of 45 percent is levied on all imported cars. Registration fees of 150 percent of the market value of the car and a flat fee of $568 dollars for a private car and $1,841 dollars for a company car are required. There is a road tax of $0.40 to $1.00 per (cc) per annum. A surcharge of $5,682 is imposed on used imported cars.

Mercedes, Ford, British Leyland, and Volvo assemble cars. Nissan assemblies vans.

South Korea.--There are no local content requirements or quantitative restrictions on motor vehicles. The automobile tariff rate in Korea was 17 percent in 1992 and is scheduled to be reduced to 5 percent by 1995. Currently, the tariff rate for automobiles is 15 percent. In addition to the tariff, the Government has an eight-level cascading tax for automobiles. Consequently, an imported automobile costs approximately 27 percent more than a comparable domestic vehicle. The South Korean Government has historically discouraged

the importation of automobiles and has instituted various nontariff barriers. Over the last few years, the South Korean Government pursued an "anti-import" campaign in an attempt to discourage the purchase of "expensive" imports, especially automobiles. The Korean Government has repeatedly assured the U.S. Administration that the "anti-import" campaign has ended. However, we continue to receive reports of informal efforts by the South Korean Government to discourage the purchase of imported autos.

There are five domestic car manufacturers in Korea--Hyundai Motor Company of which Mitsubishi has a 15 percent equity share; Daewoo Motor Company; Kia Motor Company, in which Ford and Mazda have 10 and 15 percent equity shares, respectively; and Asia Motors, which is 43 percent owned by Kia Motors and Ssangyong Motors. Samsung is planning to manufacture commercial vehicles. Honda has an agreement to assemble a small number of Honda Acura Legends with Daewoo Motor Company.

Taiwan.--Maintains an import ban on most Japanese passenger cars and light trucks. It also imposes an import quota on Korean passenger cars. Imports of diesel vehicles, except jeeps, and two stroke engine cars are also prohibited. Vehicles face effective duties and taxes of 60-100 percent. These include import duties of 30 percent for passenger cars and 35-42 percent for commercial vehicles; commodity taxes of 25 percent for passenger cars with 2000 cc engine displacement or less, 35 percent for engines of 2001-3600 cc's, 60 percent for engines of 3601 cc's and larger, and 15 percent for commercial vehicles; 5 percent value added tax; and 0.5 percent harbor tax. Taiwan customs uses invoice price as the basis for calculating the duty- paying value.

General Motors, Ford, Honda, Renault, Toyota, Daihatsu, Mitsubishi, Subaru, Citroen, and Suzuki produce and/or assemble vehicles in Taiwan.

House of Representatives,
Committee on Energy and Commerce,
Washington, DC, June 15, 1993.

## Hon. Ronald H. Brown,

Washington, DC. Secretary, Department of Transportation,

Dear Secretaries Brown and Pena: Enclosed is a letter I received from Mr. Jack C. Thomas of Illinois about the North American Free Trade Agreement. He raises some interesting issues and questions. Please respond to them and identify and provisions of the Bush Agreement that address such issues and questions. Please provide a copy of your reply to Mr. Thomas.

With every good wish.

Sincerely,

John D. Dingell, Chairman.

Enclosure.

Burr Ridge, IL, May 9, 1993.

Representative John Dingell,
House of Representatives,
Washington, DC.

Dear Representative Dingell: I am writing about the provisions of the North American Free Trade Agreement (NAFTA) which calls for the "Harmonization" of the safety regulations between the signatory countries.

As a former truck driver and a high safety advocate I'm afraid that our U.S. truck safety rules, regulations, and laws will be seriously jeopardized, undermined, and/or eliminated under the "Harmonization" provisions of NAFTA.

Here's just a few examples:

TRUCK WEIGHT LIMITS

The U.S. has a 80,000 pound truck weight limit, Canada 137,000 pounds, and Mexico 170,000 pounds. We can not afford to maintain our nations highways and bridges now, so how can we afford to maintain them with 170,000 pound trucks running across them? How many of our present structurally deficient bridges will even support them?

TRUCK DRIVER SAFETY REGULATIONS

The U.S. has a 10 hour driving limit on truck drivers, Canada 13 hours, and Mexico has a unlimited 24 hour per day driving limit. With truck driver fatigue being the largest single causal factor in truck accidents. How can we in good faith allow longer driving hours in the U.S. which will only result in more accidents, injury or death?

MISCELLANEOUS ITEMS

Congress enacted the Commercial Drivers Licensing (CDL) system in order to eliminate multiple licenses, insure the standardization of driving tests, hazardous materials training, equipment knowledge, and a nationwide driver computer system to track down and eliminate bad drivers. How can we eliminate unsafe Canadian or Mexican drivers from U.S. highways when we don't even know who they are? How can Mexican drivers who can't read or speak english read maps, traffic signs, and comply with laws they can't read or don't even know about?

Front wheel brakes are required on American trucks but not on Mexican trucks. At 60 miles per hour how many more feet does it take to stop a 170,000 pound truck without front wheel brakes than it does to stop a 80,000 pound truck with front wheel brakes? How many additional accidents will occur and how many more Americans will be

injured maimed, or killed on those extra feet? How, or will, NHTSA, OSHA, OMC, DOL, and DOT be able to inspect, audit, and enforce U.S. safety requirements on Canadian and Mexican companies?

I'm not totally opposed to NAFTA because I really don't know how it's other provisions effects other industries, but if it can effect other industries like it can the trucking industry I'm very concerned that NAFTA could very well cause a U.S. depression or even a collapse of our economy.

NAFTA, or any like agreement, that might be entered into by the United States with any other country, and/or countries, must always ensure the raising of the Standard of Living, Wages, Working Conditions, and Safety and Environmental regulations up to the highest level, current and future, of those countries who are signatory to said agreement.

In no way should NAFTA, or any like agreement, be allowed to become a tool by which the U.S. Standards of Living, Wages, Working Conditions, and Safety and Environmental Laws are reduced or lowered to those of the country with a lower level. This would only exploit the citizens of the lower country and would only hurt the citizens and economies of the other countries that are signatory to all parties concerned it must, without fail, insure the raising of the Standards of Living in all signatory countries to that of the highest country, so as to level the trading field and to make it fair so, everybody can gain without anyone having to lose.

How can a Mexican worker making $7.00 a day afford to purchase their own domestic products and services, let alone those of the U.S. or Canada?

During the 1980's, after adjusting for inflation, the U.S. workers real wages fell 8%, and are presently at 1973 levels. If as a result of NAFTA, or any like agreement, our wages would go any lower, we won't be able to afford to buy products or services either. If and when that happens, more and more U.S. companies will go out of business, lay-off their employees, and our economy will either slip or crash right into a depression or even bankruptcy. As goes the American economy so goes the world's economy.

If NAFTA, or any like agreement, allows, permits, or even entertains the concept of reducing and/or lowering of the U.S. Standards of Living, Wages, Working Conditions, Safety and Environmental Laws, and/or allows or permits any agency, panel or commission, to overrule or rewrite our Laws, circumvent our Legal and Judicial system, our Congress, and our Constitutional Right of Self Government it should never, I repeat never, be considered let alone be ratified by Congress!

Congress must be extremely diligent when it comes to protecting our Constitutional Rights and installing adequate safeguards into NAFTA, or any like agreement, prior to ratifying it, as they have the potential to destroy our jobs, our economy, and to wreak havoc and suffering on all of the American citizens.
Sincerely yours,
Jack C. Thomas.

## Department of Transportation,

The Secretary of Transportation,
August 13, 1993.
Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter dated June 15, 1993, forwarding Mr. Thomas' very thoughtful letter outlining his concerns about the North American Free Trade Agreement (NAFTA). He expresses particular concern about the section of the Agreement that addresses standards harmonization among the United States, Canada, and Mexico.

First, let me reassure you that no provision of the NAFTA exempts Mexican or Canadian commercial vehicles from U.S. or state safety or environmental standards. Indeed, the Agreement specifically states that each country retains the right to adopt and enforce standards for the protection of life, property, and the environment that may be more stringent than standards in effect in the other countries. The United States made it clear from the beginning of the NAFTA negotiations that foreign commercial vehicles will be required to comply with all applicable safety and environmental standards when they operate in this country and that those standards will be strickly enforced.

In negotiating the work plan for attempting to reach compatibility on safety standards among the three countries (Annex 913.5.a-1), the overriding U.S. objective was to have a technical evaluation of the regulatory regimes of each NAFTA country and to encourage adoption of regulations that yield the highest safety standards. NAFTA does not require the development of a single set of standards applicable to all North American motor carrier operations. It was clear, however, to the U.S. negotiators that the other two-countries shared the guiding principle of adopting comparable standards with enhanced safety. It must be emphasized that at no time has any party sought to establish these standards on the basis of the lowest common denominator.

The specific concerns outlined in Mr. Thomas' letter are addressed below.

TRUCK WEIGHT LIMITS

Truck size and weight requirements are included in the work plan for standards harmonization set forth in the NAFTA (Annex 913.5.a-1). Although the Agreement includes a commitment from the United States, Mexico, and Canada to work toward compatible technical and safety standards, it does not require the United States to change its size and weight limits, or any of its regulations applicable to motor carrier operations. Indeed, Mexican and Canadian carriers are required to comply with existing size and weight requirements when operating in the United States.

The Department is fully aware that any future changes in our size and weight standards that might result from this process must be consistent with U.S. law. Current U.S. requirements governing truck size and weight are statutory and can only be changed by amending the relevant statutes. As part of the trilateral discussions on these standards, the Department will work closely with all potentially affected parties and with the Congress to assess the technical feasibility and implications of the various options. The Department does not intend to use the NAFTA harmonization process as a "backdoor" method of altering current size and weight limits.

HOURS OF SERVICE

As with the other safety and operating regulations for truck drivers, Mexican and Canadian drivers are required to comply with the U.S. hours-of- service requirements when operating in the United States and to keep a logbook noting driving time and time on and off duty time. The NAFTA does not change these requirements.

CDL AND INFORMATION EXCHANGE

Mr. Thomas is also correct that exchanging information on commercial drivers is critical if we are to assure that unsafe drivers can be identified and prevented from driving commercial vehicles. The United States and Mexico are committed to exchanging information on convictions, suspensions, cancellations, and revocations on a regular basis. Mexico and Canada provide information to the Department of Transportation, which then disseminates it to the states. In addition, we have established a bilateral group that is working toward implementation of an electronic information exchange process. In April 1993, technical experts from the United States met with technical staff from Mexico to begin substantive discussions on creation of an electronic data interchange system. These meetings will continue through the year.

DRIVER LANGUAGE REQUIREMENTS

The Department's motor carrier safety regulations include a requirement that commercial drivers be able to read and speak the English language sufficiently to converse with the general public, to

understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

FRONT BRACES

Mr. Thomas is correct that front brakes are not required on Mexican vehicles. However, all Mexican commercial motor vehicles manufactured after January 25, 1980, must be equipped with front brakes in conformance with the Federal Motor Carrier Safety Regulations if they are to be operated in the United States.

STANDARDS ENFORCEMENT

Mexican and Canadian carriers will be subject to U.S. safety standards and enforcement procedures. U.S. enforcement officials will conduct the same stringent driver and vehicle inspections on Mexican and Canadian carriers as are currently conducted on U.S. carriers. Drivers and carriers who fail to pass the inspections will be subject to the same penalties placed on U.S. carriers.

DOT's Federal Highway Administration (FHWA) is working with the states on enforcement issues on an ongoing basis and has undertaken a $300,000 study of enforcement practices along the border to assure that potential problems resulting from the NAFTA are identified and resolved.

To ensure uniform and consistent enforcement, Mexico has joined the Commercial Vehicle Safety Alliance (CVSA), an international organization that includes state and Canadian province motor carrier enforcement officials. Mexico has agreed to adopt the North American Vehicle Inspection Standards and conduct uniform, effective roadside inspections based on FHWA-CVSA standards for use in its own country.

The U.S. inspection standards, the out-of-service criteria, and accompanying training materials have been translated into Spanish. Further, FHWA, through the Transportation Safety Institute, has developed and conducted a train-the-trainer course in both Spanish and English for Mexican roadside inspectors.

OVERALL NAFTA IMPACTS

The Administration shares Mr. Thomas' concern about the potential effects of the NAFTA on U.S. labor and on the environment. That is why the United States, Canada, and Mexico are currently negotiating supplemental agreements concerning these issues. The NAFTA will not be submitted to the Congress for ratification until satisfactory side agreements have been signed.

I am very excited about the opportunity that we have to build a transportation system to support the new trade opportunities that will develop as a result of NAFTA. This Agreement will be of great benefit to U.S. motor carriers, railroads, and intermodal companies. We believe it provides equivalent competitive opportunities to companies

of both countries. I look forward to working with you and your colleagues to assure that this system provides equal access for all carriers, moves people and cargo as efficiently as possible, and maintains a consistently high safety standard. Sincerely,
Federico Pena.
Department of Commerce,

## International Trade Administration,

Washington, DC., July 13, 1993.
Hon. John D. Dingell,
Committee on Energy and Commerce,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter to Secretary Brown on behalf of your consistent Mr. Jack C. Thomas regarding the "harmonization" of transportation safety standards under the North American Free Trade Agreement (NAFTA). The Department of Transportation (DOT) has the expertise on the specifics of the technical transportation issues raised in Mr. Thomas' letter. NAFTA transportation issues have been handled by the Office of International Transportation and Trade directed by Arnold Levine. He can be reached at 366-2892. I am sure that Secretary Pena will provide a full and effective response to your letter. I will note that nothing in the NAFTA requires the United States to change any of its laws and regulations applicable to motor carrier operations. In addition, every reputable study that has looked at the labor effects of NAFTA has found that it will result in either increased U.S. jobs or increased U.S. wages, or both.

Thank you for sharing your constituent's opinion. Please feel free to contact Michelle O'Neill, Acting Congressional Liaison.
Sincerely,
Ann H. Hughes,
Deputy Assistant Secretary for the Western Hemisphere.
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## U.S. International Trade Commission,

Washington, DC, July 30, 1993.
Hon. Cardiss Collins,
Chairwoman,
Subcommittee on Commerce, Consumer Protection, and Competitiveness,
Committee on Energy and Commerce,
House of Representatives, Washington, DC

Dear Chairwoman Collins: In my letter to you of July 13, 1993, I noted that we would need more time to respond to your request of June 30, 1993 for information on U.S. exports to Mexico. The enclosed information addresses your four questions.

Since Mexico sharply reduced its tariffs in 1987, Commission staff estimate that U.S. exports for consumption in Mexico have grown by 224 percent by 1992, to $30.9 billion. U.S. exports to Mexico's maquila sector rose more slowly during this period, by 93 percent, to $8.7 billion. Hence, maquila- related exports as a share of total U.S. exports to Mexico fell from 32 percent in 1987 to 21 percent in 1992, as shown in table 1 (enclosed).

The growth in U.S. exports for consumption in Mexico since 1987 has been widespread among product groups, as shown in table 2 (enclosed). Consumer goods have been one of the fastest growing categories. Traditional exports to Mexico, namely industrial materials and capital goods, have remained the principal exports for consumption there.

Thank you for the opportunity to share this information about U.S.-Mexico trade. If you have any questions regarding the enclosed information, please do not hesitate to call us.

Sincerely,

Don Newquist, Chairman.

Enclosures.

Response to Chairwoman Cardiss Collins' Questions About United States-Mexico Trade (Annually, 1978-92)

1. How much of total U.S. exports to Mexico went to build and establish U.S.-owned maquiladora plants in Mexico?

Officially U.S. statistics are simply not available on U.S. exports to Mexico of products such as construction materials, manufacturing machinery, and office equipment that are used to set up and operate maquilas. Thus, Commission staff does not have a sound basis for estimating the value (or portion) of U.S. exports to Mexico for such purposes.

Data collected by the Government of Mexico on imports by the maquiladora sector, and published by the Banco de Mexico, combine imports of components with other goods used by the sector. The Banco de Mexico data also aggregate imports from the United States which maquila imports from other countries. The most definitive statement about U.S. exports for the building and establishment of maquilas comes from the Office of Technology Assessment: "[For most maquila plants,] the steel, insulation, piping and furnishings in factory buildings--along with the production equipment--come from [the United States]." Note /1/ U.S. Congress, Office of Technology Assessment, "U.S.-Mexico Trade: Pulling Together or Pulling Apart?,"

ITE-545 (Washington DC: U.S. Government Printing Office, Oct. 1992), p. 67./1/

Nevertheless, we would note that while the maquiladora sector in Mexico exports almost exclusively to the United States, only 46 percent of the 2,522 maquilas in existence in 1992 were completely or majority U.S.-owned. Some 48 percent were either completely or majority Mexican-owned; 2 percent (52 plants) were Japanese-owned.Note /2/ U.S. General Accounting Office, "North American Free Trade Agreement: U.S.-Mexican Trade and Investment Data," GAO/GGD-92-131 (Washington, DC: Sept. 1992), p. 97./2/ A growing portion of U.S. companies using assembly facilities in Mexico contact out the work to Mexican firms that provide assembly services.

2. How much of total U.S. exports to Mexico went to supply materials and components needed in the assembly and manufacturing operations of U.S.-owned maquiladora plants in Mexico?

Maquila-related exports account for a declining share of total U.S. exports to Mexico, based on Commission staff estimates shown in table 1. Their share declined from 32 percent in 1987, the year in which Mexico sharply cut its tariffs, to 21 percent in 1992, when U.S. exports to Mexico totaled $39.6 billion. While exports to the maquila sector rose by 93 percent during 1987- 92, to $8.7 billion, exports for consumption in Mexico rose by a much higher 224 percent, to $30.9 billion (identified in table 1 as "estimated net exports for Mexican consumption"). Thus, the net bilateral trade balance with Mexico improved markedly, shifting from a U.S. deficit of $5.72 billion in 1987 to a U.S. surplus of $5.67 billion in 1992.Note /3/ These trade balance figures, which are derived from data in table 1, do not include the value of U.S. components involved in maquila trade. In 1992, for example, "estimated net exports for Mexican consumption" of $30,913.0 million minus imports of $25,242.7 million ("total imports from Mexico" of $33,934.6 million less the "total value of U.S. components" contained in imports from the maquiladoras of $8,691.9 million) yields a net trade surplus of $5,670.3 million./3/

Official statistics do not distinguish between maquila-related exports and exports for consumption in Mexico. As a proxy, Commission staff uses the value of the U.S. components contained in imports from Mexico under U.S. tariff provisions 9802.00.60 (metal processing) and 9802.00.80 (assembly). These value figures are shown in table 1 as "U.S. exports of components." The figures include U.S. components used by all maquila plants, whether owned by U.S., Mexican, or other foreign firms.

A few caveats should be noted about the data in table 1.Note /4/ Table 1 was originally prepared by Commission staff for the Office of the United States Trade Representative (1986-92). Versions of this

table have previously been provided to members of Congress, Congressional committees, and other government agencies./4/ First, while most imports from Mexico under the 9802 tariff provisions are from the maquila sector, some are from non-maquila firms that make goods in Mexico from U.S. components for both the Mexican and U.S. markets. Second, some imports from the sector do not enter under these tariff provisions, especially if the goods enter free of duty. Third, some U.S.-origin materials used in the maquila sector do not meet U.S. Customs Service criteria for duty-free entry under heading 9802.00.80. Nevertheless, Commission staff believes that the duty-free portion of 9802 imports from Mexico is substantially equivalent to the value of U.S. exports of components to the maquila sector.

3. How much of total U.S. exports to Mexico consisted of finished and other goods intended for sale to Mexican consumers?
and

4. How much of total U.S. exports to Mexico consisted of materials and industrial goods purchased by Mexican industry to produce manufactured products for consumption in Mexico?

As noted above, U.S. exports for consumption in Mexico have grown much faster than those to the maquila sector in recent years. Table 2 shows that the growth in these exports for consumption has been widespread among major products. Consumer goods have been one of the fastest growing groups, rising from $272 million in 1987 to almost $2.3 billion in 1992, an increase of over 700 percent.

Traditional U.S. exports to Mexico, namely industrial materials and capital goods, have remained the principal exports for consumption there. It is probable that a portion of the goods made in Mexico from the industrial materials or on the machines (capital goods) exported from the United States were sold abroad, including in the United States. Commission staff estimates that roughly 70 percent of U.S. exports of capital goods purchased by Mexican industry Note /5/ The Mexican industry also includes United States, Japanese, and other foreign firms producing in Mexico for the Mexican market. /5/ in 1992 generally consisted of equipment that does not lend itself to production of products for export.Note /6/ To answer your question as to how much of total U.S. exports to Mexico consisted of industrial goods purchased by Mexican industry to manufacture products for consumption in Mexico, Commission staff examined data on exports of capital goods to Mexico at the more detailed 5-digit end- use classification level, instead of at the broad 1-digit level, in order to identify individual capital goods that would likely not be used directly in the production of products for export. Capital goods likely to fall into this category are electric apparatus and parts; drilling and oilfield equipment; mining and oil processing equipment; excavating, paving,

and construction machinery; nonfarm tractors and parts; measuring, testing, and control instruments; materials-handling equipment; photo and other service industry machinery; agricultural machinery and equipment; computers; computer accessories and peripherals; semiconductors; telecommunications equipment; business machinery and equipment; laboratory testing and control instruments; other scientific, medical, and hospital equipment; civilian aircraft, and parts and engines; railway transportation equipment; passenger, cargo, and other vessels; and marine engines and parts. /6/

Commission staff used the same methodology to estimate U.S. exports for consumption in Mexico by major end-use product groups as that discussed in response to question 2. Hence, the caveats noted above are applicable here. Staff considers the value of U.S. components exported to the maquila sector for a given capital good to be equivalent to the value of U.S. components contained in imports of that capital good from Mexico under the 9802 provisions. In any instances where exports of the components for a capital good are classified under provisions for "industrial supplies and materials" rather than under provisions for the capital good, the effect would be to understate exports for consumption in Mexico of that capital good.

The product groups in table 2 are based on categories established by the U.S. Department of Commerce, Bureau of Economic Analysis, for publication of export data.

TABLE 1.--ANALYSIS OF "MAQUILADORA" TRADE, 1978-92

[In millions of dollars]

| Line No. | Item | 1978 | 1979 | 1980 |
|---|---|---|---|---|
| 1. | Total imports from Mexico | 6,060.9 | 8,784.9 | 12,497.7 |
| 2. | U.S. imports from "Maquiladoras": | | | |
| 3. | Total value | 1,540.0 | 2,065.1 | 2,341.4 |
| 4. | Percent of total imports | 25.4 | 23.5 | 18.7 |
| 5. | U.S. components: | | | |
| 6. | Total value | 826.0 | 1,049.4 | 1,186.3 |
| 7. | Percent of "Maquiladora" imports | 53.6 | 50.8 | 50.7 |
| 8. | Percent of total imports | 13.6 | 11.9 | 9.5 |
| 9. | U.S. imports under HTS subheadings: | | | |
| 10. | 9802.00.60 | 50.0 | 63.4 | 65.1 |
| 11. | U.S. components | 34.9 | 44.3 | 44.9 |
| 12. | Percent | 70.0 | 69.9 | 69.0 |
| 13. | Foreign value added | 15.1 | 19.1 | 20.2 |
| 14. | 9802.00.80 | 1,490.0 | 2,001.7 | 2,276.3 |
| 15. | U.S. components | 791.1 | 1,005.1 | 1,141.4 |
| 16. | Percent | 53.1 | 50.2 | 50.1 |
| 17. | Foreign value added | 698.8 | 996.6 | 1,349.9 |
| 18. | Total exports to Mexico | 6,540.2 | 9,662.5 | 14,881.4 |

19. U.S. exports of components to 826.0 1,049.4 1,186.3
maquiladora industry /1/ Based on the value of U.S.-made components contained in U.S. imports from Mexico under Harmonized Tariff Schedule headings 9802.00.60 (metal processing) and 9802.00.80 (assembly) /1/
20. Percent of total U.S. exports 12.6 10.9 8.0
21. Estimated net exports for Mexican 5,714.2 8,613.1 13,695.1
consumption

| Line No. | 1981 | 1982 | 1983 | 1984 | 1985 |
|---|---|---|---|---|---|
| 1. | 13,703.6 | 15,488.0 | 16,618.9 | 17,762.4 | 18,938.2 |
| 2. | | | | | |
| 3. | 2,709.4 | 2,837.5 | 3,714.1 | 4,807.8 | 5,567.0 |
| 4. | 19.8 | 18.3 | 22.3 | 27.1 | 29.4 |
| 5. | | | | | |
| 6. | 1,437.6 | 1,454.1 | 1,906.9 | 2,554.7 | 2,955.8 |
| 7. | 53.1 | 51.2 | 51.3 | 53.1 | 53.1 |
| 8. | 10.1 | 9.4 | 11.5 | 14.4 | 15.6 |
| 9. | | | | | |
| 10. | 53.8 | 32.7 | 27.1 | 32.4 | 30.3 |
| 11. | 38.4 | 24.3 | 20.2 | 24.6 | 22.2 |
| 12. | 71.3 | 74.3 | 74.5 | 75.9 | 73.3 |
| 13. | 15.4 | 8.4 | 6.9 | 7.8 | 8.1 |
| 14. | 2,655.6 | 2,804.8 | 3,687.0 | 4,775.4 | 5,536.7 |
| 15. | 1,399.2 | 1,429.8 | 1,886.7 | 2,530.1 | 2,933.6 |
| 16. | 52.6 | 51.0 | 51.2 | 53.0 | 53.0 |
| 17. | 1,256.4 | 1,375.0 | 1,800.3 | 2,245.3 | 2,603.1 |
| 18. | 17,353.1 | 11,025.8 | 8,755.2 | 11,461.2 | 13,084.3 |
| 19. | 1,437.6 | 1,454.1 | 1,906.9 | 2,554.7 | 2,955.8 |
| 20. | 8.3 | 13.1 | 21.8 | 22.3 | 22.6 |
| 21. | 15,915.5 | 9,571.7 | 6,848.3 | 8,906.5 | 10,128.5 |

TABLE 1.--ANALYSIS OF "MAQUILADORA" TRADE, 1978-92--Continued
[In millions of dollars]

| Line No. | Item | 1986 | 1987 | 1988 |
|---|---|---|---|---|
| 1. | Total imports from Mexico | 17,196.4 | 19,765.8 | 22,617.2 |
| 2. | U.S. imports from "Maquiladoras": | | | |
| 3. | Total value | 6,456.6 | 8,688.7 | 10,784.5 |
| 4. | Percent of total imports | 37.5 | 43.9 | 47.7 |
| 5. | U.S. components: | | | |
| 6. | Total value | 3,400.8 | 4,493.4 | 5,403.7 |
| 7. | Percent of "Maquiladora" imports | 52.7 | 51.7 | 50.1 |
| 8. | Percent of total imports | 19.7 | 22.7 | 23.9 |
| 9. | U.S. imports under HTS subheadings: | | | |
| 10. | 9802.00.60 | 89.9 | 112.3 | 131.0 |
| 11. | U.S. components | 69.0 | 76.2 | 103.9 |

12. Percent 76.7 67.9 79.2
13. Foreign value added 20.8 36.1 27.1
14. 9802.00.80 6,366.7 8,576.4 10,653.5
15. U.S. components 3,331.8 4,417.2 5,299.8
16. Percent 52.3 51.5 49.7
17. Foreign value added 3,035.0 4,159.1 5,353.7
18. Total exports to Mexico 1,924.9 14,045.2 19,853.3
19. U.S. exports of components to 3,400.8 4,493.4 5,403.7
maquiladora industry /1/ Based on the value of U.S.-made componentscontained in U.S. imports from Mexico underHarmonized Tariff Schedule headings 9802.00.60(metal processing) and 9802.00.80 (assembly)which Commission staff believes is substantiallyequivalent to the value of U.S. exports of /1/
20. Percent of total U.S. exports 28.5 32.0 27.2
21. Estimated net exports for Mexican 8,524.0 9,551.8 14,449.6
consumption

Line No. 1989 1990 1991 1992
1. 26,556.6 29,506.0 30,445.1 33,934.6
2.
3. 11,968.7 13,024.6 14,334.3 16,502.0
4. 45.1 44.1 47.1 48.7
5.
6. 6,125.7 6,544.8 7,254.8 8,691.9
7. 51.2 50.2 50.6 52.7
8. 23.1 22.2 23.8 25.6
9.
10. 180.8 188.3 183.5 229.4
11. 142.7 140.7 137.1 169.5
12. 78.9 74.7 74.7 73.7
13. 38.1 47.6 46.4 59.9
14. 11,787.9 12,836.3 14,150.8 16,272.6
15. 5,983.0 6,404.1 7,117.6 8,522.4
16. 50.8 49.9 50.3 52.4
17. 5,804.9 6,432.2 7,033.1 7,750.2
18. 24,117.3 27,467.6 32,279.2 39,604.9
19. 6,125.7 6,544.8 7,254.8 8,691.9
20. 25.4 23.8 22.5 21.3
21. 17,991.6 20,922.8 25,024.5 30,913.0

Source: Compiled by U.S. International Trade Commission staff from official statistics of the U.S. Department of Commerce.

TABLE 2.--ESTIMATED NET UNITED STATES EXPORTS OF MERCHANDISE FOR CONSUMPTION IN MEXICO, BY SPECIFIED END USES, 1978-92

[In millions of dollars]

Line No. Item 1978 1979 1980
1. Total 5,714 8,613 13,795
2. Foods, feeds, and beverages 792 861 2,317
3. Industrial supplies and materials 1,825 3,033 4,458
4. Automotive vehicles, parts, and engines 689 994 1,474
5. Consumer goods (nonfoods), except automotive 240 272 625
6. Capital goods, except autos:
7. Generators, transformers, and accessories 255 379 532
8. Electric apparatus and parts /3/ Included with generators, transformers, and accessories. (/3/) (/3/) (/3/)
9. Drilling and oilfield equipment 239 285 285
10. Mining and oil processing equipment 53 52 94
11. Excavating, paving, and construction machinery 85 159 218
12. Nonfarm tractors and parts 148 162 183
13. Industrial engines, pumps 187 363 440
14. Food and tobacco processing machinery 22 30 54
15. Machine tools and metal working machinery 92 144 255
16. Industrial textile, sewing, and shoe machinery 31 58 75
17. Woodworking, glass working machinery 38 72 106
18. Pulp and paper machinery 45 78 136
19. Measuring, testing, and control instruments 77 109 109
20. Materials-handling equipment 68 106 184
21. Other industrial machinery 214 311 401
22. Photo and other service industry machinery 35 72 86
23. Agricultural machinery and equipment 85 212 362
24. Computers 53 108 167
25. Computer accessories, peripherals /4/ Included with computers. (/4/) (/4/) (/4/)
26. Semiconductors /2/ Data are not available. Press Esc to Continue!!(/2/) (/2/) (/2/)
27. Telecommunications equipment /2/ Data are not available. (/2/) (/2/) (/2/)
28. Business machinery and equipment 43 72 90
29. Laboratory testing and control instruments 16 29 31
30. Other scientific, medical, and hospital equipment 26 37 49
31. Civilian aircraft 70 198 365
32. Parts for civilian aircraft 18 22 41
33. Engines for civilian aircraft 9 9 15
34. Railway transportation equipment 34 103 187
35. Passenger, cargo, and other commercial vessels 10 4 81

36. Marine engines and parts 12 18 29
37. Other/5/ Includes military-type goods, miscellaneous exports, and reexports. /5/ 250 220 310
Line No. 1981 1982 1983 1984 1985
1. 15,195 9,572 /1/ Data for major product groups do not add up to total shown; the shortfall equals less than 1 percent of total estimated net exports that year. /1/ 6,852 8,906 10,129
2. 2,221 978 1,769 1,721 1,350
3. 4,690 3,812 2,559 3,267 3,852
4. 1,982 982 221 482 442
5. 791 450 295 380 404
6.
7. 595 345 /2/ Data are not available. Press Esc to Continue!!(/2/) (/2/) (/2/)
8. /3/ Included with generators, transformers, and accessories. (/3/) (/3/) 59 184 120
9. 308 210 66 80 103
10. 147 74 11 14 15
11. 313 96 79 103 117
12. 213 98 29 55 69
13. 510 334 263 329 369
14. 74 66 36 35 42
15. 443 260 121 154 193
16. 81 46 28 42 56
17. 143 135 68 86 114
18. 158 136 25 39 48
19. 153 114 41 78 81
20. 265 142 140 222 284
21. 504 288 132 199 266
22. 144 84 65 93 122
23. 276 132 53 122 234
24. 179 134 22 38 60
25. /4/ Included with computers. (/4/) (/4/) 87 170 198
26. /2/ Data are not available. (/2/) (/2/) 127 224 297
27. /2/ Data are not available. (/2/) (/2/) 15 106 272
28. 128 74 46 59 76
29. 55 38 23 37 46
30. 70 50 103 164 236
31. 641 71 145 61 105
32. 73 31 42 80 108
33. 47 17 11 27 29
34. 188 84 78 70 83
35. 124 95 21 35 8
36. 20 20 9 13 11

37. 390 190 122 247 415
See footnotes at end of table.
TABLE 2.--ESTIMATED NET UNITED STATES EXPORTS OF MERCHANDISE FOR CONSUMPTION IN MEXICO, BY SPECIFIED END USES, 1978-92--Continued
[In millions of dollars]
Line No. Item 1986 1987
1. Total /1/ Data for major product groups do not add up to total shown; the shortfall equals less than 1 percent of total estimated net exports that year./1/ 8,524 9,552
2. Food, feeds, and beverages 877 941
3. Industrial supplies and materials 3,309 4,052
4. Automotive vehicles, parts, and engines 217 /2/ Data are not available. (/2/)
5. Consumer goods (nonfoods), except automotive 188 272
6. Capital goods, except autos:
7. Generators, transformers, and accessories /2/ Data are not available. (/2/) (/2/)
8. Electric apparatus and parts 68 167
9. Drilling and oilfield equipment 91 66
10. Mining and oil processing equipment 14 21
11. Excavating, paving, and construction machinery 76 85
12. Nonfarm tractors and parts 40 41
13. Industrial engines, pumps 389 349
14. Food and tobacco processing machinery 43 90
15. Machine tools and metal working machinery 256 255
16. Industrial textile, sewing, and shoe machinery 61 55
17. Woodworking, glass working machinery 154 137
18. Pulp and paper machinery 60 49
19. Measuring, testing, and control instruments 76 91
20. Materials-handling equipment 245 302
21. Other industrial machinery 302 390
22. Photo and other service industry machinery 111 110
23. Agricultural machinery and equipment 88 83
24. Computers 52 37
25. Computer accessoreis, peripherals 250 287
26. Semiconductors 391 313
27. Telecommunications equipment 278 342
28. Business machinery and equipment 49 63
29. Laboratory testing and control instruments 43 36
30. Other scientific, medical, and hospital 239 266
equipment32. Parts for civilian aircraft 104 97
33. Engines for civilian aircraft 26 37
34. Railway transportation equipment 82 58

35. Passenger, cargo, and other commercial vessels 4 1
36. Marine engines and parts 9 12
37. Other/5/ Includes military-type goods, miscellaneous exports, and reexports. /5/ 374 553

Line No. 1988 1989 1990 1991 1992

1. /1/ Data for major product groups do not add up to total shown; the shortfall equals less than 1 percent of total estimated net exports that year./1/ 14,450 17,992 20,923 25,024 30,913
2. 1,904 2,333 2,178 2,527 3,265
3. 5,362 6,692 7,361 8,551 10,373
4. /2/ Data are not available. (/2/) 949 1,753 2,165 2,828
5. 790 1,008 1,376 1,662 2,290
6.
7. /2/ Data are not available. (/2/) 172 204 246 259
8. 432 830 801 1,150 1,475
9. 88 53 72 105 144
10. 35 26 10 17 56
11. 111 132 234 350 433
12. 63 93 137 132 112
13. 471 397 417 545 610
14. 154 63 90 98 121
15. 364 253 253 303 520
16. 81 87 89 92 96
17. 157 160 191 197 202
18. 67 105 160 213 232
19. 108 286 366 493 605
20. 444 179 214 257 397
21. 405 525 563 640 728
22. 172 119 157 174 231
23. 135 112 147 167 157
24. 47 53 95 147 261
25. 397 345 465 560 525
26. 434 212 231 247 331
27. 552 799 910 1,127 1,335
28. 108 132 155 185 208
29. 57 58 57 63 72
30. 350 91 112 182 221
31. 75 268 272 375 693
32. 83 57 110 132 173
33. 33 31 48 48 70
34. 119 70 152 159 79
35. 13 3 5 6 12
36. 18 4 8 11 19
37. 798 1,290 1,520 1,700 1,780

Note.--The product groups are based on categories established for data collection by the U.S. Department of Commerce, Bureau of Economic Analysis. Data for 1978-82 are not exactly comparable with data for 1983-92 because of different concordances used for each period.
Source: U.S. International Trade Commission staff estimated net exports to Mexico by deducting from the total reported value of U.S. merchandise exports to Mexico, the value of U.S. components sent there for processing or assembly into products for return to the United States. Because official U.S. statistics do not distinguish between exports to Mexico for consumption there and exports of components for processing or assembly and reexport, Commission staff used the value of U.S. components contained in imports from Mexico entered under U.S. tariff provisions 9802.00.60 and 9802.00.80 (formerly the 806 and 807 provisions) as a proxy for the exported components.

## United States Environmental Protection Agency,

Washington, DC, August 9, 1993.
Hon. Cardiss Collins,
Chairwoman, Committee on Energy and Commerce, Washington, DC.

Dear Ms. Chairwoman: I am responding to your letter to Administrator Browner of June 25, 1993, regarding environmental issues surrounding the construction of four coal-fired electricity generating units at a site near Piedras Negras, Mexico (Carbon II). These units are being built near an existing, coal-fired power plant (Carbon I) and are located approximately 20 miles south of Eagle Pass, Texas and 140 miles southeast of Big Bend National Park. Neither Carbon I nor Carbon II have add-on controls for sulfur dioxide (SO2) emissions.

Like you, EPA is very concerned that the plant could have a significant impact on U.S. air quality in adjacent border areas. The EPA's focus to date has been on gathering technical information regarding the source's operating parameters and emissions and, using standard modeling techniques and other tools, assessing the impact of the SO2 emissions on Big Bend National Park and other portions of the United States. In this effort, EPA has worked cooperatively with the National Park Service and other federal agencies. The EPA has also had the cooperation of Mission Energy Corporation, the U.S. investor in Carbon II. The answers below are based on the information EPA has gathered as well as the modeling conducted to date by EPA and the Park Service. However, because of the early stage of EPA's investigation, the following answers must be considered preliminary.

Once EPA's evaluation is complete, EPA will be in a position to seek a resolution of the issues surrounding the project. The EPA is committed to seeking a solution that eliminates any significant impairment of visibility at Big Bend National Park and addresses any other significant transborder impacts from the project. We remain optimistic that a satisfactory solution can be achieved and we will continue, with the assistance of the National Park Service, the State Department and other federal agencies, to pursue the issue aggressively until that solution is identified and implemented.

Question. If the Carbon I and Carbon II facilities were located immediately across the U.S.-Mexico border in Texas, what federal and state environmental laws would apply to their operation?

Response to Question 1. Based on the information EPA has in its possession, EPA has not assessed, and cannot assess, the full range of federal, state and local environmental laws that would apply if this project had been constructed in the United States. As discussed, our focus has been on the air emissions from this coal-fired facility. In this regard, the limits on a new coal-fired power plant located on the U.S. side of the border would include a requirement that the source comply with the new source performance standard (NSPS) applicable to power plants (Clean Air Act Sec. Sec. 111 and 40 CFR 60.40a et seq.) and the requirement that the source undergo New Source Review (NSR) pursuant to the Prevention of Significant Deterioration (PSD) program (Clean Air Act Secs. 160 et seq.), assuming that the plant is located in a border area in attainment with the National Ambient Quality Standards (NAAQS).

The NSPS would require a power plant of the Carbon II design to comply with the more stringent of the following limits for emissions of SO2, particulate matter (PM) and nitrogen oxide (NOx ):

SO2--An emissions rate of 1.2 lbs. of SO2 per million British Thermal Units (Btu) or a 90% overall reduction in the unit's emission rate; or a 70% overall reduction in the unit's SO2 emissions rate so long as the resulting emissions rate is less than .60 lbs. per million Btu.

PM--An emissions rate of .03 lbs. of PM per million Btu or a 99% overall reduction in the unit's PM emissions rate.

NOx--An emissions rate of .50 lbs. of NOx per million Btu or a 65% overall reduction in the unit's NOx emissions rate.

(See 40 CFR 60.40a et seq.)

To secure a New Source Review permit, the applicant would need to install best available control technology (BACT) to the project. CAA Sec. 165(a)(4). BACT is based on a case-by-case evaluation of the appropriate technology considering the individual characteristics of the project, although the level of controls cannot be less stringent than the relevant NSPS. CAA Sec. 169(3). The initial survey of available control

technology is the responsibility of the applicant subject to the approval (after notice and comment by the public) of the permitting authority.

In addition to agreeing to install the best available control technology, the applicant would also have to demonstrate through air quality modeling that the new source would not violate a NAAQS or PSD "increment" or significantly contribute to such a violation. CAA Sec. 165(a)(3). PSD increments are prescribed levels of degradation of air quality that will be allowed in an area. The PSD increments for Big Bend National Park and other "Class I" areas are very small and allow little additional degradation of air quality from baseline levels. If modeling indicated that the project (even with BACT) would violate a NAAQS or the increments, additional reductions or other measures would be required before the applicant could construct the facility.

The PSD evaluation would also include an analysis of whether the project would result in adverse impacts on visibility or other air quality related values on nearby national parks and other Class I areas. CAA Sec. 165(a)(5), (d). Class I areas are designated by section 162(a) of the Act. If a project is found to result in an adverse impact, it could not be built unless these impacts are mitigated or a waiver (available under limited conditions) is granted. These ambient impact requirements for new or modified sources are specified in 40 CFR 52.21(p). Even if treated as an existing--rather than a new--source, a plant like Carbon II could be subject to the visibility protection provisions of Clean Air Act section 169A, which requires installation of the best available retrofit technology at existing sources that may impair visibility in Class I areas. It is worth noting in this regard that in order to address visibility problems in the Grand Canyon area, EPA recently required a large, coal-fired power plant to reduce its SO2 emissions by 90 percent in order to achieve an SO2 emissions rate of .10 lbs per billion Btu. See 56 Fed. Reg. 50,172 (Oct. 3, 1991).

Question 2: What are the equivalent Mexican standards for the U.S. federal and state laws identified in question 1? Please identify, in particular, where there is no equivalent Mexican standard or where the Mexican standard provides less environmental protection than the applicable U.S. federal or state standard.

Response to Question 2. Mexico's environmental standards for air pollution contain both ambient standards and source-specific emissions limitations. For SO2, the Mexican ambient air quality standard is .13 ppm (340 g/m3), averaged over a 24-hour period. This is slightly stricter than the U.S. 24- hour NAAQS which is set at .14 ppm (365 g/m3). For nitrogen dioxide (NO2), the Mexican standard is 395 g/m3, averaged over a one-hour period. The U.S. NO2 NAAQS is 100 g/m3, averaged annually. (The U.S. has no short-term NO2 standard.) For particulate matter, Mexico's ambient standard is 275 g/m3 for a 24-

hour average (measured as total suspended particulates). The comparable U.S. NAAQS is 150 g/m3 for a 24-hour average (measured as particulates with diameters equal to or less than 10 microns). For carbon monoxide, Mexico's ambient standard is 14,950 g/m3 (8-hour average), while the United States NAAQS is 10,000 g/m3 (8-hour average).

EPA's preliminary research indicates that a Mexican "technical norm" (NTE- CCAT-006/88) provides the key emissions standards applicable to coal-fired, electricity-generating stations. Pursuant to that norm, a plant's SO2 emissions are limited to 51.3 kilograms of sulfur per cubic meter of dry coal burned. Because the Mexican emission standard for SO2 is tied to coal density and heat (Btu) value of the coal to be burned, conversion to comparable U.S. units is necessary. Based upon the coal's heat value specified by Mission Energy, EPA staff estimate the applicable Mexican SO2 emissions standard at Carbon II to be approximately 4.4 lbs. per million Btu. In comparison, as discussed above, EPA's NSPS would require a new source to install controls that achieve at least a 70 percent reduction and also achieve an emissions rate of .60 lbs per million Btu, even if the cleanest of coals were used (0.2 to 0.4 percent sulfur). Coal-fired generating units subject to BACT in the last few years have typically been required to achieve reductions of 90 percent or more.

The same technical norm also provides limits for particulates (3.6 Kg/ m/3/), NO2 (10 Kg/m/3/) and CO (.270 Kg/m/3/). As with SO2, the Mexican emissions standards for particulates, NO2, and CO are written somewhat differently than U.S. standards, being based upon kilograms of pollutant emitted per cubic meter of coal burned. The stringency of this type of standard is, therefore, heavily dependent on coal density and heat (Btu) value of the coal to be input into the power station. In contrast, the U.S. standard directly links pollution emissions (in pounds) to the heat input of the coal to the power station (in Btu's).

At this time, EPA's best estimates for the Mexican standards for particulate matter emissions and nitrogen oxides emissions for coal-fired power plants (for the heat value and estimated coal density of the coal specified by Mission Energy) are approximately the following:
PM--.31 lbs. per million Btu.
NOx--.86 lbs. per million Btu.

The comparable U.S. PM emission standard is .03 lbs. per million Btu. This standard is approximately 10 times as stringent as the Mexican standard. The U.S. NOx emission standard (.5 lbs per million Btu) is approximately 70% more stringent than the Mexican standard. There is no specific U.S. CO emissions standard for coal-fired power

plants, as the SO2, PM, and NOx standards are sufficient to indirectly limit CO emissions so as to prevent ambient CO problems.

Question 3. Does federal law require that a power generating facility located outside the United States meet the requirements of the Celan Air Act in order to transmit power into the U.S. power grid?

Response to Question 3. At this time, EPA is unaware of any evidence indicating that the power generated at Carbon I or Carbon II will in fact be sold to U.S. utilities for use in the U.S. It appears instead that the power from Carbon II, like that from Carbon I, will be used to meet power needs solely within Mexico. If EPA learns that power from the plants is to be imported into the U.S., EPA will at that time consider what, if any, environmental restrictions the Clean Air Act or other U.S. environmental statutes may impose on these sources. In addition, an environmental assessment consistent with NEPA may be required under such circumstances for any new connecting transmissions lines involving construction in the United States. This assessment should include an examination of the environmental impact of the sources supplying the power to be transmitted over the new lines.

Question 4. What effect do the air emissions from the Carbon I plant have on the compliance or noncompliance status of states of the United States, or geographic sub-areas of such states, under the Clean Air Act Amendments? Response to Question 4. The EPA has undertaken preliminary air quality modeling to assess the impact on the PSD increments of the SO2 emissions from the Carbon I and Carbon II plants. This modeling appears to indicate that the Carbon I and Carbon II plants result in ambient impacts at Big Bend National Park in excess of the 3-hour and 24-hour Class I increments for SO2. The EPA is in the process of subjecting these results to internal review. While this air quality modeling followed all EPA guidelines, it was based upon a model known as ISCST2, which can produce somewhat conservative (i.e., somewhat overestimated) results when extended beyond 100 kilometers. Mission Energy has attempted to run a more refined model and has agreed to share these results with EPA when they are completed.

Although EPA has not independently verified the analysis, the National Park Service has reported that its screening modeling indicates that emissions from the plant will degrade visibility significantly at Big Bend National Park and may adversely impact visibility at other southwestern parks. Question 5. What effect do these air emissions have on the State Implementation Plans of states of the United States?

Response to Question 5. In general, if EPA determines that a PSD increment has been violated, it must call for a revision of the relevant

state implementation plan (SIP) (40 CFR Sec. 51.166(a)(3)) and, in the meantime, bar any major construction or modification project that would cause or contribute to the violation. See Clean Air Act Secs. 113(a)(3), 165(a)(3)(A), and 167. However, a state may exclude emissions from foreign sources in calculating increment consumption. CAA Sec. 163(c)(1)(D). Since Texas' PSD provisions do not contain this exclusion, the emissions from Carbon I and II would count in all increment consumption calculations until such time as Texas adopted and submitted, and EPA approved, a SIP revision adding the foreign emissions exclusion. CAA Sec. 163(c)(3). Even with that exclusion, EPA may still be required to call for a revision of the PSD portion of Texas' SIP if the Administrator determined that revisions were necessary to prevent significant deterioration of air quality. See 40 CFR 51.166(a)(3). Question 6. What effect will the expected emissions from both the Carbon I and Carbon II, when taken together, have on the Clean Air Act compliance status of states of geographic sub-areas in the United States? Response to Question 6. EPA has not attempted to assess the impacts that the Carbon I and Carbon II emissions might have on non-attainment airsheds in Texas and elsewhere.

Question 7. What is the average cost of compliance under the Clean Air Act for industrial firms and comparable power plants located in noncompliance areas in the United States?

Response to Question 7. Compliance costs at power plants vary widely depending upon whether retrofit controls are necessary, the operating parameters and output capacity of the units, and the profile of the coal to be burned. In addition, the nature and severity of the nonattainment problem for the area can also have a dramatic impact on the level of emissions reductions necessary for any particular source. For this reason, it is difficult to provide meaningful average cost numbers. Still, there is no doubt that the cost of installing a scrubber on an existing power plant the size of Carbon I or Carbon II--whether in the United States or Mexico--is substantial. EPA would expect a scrubber project at a plant of this size to cost in excess of $300 million. This does not include the cost of NOx or other pollutant controls that may also be required depending on the air quality status of the area in which the plant is locating.

Question 8. Was an Environmental Impact Statement, or similar environmental review, prepared before the operation of Carbon I and Carbon II? Did any such statement or review meet the requirements of the National Environmental Policy Act (NEPA), including the requirements of public transparency and participation?

Response to Question 8. EPA understands from Mission Energy, the United States investor in Carbon II, that an environmental assessment

complying with Mexican laws was prepared by CFE, the State-run utility authority that built Carbon I and is currently constructing Carbon II. EPA formally requested a copy of this analysis in an April 21, 1993 letter to SEDESOL. However, to this date, EPA has not received a copy of this document and cannot comment on whether it would be comparable to an environmental impact assessment prepared in accordance with the requirements of NEPA. In addition, Mission has furnished a "draft" environmental assessment which it is in the process of revising. Because it has not been finalized, EPA has not assessed whether the Mission analysis meets NEPA standards.

Question 9. If the U.S. proposal for the creation of a North American Commission on the Environment were fully implemented today, what authority would that Commission have to require Carbon I and II to generate power in a manner that meets the requirements of the U.S. Clean Air Act? Response to Question 9. Although the United States objectives in negotiating the environmental side agreement to the NAFTA may be discussed in general terms, it is impossible to predict at this time what the provisions of the final side agreement will contain and what impact it may have on the situation posed by the Carbon I and II facilities.

One objective of the negotiations of the environmental side agreement to NAFTA has been to develop a forum for the discussion of environmental issues of concern to the NAFTA parties that will serve as a mechanism for avoiding environmental disputes before they arise or for conciliation of such disputes before they become acute. In addition to dispute avoidance and resolution measures, it may also be possible that the Commission could be used as a forum to work toward the development of increasingly compatible environmental standards among the three NAFTA parties. This would be useful when particular problems are due mainly to significant differences in environmental standards between or among NAFTA countries.

Other Materials Requested:

1. A copy of the memorandum identified is enclosed.

2. EPA does not have sufficient data to map the overall impacts from Carbon I and II. If and when this information becomes available, EPA will provide it to the Subcommittee.

3. As discussed in the response to Question 3, EPA has not identified what United States environmental standards, if any, apply to importation of power generated in Mexico. Since EPA is unaware of any evidence indicating that the power generated at Carbon II will be imported, EPA does not intended to pursue the question of extraterritorial application of the Clean Air Act further at this time.

I hope the information contained in this letter is helpful. If you have any questions regarding any of the information presented, please

have your staff contact either Bill Tyndall at EPA Headquarters or Jim Yarbrough at Region VI in Dallas.
Sincerely yours,
Michael H. Shapiro,
Acting Assistant Administrator for Air and Radiation.
Enclosure.
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United States Environmental Protection Agency
Dallas, TX.
MEMORANDUM

**Subject: Mexican Electricity Generating Stations Near Big Bend National Park, Texas.From: Alan Hecht, Acting Assistant Administrator for International Activities (A-106); Michael Shapiro, Acting Assistant Administrator for Air and Radiation (ANR-443); Joe D. Winkle, Acting Regional Administrator, Region 6 (6A).To: Carol Browner, Administrator (A-100).**

The purposes of this memorandum are to inform you about a Mexican power station complex near the U.S.-Mexico border which is currently being expanded and to outline for you the various environmental implications for the U.S. Our information at this time is preliminary, but we felt the matter sufficiently serious to provide you with this initial information. During the last four months, Region 6 and OAR staff have attempted to acquire information from EPA's Mexican counterpart SEDESOL regarding air emissions from a Mexican electricity generating complex known as the Carboelectrica Power Stations, located approximately 20 miles south of Eagle Pass, Texas near the town of Rio Escondido, Coahuila. From media reports and information from other sources, we have learned the existing station consists of four coal-burning units of 300 megawatts each. Four additional coal-fired units of 350 megawatts each are planned, two of which are completed, with the other two being 35-40% complete. These units are located approximately 125- 150 miles southeast of Big Bend National Park and within Mexico's 100- kilometer "border zone" as outlined in the 1983 La Paz Agreement. They apparently have no air pollution controls for sulfur dioxide and also fail to meet basic U.S. standards for nitrogen dioxide and particulate matter. If what we understand from various sources is true, these power stations could seriously affect the sulfur dioxide class I increments and visibility at Big Bend National Park and other Southwest U.S. National Parks, as protected under the U.S. Clean Air Act.

The facility is 49% owned by a U.S. company, Mission Energy Corporation, which in turn is a subsidiary of SCE Corporation, the holding company for Southern California Edison. Further, the power plant has been touted in the May 17, 1993, issue of The Wall Street Journal as a significant breakthrough in privatization of Mexican energy production. Negative comments on the facility from U.S. environmental groups were contained in an article in the Mexican publication El Financiero on May 31, 1993. These articles are attached.

In discussions with Mission, the company has admitted that the four new units will not have sulfur dioxide controls but claims that the source still will not have a significant impact on Big Bend. It also claims that the facility will meet all Mexican and World Bank standards. Mission declined at this time to provide EPA with a copy of an environmental analysis prepared on the project by the company's environmental consultant.

Our analysis of this situation has identified several concerns, as noted in the following:

(1) Despite Mission's assurances, EPA and National Park Service staff remain concerned that existing and planned units may significantly impact U.S. National Park areas. Upper management in the National Park Service are being informed of this situation by their staff.

(2) Although Mission indicated that the new Carboelectrica facility meets all applicable Mexican environmental regulations, neither the existing facility nor the new units could be permitted anywhere in the U.S. because of their failure to meet EPA new source performance standards, let alone the best available control requirements mandated by the Clean Air Act new source review program. Moreover, at this point we have no information indicating the facility would be barred by the Mexican Government from burning even dirtier, higher sulfur coal.

(3) EPA is also concerned that the existing facility and the new units consume the sulfur dioxide air quality increment in the U.S. Thus, this source as presently configured can preclude industrial growth in the U.S.

We will continue our efforts to secure information regarding this project. We are also, at your discretion, prepared to initiate a variety of additional actions in an attempt to resolve this problem.

Attachments.

## Foreign Investors Jumping at Mexico's Invitation To Help Boost Power Capacity

Nava, Mexico--Electricity-hungry Mexico has begun to open the door to foreign investment in power generation, and companies are rushing to get in. The first major opening was the $1.8 billion

privatization of a plant called Carbon II here, not far from the Texas border in the Mexican state of Coahuria "Carbon II is a landmark deal," says John Vella, an executive with Mission Energy Co., a unit of Los Angeles based SCEcorp., one of the new co- owners of the coal-fired plant. "We see this as a breakthrough in opening up the marketplace."

The 1,400 megawatt project, now half complete, will be owned and operated by Mission Energy, which has a 49% stake, and Grup Aceraro del Norte SA, a mining concern that will use about 120 megawatts to power a steel mill. The rest of the power will be sold to the government utility under a 30-year contract.

The Mexican constitution reserves for the state the exploitation of hydrocarbons and electricity generation, transportation and distribution. But, in a effort to fund the expansion of Mexico's electricity grid. President Carlos Salinas de Gortari won approval of a law last December that allows private investment in electrical plants, on the condition that the electricity be supplied as a private service to the private sector. The constitution reserves the public service of electricity production to the state. Under the new law, three new areas of independent power production, including the Carbon II operation, are considered "private service" generation.

The law touched off a burst of activity. Mexico has $3.3 billion in privately funded power plants in the works. Faced back home with nearly * * * electricity growth through the year 2000, U.S. companies are eager to enter the Mexican market.

Joe Tondu, who heads Tondu Energy Systems Inc., a Houston firm, has been hunting for work in Mexico for more than a year. "Mexico is way, way under- electrified. Everybody looks across the fence and says, 'Whose huge possibilities,"" he says.

Mexico has about 27,500 megawatts on its grid, roughly the same as Ohio. It wants to add 17,000 megawatts by 2000, according to a recent prospectus by the government run utility.

In addition to the Carbon II plant, a consortium is planning a $800 million, 700-megawatt plant in Samalzyuca, across the border from El Paso, Texas. General Electric Co., El Paso Natural Gas Co., Houston-based Coastal Corp., ICA SA. which is Mexico's largest construction firm, and San Francisco-based Bachtel Group are members of the consortium. Dozens of others, including Enton Corp. of Houston, San Diego Gas & Electric Co., Southern Cos. of Atlanta, Public Service Enterprise Group Inc. of Newark, N.J., and Central & South West Corp. of Dallas are also bidding or waiting to bid on future projects.

More than 40 firms, for example, have expressed interest in the next big project on the Yucatan Peninsula.The United States Trade Representative,
Executive Office of the President,

Washington DC, August 31, 1993.
Hon. Cardiss Collins,
Chairwoman, House of Representatives, Ford House Office Building, Washington, DC.

Dear Madam Chairwoman: Please find enclosed responses to the questions you submitted for the record on the joint hearing of August 3, 1993. I hope that you find this information helpful, and I urge you to contact me should you require further clarification of the Administration's position on specific trade-related issues.

Thank you for your continued interest, I look forward to working with you in the future.Sincerely,
Michael Kantor.

Enclosures.

USTR ANSWERS TO QUESTIONS SUBMITTED BY CONGRESSWOMAN COLLINS

Question 1. Will a method for funding environmental cleanup be included in the NAFTA implementing legislation, and if so, are the press reports that it will be a development commission authorized to issue federal guaranteed bonds correct?

Answer. As you know, the Clinton Administration is firmly committed to addressing funding needs to solve the serious pollution problems along our southern border. On August 13, I announced an agreement in principle with Mexico to establish a new border environment institution as well as a separate financing facility. (A copy of that agreement is attached.) In coming weeks, U.S. and Mexican authorities will consult on the details. We do not anticipate that the new institution would be authorized to issue federal guaranteed bonds.

Over the coming weeks, we will be consulting with Congress on NAFTA implementing legislation, including the question of whether the funding issue will be addressed in that bill.

Question 2. There has been a lot of discussion about what kind of sanctions will be permitted to be imposed, if the proposed trinational commission finds a country is not enforcing its environmental laws. You have proposed trade sanction, and the Mexicans apparently have suggested fines that would be paid for by the government involved.

Is the United States' position that the side agreement on the environment must permit trade sanctions to be imposed pursuant to a determination that a violation has occurred; what resolution do you see being reached on this issue?

Answer. On August 13, I announced the conclusion of negotiations on the agreements on environment, labor and import surges, which President Clinton called for last October. The dispute settlement provisions of the agreements on environmental and labor provide for arbitral panels which could consider whether a party has engaged in a

persistent pattern of failure to effectively enforce its environment law or its labor laws with respect to health and safety, child labor and minimum wage.

If a panel makes such a finding the Parties may, within 60 days, agree on a mutually satisfactory action plan to remedy the non-enforcement. If there is no agreed action plan, then between 60 and 120 days after the final panel report, the panel may be reconvened to evaluate an action plan proposed by the Party complained against or to set out an action plan in its stead. The panel would also make a determination on the imposition of monetary enforcement assessments on the Party complained against.

The panel may be reconvened at any time to determine if an action plan is being fully implemented. If it is not being fully implemented, the panel is to impose a monetary enforcement assessment on the Party complained against. In the event that a Party complained against fails to pay a monetary enforcement assessment or continues in its failure to enforce its environmental or relevant labor law, the Party is liable to ongoing enforcement actions. In the case of Canada, the Commission, on the request of a complaining Party, collects the monetary enforcement assessment and enforces an action plan in summary proceedings before a Canadian court of competent jurisdiction. In the case of Mexico and the United States, the complaining Party or Parties may suspend NAFTA benefits based on the amount of the assessment.

Question 3. What is your timeframe for submitting implementing legislation to the Congress for the NAFTA?

Answer. We have not decided on a specific date for introduction of implementing legislation. We plan to work with Congress over the coming weeks so legislation is place for implementation of the agreement from January 1, 1994.

Question. 4. When do you expect to get a ruling on the appeal of Judge Richey's decision that you must submit an environmental impact statement along with the NAFTA implementing legislation, and if that decision is upheld, would, in your opinion, NAFTA be dead as some have suggested? Answer. The Court of Appeals has scheduled the hearing in the case for August 24. We expect that the court will issue its opinion shortly thereafter. We have made clear that the district court's opinion is not in the public interest for a number of reasons, and we expect that we will prevail on appeal. Having concluded the supplemental agreements on labor, the environment, and import surges last week, we are continuing our work, in cooperation with the Congress, on the drafting of the implementing legislation.

Question. 5. In the dumping and subsidies cases brought by the U.S. steel industry, the Commerce Department found huge margins of

unfair trade-86% in the case of France, and 92% in the case of Brazil. Yet, the ITC last week found the American industry suffered "no injury" in about half the cases considered. I would like to add that in the 90 minutes following the announcement of the ITC's decision, U.S. steel stocks lost over $1 billion in value.

Clearly, the ITC's decision surprised the stock market. How do you explain the differences in the way the Commerce Department and ITC ruled in these cases?

Answer. The Commerce and ITC decision concern entirely different issues. The Commerce Department has the sole authority to determine dumping and subsidy margins for AD and CVD cases. This process is basically mathematical. The ITC on the other hand determines whether the industry is being materially injured, or threatened with material injury, or the establishment of a domestic industry is materially retarded, by reason of subsidized imports or imports priced at less than fair value. In 32 of the 72 AD and CVD cases investigations brought covering flat-rolled steel products the ITC found injury. In other words, harm that was not inconsequential, immaterial, or unimportant. The ITC issued a report August 9, explaining these votes.

Question 6. If we are not going to take action under our anti-dumping and countervailing duty laws to offset the unfair margins documented by Commerce, what can you now do about it, for example in the negotiations under the Uruguay Round and of the Multi-Lateral Steel Accord?

Answer. Under the MSA the U.S. proposal would prohibit all subsidies and reduce tariffs for steel to zero and eliminate non-tariff barriers. We believe that these provisions would put the global steel industry on a much more rational economic base and greatly reduce the likelihood of dumped or subsidized imports entering the U.S. market and distorting world trade. The next MSA negotiation will take place September 21-23. We will be pushing to conclude the MSA negotiations in the same time frame as the UR, by December 15.

Question 7. In Tokyo at the G-7 meeting, it was announced that on about half the industry sectors that had been targeted for zero tariffs, tariffs would go to zero, and for the other sectors like semiconductors, lumber, paper, and soda ash, negotiations would continue.

Does this mean, in reality, that the "zero-for-zero" tariff negotiations are over, or is there a real opportunity in your view that negotiations will result in some of these sectors getting zero tariff treatment as well? Answers. Our agreement in Tokyo sets the foundation for a major package of tariff reductions in industrial products. A key component of the package responds to the tremendous effort and export interests of U.S. industries to eliminate tariffs in eight sectors, and reducing them in many others. For those

where we have not yet achieved success--paper, wood, scientific equipment, non-ferrous metals and electronics--we are by no means at the end of the negotiation. With respect to soda ash, I would note that it is currently subject to the chemical harmonization initiative and we will continue to press for duty elimination on these particular products.

Question 8. Under the Semiconductor Agreement, don't we count as U.S. sales, semiconductors that American firms made and assembled overseas, and isn't IBM seeking to have chips it makes in Singapore and sells to its Japan division counted as U.S. sales under the Agreement?

Answer. Under the Semiconductor Arrangement, the U.S. Government and the Government of Japan calculate foreign market share in the Japanese semiconductor market on a quarterly basis. This requires us to keep track of sales by all foreign (non-Japanese) capital-affiliated semiconductor companies into the Japanese market.

In order to determine whether to treat a semiconductor sale as "Foreign" or "Japanese," we look at the capital-affiliation of the firm that manufactures the semiconductor. In some cases, the semiconductor is actually assembled outside of the United States by U.S. firms. However, in most cases, U.S. firms perform the research and development, design, and/or diffusion work in the United States, which benefits the U.S. economy.

Since the 1991 Arrangement has come into effect, we have been treating IBM as a "captive" semiconductor suppler, a company that internally uses all of the semiconductors it produces, in our market share calculation. IBM has recently started selling semiconductors to external customers in Japan. Given this development, we are currently discussing the issue of how to treat IBM sales under the Arrangement with the Government of Japan.

Question 9. If the approach taken in question (R)8 is the approach taken under the Japan Framework as well, is it not possible that while U.S. firms may benefit through increased sales to Japan, American workers may not benefit nearly as much?

Answer. The products included in the sector specific "baskets," including supercomputers, computers, telecommunications equipment, medical devices, satellites, autos and auto parts, have been chosen carefully as sectors in which U.S. international competitiveness is high. Therefore, although agreements negotiated as follow on to the Framework will be on a most favored nation basis, we expect American firms to be well positioned to benefit from them.

There is no firm decision yet as to what "quantitative indicators" will be used in the follow on agreements. Several indicators will probably be used for each product area. These may include measures

showing market share of foreign suppliers in the Japanese market, as utilized in the Semiconductor Arrangement. In that event, some assembly may be performed outside of the United States. However, in any event, the U.S. economy and labor will benefit from other activities performed in the U.S. such as research and development and design work.

Question 10. With respect to the Japan Framework Agreement, it is my understanding that issues have been lumped into "baskets" or categories, and that for some of these issues agreements are to be reached by the end of this year, and that for others, agreement is to be reached by next July. Is it realistic to think that agreements can be reached by the end of this year; have face to face negotiations even begun yet?

Answer. The time constraint imposed by the Framework is among its strongest features. Given the momentum provided by the biannual Heads of State meetings provided for in the Framework, our negotiating schedule is realistic. Under the Agreement, both sides have pledged utmost efforts to reach agreements on some areas of Government Procurement, the insurance sector and the auto sector by the first Heads of Government meeting in early 1994. Agreements in remaining areas are to be sought by the second such meeting in July 1994. We expect that the first wave to follow on negotiations under the Framework will begin in September.

Question 11. It is my understanding that insurance, auto parts, and government procurement are the issues on which agreement is scheduled to be reached by the end of this year. Insurance is an issue of special importance to the Subcommittee on Commerce, Consumer Protection and Competitiveness. Can you tell us whether our understanding is correct, and what objectives you have for the negotiations on insurance?

Response. Yes. Under the Joint Statement on the United States-Japan Framework for a New Economic Partnership, the United States and Japan will agree on measures regarding significant market access problems in government procurement, the insurance market, the automotive industries at the first Heads of Government meeting in 1994 or by January 10, 1994. Therefore, improved access to the Japanese insurance market for U.S. firms is a high priority issue for our next consultations with the Japanese Government. In our negotiations on insurance we will be addressing certain sectoral and structural impediments such as non-transparency and keiretsu or cross shareholding practices, among other things. We also intend to review closely the reforms proposed by Japan's Ministry of Finance's Insurance Council and to ensure that such reforms are implemented in a manner that is non- prejudicial to foreign insurers.

Question 12. The FCC has estimated that approximately half of the $4 billion which is paid annually by U.S. telecommunications carriers to foreign carriers as accounting payments is in the form of an above-cost subsidy. Is this subsidy a concern to you, and if so how do you propose to deal with it?

Answer. Yes. USTR is considering different avenues of trade pressure to remedy this imbalance.

The GATS Telecommunications Annex and the NAFTA Telecom Chapter refer to cost-oriented pricing as the basis on which charges for use of the basic telecom network should be determined. This is a necessary first step in reducing the above-cost subsidy our carriers are currently paying to foreign telecom companies.

The objective of the proposed GATS basic telecom negotiations is access for U.S. carriers to foreign telecom markets. A successful outcome to these negotiations, by introducing competition into markets currently closed to U.S. telecom companies, would help to bring current international rates nearer to cost, and so reduce the above-cost subsidy.

Question 13. The current U.S. GATT objectives now include a proposal to liberalize market access for long distance basic telecommunications services. In light of the significant openness of U.S. market and the lack of openness of most foreign markets, do you believe further opening on the part of the U.S. through regulatory decisions would give away your negotiating leverage? Answer. Through close coordination with the FCC, we will preserve negotiating leverage that might be lost if regulatory decisions were made in a vacuum. USTR has a close working relationship with the FCC, and the FCC participates regularly in telecom trade inter-agency working groups and in our multilateral and bilateral telecom negotiations. We have formally submitted comments in the past to the FCC on the trade implications of specific regulatory decisions and will continue to do so in the future. Question 14. Foreign telecommunications switch manufacturers now account for nearly half the U.S. switch market. Northern Telecom, owned by Bell Canada Enterprises, is the largest foreign firm selling telecommunications switches in the United States. AT&T, on the other hand, has been unable to sell switches in Canada.

This issue was not addressed in the U.S.-Canada Free Trade Agreement, and it is not addressed in the NAFTA, either.

Given the difficulty AT&T and other U.S. switch producers have had selling products in Canada and in light of the changes now occurring in the Canadian telecommunications market, would it be appropriate in your opinion to address this issue in formal discussions with Canada, perhaps at a working group level?

When will a decision be made by the Administration as to how to approach this issue with Canada?

Answer. As you are aware, we are in the process of concluding an inter- agency review of this question in response to industry and Congressional interest. We are consulting with all of the concerned agencies and have also talked extensively with GAO and your staff. We expect that the review will be completed this month, at which time we will give you a full report on our findings.

Question 15. I have become concerned that U.S. airlines which have been hit hard financially here at home are also facing new restrictions on their ability to serve many foreign airports, for example, in France and Germany. Is your office participating in discussion or other efforts to address this problem, if so, what are you doing, and if not, how is this issue being handled within the Administration?

Answer. USTR has been participating in preparatory discussions for bilateral aviation negotiations, which are led by the Departments of State and Transportation. These issues also were addressed by a Presidentially- appointed Commission (National Commission To Ensure A Strong Competitive Airline Industry, created by section 204 of the Airport and Airway Safety, Capacity, Noise Improvement and Intermodal Transportation Act of 1992, PL 103-13, April 7, 1993). The Commission's report is scheduled to be forwarded to the President and the Congress on August 20. USTR assigned two staff members to serve on the professional staff of the Commission to assist in the work on international issues. USTR also is participating in the interagency review of the Commission's proposals, led by the National Economic Council. Question 16. I would like to have someone in your office provide a report to the Subcommittee on what is being done to deal with the problem of restricted access to foreign airports for U.S. airlines.

Answer. Attached is a brief report on major markets in international air transportation. In terms of market share, U.S. carriers are doing well, but their success has led to increased resistance to liberalized aviation regimes on the part of some of our trade partners. In some countries, air transportation is affected by physical space limitations at major airports. The U.S. Government is dealing aggressively with these problems through a series of ongoing negotiations, as indicated in the following:

STATUS OF BILATERAL AIR TRANSPORT AGREEMENTS (MAJOR MARKETS) AS OF AUGUST 9, 1993

FRANCE.--U.S. carriers have about 70 percent of the air passenger market between the two countries. Eight U.S. carriers serve this market. On May 4, 1992, under terms of the bilateral agreement, France gave official notice to the U.S., renouncing the agreement, to

be effective in a year. Thus, since May 1993, air transportation services between the United States and France are continuing without an agreement under a system of comity and reciprocity. Services of U.S. airlines have not been reduced, but possibilities of further expansion are questionable at present.

GERMANY.--U.S. carriers have about 60 percent of the passenger market. The current agreement with Germany is among the most liberal U.S. aviation agreement in Europe. The U.S. has the right to fly to any point in Germany. Germany is seeking to renegotiate the agreement and has threatened to renounce the present agreement if a new agreement or an acceptable interim agreement is not reached by this fall. Last year, in an interim agreement, both sides agreed to freeze the volume of each carrier's traffic until the end of October, while negotiating continue. Talks are scheduled for Bonn, August 31-September 2.

UNITED KINGDOM.--U.S. carriers have roughly half the bilateral passenger market, which is severely restricted under terms of the agreement with the U.K. Nine passenger airlines fly between the U.S. and the U.K. serving 22 U.S. gateway cities and four airports in the U.K. U.S. carriers are seeking greater access to the U.K. market, particularly through Heathrow Airport. Physical capacity at Heathrow, however, is limited. The British are seeking increased participation in the U.S. market through part-ownership of USAir. Negotiations are continuing.

JAPAN.--U.S. carriers have about 64 percent of the revenues in the passenger/cargo market between the U.S. and Japan, which is the gateway to the Asian market. Unlike its huge trade deficit in merchandise trade with Japan, the U.S. has a surplus in air transportation services ($2.6 billion in 1992). The Japanese are seeking to negotiate a new, more restrictive agreement. An area of contention is the carriage of Japanese passengers by U.S. airlines from Tokyo and Osaka to Australia and other points beyond Japan (fifth freedom rights). Negotiations in Washington August 3-5 were inconclusive on these issues. Airports in Tokyo and Osaka are congested. This will be relieved at Osaka when Kansai Airport is completed (scheduled for 1994).

Question 17. The European Commission has apparently agreed to a program of telecommunications services liberalization that would fully open the European Community marketplace by 1998.

Do you believe it is acceptable to continue to allow European service providers into the U.S. between now and 1993?

Answer. Although it is obviously an internal matter within the EC and solely their decision, we are disappointed that the EC's 1998 date for the liberalization of telecommunications, on a resale basis only,

does not liberalize as rapidly or as completely as many within and outside the Community had hoped. We expect to use the multilateral negotiating process to secure a more timetable.

In the meantime, European services providers seeking to provide international services with the United States on a simple resale basis must apply for licenses and be approved on the basis of equivalent resale market opportunities as set forth in the applicable FCC regulations. For common carrier services, provisions of Section 310 of the Communications Act of 1934 remain in force. That means that under existing law and regulation, European providers of basic telecommunications services may not have the opportunity to compete in our market due to their restricted nature of their own markets.

Question 18. The 1988 Trade Act mandated negotiations designed to achieve mutually advantageous market access for telecommunications equipment. After five years, can you give us an assessment of how successful we have been in opening markets as a result of that Act?

Answer. The 1988 Trade Act provided two useful tools to secure increased market opportunities abroad for U.S. telecommunications firms. The first, section 1374, provided authority to designate priority countries with major telecom markets closed to U.S. suppliers and to initiate trade negotiations with them. The second, section 1377, provides an annual review mechanism for all telecom trade agreements resulting from those or other negotiations. In both cases, the statute provides for appropriate sanctions in the event the markets remain closed or the agreements are violated.

With respect to section 1374, USTR in 1989 designated the Republic of Korea and the European Community (EC) for market-opening trade negotiations and concluded the negotiations in February 1992, at the end of the statutory negotiating period. In the case of Korea, the negotiations yielded a trade agreement (enforceable under section 1377) that met the statutory negotiating objectives and provided U.S. suppliers of telecommunications goods and services with significant new opportunities in the large growing Korean telecommunications market.

In the case of the EC, although the EC had liberalized considerably in the area of services and in some aspects of equipment trade during this period, the review concluded that the statutory negotiating objectives with respect to government procurement had not been met. At the same time, USTR concluded an early review of DC telecom procurement practices under Title VII of the 1988 Trade Act and identified the EC as a country that discriminates in government procurement. As a result, USTR imposed sanctions on the EC under title VII. Negotiations continue for telecommunications equipment as

part of the renegotiation of the GATT Agreement on Government Procurement code, which is being conducted concurrently with the Uruguay Round negotiations. With respect to other markets, the major markets have either concluded trade agreements with the United States, successfully engaged in constructive negotiations in the GATT, or been the subject of additional bilateral negotiations. This is particularly true of Japan, which has agreed to discuss telecommunications in the context of the Framework Agreement.

On balance, the provision of the Telecommunications Trade Act in the 1988 Trade Act have provided useful legal mechanisms to open markets abroad and led to significant grains for U.S. suppliers of the telecommunications equipment and services. Nevertheless, much remains to be done, and many new issues continually arise in such a rapidly moving industry as telecommunications.

Question 19. Would you comment on the prospects of the agreement [with Germany that would open German public procurement to U.S. firms], and, if the fact, U.S. firms might expect some greater market access to Germany in the near term.

Answer. As you know, the U.S. on May 28 imposed Title VII sanctions against nine EC member states for discrimination in the procurement of telecom equipment. Shortly thereafter, the German Government informed us that it did not intend to impose against U.S. suppliers the discriminatory provision required by the EC Utilities Directive. Germany also stated that it would not impose the countersanctions voted on by the EC on June 8. We are still working out the detail of a formal confirmation. In the meantime sanctions remain in place against Germany.

U.S. firms have recently won significant procurement contracts in Germany and there is every reason to expect they will continue to improve their sales in Germany.

Question 20. In your testimony at the joint hearing, you said that it was your personal view that regulatory agencies like the FCC and the SEC should be given wider latitude to consider the trade policies of foreign countries when deciding cases that come before them.

But, at least with respect to services, including telecommunications and financial services, you have already confirmed in response to a written question I submitted to you that you already have authority under section 301(c)(2)(A) of the Trade Act of 1974 to "restrict, in the manner appropriate, the terms and conditions of "any such authorizations" such as would be granted to a foreign stock firm seeking authority to sell stock in the United States.

If, in fact, you believe the FCC and the SEC should be taking trade policies of foreign countries into consideration, my question, then, is,

in light of your authority under the Trade Act, why have you not directed those agencies to do so?

Answer. During my testimony, I stated that, in my personal view, in an increasingly global economy the decisions of independent regulatory bodies should not be taken in isolation, but rather that the regulatory bodies should be aware that their actions may in some cases have trade implications. This is significantly different from asserting that regulatory bodies should be "given wide latitude to consider trade policies of foreign countries" in their decisions.

The formulation of trade policy is and should remain the responsibility of the Executive Branch of the Federal Government. We, of course, actively seek the cooperation and advice of those regulatory bodies in our work. Nevertheless, the elements that such regulators should take into consideration in their decisions are set by the Congress through the relevant statutes and implementing regulations and typically do not include evaluations of the trade policies of other countries.

With respect to the reference to the question that you submitted previously, my answer replied to a question concerning only telecommunications services and addressed only those issues.

Question 21. In response to another question I submitted to you, you said, "The provisions of section 301(c)(2)(A) apply only to cases brought under Section 301 and therefore are not available in this case." The "case" you referred to is the investigation of discrimination against telecommunications suppliers in government procurement under Title VII of the 1988 Trade Act. I would just like you to clarify this statement for me, since I know that other government procurement issues, for example discrimination by the Japanese Government in procurement of super computers, have been addressed under section 301 authority.

My question, therefore, is simply that is it not your decision, as the U.S. Trade Representative, whether to use section 301 authority or whether to use Title VII authority to deal with procurement issues, and isn't section 301 authority actually broader and therefore able to encompass matters considered under Title VII?

Answer. Title VII of the 1988 Trade Act requires USTR to conduct an annual review of foreign governments' procurement practices, to be completed by April 30. The statute prescribes actions that USTR must take in the event that the review results in a finding of a persistent pattern of discrimination. The sanctions available to the U.S. Government in cases identified under Title VII, set forth in 41 U.S.C. 10b-1, limited to restricting access to U.S. Government procurement. Therefore, when we identified the European Community under Title VII for discriminating in the procurement of telecommunications

equipment, denial or restriction of services authorizations was not a retaliatory option available to us. Cases concerning discrimination in procurement practices may be brought under Section 301, in which case the denial or restriction of a service authorization is an option. The criteria for a determination is different in Section 301, as is the time frame and procedures of the investigation. In cases where USTR could proceed under either Section 301 or Title VII, USTR decides which statutory scheme will best achieve our objectives in the most expeditious manner.

As you noted, we proceeded under Section 301 in responding to Japanese discrimination in government procurement of supercomputers. In fact, we are now conducting a review of the supercomputer agreement with Japan, which resulted from the Section 301 investigation, to determine whether Japan is complying with the provisions of the agreement.The United States Trade Representative,
Executive Office of the President,
Washington, DC, September 7, 1993.
Hon. Henry A. Waxman,
Chairman, Subcommittee on Health and the Environment, Committee on Energy and Commerce, Washington, DC.

Dear Congressman: Thank you for your letter of June 23, 1993, in which you raise a number of questions concerning the interpretation and application of the provisions of the North American Free Trade Agreement (NAFTA) in connection with several environmental concerns.

The NAFTA will establish the largest market in the world, create jobs in America, and enhance the region's competitiveness. The NAFTA, together with the supplemental Agreement on Environmental Cooperation concluded last week, provides a number of strong steps to promote environmental protection. The NAFTA itself begins with the Parties' commitment to "promote sustainable development; strengthen the development and enforcement of environmental laws and regulations" and undertake the NAFTA commitments "in a manner consistent with environmental protection and conservation."

These commitments are reflected in the provisions of the NAFTA that follow, including explicit recognition of the rights of governments to maintain measures to protect human, animal or plant life or health, the environment and consumers; recognition of the rights to establish the level of protection governments consider appropriate; a commitment to work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers; and renouncing the relaxing of health, safety or environmental measures to encourage investment.

The Agreement on Environmental Cooperation will ensure that economic growth is consistent with goals of sustainable development. The Agreement on Environmental Cooperation further promotes environmental protection, including by ensuring that laws and standards continue to provide high levels of environmental protection and that those laws are effectively enforced. I will respond to each of the specific questions in your letter in turn. Question 1. NAFTA requires that regulatory standards pertaining to food safety be based on "risk assessment, as appropriate to the circumstances." Article 712, para. 3. As you are aware, for food additives, color additives and animal drugs, the Delaney clauses in U.S. law prohibit the addition of any substance to foods if the substance is an animal carcinogen. 21 U.S.C. 348(c)(3)(A), 376(b)(5)(B) and 512(d)(1)(H). Under the Delaney clauses, a traditional risk assessment is irrelevant. Public Citizen v. Young, 831 F.2d 1108 (D.C. Cir. 1987). I would like your evaluation of whether the NAFTA agreement in any way jeopardizes the Delaney clauses in U.S. law. Specifically, how does the Delaney clauses' statement that the theoretical risk to humans is irrelevant square with the requirement in Article 712, para. 3 that U.S. laws be based on a risk assessment?

Response. The NAFTA was carefully drafted, with the Delaney clauses and other provisions of U.S. law firmly in mind, to safeguard the ability of governments to ensure food safety. To understand how the NAFTA applies to these and other "sanitary and phytosanitary measures" (covered in Section B of Chapter 7), it is important to distinguish between two key concepts--the level of protection that a government chooses and the measure that the government uses to achieve that level of protection.

The NAFTA makes explicit that each government may establish those levels of protection for human, animal or plant life or health that the government considers to be appropriate (Article 712(2)). A government's choice of the level of protection of human health need not be based on a scientific rationale or a "risk assessment." the NAFTA implicitly recognizes that such choices are based on societal, not scientific, values.

The Delaney clauses, in the first instance, establish a level of protection. They reflect a decision by the Congress that there should be no risk of cancer to humans from the substances those clauses cover. That decision is fully protected under the NAFTA.

The NAFTA does require governments to meet certain elementary requirements when applying laws and regulations to achieve their chosen level of protection in order to safeguard against blatant trade protectionism in the guise of a health regulation. Our trading partners

have repeatedly sought to exclude perfectly safe U.S. products from their markets by citing false "health" pretexts.

For example, the NAFTA requires that the sanitary or phytosanitary measure used have a scientific basis and be based on a risk assessment appropriate to the circumstances.

It makes sense to require governments to meet these tests since legitimate health laws and regulations would have a scientific basis and are the product of a risk assessment. For example, a determination that a particular food additive poses a health risk is made on scientific grounds. Similarly, legitimate food additive regulations are based on "risk assessments" of the type required in the NAFTA. The term "risk assessment" is defined in the NAFTA in relevant part as an evaluation of the potential for adverse effects on human life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff. Importantly, "risk assessment" as used in the NAFTA is not limited to quantitative risk assessment, which is a particular type of risk assessment used to evaluate the potential for carcinogenesis. The Delaney clauses are entirely consistent with the NAFTA's requirements in this regard. The determination that a particular substance poses a risk of cancer is a scientific determination, based on an evaluation of the potential for carcinogenic effect. Based on scientific principles, the United States has determined that if a substance induces cancer in animals, it poses some risk of human carcinogenesis. And since the level of protection under Delaney requires that there be zero risk of carcinogenesis, we prohibit the substance.

The Public Citizen case dealt with the question of whether there was a de minimis exception under the color additives Delaney clause, not whether it was appropriate to evaluate whether a particular substance is an animal carcinogen and thus such substance poses a risk of carcinogenesis. The court's determination that there was no de minimis exception under the Delaney clauses does not change the fact that all three Delaney clauses are themselves based on a risk assessment and are consistent with the NAFTA requirements.

Question 2: NAFTA declares that each party may adopt food safety regulation "only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility." Article 712, para. 5. What provisions in NAFTA would prevent Canada or Mexico from successfully challenging U.S. laws as NAFTA inconsistent, including the Delaney clauses and laws relating to pesticide residues in foods, on the ground that they are more stringent than "necessary" to achieve the appropriate level of protection chosen by the U.S.?

Response. Article 712(5) of the NAFTA provides as follows: "Each Party shall ensure that any sanitary or phytosanitary measure that it adopts, maintains or applies is applied only to the extent necessary to achieve its appropriate level of protection, taking into account technical and economic feasibility." (Emphasis added.)

This provision addresses how a health law or regulation that is in place is applied. It does not address the validity of the underlying health law or regulation itself, or the level of protection afforded by those laws. Article 712(5) provides no basis for challenging the levels of protection that the Congress has established in the Delaney clauses or laws relating to pesticide residues in food. The fact that those chosen levels of protection reflect a more conservative approach than other countries toward the level of protection that we desire in setting specific standards does not render these laws subject to question under Article 712(5).

This provision is meant to ensure that governments do not enforce or apply their health laws or regulations in a way calculated to provide a special advantage to domestic producers. For example, this provision is designed to guard against a country imposing a two year quarantine on imported cattle (and not coincidentally protecting the domestic industry) when a 10 day quarantine would be sufficient to guarantee the cattle are not diseased. Article 712(5) does not require governments to avoid taking any action that has trade restrictive effects. And it recognizes that governments may legitimately take economic and technical factors into account in the manner that they apply their health regulations to imported goods. Finally, the provision is drafted so that a government will always be able to apply its health measures in a manner that fully achieves the country's chosen level of protection.

Question 3. I want to ensure that the U.S. has not ceded its authority to restrict trade in order to promote protection of our global commons. Please explain whether the language in NAFTA would prevent the U.S. or other signatories from restricting trade in order to protect an extraterritorial resource, assuming that such a restriction is applied in a way that is nondiscriminatory. For example, would NAFTA preclude the U.S. from prohibiting the sale or import of specific varieties of seal pelts with the objective of protecting seal populations that are not listed as endangered under the Convention on International Trade in Endangered Species? Would nondiscriminatory restrictions on the sale or import of products producing greenhouse emissions for the purpose of protecting the global climate be consistent with NAFTA?

Response. This Administration is committed to taking effective action to protect global environmental resources, including the global

commons. Far from ceding our authorities in this area in the NAFTA, the agreement itself and the supplemental Agreement on Environmental Cooperation affirm the commitment of all three countries to protection of the environment and the promotion of sustainable development. In a provision that has no precedent in trade agreements, NAFTA Article 104 expressly provides that the obligations of the NAFTA parties under international environmental agreements shall prevail over any inconsistent obligations undertaken in the NAFTA. The NAFTA does not change U.S. obligations concerning the use of trade sanctions to protect a particular resource outside the United States. The NAFTA will not impair the ability of the United States to impose the kinds of non-discriminatory trade restrictions cited in your examples. Thus, a nondiscriminatory prohibition on the sale of all domestically- and foreign- produced seal pelts in the United States would generally be consistent with the NAFTA. Similarly, a ban on the sale of all domestic and foreign-made goods producing greenhouse gas emissions would generally be consistent with NAFTA requirements.

As you may know, the broader question of the use of trade measures to protect resources outside a particular country's jurisdiction is currently under discussion in a number of international fora, including the Working Group on Environmental Measures and International Trade under the General Agreement on Tariffs and Trade (GATT), and in the Organization for Economic Cooperation and Development (OECD).

This issue arises most clearly in connection with the "general exceptions" to the GATT, a number of which have been included as general exceptions to the NAFTA as well. The exceptions most directly applicable to environmental protection are GATT Article XX(b) (protection of human, animal and plant life or health) and Article XX(g) (conservation of exhaustible natural resources). Some GATT countries, and an earlier, unadopted GATT panel report, have asserted that those exceptions are not available for measures to conserve or protect a resource outside the jurisdiction of the country taking the measure. The scope of those articles are the subject of on-going dispute settlement proceedings before a GATT panel concerning a challenge by the European Communities and the Netherlands to U.S. import restrictions on tuna in order to protect dolphins.

In those GATT dispute settlement proceedings, we have made clear that Article XX fully guarantees the ability of the Untied States to take measures to protect resources outside its jurisdiction. The inclusion of these Article XX provisions in the NAFTA does nothing to jeopardize the U.S. position on this question.

Question 4. I also want assurances that NAFTA will not prohibit the use of trade restrictions as a sanction for the failure to comply with future international environmental accords not listed in NAFTA Article 104, especially on the issue of global climate protection. Please explain whether NAFTA would discourage the adoption in any new multilateral agreement on global climate of provisions imposing trade sanctions on non-complying nations, analogous to the trade sanction provisions which have proven so effective in the Montreal Protocol for Protection of the Stratospheric Ozone Layer.

Response. The NAFTA is intentionally designed to be flexible enough to accommodate additional international environmental or conservation agreements that contain trade obligations. Article 104 of the NAFTA gives precedence over the NAFTA to the trade obligations contained in a list of international environmental agreements. That list includes the Montreal Protocol on Substances that Deplete the Ozone Layer.

Article 104 explicitly contemplates adding new environmental or conservation agreements to the list as the NAFTA countries may agree. If a new multilateral agreement on climate change contains trade obligations, it could be added to the list in accordance with Article 104.

Question 5. Section 105 of NAFTA provides that the parties are to insure "all necessary measures are taken in order to give effect to [its] provisions * * *, including their observance * * * by state and provincial governments." Does this require the U.S. to preempt any state and local laws, and does the Administration intend to include any preemption provisions in its implementing legislation?

Response. Article 105 is intended to ensure that the federal government in each of the three NAFTA countries is fully accountable for any state or provincial measures covered by the agreement. This provision is drawn virtually verbatim from the United States-Canada Free-Trade Agreement (CFTA). Article 105 does not establish or require federal preemption of state or provincial measures. It does mean that the federal government will be held accountable if it cannot secure state or provincial compliance with NAFTA obligations.

The precise legal relationship between the NAFTA and a country's domestic law is a matter for each participating government to decide. For example, we understand that Mexico intends to adopt NAFTA into its domestic law, thus superseding any pre-existing, inconsistent Mexican federal or state law. In the United States, this issue will be addressed in the NAFTA implementing bill. The Administration will be working with the Congress to develop the NAFTA implementing legislation, including any provisions necessary or appropriate to implement Article 105.

It is important to note that where a question arises concerning the consistency of a state law with U.S. international trade obligations, the Executive Branch works with the state through cooperation and consultations. We ensure that our states are fully briefed on any discussions with other governments concerning state laws and are kept involved in any dispute settlement proceedings that may be initiated. In the case of the NAFTA--as we have done in connection with the CFTA--we would expect state representatives to be full participants in any panel proceedings concerning their laws. In the one instance where state measures were successfully challenged before a GATT panel, we have not had recourse to preemption or lawsuits. Rather, we have worked with the state involved to see what, if any, solutions to the question can be found that would fully protect state interests in the matter. We expect our practice of consultations and cooperation to continue under the NAFTA.

We would note that there is no preemption under the NAFTA in another sense, which is that state and local laws are free to differ from federal regulations and still be consistent with the NAFTA. In fact, there is nothing in the NAFTA that refers to federal standards as any point of reference for state standards. Instead, the same NAFTA requirements that guard against standards being used to provide a special advantage to domestic producers are applied to federal standards and to state standards.

Thank you for this opportunity to clarify these issues. I look forward to continuing to work with you in preparing for the implementation of the NAFTA. Sincerely,

Michael Kantor.

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## The United States Trade Representative,

Executive Office of the President,
Washington, DC. September 29, 1993.
Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter of July 29, cosigned by Chairwoman Collins, containing questions regarding matters of significance to the Energy and Commerce Committee. I apologize for the delay in responding, but we wanted to provide complete responses, which required interagency coordination.

Please find attached a complete set of answers to your questions.

I know that my staff has met with committee staff on several occasions over recent weeks. I hope that this is the start of a fruitful

process for working together on facilitating drafting of NAFTA implementing legislation. I look forward to working with you and the members of the committee in achieving President Clinton's goal to bring NAFTA into effect on January 1.

Sincerely,

Michael Kantor.

## THE NORTH AMERICAN FREE TRADE AGREEMENT PROPOSAL

1. Paragraph 1 of Article 102 of the proposed North American Free Trade Agreement (NAFTA) sets forth six objectives of the Agreement. They differ from those set forth in Article 102 of the Canadian Free Trade Agreement (CFTA). Paragraph 2, which was not included in the CFTA, provides that the Parties shall interpret and apply the provisions of NAFTA in the light of these objectives and in accordance with applicable rules of international law. The objectives do not include any reference to workers or the environment. None even remotely focus on these two important matters. Please explain why workers and the environment were ignored in the objectives and how and to what extent the Parties will be able to effectively interpret and apply the agreement to protect and enhance workers and the environment if even the basic objectives of NAFTA fail to mention either category.

Answer. The objectives of NAFTA focus in highly generalized terms on what the NAFTA does, as opposed to the motivations for the agreements. Those motivations are laid out in detail in the preamble, including the resolve of all three countries to benefit workers and the environment through the NAFTA. While the objectives of the NAFTA are appropriately stated in terms of removing trade and investment barriers, the Agreement clearly will lead to direct economic benefits for U.S. workers and is carefully drafted to ensure that U.S. worker and environmental standards can be fully maintained and improved. We see no contradiction between the goal of increasing economic opportunities for all Americans by removing trade and investment barriers, which is the purpose of the NAFTA, and the inclusion of strong provisions in the Agreement ensuring that U.S. worker and environmental standards are fully protected.

2. An article in the June 9, 1993 edition of the Journal of Commerce reports that a company in Walled Lake, Michigan, has closed its factory which employed as many as 100 workers and supplied air-conditioning components to General Motors Corporation, and transferred its operations to Mexico. The company is headquartered in Florida. It employs about 1,000 workers in various facilities in the U.S. and 200 workers in Mexico. At the Walled Lake

facility workers are members of the United Auto Workers Local 445. The firm's president, Mr. David Neighbert, in commenting on this closure and transfer, noted that we "live in a global economy" and "have to be competitive." He said he was moving south to cut costs. This closure and move to Mexico of an auto parts firm even before NAFTA is adopted is a concern because many believe such events will be more common after adoption. We request that you, working with the Secretary of Labor, examine this closure and explain the factors that enticed this firm to move to Mexico.

(a) Is it likely that other operations of this firm will also be moved to Mexico?

Answer. We have no information on whether S&J Fabricating and Engineering of Florida plans to move additional facilities to Mexico. We can say that if the NAFTA is passed there is less incentive in several respects for an automotive company to move operations from the United States to Mexico: NAFTA requires Mexico to phase out current Mexican legal requirements (such as local content and trade-balancing requirements) that now force our companies to produce in Mexico or purchase Mexican products in order to sell products in the Mexican market.

NAFTA requires Mexico to eliminate its tariffs on U.S. and Canadian-made automotive products, but not those of other countries. That means American vehicles and parts will be much cheaper in Mexico. Mexico's tariffs on cars are 20%, and on parts average about 12%; our tariffs on Mexican automotive products, by comparison, are much lower.

NAFTA will require Mexico to eliminate trade-distorting requirements of its duty drawback and maquiladora programs that provide incentives to export products from Mexico and restrict sales in Mexico.

By comparison, current U.S. tariffs on Mexican automobiles and parts are already very low, and there are no significant U.S. non-tariff barriers against imports of Mexican automotive products. In that sense, the playing field is now titled in Mexico's favor. By levelling the playing field, NAFTA makes it more likely for a company to stay in the United States and export its products to Mexico. Rejecting NAFTA means leaving in place all these measures that hurt us now.

There is good reason to believe that we will benefit by levelling that playing field. For example, in a study released in September 1992, the Office of Technology Assessment found that, for automobiles to be sold in the United States, it is $410 cheaper to assemble an automobile in the United States than in Mexico, even though hourly compensation of assembly workers is about eight times higher in the United States than in Mexico.

(b) How does the NAFTA address such closures and relocations if its objective fail to consider workers?

Answer. The primary reason that the Clinton Administration supports NAFTA is that it will benefit U.S. workers. There have been some 20 serious studies of NAFTA's employment effects. All but one found a positive impact (and the exception used very questionable assumptions).

Of course, any job dislocations are unfortunate, whether they be from trade, defense conversion, or technology changes. That is why the Administration has worked to develop a Comprehensive Worker Adjustment Program that will provide workers displaced by trade with Mexico and for other reasons with a comprehensive package of one-stop employment services, training, and income maintenance.

(c) What is the average auto parts manufacturing wage and benefits in Mexico? What is it projected to be in five years with the adoption of NAFTA? Answer. We do not have precise figures on wages and benefits for the auto parts industry alone, but we believe that wages and benefits are lower than those of assembly workers in both countries and roughly comparable to average manufacturing wages.

It is very difficult to predict Mexican auto parts wages and benefits into the future because they can be affected by numerous macroeconomic and microeconomic factors. We expect productivity and wages in Mexico to continue to rise as they have done since 1987. The Mexican government's commitment to tie increases in the real minimum wage to productivity increases should contribute to increases in real wages of Mexican workers.

(d) How do Mexican wages and benefits compare to U.S. wages and benefits in this industry?

Answer. As mentioned in the response to question (c), we do not have precise figures on wages and benefits for the auto parts industry alone, but we believe that wages and benefits are lower than lots of assembly workers in both countries and roughly comparable to average manufacturing wages. According to comparative measures of hourly compensation costs for production workers in manufacturing developed by the Bureau of Labor Statistics, Mexican average manufacturing compensation costs in 1992 were $2.35 per hour, or 15 percent of comparable U.S. costs of $16.17 per hour. In general, most estimates agree that compensation is 6-8 times higher for workers in the United States than workers in Mexico. At the same time, analyses suggest that the productivity of U.S. workers may be higher than that of Mexican workers by approximately the same ratio, thereby eliminating any advantage derived from lower Mexican wages.

3. We understand that the President is committed to a strategy of building a higher-wage/higher-skilled economy in the United States as the best way to boost the standard of living for American workers. NAFTA is said to be an important part of that strategy. At the same time, the Administration explains that as greater economic integration occurs between the U.S., Canada, and Mexico, some American workers may be forced to change jobs. Some may also lose their jobs. We understand that without NAFTA, more than 2 million Americans lose their jobs annually due to plant closings, workplace restructuring, or production cuts. The pace of structural economic change and worker dislocation appears to have accelerated in recent years. (a) Explain the above strategy and the role of NAFTA in this strategy. Under such economic integration, is it more likely that this strategy and NAFTA will cause a loss of jobs in manufacturing such as reported by the Journal of Commerce, in the technology and service industries, or in all of them?

Answer. The President's national economic strategy seeks to use human resource, technology, infrastructure development, and trade policies to increase the number of high-wage, high-skill jobs in the United States. NAFTA and other U.S. trade policy initiatives are important to the President's strategy because they will further open foreign markets to U.S. exports of technology- and skill-intensive goods and services.

Since the Mexican market is currently more protected than our own, we anticipate that the NAFTA will create U.S. jobs, on net, in manufacturing and, in particular, in the knowledge-intensive, high-technology, and service industries. The U.S. Department of Commerce estimates that in 1990, U.S. exports to Mexico supported 538,000 U.S. jobs, including 260,000 in manufacturing. Since that time, there have been further dramatic rises in our exports to Mexico. The Office of the U.S. Trade Representative (USTR) has updated the Commerce Department's estimate of the number of U.S. jobs supported by U.S. exports to Mexico; USTR estimates that 716,000 U.S. jobs were directly or indirectly supported by U.S. exports to Mexico in 1992. Also, USTR has calculated that on average U.S. jobs supported by merchandise exports to Mexico pay a wage 12 percent higher than the U.S. national average wage.

(b) To what extent have manufacturing jobs in the U.S. increased or declined since 1980? What are the causes of the decline?

Answer. The number of manufacturing jobs in the U.S. economy declined from slightly over 20 million in 1980 to slightly over 18 million in 1992. The most important reason for this decline is technological change, which increases productivity. The dramatic growth of U.S. manufactured goods exports to Mexico has had a positive effect on

U.S. manufacturing employment. (c) What is the estimate of increase or decline under NAFTA in this decade? Answer. It is difficult to estimate precisely the contribution of NAFTA to gross and net U.S. job formation by the year 2000. The many economic studies of the effects of the free trade with Mexico have projected an increase in U.S. employment and/or an increase in wage compensation as compared to the status quo. Indeed, it might also be the case that failure to implement the NAFTA could also bring about the loss of some U.S. manufacturing jobs as companies that had made investments in the United States in anticipation of additional exports to Mexico associated with the Agreement are forced to revise those plans.

Most recently, a study by the Congressional Budget Office (CBO) that includes a survey of the economic impact studies conducted by academics and private sector institutions finds that NAFTA will result in net employment gains in the United States. The CBO notes that some workers could lose their jobs, but that the NAFTA would, on net, increase total employment in the United States, as job gains more than offset job losses. The CBO and other studies have found that both job losses and gains are small in relation to the size of the U.S. economy and workforce.

(d) Can we as a nation afford to lose more and more manufacturing jobs, even if there are gains in service and technology industries? Answer. If this question is related to NAFTA, the simple answer is that we and private economists expect more Americans to be employed in manufacturing in the United States if the NAFTA is approved than if the NAFTA is rejected. Independent of NAFTA, however, there is a trend of declining employment in manufacturing, at least as a share of total employment, in the United States and in most of our trading partners, because manufacturing enjoys higher productivity growth than other sectors. A fundamental problem, and a priority of the President, is to ensure that manufacturing workers, and the majority of our labor force that works in the service and other non-manufacturing sectors, are competing based on innovation and rising productivity and quality, and not by lowering wages.

[No questions 4 or 5 were received]

6. We understand from the Secretary of Labor that in this recession, only 14 percent of the workers who lost their jobs have been recalled. In prior recessions, this figure was 44 percent. Even when re-employed, the typical displaced worker faces a decline in real wages or loss of health care benefits.

(a) If workers who come from manufacturing lose jobs under NAFTA, what programs exist to help them find another job at a similar wage and benefit level or will they likely have to accept a lesser wage and benefit scale if they can find a job?

Answer. Currently, there are two Federal programs which help trade-impacted workers find new employment:
Trade Adjustment Assistance serves approximately 25,000 workers dislocated because of imports each year, and includes an entitlement to training, income maintenance, job search and relocation allowances. The Economic Dislocation and Worker Adjustment Assistance program provides rapid response to announcements of layoffs, and an array of retraining and readjustment services, including supportive services and needs-related payments for over 300,000 workers each year without regard to the cause of dislocation.

Very soon, the Administration plans to introduce legislation creating a comprehensive worker adjustment program that combines the best features of our adjustment programs. We foresee the new program as emphasizing early identification of displaced workers, followed by early readjustment and job- search assistance, proven ways to cut the time of unemployment and the associated loss in earnings. In addition, the Administration will also propose a transitional program to cover any workers dislocated by the impact of NAFTA until such time as the comprehensive program is fully implemented. (b) What does that do for their standard of living?

Answer. The Administration believes that in recent years programs to assist dislocated workers have not been as effective as they must be. Workers have suffered the consequences. The new comprehensive worker adjustment program is intended to improve the situation.

Indeed, the most recent survey of displaced workers, conducted in January 1992, showed that 5.6 million workers with 3 or more years tenure with their employers lost jobs between January 1987 and January 1992 due to plant or company closings, slack work, or position or shift abolishment. About 3.6 million, or 65 percent, were reemployed.

Among the reemployed workers, median earnings on the jobs held in January 1992 were $369 per week, 14 percent lower than the earnings on the jobs from which they were displaced ($431).

We intend to improve upon this record with the new comprehensive dislocated worker program.

(c) Will NAFTA legislation address these problems? If not, why not? If yes, please explain how.

Answer. As discussed in the answer to question (a), the Administration is committed to introducing a comprehensive worker adjustment legislative proposal which addresses the needs of all dislocated workers through timely assistance in finding a suitable job and support for longer-term training for those who seek to upgrade their skills as a way to preserve or increase their earnings. Until that program is enacted by Congress, the Administration will propose a

transitional program to address the needs of workers who might be dislocated as a result of NAFTA.

Concerns about the economic future of Americans are well-placed. Since the 1970s, the real wages of most American workers have persistently declined. The average real hourly earnings of production and non-supervisory workers, mainly non-college workers, declined by 10 percent from 1973 to 1992 (and by nearly 9.5 percent from 1979 to 1992). Real wages have fallen even more dramatically for young, non-college workers. In fact, the percentage of year- round, full-time workers not earning enough to support a family of four above the U.S. poverty level increased from 12.1 percent in 1979 to 18 percent in 1990.

The job market is also growing more unstable, leaving an increasing number of Americans to work harder for not only a lower wage but for lower benefits and less peace of mind. The number of temporary and part-time workers continues to grow.

We can and we must address these sources of concern. But retreating from trade--and in particular hoping that the defeat of NAFTA will reverse the tide of global economic evolution--not only is not the solution, but will only make our problems worse. Our challenge is to pursue the President's integrated economic strategy of deficit reduction, investment in our workers, and expanded trade. That is the only way to reverse the pattern of stagnant or declining earning. NAFTA will help to do that. I21The Auto Pact with Canada is not part of the CFTA. However, the CFTA did not terminate it, although it freezes the list of manufacturers in Canada who may be granted pact or pact-like status. How does NAFTA affect this freeze under the auto PACT?

Answer. The NAFTA reaffirms Canada's obligations found in the U.S. Canada Free Trade Agreement Chapter 10 regarding the Auto pact. In other words, the freeze on Auto Pact membership continues under the NAFTA.

8. As you know, the Japanese continue to export large numbers of vehicles to the U.S. Will any additional capacity be provided for Japanese vehicles in Canada and Mexico for export? Where will those exports likely go? Answer. The NAFTA accords no benefits in any NAFTA country to cars made in Japan. To benefit from NAFTA preferences, a car will not only have to be assembled in the United States, Canada or Mexico, but at least fifty percent of its value will have to consist of North American parts and labor, rising to 62.5 percent North American content by January 1, 2002. The NAFTA also increases the incentive to use U.S. parts as compared to parts from Japan or other non-NAFTA countries, by eliminating the trade distorting provisions of duty drawback and maquiladora programs.

The effect of NAFTA, therefore, is to favor cars and parts made in North America over those made in Japan.

Independent of NAFTA, the majority of vehicles produced in Mexico are currently sold in Mexico. Currently, the only Japanese manufacturer of motor vehicles in Mexico is Nissan which also produces in the United States. Nissan is therefore unlikely to export to the United States from Mexico as it would be competing directly with Nissan in the United States. Nissan Mexico has been exporting minor numbers of an older model Sentra from Mexico to Canada, and also exports to Central and South America as well as back to Japan. It does not currently export vehicles to the United States from Mexico. No recent announcements have been made for increased Japanese production capacity in Canada or Mexico. Honda and Toyota manufacture in Canada and the United States and both companies ship vehicles and parts between the United States and Canada. These two companies have basically rationalized their U.S.-Canadian production. We have no information with respect to Honda's and Toyota's plans for the Mexican market, but we would note that under the NAFTA there are provisions to ensure that new investment does not receive an advantage over existing companies (chiefly U.S. companies). Nissan Mexican expansion plans that were announced in 1991 are for production to be exported to Japan, Central and South America, as noted above. This will increase demand for U.S. parts exports which are incorporated in vehicles produced in Mexico and exported outside of North America. Nissan's production facility in Smyrna, Tennessee, was also recently expanded.

9. Article 103 provides that the Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are a party. In the event of inconsistency, NAFTA shall prevail. Please identify these other agreements. Do they cover only trilateral agreements between the three Parties?

Answer. Article 103 applies to all pre-existing agreements to which two or all three NAFTA governments are parties, including bilateral, trilateral, and multilateral agreements. This Article codifies a normal rule of international law: an agreement later in time agreement will prevail over a prior agreement to the extent of the inconsistency. It also repeat Article 104 of the U.S.- Canada Free-Trade Agreement (CFTA).

That does not mean that NAFTA nullifies prior agreements. It only means that, unless otherwise specified in the NAFTA, obligations of the NAFTA cannot be avoided on grounds of some other agreement that was concluded earlier between the Parties. Incidentally, this rule is very similar to that concerning U.S. legislation: a law enacted later in

time will prevail over a prior inconsistent law to the extent of the inconsistency.

It should be noted, however, that there are several exceptions specified in the NAFTA in which the parties specifically affirm that a prior agreement will have precedence over the NAFTA in the event of an inconsistency. For example:

(a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora;

(b) the Montreal Protocol on Substances that Deplete the Ozone Layer; and

(c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

Similarly, Annex 104.1 lists two bilateral agreements, one with Canada and the other with Mexico:

(d) The Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste; and

(e) The Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area.

Article 104 also provides that the parties may agree to add other agreements to the list of exceptions in Article 104.

In other parts of the NAFTA, the United States and Canada affirm that no inconsistency is intended between the NAFTA and the Agreement on International Energy Program, and the parties have also affirmed the priority of tax treaties over the NAFTA, to the extent of any inconsistency. It should be noted that in virtually every instance, we do not believe that there is in fact an inconsistency between NAFTA and these prior agreements. Our concern has been to avoid doubts in instances where there has been an argument to the contrary, even if that is not the U.S. Government's view. 10. Article 105 has been criticized because it is perceived as potentially requiring changes in Federal and State laws in order to give effect to the proposed Agreement. A similar provision is contained in Article 103 of the CFTA. This perception was recognized by a U.S. district court in the recent decisions of Judge Charles R. Richey regarding the application of the National Environmental Policy Act of 1969. The court noted that NAFTA could serve as a basis to challenge such laws as the Federal Food, Drug, and Cosmetic Act and California's Proposition 65. Certainly, Article 105, together with paragraph 2 of Article 102, would appear to give credence to this criticism.

(a) What is the intent of the Parties? Do you agree with the court opinion? If not, please explain why not and provide your understanding of the effect of this Article. Are your views shared by

the other parties? Answer. The purpose of Article 105 is to make explicit the Parties' understanding that their obligation to act in conformity with the NAFTA extends to state and provincial laws and regulations as well as to federal measures. The language builds on that of GATT Article XXIV (12), which has been in place since 1947, and is virtually identical to CFTA Article 103. Article 105 does not address the application of the NAFTA under the domestic law of the three countries. That is a matter for each country to decide. Rather, Article 105 makes clear what obligations the three countries have to each other under international law in respect of state and provincial measures.

In this regard, Article 105 simply says that no country can avoid its commitments under the Agreement by claiming that the measure in question is a matter of state or provincial jurisdiction. We believe that the NEPA district court misunderstood this key distinction and concluded that, as a result of Article 105, the NAFTA could directly overrule state (and federal) environmental and health measures.

Contrary to the district court's opinion, we are not aware of any U.S. federal or state health, safety, or environmental measures that are inconsistent with the obligations of the NAFTA, including Article 105, Nor does Article 105 require state laws and regulations to be similar or identical to those of the federal government.

In fact, nothing in the NAFTA automatically preempts state law--even where a NAFTA panel determines that a state law may be inconsistent with the agreement. And the NAFTA implementing legislation will ensure that there is no "private right of action" under the NAFTA that might mean that states could face lawsuits by companies or individuals seeking to enforce compliance with the NAFTA.

If we follow the pattern of the GATT and the CFTA, the federal government's efforts to secure state conformity with the NAFTA are likely to be entirely cooperative in nature. The Administration typically works very closely with the states involved in any dispute settlement proceedings, both before and after my panel consideration, in a cooperative effort to determine the best course of action. Although ultimately the federal government, through its Constitutional authority and implementing legislation, retains the authority to overrule inconsistent state law through legislation or civil suit, use of this authority has not been necessary in the nearly half-century history of the GATT or the five years that the CFTA has been in effect. (b) Please explain how the side agreements will change this perception? How has article 103 of the CFTA been interpreted? Do the parties intend a different interpretation for NAFTA, particularly in view of paragraph 2 of Article 102 of NAFTA?

Answer. As noted above, we do not believe that the NAFTA requires the United States to change its existing health, environmental, or safety laws or to make state laws and regulations the same as those of the federal government. The supplemental agreements also do not require changing our laws and regulations at the state or federal level. The supplemental agreements are intended, like certain provisions of the NAFTA, to encourage improved labor and environmental protection in North America, but any changes in U.S. laws or regulations would have to be implemented in accordance with domestic law.

CFTA Article 103 has consistently been interpreted in accordance with the view expressed in our answer to question 10(a). We would expect the three NAFTA countries to interpret NAFTA Article 105 in the same way. 11. When the CFTA was under consideration, the Energy and Commerce Committee had a number of concerns, particularly regarding the energy and auto chapters (see H. Rept. 100-816, Part 7, Aug. 5, 1988). Some of these concerns were addressed in the implementing legislation and accompanying Statement of Administrative Action. NAFTA appears silent on its relationship to the CFTA, although we note that Annex 608.2 incorporates Annexes 902.5 and 905.2 of the CFTA and Annex 801.1 incorporates Article 1101 of the CFTA. (a) What is the effect of NAFTA on the bilateral CFTA and the United States-Canada Free-Trade Agreement Implementation Act of 1988? Answer. The United States and Canada will suspend the operation of the CFTA upon the entry into force of NAFTA. The suspension will remain in effect for such time as the two governments are parties to the NAFTA. Where the CFTA Implementation Act carries out U.S. obligations under the CFTA that will continue in effect through the NAFTA, those statutory provisions will either be repealed and reenacted in the NAFTA implementing legislation or simply remain in place.

(b) Are the requirements of the CFTA fully incorporated into NAFTA? If not, is it the intent of the Parties that the U.S. and Canada would suspend or repeal the CFTA and its implementing Act? Please explain how that would be done and under what circumstances the CFTA could be reinstated. If suspension or repeal occurs, what is the effect on the matters addressed in the CFTA that are not specifically addressed in NAFTA or the NAFTA implementing legislation?

Answer. Most, but not all, provisions of the CFTA have been incorporated into NAFTA. For example, the tariff schedules between the United States and Canada have remained the same, but some rules of origin have been changed, such as the increased North American content for automobiles. In many cases, the NAFTA simply restates as obligations for the three governments, in the same or somewhat different words, the provisions of the CFTA. In other cases,

the three governments simply decided on a new approach to a particular subject area. For example, the investment protections are stronger and include a wider list of prohibited performance requirements. In still other cases, where the three governments agreed that certain CFTA provisions should continue to apply solely between the United States and Canada, those provisions have been incorporated by reference into the NAFTA in appropriate annexes. In addition to the incorporations by reference of CFTA provisions into NAFTA that you cited, others include paragraph one of Appendix 300-A.1 in Annex 300-A (automotive sector); paragraph A of Appendix 2.1 in Annex 300-B (textiles and apparel); Annex 702.1 (agricultural trade); Annex 1401.4 (financial services); and Annex 2106 (cultural industries). 12. Paragraph 2 of Annex 608.2 specifies that Canada and the United States intend no inconsistency between Chapter 6 and the Agreement on International Energy. If there is one, the International Energy Plan will prevail as between Canada and the U.S., but not as to Mexico, which is associated with the Organization of Petroleum Exporting Countries (OPEC). What problems does that present? For example, can the U.S. divert shipments of Mexican oil, if necessary, to comply with International Energy Agency allocation requirements? In responding, please consider an article in the February 26, 1993 edition of the Journal of Commerce entitled "Missing Oil Chapter in NAFTA."

Answer. Taking into account the Journal of Commerce article cited in your question, we do not believe Annex 608.2 will present any new problems for the implementation of the IEP. Under the International Energy Agency's (IEA) Sharing System, during an emergency the participating countries would redistribute their available oil supplies among themselves in accordance with a prescribed formula, under which some countries would have allocation rights and others would have allocation obligations. If the U.S. has an IEA allocation obligation during an emergency, nothing in the NAFTA would prevent participating U.S. oil companies from diverting shipments of Mexican oil to IEA countries with an allocation right. Mexico, pursuant to NAFTA Article 603(3), may require as a condition of export of its oil, that the oil be consumed in the United States. In that event, given the large number of oil suppliers available to U.S. companies, it is likely participating U.S. oil companies would be able to divert other foreign oil shipments to satisfy the U.S. allocation obligation.

It should be noted that the NAFTA does not pose new obstacles to implementation of our IEA commitments in this regard. Mexico could pose a requirement that oil exported to the United States be consumed in this country even without the NAFTA.

13. The provisions of Article 603 of NAFTA are very similar to those in Article 902 of the CFTA, except for paragraphs 5 and 6. Please explain the need for including these paragraphs and their impact on the U.S. Please include a discussion of Annex 603.6 and the reasons why the U.S. agreed to such an exception.

Answer. Paragraph 5 of Article 603 is included in NAFTA to confirm each Party's right to maintain systems for licensing imports and exports of energy and basic petrochemical goods so long as such systems do not constitute barriers to trade in energy and basic and petrochemical goods among the Parties, in violation of paragraphs 1 and 2 of Article 603. Thus, for example, the U.S. system for licensing imports and exports of natural gas will be maintained under this provision. The reference to "Article 1502 (Monopolies and State Enterprises)" in paragraph 5 is intended to make clear that the Parties may not implement their import/export licensing systems in a discriminatory or anticompetitive manner. Regarding paragraph 6, Annex 603.6 authorizes Mexico to restrict the issuance of import and export licenses for the energy and basic petrochemical goods listed in the Annex to the Mexican Government for the purpose of maintaining the Mexican Government's monopoly in the energy and basic petrochemicals sectors. The Mexican Government maintains the Mexican Constitution requires the reservations set out in Annex 603.6. This provision does not permit Mexico to derogate from the GATT trade obligations incorporated by paragraph 1 of Article 603 or from any other applicable trade obligations in the NAFTA. Moreover, to the extent that Mexican state enterprises or monopolies are responsible for foreign trade in energy and basic petrochemical goods, they are subject to the obligations and disciplines in Article 1502, Monopolies and State Enterprises. 14. The energy provisions of the CFTA raise questions about whether these provisions apply to Mexico in the context of NAFTA. If these do not apply to Mexico, will the CFTA provisions be maintained? If they do apply, do we need specific legislative language on the following:

(a) Article 903, which prohibits tax, duty or charge on energy that is not charged domestically.

(b) Article 905, which prohibits discriminating regulatory treatment by FERC and its Canadian equivalent.

(c) Article 906, which allows oil and gas production incentives.

Answer. The fundamental energy trade provisions in Articles 902 and 903 of the U.S.-Canada Free Trade Agreement (CFTA) are carried forward into Articles 603 and 604, respectively, of the NAFTA. They apply to Mexico. The provisions of CFTA Article 904 (which limit the circumstances under which a CFTA Party may restrict exports in accordance with the GATT when conserving resources to address a

domestic shortage or protect a domestic price control program) and 907 (which narrows the GATT national security exceptions for energy) have been carried forward into NAFTA Articles 605 and 607, respectively. These Articles apply as between the U.S. and Canada but not Mexico. No statutory changes were required to implement Articles 903, 905, and 906 of the CFTA, and no statutory changes will be required to implement the parallel NAFTA Articles 604, 606, and 608(1), because existing U.S. laws are not in conflict with these provisions.

15. The CFTA contains two statutory provisions on energy. The Alaskan oil swap exception allows 50,000 barrels per day to be swapped for Canadian oil. In addition, the Atomic Energy Act is amended to allow Canadian uranium to be considered domestic.

(a) Do either of these provisions require legislation in NAFTA?

(b) Should these provisions apply to Mexico?

(c) What is their legal status without legislation?

Answer. The fundamental energy trade provisions in Articles 902 and 903 of the U.S.-Canada Free Trade Agreement (CFTA) are carried forward into Articles 603 and 604, respectively, of the NAFTA. They apply to Mexico. The provisions of CFTA Article 904 (which limit the circumstances under which a CFTA Party may restrict exports in accordance with the GATT when conserving resources to address a domestic shortage or protect a domestic price control program) and 907 (which narrows the GATT national security exceptions for energy) have been carried forward into NAFTA Articles 605 and 607, respectively. These Articles apply as between the U.S. and Canada but not Mexico. No statutory changes were required to implement Articles 903, 905, and 906 of the CFTA, and no statutory changes will be required to implement the parallel NAFTA Articles 605, 606, and 608(1).

These U.S. obligations, addressing specific U.S.-Canada issues, are continued in effect under the NAFTA. They already have been implemented by the United States-Canada Free-Trade Agreement Implementation Act of 1988. No additional statutory changes would be required for us to meet our obligations or enforce our rights under these provisions.

16. Chapter Nine of the CFTA's Statement of Administrative Action states that energy regulatory bodies must treat the other country's energy goods as no less favorable than the most favorable treatment accorded by such province, state, or federal governments. Does this principle apply to Mexico? Answer. Yes. Articles 301, 603(1), and 606 apply the "national treatment" principle to Mexico.

17. Practices forbidden under national treatment include discriminatory internal taxes, or a domestic rule imposing an internal

quantitative requirement that a specified portion of energy needs to be supplied from domestic sources. Does this principle apply to Mexico?

Answer. Yes, as indicated in the answer to Question 16, the principle of national treatment applies to Mexico.

18. Annex 905.2 (4) of CFTA specifically limits the application of any energy "surplus" test to exports. While Annex 608.2 of NAFTA specifically excludes Annex 905.2 from applying to Mexico, would not "national treatment" result in this provision applying to Mexico?

Answer. Mexico's export measure must be administered in a manner consistent with the trade principles of the NAFTA (and specifically with Articles 603 and 604 of Chapter Six), just as CFTA Article 905.2 stipulates that Canada's "surplus" test for exports had to be administered in a manner consistent with the trade principles of the CFTA.

19. Annex 905.2 (2) of CFTA requires Bonneville Power to modify its intertie access policy to treat Canada "no less favorable than the most favorable treatment afforded to utilities outside the Pacific Northwest." Annex 905.2 (3) of CFTA states that no other changes are required. Does NAFTA's treatment of Bonneville as a government purchasing agent change this? Answer. No. The government procurement provisions of Chapter 10 of the NAFTA apply to certain purchases by the Bonneville Power Administration, as indicated in Annex 1002.1a-2 and Article 1001. Specifically, BPA would be required to accord national treatment to Mexican goods and Mexican suppliers of goods and services with respect to certain procurement contracts, and BPA would be required to comply with the procurement procedures set forth in Chapter 10 with respect to certain contracts. The obligation to accord national treatment to Mexican goods and Mexican suppliers of goods and services applies to the BPA only with respect to purchases for its own use. The government procurement obligations do not alter the validity of the statement in CFTA Annex 905.2(3) that "No other policy of [the BPA] or law authorizing such policy need be changed insofar as such law or policy concerns energy sales, transmission of energy and related business arrangements between the Bonneville Power Administration and British Columbia Hydro." This annex is specifically incorporated into the NAFTA in Annex 608.2.

20. The Public Utility Holding Company Act (PUHCA) regulates the purchase and financial transactions of electric utilities.

(a) How would Mexican or Canadian companies purchase of a U.S. utility or a U.S. utility's investment in Canada or Mexico be affected by NAFTA? Answer. NAFTA Chapter 11, "Investment," generally obligates the NAFTA parties to provide nondiscriminatory treatment to investors of the three nations and their investments with respect to

establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. The chapter also places restrictions on the ability of the countries to impose "performance requirements" on investments and to expropriate investments. The protection of this chapter would apply to any investment in a U.S. utility by Mexican or Canadian companies and to a U.S. utility's investment in Canada or Mexico.

The Securities and Exchange Commission (SEC) is responsible for administering the Public Utility Holding Company Act. Thus, the question of how PUHCA may, in light of NAFTA, affect a Mexican or Canadian company's purchase of a U.S. utility, or a U.S. utility's investment in Canada or Mexico, is best addressed by the SEC.

(b) Would there be any change in the application of PUHCA? If so, are statutory changes needed?

Answer. The Securities and Exchange Commission (SEC) is responsible for administration of PUHCA. Thus, these questions are best addressed by the SEC. 21. Will any changes in the application of any U.S. energy laws, other than the fuel economy provisions of law, be needed to comply with NAFTA (e.g., regulations, rulemakings, orders, judgment, etc.)?

Answer. NAFTA Chapter Six requires no change in statute and no administrative action to implement its provisions. With respect to NAFTA Chapter Seventeen, Intellectual Property, the Department would be required to amend its regulations (10 CFR 780) on compulsory licensing under the Atomic Energy Act to comply with the requirements in Section 10(a-1) of Article 1709.

22. Are there any procurement laws, regulations, orders or rules in energy statutes which need to be changed in order to satisfy Article 1003? Answer. There are no procurement laws, regulations, orders or rules in energy statutes that need to be changed. Price preferences resulting from the Buy America Act of 1933 will have to be waived for covered procurement by the Department of Energy, its power marketing administrations, and the Tennessee Valley Authority (TVA). Additionally, a minor change will have to be made to TVA's authorizing legislation to ensure that TVA's procurement activities will be conducted in a manner consistent with the NAFTA. This should not require any significant changes in TVA's current procedures. Finally, the Rural Electrification Act will have to be amended to waive existing Buy America price preferences for procurement of Canadian and Mexican origin. 23. Would Chapter 10 pertaining to government procurement prohibit, restrict, or subject to challenge legislative or executive order provisions that allow federal agencies to provide price preference materials for certain minimum percentages of recycled

content or that required federal agencies to procure materials or commodities with certain minimum percentages of recycled content?

Answer. As long as such measures are legitimate environmental restrictions that do not have as their objective discrimination against materials of Canadian or Mexican origin, they should not be violations of the NAFTA and subjected to challenge.

24. What is the scope of and rationale for the changes in current compulsory licensing provisions under Article 1709 (10).

Answer. These projections include items such as payment of adequate remuneration, that takes into account the economic value of the license, the availability of judicial review of decisions to grant a license and the amount of remuneration paid, authority to terminate the compulsory license, and limits on the scope of the license, i.e., a compulsory license must be predominately for the supply of the domestic market, i.e., not for export purposes. Paragraph 7 of this Article also ensures that a compulsory license will not be granted because of failure to "work" the patent in a particular NAFTA party.

Two U.S. laws provide for grant of a compulsory license: (1) Section 308 of the Clean Air Amendments of 1970 (42 U.S.C. Sec. 7608) and (2) various provisions of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Secs. 2183, et. seq.). The Environmental Protection Agency (EPA) has never issued regulations implementing the Clean Air Act compulsory license and the Department of Energy has not granted any compulsory licenses pursuant to the Atomic Energy Act. We understand, however, that amendments to the Atomic Energy Act providing authority for a compulsory license on technology relating to uranium enrichment could foreseeably result in applications for compulsory licenses.

To implement Article 1709(10), we recommend that EPA issue regulations meeting the requirements of this NAFTA paragraph. DOE would be required to amend provisions found at 10 CFR, Part 780.

These provisions have been key objectives in our negotiations with other countries that have used compulsory licensing provisions freely in a manner that has severely undermined the value of U.S. intellectual property rights. 25. In supporting inventive activity through the Department of Energy, the Department exercises some limitations on the exercise of resulting patents. Does Article 1703(1) affect or modify these limitations?

Answer. Article 1703(1), in relevant part, requires NAFTA parties to provide national treatment with regard to protection and enforcement of intellectual property rights. Article 1703(1) does not affect or require modification of DOE practices relating to exercise of resulting patents. 26. Article 712, paragraph 3, relating to sanitary and phytosanitary measures, requires each party to ensure that measures

it adopts, maintains, or applies are based on scientific principles, taking into account relevant factors including, where appropriate, different geographic conditions. This raises a number of questions about environmental measures which are not scientifically based but are adopted at the state or federal level to further other societal goals. For example, in the solid waste area minimum content or take back requirements are imposed to encourage recycling and to stimulate markets for recycled materials.

(a) Would such measures generally be subject to challenge under the terms of NAFTA?

Answer. Environmental regulations in the solid waste area such as minimum content and take back requirements are not sanitary and phytosanitary measures as defined in Article 724 of Chapter 7. The NAFTA requirement in Article 712(3) for a scientific basis therefore does not apply to these recycling laws.

(b) Does this Article in conjunction with Article 105 which states that all parties "shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement . . . by state and local governments subject state recycling laws imposing minimum content or take back requirements to challenge?

Answer. As noted in the answer to part (a) above, state recycling laws are not sanitary or phytosanitary measures and are not subject to Article 712. (c) Specifically, could a legislative provision which requires U.S. newspapers to use newsprint with a minimum percentage of recycled content be challenged under Article 712 or any other provision of NAFTA on the basis that it is not "based on scientific principles"?

Answer. As noted above, a requirement to use newsprint with a minimum percentage of recycled content is not a "sanitary or phytosanitary measure," so Article 712 does not apply. No other provision of NAFTA requires such a measure to be based on scientific principles. More broadly, we do not believe that environmental measures that do not discriminate based on national origin of the product could be successfully challenged under any of the NAFTA provisions.

27. Paragraph 5 of Section 712 provides that each party must ensure that any sanitary or phytosanitary measure that it adopts, maintains, or applies is applied only to the extent necessary to achieve the appropriate level of protection "taking into account technical and economic feasibility." Some U.S. standards, under, for example, the Clean Air Act, are solely health- based. What is the effect of this last phrase on these standards. If the phrase is not applied, is a challenge likely to be successful? Answer. Environmental standards such as Clean Air Act standards are not "sanitary and phytosanitary measures"

as that term is defined in the NAFTA, and are thus not governed by Article 712(5). Even for those measures that are covered by Article 712(5), the quoted language about technical and economic feasibility provides governments some flexibility in meeting the obligations in that article, to provide administrative flexibility so that governments can assure compliance with standards under real world constraints. The quoted language does not obligate governments to take technical and economic feasibility into account in establishing sanitary and phytosanitary measures. Rather, this language permits governments to take technical and economic feasibility into account in carrying out their NAFTA obligation with respect to how their sanitary and phytosanitary measures are applied. 28. What steps have been taken to ensure that existing or future U.S. standards will remain in effect relative to pesticide use on crops intended for food use and to pesticide/chemical residues on fresh imported produce or canned or otherwise processed food?

Answer. The NAFTA does not change our standards on pesticide use or pesticide and other chemical residue or contaminant standards for fresh or procresed foods, and we are not changing any such standards in implementing the NAFTA. The NAFTA provisions safeguard the ability of the United States to ensure food safety. In short, existing U.S. food safety standards will continue be applied to imported as well as domestically-produced foods. This means that the U.S. will continue to prohibit any food shipments determined not to meet pesticide residue or other food safety requirements. 29. Does the NAFTA ensure that application of U.S. Food and Drug Administration standards for safety, purity, and appropriate labelling of foods will not be interfered with, called into question, or deemed to be a barrier to trade or a violation of the agreement?

Answer. The NAFTA safeguards the ability of the United States to ensure food safety and quality. The Food and Drug Administration (FDA), which participated in the negotiation of the NAFTA, has reviewed the FDA standards for safety, purity, and appropriate labelling of foods and has determined that these standards are consistent with the terms of the agreement. This is why no changes in these standards are needed or proposed to implement the NAFTA, and why we believe that our measure could not be successfully challenged in any NAFTA dispute settlement proceeding.

(a) What is the impact relative to the safety, effectiveness, and appropriate labelling of human and animal drugs and medical devices?

Answer. The NAFTA has no effect on U.S. laws and regulations in these areas. Any products coming into the U.S. must continue to meet all FDA standards and requirements.

(b) What is the impact relative to safety and appropriate labelling of dietary supplements imported in to the U.S.

Answser. The NAFTA does not change or affect U.S. laws and regulations with respect to such products, and imported products must continue to meet those standards and requirements.

30. If the U.S. food safety standards were challenged by Mexico or Canada under the dispute settlement provision of NAFTA, would the U.S. have to prove that its standard is necessary to achieve an "appropriate" level of protection; that the standard is based on a risk assessment; and that the standard will be maintained only as long as there is a scientific basis for it.?

Answer. Article 723(6) makes explicit that the party challenging a U.S. food safety measure would have the burden of showing that the measure is inconsistent with the NAFTA. Whether any particular level of protection is "appropriate" is a social and political judgement that the agreement reserves for the government applying the measure (see Articles 712(2) and 724). As provided in Article 712, a sanitary or phytosanitary measure is to be based on a risk assessment "as appropriate to the circumstances," and is not to be maintained where there is no longer a scientific basis for it. U.S. food safety standards are already based on risk assessments and have a scientific basis. These NAFTA requrements help assure that measures applied by the other parties will not unfairly exclude U.S. food exports.

(a) Would the Delaney Clause (Public Law 85-929, 21 U.S.C. 341, et seq.), which was enacted by Congress and not based on specific scientific evidence, meet the NAFTA criteria described above?

Answer. Yes. The NAFTA was carefully drafted, with the Delaney clause and other provisions of U.S. law firmly in mind, to safeguard the ability of governments to ensure food safety. As noted above, the choice of the "appropriate" level of protection is a social value call: how much protection do we want as a society from a particular risk. The choice of the level of protection is not required to be based on a risk assessment. The Delaney clause, in the first instance, establish a level of protection that Congress has deemed appropriate. They express our society's determination that we will accept no risk of cancer from the presence of the regulated substances. The NAFTA disciplines in Article 712(3) do apply to any measure adopted to give effect to the Delaney clauses. The Delaney clauses are entirely consistent with the NAFTA's requirements in this regard. The determination that a particular substance poses a risk of cancer is a scientific determination, based on an evaluation of the potential for carcinogenic effect. Based on scientific principles, the United States has determined that if a substance induces cancer in animals, it poses some risk of human carcinogenesis. And since the level of protection

under Delaney requires that there be zero risk of carcinogenesis, we prohibit the substance. (b) Has the Administration reviewed all U.S. food safety standards to determine their consistency with NAFTA, and if so, what U.S. food safety standards, in the opinion of the Administration, may not meet the NAFTA criteria described above?

Answer. Yes, the relevant federal agencies, including the Department of Agriculture, the Food and Drug Administration and the Environmental Protection Agency, have reviewed all U.S. food safety standards. In their judgment, all current standards are consistent with the NAFTA. Accordingly, no changes to U.S. food safety standards are needed or proposed to implement the NAFTA.

31. Paragraph 1 of Article 714 requires that without reducing the level of protection, the Parties, to the greatest extent practicable and in accordance with section B of chapter 7, pursue equivalence of their respective sanitary and phytosanitary measures.

(a) Please explain this provision and indicate how it will be implemented, taking into consideration paragraphs 2, 3, and 4.

Answer. In addressing sanitary and phytosanitary concerns, countries may adopt somewhat different systems or requirements to with respect to a particular risk situation. Article 714(1) establishes a cooperative approach to making those systems or requirements equivalent, where practicable and without reducing the level of protection of human, animal or plant life or health. We anticipate that this work will generally be done through the Committee on Sanitary and Phytosanitary Measures established under the NAFTA and technical working groups or subcommittees under that committee. Any recommendations of those groups could only be implemented in the United States through the normal domestic legal processes--either through legislation or rulemaking consistent with U.S. law.

Article 714(2) deals with particular cases. Under that article, an importing party will treat a sanitary or phytosanitary measure of an exporting NAFTA party as equivalent as long as the exporting party's measure achieves the importing party's appropriate level of protection, and the exporting party has provided, in cooperation with the importing party, the necessary scientific evidence or other information in accordance with mutually agreed risk assessment methodologies.

Article 714(3) specifies that the exporting party must take reasonable measures to facilitate access in its territory for the importing party to conduct inspections, tests, or other procedures to evaluate properly the equivalency of the two regulatory systems.

Article 714(4) urges each country, when developing its own sanitary or phytosanitary measures, to consider the existing or proposed measure of the other parties.

(b) How will the term "equivalence" be interpreted?

Answer. Under the terms of Article 714(2)(a), a measure is equivalent only where "the exporting Party's measure achieves the importing Party's appropriate level of protection."

(c) How will this affect imports of products, including food, to the U.S.? Answer. Products can be imported to the U.S. only if the agency with the relevant jurisdiction makes a determination, in accordance with normal agency procedures and requirements, that the exporting country's regulatory program provides a level of protection that is at least as high as the level of protection required under U.S. law.

(d) What procedures must be established in the U.S. to implement paragraphs 2 and 3 of this article?

Answer. Any procedures that are required for the affected agencies to implement this article will be included in the implementing legislation and statement of administrative action.

32. Have any recent GATT panel decisions interpreted the term "necessary to protect human, animal or plant life or health" as requiring such measures to be "least GATT" or "least trade" restrictive. If so, please provide any such decisions. Since Chapter 21's environmental exceptions appear to incorporate GATT jurisprudence, could the above-referenced standard result in state recycling provisions or programs being found NAFTA inconsistent? Answer. The report of the GATT Panel on Thailand--Restrictions on Importation of and Internal Taxes on Cigarettes, adopted on November 7, 1990 (BISD 37S/200) concluded that Thailand's import restrictions "could be considered to be 'necessary' in terms of Article XX(b) [necessary to protect human, animal, or plant life or health] only if there were no alternative measure consistent with the General Agreement, or less inconsistent with it, which Thailand could reasonably be expected to employ to achieve its health policy objectives."

The unadopted report of the Panel on United States--Import Restrictions on Tuna and Tuna Products from Mexico (contained in GATT document DS21/R, September 3, 1991) adopted the Thai cigarette rationale, stating that "this paragraph of Article XX was intended to allow contracting parties to impose trade restrictive measures inconsistent with the General Agreement to pursue overriding public policy goals to the extent that such inconsistencies were unavoidable."

Article XX(b) is a general exception to GATT obligations, and as incorporated into the NAFTA under Article 2101, it is an exception to NAFTA obligations. With respect to state recycling provisions or programs, this GATT jurisprudence would be relevant only if the measures are designed to protect human, animal or plant life or health, and only if the party complaining about the measure first

established that the measure was somehow otherwise inconsistent with the NAFTA.

33. Article 712 also requires sanitary or phytosanitary measures to be "based on a risk assessment, as appropriate to the circumstances."

(a) Does Article 712 contemplate an international or North American "risk assessment" standard? If so, to what extent does it differ from risk assessment techniques use by the EPA and other U.S. agencies? Answer. No, Article 712 does not contemplate an international or North American "risk assessment" standard. Article 715(1) calls upon the parties simply to "take into account," in conducting their own risk assessment, relevant techniques and methodologies developed by North American or international standardizing organizations. Under NAFTA, federal and state agencies in the U.S. may continue to apply, and to modify from time to time as they choose, risk assessment techniques and methods for each regulatory circumstance.

(b) Please define the meaning of the phrase "risk assessment" as used in NAFTA.

Answer. "Risk assessment" is defined in Article 724 as follows: "Risk assessment means an evaluation of:

(a) The potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(b) The potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food, beverage or feedstuff." (c) Please provide any clarification as to the circumstances where the Parties believe it is appropriate or those where it is inappropriate to use risk assessment.

Answer. It is appropriate to do a risk assessment for all sanitary and phytosanitary measures (Article 712(3)(c)).

34. Please explain how and to what extent Article 715 will apply to or change risk assessments now conducted by the Environmental Protection Agency (EPA) or other agencies? Will it require risk assessments at the EPA and other agencies where they are not now conducted?

Answer. Although Article 715 applies to risk assessments now conducted by the EPA, the FDA, and the USDA in carrying out their respective responsibilities in the sanitary and phytosanitary area, those agencies already conduct risk assessments consistent with the NAFTA. The NAFTA will not require that additional risk assessments be conducted.

35. Do the provisions of Article 715 (2) and (3) apply to the establishment of environmental standards necessary to protect human health and the environment?

Answer. Article 715(2), which requires certain economic factors to be taken into account where relevant in establishing the appropriate level of protection and in conducting risk assessments, does not apply to human health measures. It applies only to the establishment of measures with respect to the establishment or spread of animal or plant pest or disease. Article 715(3) applies to the establishment of the appropriate level of protection with respect to any sanitary or phytosanitary measure. It encourages countries to take into account the objective of minimizing negative trade effects, and calls upon them to avoid arbitrary or unjustifiable distinctions in those levels of protection where such distinctions result in arbitrary or unjustifiable discrimination against a good or another party or constitute a disguised restriction on trade between the parties.

36. Please explain the application of Article 718 to regulations issued by the EPA or other agencies, such as the rules required under section 112 of the Clean Air Act. When would the 60-day notice requirement apply--at the time of proposal or promulgation? Does Article 718.1(d) give the comments of the Parties greater significance and importance in rulemaking? Answer. First, it should be noted that Article 718 does not apply to such EPA rulemaking as the toxic air pollutant provisions of section 112 of the Clean Air Act since those regulations would not be sanitary or phytosanitary measures.

The 60-day notice period applies to the minimum period before final adoption of the rule. Thus, notice of the proposed rule pursuant to standard agency practice under the Administrative Procedure Act will satisfy this requirement.

Article 718(1)(d), by its own terms, expressly states that the opportunity for written comment and, on request, for discussion of and response to comments, shall be afforded "without discrimination." Thus, Article 718.1(d) does not give the comments of the Parties greater significance and importance in rulemaking than the comments of other interested persons. 37. As provided in Article 1801 of the CFTA, the CFTA Commission is composed of the Canadian and U.S. cabinet officials primarily responsible for international trade. Will the membership of the Commission established in Article 2001 be similarly provided or will others, like the Secretary of Labor, be members? If not, why not?

Answer. The three governments intend the membership of the Commission established by Article 2001 to be very similar to that of the CFTA. It will comprise one cabinet-level official from each Party, which in most cases will be the official primarily responsible for

international trade, i.e., the U.S. Trade Representative and his Canadian and Mexican counterparts. However, for any given matter it will be up to each government to select the appropriate cabinet officer its wishes as its representative.

38. The CFTA provides that the Commission operate by consensus. Article 2001 of NAFTA provides that the parties may agree to operate by other than consensus. We would like to know the circumstances when that would be appropriate and useful to the U.S.

Answer. This provision was included in order to give the three governments the flexibility to depart from the general consensus rule if they choose to do so. It is most likely to be used, if at all, in connection with Commission procedural rules or in purely bilateral matters in which the third Party expresses a preference not to participate.

39. Unlike the CFTA, Article 2001 provides that the Commission, which meets at least once annually, shall supervise the work of all of the committees and working groups established by NAFTA. There are a number of them. Please explain why the Commission was given this duty and how it will conduct such supervision.

Answer. NAFTA creates a large number of working groups and committees. The three governments recognized that there was a need for a central coordination and oversight role. The negotiators also determined that, in view of its overall responsibilities for the implementation of the NAFTA, the Commission was the most appropriate body for this role. Although not expressly provided for in the CFTA, the CFTA Commission serves a similar function. The Commission will carry out its supervisory function by periodically reviewing either oral or written reports from the various bodies and, where appropriate, by discussing matter referred to it by such bodies. In some cases, the NAFTA establishes a direct reporting requirement. For example, the Committee on Standards-Related Measures is required, under Article 913(3)(b), to report annually to the Commission. In other cases, the Commission is likely to request periodic status reports.

40. On the issue of referral of matters from judicial or administrative proceedings, Article 2020 of NAFTA differs somewhat from Article 1808 of the CFTA. Please explain these differences. Do you agree that the views of the Commission are not binding on U.S. courts in the case of NAFTA, just as they are not in the case of the CFTA?

Answer. No material change is intended. The difference in language between the two agreements largely reflects the trilateral, rather than bilateral, nature of the NAFTA.

Article 2020 is simply intended to provide a process for the submission of views by the Parties concerning the interpretation of the NAFTA in accordance with the rules of the pertinent court or administrative body. As is the case under the CFTA, the views of the three governments (whether acting individually or as the "Commission") are not binding on U.S. courts. 41. Unlike the CFTA, the NAFTA requires that the Commission establish a Secretariat. Please explain the need and role of the Secretariat. Where will it be located? What will be the cost to the U.S. of the Commission, the Secretariat, the committees, working groups, scientific review boards, and other panels? How will these be staffed? What has been the annual costs of the CFTA under Article 18?

Answer. The CFTA establishes a Secretariat to facilitate the operation of binational panels that review the application of domestic dumping and countervailing duty laws in the two countries. The Secretariat has also been used to provide administrative support for CFTA Chapter 18 dispute settlement panels as well, in accordance with the CFTA implementing act. Given our experience under the CFTA, the negotiators believed that it was important to recognize the role that the Secretariat has played in connection with dispute settlement panels and to permit it to provide administrative support to the Commission and to committees and groups if the three governments decide that it is appropriate in any particular case. As is the case under the CFTA, each country will establish a Section of the Secretariat, with appropriate staffing. In the United States, the Section has been a unit of the Department of Commerce and has been located in Washington. That office would assume the functions of the NAFTA Secretariat Section here. The projected cost of the U.S. Section, including administrative support for both Chapter 19 and 20 panels, is $1,107,000 for FY94 and $1,250,000 for FY95.

We do not expect the U.S. Section to incur any significant increased costs in connection with the provision of administrative support to the NAFTA Commission or committees and working groups. For the most part, we would anticipate that such support will be provided directly by the relevant U.S. departments and agencies without a need for further budget resources. The annual costs of the operation of the U.S. Section under the CFTA, including dispute settlement activities under both Chapters 18 and 19 were $460,800 for FY92 and are projected to be $788,000 for FY93. 42. Please identify and explain the principle difference between the CFTA and NAFTA regarding dispute settlement and the reasons for the differences. We point out that the NAFTA provisions seem overly detailed, complicated, and costly. For example, in the case of the CFTA, there is provision for a roster of persons who are willing to serve

as panelists in the case of arbitration and panelists are chosen from the roster. In the case of NAFTA, the panelists are appointed by consensus for a term of three years. Why is there a need for such appointments prior to any dispute?

Answer. NAFTA Chapter 20 is largely similar to the dispute settlement provisions in CFTA Chapter 18. Differences largely reflect the trilateral nature of the NAFTA and experience gained over the five years that the CFTA has been in effect. The NAFTA provisions are more detailed in some respects, but are not more burdensome or costly to apply.

Key differences include: (1) the selection procedure for roster and panel members (Articles 2009 and 2011); (2) the provision in NAFTA Article 2015 for the use of scientific review boards; (3) refinements in the relationship between GATT dispute settlement and dispute settlement under the free-trade agreement; (4) the application of dispute settlement procedures to financial services matters; (5) a procedure for Parties to challenge retaliatory measures on the basis that they are excessive; and (6) providing for third party rights in disputes.

NAFTA Article 2009 is very much like CFTA Article 1807(1). both articles provide for the establishment of a roster of individuals from which a government may--but is not required to--select panelists. The three year term set under the NAFTA applies to the roster members only, not to panelists. 43. Section 102(b)(1) of the legislation implementing the CFTA which was approved by the Energy and Commerce Committee states that "The provisions of the Agreement prevail over--(A) any conflicting state law; * * * to the extent of the conflict." Section 102(b)(4)(B) then defines the term "state law" to include "any state law regulating or taxing the business of insurance."

(a) Does the Administration anticipate including similar language concerning the preemption of state insurance laws in the implementing legislation for the North American Free Trade Agreement?

Answer. Language similar to that in the CFTA Act may be included in the NAFTA implementing legislation, but states will not be compelled to change existing laws as a result of this provision. Insurance measures were specifically mentioned in the CFTA Act because of the requirements of section 2 of the McCarran-Furguson Act. If the NAFTA implementing bill includes a provision similar to CFTA Article 102(b), there would be a need for an explicit reference to insurance laws. As of this time, however, bill language in this area remains under consideration.

In any case, the NAFTA allows states to continue any existing insurance regulations that may be inconsistent with NAFTA rules by taking a reservation within one year after NAFTA enters into force. The

NAFTA will not limit the ability of states to regulate for reasons such as consumer protection, provided discrimination based on nationality is avoided. In addition, NAFTA does not preempt the ability of states to impose prudential measures. 44. Will NAFTA, or the implementing legislation, in any way affect the current authority of the Consumer Product Safety Commission (CPSC) to establish and enforce consumer product safety standards for the protection of American consumers?

Answer. No.

(a) What standards will control where U.S. standards are inconsistent with those of Canada or Mexico?

Answer. U.S. standards.

Will NAFTA, or the implementing legislation, in any way affect any other CPSC authority?

Answer. No.

45. On June 4, 1993, the business community that supports NAFTA wrote to you about the side agreements currently under negotiation, expressing several concerns. Please respond to each of these concerns.

Answer. The business community letter to Ambassador Kantor dated June 4, 1993 expressed certain concerns about the supplemental agreements on environment and labor, based on draft texts that had been published in Inside U.S. Trade on May 21st. At the time, negotiations with Mexico and Canada on the supplemental agreements were still in a relatively early stage. We believe that the final product is a good deal for the United States and that it takes account of the business community's concerns.

In negotiating the supplemental agreements, the Administration sought to maintain a delicate balance. As Ambassador Kantor noted in his testimony before Congress last Spring, we were committed to forgoing supplemental agreements with "teeth"; we wanted to make sure that if our trading partners engaged in a persistent pattern of failure to enforce their environmental or labor laws, the supplemental agreements would provide a mechanism for attacking that failure. At the same time, the fundamental premise of the supplemental agreements is national enforcement of national laws, not supranational enforcement nor one country's enforcement of its laws within another country's borders. The dispute settlement provisions provide a mechanism for dealing with cases when national enforcement breaks down. We were always guided by our understanding that the United States would have to live with anything that we asked Canada and Mexico to accept. Consequently, we had no intention of fashioning supplemental agreements that intruded unacceptably on the U.S. sovereignty by inappropriate reliance on supranational authority.

With respect to the particular concerns expressed in the letter:

A. Accountability of the Secretariat to the Council. The environmental supplemental agreement includes a number of provisions to ensure that the Secretariat is appropriately accountable to the Council. For example, the Council chooses the Executive Director of the Secretariat (Art. 11, par. 1), sets the standards for the staff of the Secretariat (Art. 11, par. 2), and may decide, by a two-thirds vote, to reject any appointment that do not meet the general standards. (Art.11, par. 3.) The Council approves the annual program and budget of the Secretariat. (Art. 10, par. 1(e).) The Secretariat may prepare reports on environmental matters beyond the scope of its annual program, but it must notify the Council when it is doing so, and the Council has the right to object to such reports, by a two-thirds vote. (Art. 13, par. 1.)

If the Secretariat receives a submission from a person or a non-governmental organization (NGO) indicating that one of the countries has failed to enforce its environmental laws, the Secretariat can develop a factual record, if it decides the matter warrants it, but the Secretariat must notify the Council of its intention to do so, and can go forward only after the Council approves by a two-thirds vote. (Art. 15, par. 1.) The Secretariat does not have the power to subpoena a private company. If a government believes that a request for information from the Secretariat is excessive or otherwise unduly burdensome, it may notify the Council, and the Secretariat shall revise the scope of its request to comply with any limitations set by the Council by a two-thirds vote. (Art. 21, par. 2.) B. Secretariat preemption of governments' enforcement authority. A number of steps were taken to allay the concern that the Commissions could become new, politically unaccountable bureaucracies with the potential to preempt local, state and national enforcement authority. The Commission's role in enforcement is limited to determining whether a government has engaged in a pattern of nonenforcement; it is not empowered to act upon a company's individual instances of noncompliance.

The enforcement prerogatives of federal, state and local governments are further protected by safeguards built into the agreement. For example, in cases where the Secretariat receives a submission for a person or an NGO concerning an alleged failure to enforce environmental laws, the Secretariat is required to consider whether private remedies available under the party's law have been pursued. (Art. 14, par. 2(c).) Moreover, the party charged with non-enforcement shall advise the Secretariat whether the matter is the subject of a pending judicial or administrative proceeding, "in which case the Secretariat shall proceed no further." (Art. 14, par. 3.) A

party is not required to make available information the disclosure of which would impede its own environmental enforcement. (Art. 39, par. 1(a).) The provisions listed in (A) above also help strike the proper balance between the activities of the Commission and the enforcement activities of the three sovereign nations.

C. Confrontational approach. The procedures ultimately agreed upon for the Commission do not reflect the "institutional bias toward confrontation" which the business community perceived in previous draft texts. The June 4 letter noted with particular concern the proposal that Secretariat reports would be made public at the same time they went to the Council. In the supplemental agreement negotiated, however, reports prepared by the Secretariat will not be made final until after the parties have had a chance to comment on the accuracy of the draft factual record. (Art. 15, par. 5.) Moreover, the Council may decide not to make a final factual record publicly available (though we would expect most records to be made public). (Art. 15, par.7.) D. Recognition of labor principles. The labor supplemental agreement sets forth important labor principles (Annex 1), which the parties commit to "promote, to the maximum extent possible." (Art. 1(a).) Unlike the earlier text, the final text does not use the term "internationally recognized" labor principles, because the United States has not ratified certain of the International Labor Organization (ILO) conventions which provide the basis for such international recognition. Nonetheless, the eleven principles listed are endorsed by all three countries, and have wide support around the world. Moreover, the supplemental agreement commits each of the three parties "to ensure that its labor laws and regulations provide for high labor standards . . and [to] continue to strive to improve those standards . . ." (art.2.) E. Trade sanctions. The business community noted its opposition to the use of trade sanctions for the non-enforcement of environmental or labor laws. The agreements encourage effective enforcement by the parties primarily through cooperation and exposure of enforcement problems. Only if these problems remain unremedied do the agreements authorize sanctions.

In the context of dispute settlement, the supplemental agreements use monetary assessments, rather than trade sanctions, as the sanction of first resort in case of a panel decision that a party has engaged in a persistent pattern of failure to effectively enforce its laws and has failed to remedy the problem. Such a panel finding, if not followed up with an acceptable settlement between the parties, would result in the imposition of a monetary enforcement assessment, as well as the obligation to remedy the non- enforcement by implementing an acceptable action plan. If a panel subsequently concluded that a party had failed in its obligation to pay the monetary

enforcement assessment, or to implement the action plan, the aggrieved party would be permitted to withdraw NAFTA benefits (i.e. impose trade sanctions) at a level equal, on an annual basis, to the monetary enforcement assessment. (There would be resort to trade sanctions if Mexico or the U.S. were the offending parties; if Canada was the offending party, recourse would be to Canadian courts to enforce the order.)

The Administration believes that countries should not, with impunity, be able to engage in a persistent pattern of failure to enforce their environmental or labor laws. We believe that monetary enforcement assessments will be an effective penalty, both as a deterrent and because of the reluctance of any government to be seen failing to pay such penalties in highly-publicized cases. But we insisted on having "backup" sanctions to ensure that any monetary enforcement assessment would be paid, and that the action plan to remedy the non-enforcement would be carried out.

U.S. House of Representatives,
Committee on Energy and Commerce,
Washington, DC, October 13, 1993.

## Hon. Carol M. Browner,

Washington, DC. U.S. Trade Representative, Washington, DC.

Dear Administrator Browner and Ambassador Kantor: The Committee appreciates your testimony on September 29, 1993 concerning the North American Free Trade Agreement (NAFTA) and the Supplemental Agreement on Environmental Cooperation. Your testimony was helpful. As I indicated, I have several additional questions to which I would appreciate your response by October 29, 1993.

Our Committee continues to be ready to work with the Administration to prepare the legislation this month in order to help meet the President's November 1 timetable; however, a draft of the Statement of Administrative Action has not been provided to us and that could delay our efforts. Any assistance on this matter would be appreciated.

With every good wish.

Sincerely,
John D. Dingell, Chairman.

Enclosure.

QUESTIONS FOR THE ENVIRONMENTAL PROTECTION AGENCY AND THE U.S. TRADE REPRESENTATIVE CONCERNING NAFTA ENVIRONMENTAL MATTERS

1. At the briefing, I pointed out that the environmental side agreement states in Article 1(d) that it supports "the environmental goals and objectives of the NAFTA." I pointed out that the "objectives of NAFTA are set forth in Article 102 and they do not mention the environment. In the case of Chapter 7, the scope is agriculture and sanitary and phytosanitary measures. The latter term, as noted by the USTR in its September 29 letter, covers only certain environmental measures. The USTR said that: "Environmental standards such as the Clean Air Act standards are not sanitary and phytosanitary measures as that term is defined in the NAFTA." As far as I can tell, the words "environment" or "environmental" do not appear in NAFTA, except in Article 104 in regards to other agreements with trade obligations. Thus, I reiterate that it appears that the above quote in Article 1(d) of the side agreement is merely hortatory and that the side agreement, while helpful is independent of the NAFTA.

In short, NAFTA fails to recognize the need to protect, conserve and promote the environment in its implementation. The side agreement does not change that fact. If you disagree, please explain the basis for that disagreement. What is Mexico's and Canada's objection to, at a minimum, revising Article 102 of NAFTA to correct this perceived omission? 2. Do any of the provisions of either side agreement require implementing legislation? Please explain. Are the side agreements trade agreements under U.S. trade law and are they to be referenced or incorporated in the implementing legislation of each Party? (I assume that the U.S. would not unilaterally include them in such legislation.) In this regard, are they agreements under the Fast Track law? Are the side agreements considered agreements under Article 103 or 104?

3. At the briefing, I believe the USTR gave support to the view that if a Party gives notice under Article 50 of withdrawal from the side agreement, the U.S. should exercise its withdrawal under Article 2205 of NAFTA. Mr. Kantor indicated that the implementation legislation might be drafted to make this clear. I would like to understand how and to what extent you propose to provide such a directive to the Executive Branch in such legislation. Also, if a Party, such as Canada, gave such notice, would the U.S. terminate NAFTA only in the case of Canada and reinstate the Canadian Free Trade Agreement or would the termination apply to both Mexico and Canada? What are the possible implications of such termination for U.S. businesses under the NAFTA? 4. At the briefing you said that the EPA recently began a new analysis of Mexico's environmental law and standards to see if, for example, they are, in fact, comparable to the Clean Air Act, the Federal Water Pollution Act, the Safe Drinking Water Act, the Superfund Act, the solid Waste Disposal Act, the Toxic Substances Act,

the Pesticide Act, the Food and Drug Act, the Federal Hazardous Substances Act, the Endangered Species Act, and fish and wildlife laws, and that EPA expects to have that analysis completed in October.

However, I understand that Mexico is continuing to develop these standards and that many have not been translated. Also, I understand that EPA has found the submissions by Mexico are not always complete. Some standards are considered comparable apparently on the basis of EPA assumptions that are not yet verified as accurate through discussions with officials from Mexico. Further, EPA staff have stated that Mexico's standards will not likely be adequately developed for full analysis for some time to come. Do you disagree with these comments? Please also provide a copy of the complete and detailed analysis that exists as of October 29 and indicate therein what assumptions EPA has made and whether they have been verified with Mexico. 5. Have you made a similar analysis of Canada's laws and standards? If so, please provide the results. In the case of Canada, Annex 41 of the side agreement provides that on date of signature or on exchange of notifications under Article 47, "Canada shall set out in a declaration a list of any provinces for which Canada is to be bound in respect to matters within their jurisdiction." It also states that Canada can modify that declaration. Has Canada provided that declaration as yet? Does this mean that Canada could decide not to list any provinces or some, but not all? If so, what is the benefit of the side agreement if one or more of the provinces, such as the western provinces, are not bound, particularly since much of Canada's environmental law is dependent on the provinces concurring.

6. The following questions address the comparability of Mexico's hazardous waste laws with our Resource Conservation and Recovery Act (RCRA): (a) Does Mexico require pretreatment of hazardous waste before disposal similar to U.S. land ban requirements adopted in the 1984 amendment?

(b) Does Mexico have anything comparable to the RCRA "corrective action" program to insure cleanup of operating facilities which have a treatment, storage or disposal permit?

(c) Does Mexico have comparable closure or financial responsibility requirements for hazardous waste treatment, storage or disposal facilities?

(d) Does Mexico set comparable standards for tanks, incinerators or surface impoundments?

(e) Does Mexico have a program to remedy environmental problems from leaking underground storage tanks as the U.S. does in Subtitle I of RCRA?

(f) Does Mexican law require hazardous waste treatment, storage, or disposal facilities to obtain permits specifying conditions to protect public health and the environment?
(g) Finally, does Mexico have comparable "Subtitle D" minimum federal criteria (location, design, groundwater monitoring, corrective action, closure and post-closure care) for municipal solid waste landfills, such as the U.S. rules which were promulgated on October 9, 1991?

7. In a February 1992 report, the General Accounting Office stated that "Mexico has not yet been able to identify all hazardous waste generators and not all generators are providing manifests for their hazardous waste shipments." I understand that Mexico does have similar requirements to manifest and track shipments of hazardous waste but that based on currently available information, the authorities believe that only 30% of the hazardous waste generated is being accounted for. Is that accurate?

8. Does Mexico have a Superfund program or any program required cleanup of old sites or sites previously contaminated? Does Mexico have comparable Community Right-To-Know reporting requirements on its industry similar to those imposed by Title III of SARA in 1986 and the Pollution Prevention Act of 1990?

9. The United States and Mexico currently have a bilateral agreement regarding waste shipments. Is there a reason why this agreement is not in Annex 104.1 where the related agreement with Canada is listed? Also, how would NAFTA effect the current ban on shipments of hazardous waste to Mexico for the purpose of disposal?

10. What factors would be used under a NAFTA dispute settlement proceeding to distinguish a legitimate environmental measure from an illegitimate trade barrier, and how does this differ substantively or procedurally from the current analysis under the GATT?

11. Does Mexico have comparable criminal sanctions for environmental violations, both as to the scope and type of activities covered and as to the severity of the fines and length of possible imprisonment? (For example, under RCRA any person who creates a knowing endangerment from the transport, treatment, storage, disposal or export of hazardous waste is subject to a $250,000 fine and imprisonment for not more than 15 years.)

12. A number of bills are pending before this Committee (H.R. 963, H.R. 1076, H.R. 2848) would provide states or local communities with the authority to restrict shipments of municipal solid waste generated outside the state, which would include waste from Canada or Mexico, from entering landfills within the state. Does such a provision contravene the Canadian Free Trade Agreement or NAFTA, or is it subject to challenge under either treaty?

13. For the purposes of

standards-related measures in Chapter 9, would the definition of "standard" or "technical regulation" encompass regulations containing standard and criteria for environmental marketing claims or provisions specifying plastic recycling codes? What obligation would be imposed by Article 905 on a federal agency such as the Federal Trade Commission or the Environmental Protection Agency to use or adopt relevant international standards?

14. (a) In the case of the Carbon II plant near Predras Negras, Mexico, I understand that the emission rate under the Mexican rules is about 1.9 million Btu's. EPA said that if the plant was located in the U.S. it would be subject to a new source performance standard, the requirement of new source review pursuant to the Prevention of Significant Deterioration regulation, and the requirement of best available control technology. Am I correct in my understanding that Mexico has no comparable requirement for Carbon II under its technical norm for sulfur dioxide (SO2), particulate, and nitrogen oxides (NOx) emissions?

(b) In an August 2 letter to this Committee, the Treasury Department said that Southern California Edison's subsidiary, Mission Energy, approached the World Bank's International Finance Corporation (IFC) regarding possible financial support for Carbon II. Treasury said that Mission Energy must submit a comprehensive environmental assessment and that the project will have to comply with all World Bank pollution guidelines. Please explain whether the assessment is the same as would be required in the U.S. under the National Environmental Policy Act of 1969 and provide us with the status. Also, what are the Bank's guidelines? How do they compare with our laws? Treasury said that a meeting was to be held in August by the Bank with Mission and the staff of the EPA, as well as other Federal agencies. What was the result and who attended?

15. Please describe the current status of the Mexican investigation and enforcement systems with respect to environmental violations, including the judicial and penalty systems, and indicate its effectiveness and problems. Is there a problem of a lack of trained people and inadequate technical and other support? Is there a problem of corruption?

16. Articles 3 and 10 of the Environmental Side Agreement state that each Party shall ensure that its laws and regulations provide for "high levels of environmental protection" and that the Parties shall strive to continue to improve those laws and regulations. What is the baseline for Mexico, Canada, and the U.S. upon which one will be able to measure such improvement? What is contemplated by the word "improve" in the case of each Party's laws and standards?

17. The Side Agreement provides for a Commission for Environmental Cooperation governed by a Council. It directs the Council to cooperate with the NAFTA Free Trade Commission. Will there now be two independent Commissions and Secretariats and related councils, etc.? Does the NAFTA Commission have any powers over the side agreement commission? What is the NAFTA Commission's role in environmental and related matters? 18. (a) Article 14 appears to establish a process governing submissions by any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law. Even if the Secretariat considers that the submission warrants developing a factual record, it cannot do so unless the Council, by a two-thirds vote, instructs it to do so. Is it true that without such an instruction, the process ends? If the Secretariat gets such an instruction and prepares the record, please explain why it cannot be made public except by a two-thirds vote. Assuming there is an affirmative vote to make the factual record public, what happens then? Must the affected Party take any action? Please explain.

(b) Under Article 14, a Party has 30 days to advise the Secretariat "whether the matter [under submission] is the subject of a pending judicial or administrative proceeding, in which case the Secretariat shall proceed no further . . . ." For purposes of Article 14(3), "judicial or administrative proceeding" means "a domestic judicial, quasi-judicial or administrative action pursued by a Party in a timely fashion and in accordance with its law." Such actions are defined as "mediation; arbitration; the process of issuing a license, permit, or authorization; seeking an assurance of voluntary compliance or a compliance agreement; seeking sanctions or remedies in an administrative or judicial forum; and the process of issuing an administrative order." Does the reference to mediation and arbitration include non-binding mediation or non-binding arbitration? What criteria will be used to define or interpret the phrase "in a timely fashion"?

19. What is the expected annual cost of this side agreement to the U.S.? Will that cost be budgeted through the State Department or the EPA budget? What will be the role of the EPA? Will the EPA be required to assign any of its own full-time equivalents to the Commission? If so, please indicate the number of FTE's that will be dedicated to implementing the environmental side agreement.

20. What other letters or agreements on wheat, agriculture generally, cross-border pollution, or other matters are being discussed with Canada or Mexico or both? What is their status? What is their effect on the NAFTA?

As of the date of the filing of this report, no answer had been received to the letter of October 13, 1993 to Administrator Carol M.

Browner and Ambassador Mickey Kantor.The United States Trade Representative,
Executive Office of the President,
Washington, DC, October 26, 1993.
Hon. Henry A. Waxman,
Chairman, Subcommittee on Health and the Environment,
Washington, DC.

Dear Henry: Thank you for your letter of September 16, 1993 summarizing your concerns regarding environmental aspects of the North American Free Trade Agreement (NAFTA). That letter raised concerns regarding: process standards, international agreements, border air pollution, food safety, and preemption.

Let me note at the outset that the case for the NAFTA comes down to two compelling points: the NAFTA will increase economic growth and jobs in the United States, and the NAFTA will help us resolve problems that trouble Americans in our current relationship with Mexico. Prominent among those problems are issues related to environmental protection and our citizens' health and safety that I know are of particular interest to you. The combination of the provisions of the NAFTA and the NAFTA side agreement on the environment (the North American Agreement on Environmental Cooperation) constitute truly path-breaking advances in the area of trade and the environment. The NAFTA and the side agreements of the NAFTA show heightened sensitivity to safeguarding our rights to protect the environment, health and safety. They also contain provisions aimed at seeing that the benefits of increased trade and economic growth are accompanied by measures to improve standards and enforcement of laws affording these protections. Let me address each of your specific concerns in turn.PROCESS STANDARDS

In your letter, you state that U.S. laws that restrict market access to products that are produced in a way that harms the environment or human health would not be "standards-related measures" or "technical regulations" under Chapter Nine of the NAFTA and could therefore be found to be inconsistent with the NAFTA.

As an initial matter, it is incorrect to state that Chapter Nine of the NAFTA (Standards-Related Measures) prohibits measures that are not "standards related measures" or "technical regulations." Chapter Nine provides for a series of disciplines on standards-related measures, as defined in that chapter, and applies only to "standards-related measures of a Party, other than those covered by Section B of Chapter Seven [of the NAFTA] (Sanitary and Phytosanitary Measures), that may, directly or indirectly, affect trade in goods or services between the Parties, and to measures of the Parties relating to such measures." (Article 901)

If a measure is not a standards-related measure, then Chapter Nine does not apply to it. (A technical regulation is one type of a standards-related measure, as defined in Article 915.) Any measure of the type described in your letter would need to be analyzed on a case by case basis. We disagree that such measures would generally be inconsistent with the NAFTA. For example, as you know, the question of U.S. embargoes under the Marine Mammal Protection Act of 1972 (MMPA) on imports of yellowfin tuna in order to protect and conserve dolphin is currently the subject of a dispute settlement proceeding under the General Agreement on Tariffs and Trade (GATT). In that proceeding, the United States has maintained that the U.S. embargoes are consistent with the GATT by virtue of GATT Articles XX(g), (b) and, in the case of the intermediary nation embargoes under the MMPA, Article XX(d) as well.

Those GATT articles are incorporated into the NAFTA through Article 2101 and would be available if U.S. measures were challenged under the NAFTA. From our perspective, consideration of the issue of "processes and production methods" or PPMs is a high priority element of the workplan for the Council under the North American Agreement on Environmental Cooperation. This involves the very complex, and often sensitive, questions of how to address any environmental effects of products due to the processes or production methods associated with them. Questions like: how was the product harvested?, how was it processed?, what effects will its consumption have on say, the environment?

These questions are of a global nature, not limited just to North America. Therefore, while the Administration is committed to taking them up with our North American neighbors in the context of the NAFTA and the supplemental agreement on environmental cooperation, we are also seeking a broader dialogue. Indeed, preparatory discussions are already under way in the Organization for Economic Cooperation and Development (OECD) to development a sound analysis of PPMs. We are actively involved in those discussions.

Another important step from our perspective will be to engage the GATT, beginning with a post-Uruguay Round workprogram on the environment, which we hope will be launched at the conclusion of the Uruguay Round. This work would of necessity have to include a thorough examination of the adequacy of the GATT's, substantive rules as they relate to PPMs. Broadly, our objective is to ensure that countries are able to effectively address environmental objectives while not providing a means for arbitrary limits on trade. Easier said than done. This project will take time--but we will take it on in good faith, multilaterally and in the North American context.

## INTERNATIONAL AGREEMENTS

You expressed concern that the list of agreements in Article 104 and its Annex is not sufficiently inclusive. The agreements listed in Article 104 and its Annex had been identified as the agreements where there was particular concern that the relationship to the NAFTA should be made explicit. We did not list a number of other international environmental agreements. The NAFTA, in Article 2101, incorporates the general exceptions to the General Agreement on Tariffs and Trade (GATT). These exceptions generally provide for environmental measures to protect human, animal or plant life or health as well as for measures relating to the conservation of living and non-living exhaustible natural resources. This could include measures to implement international environmental agreements.

We recognize that trade measures under international environmental agreements can play an important role in the implementation of those agreements. For example, the trade obligations of the Convention on International Trade in Endangered species of Wild Fauna and Flora (CITES) have been vital to ensuring the preservation of endangered species. Article 104 affirms the importance of these measures.

For greater clarity, I have recently received agreement from the governments of Canada and Mexico that we will modify Annex 104.1 of the NAFTA to include the following additional agreements:

(a) The Convention Between the United States of America and the United Mexican States for the Protection of Migratory Birds and Game Mammals, done at Mexico, February 7, 1936; and

(b) The Convention on the Protection of Migratory Birds, done at Washington, August 16, 1916.

We are currently studying which additional agreements it may be appropriate to include on the list, and I look forward to continuing to work with you on this issue.

## BORDER AIR POLLUTION

Your letter expressed concern that major new pollution sources are being constructed on the Mexican side of the U.S.-Mexico border without air pollution controls, and cited as the most troubling example the Carbon II power plant now under construction in Piedras Negras.

The Carbon II power plant will use state-of-the-art electrostatic precipitators to control particulate pollution. Since the sulfur content of the coal to be used by the plant is very low (one percent or less), no controls are currently planned for SO2 emissions from the plant. As

was true in the U.S. until recently, no such controls are required by Mexican standards in this circumstance.

With respect to visibility in Big Bend National Park, we understand that technical studies are being undertaken to better estimate the magnitude of the effect from SO2 emissions from the plant. Consultations involving the Department of State, the Department of the Interior, the Environmental Protection Agency, and the Mexican government are continuing on this issue. We also understand that the local air quality effects of emissions from the plant are not a significant issue. U.S. as well as Mexican health and welfare-based ambient air quality standards for sulfur dioxide will be met. The way the Carbon II situation is being managed through cooperative work between our two governments shows how the closer ties between the United States and Mexico fostered by the NAFTA and the Supplemental Agreements greatly improve our ability to work out issues that may arise between us as neighbors. The Mexican government has given us assurances that they will work with us to reach a resolution of the issue. Indeed, officials of the Departments of State and the Interior and of the Environmental Protection Agency met with Mexican officials at least twice in the past few weeks on this topic and will meet with them again next week.

Mexico began building the Carbon I and II power plants--the only coal-fired power plants in Mexico--several years ago to meet its growing needs for electricity. The power is strictly for domestic use in Mexico. The project will continue, with or without NAFTA. What NAFTA and the Supplemental Agreements provide is closer ties among the North American countries and an environmental commission that will give us a better way to deal with such situations as they arise--or even before they arise--in the future. More to the point, the North American Agreement on Environmental Cooperation contains explicit commitments to work together toward higher environmental standards. This will help reduce existing differences between U.S. and Mexican standards by bringing their standards up, not by lowering ours.

## FOOD SAFETY

Your letter also sought assurances with respect to additional questions on the interpretation of the sanitary and phytosanitary provisions of the NAFTA not raised in our earlier correspondence on this issue. You sought an assurance that Articles 712(3)(a) and (b) and 715(3)(b) do not require that a NAFTA country base its level of protection for food safety on a risk assessment. As we stated in response to a similar question with respect to Article 712(3)(c), each

NAFTA country is free to establish its appropriate level of protection for food safety, including a level that does not rely on a risk assessment.

Article 715(3)(b) obligates each NAFTA party, in establishing its appropriate level of protection, to avoid arbitrary or unjustifiable distinctions in its appropriate levels of protection in different circumstances, where such distinctions result in arbitrary or unjustifiable discrimination against a good of another party or constitute a disguised restriction on trade between the parties. As noted in my September 7 response to your earlier letter, the NAFTA was carefully drafted, with the Delaney clauses and other provisions of U.S. law firmly in mind, to safeguard the ability of governments to ensure food safety.

The Delaney clauses, in the first instance, establish a level of protection. They reflect a decision by the Congress that there should be no risk of cancer to humans from the substances those clauses cover. As I also noted in my letter of September 7, 1993, that decision is fully protected under the NAFTA.

We do not view the level of protection established by the Delaney clauses as arbitrary or unjustifiable distinctions in U.S. appropriate levels of protection in different circumstances, nor do the Delaney clauses result in arbitrary or unjustifiable discrimination against a good of another party or constitute a disguised restriction on trade between the parties. The measures applied under the Delaney clauses apply equally to goods whatever their origin.

With respect to Article 712(5), measures that are adopted, maintained or applied are to be applied are to be applied only to the extent necessary to achieve the government's appropriate level of protection. However, each government retains the right to establish the level of protection that it considers appropriate. Your letter proposed several examples, including an example in which an agency, in applying an administrative order or regulation that it has adopted or maintains, decided to require batch-by-batch testing of infant formula rather than periodic testing. In that example, the question under Article 712(5) would be whether, taking into account technical and economic feasibility, applying batch-by-batch testing was applying a measure beyond the extent necessary to achieve the agency's appropriate level of protection, and would periodic testing achieve that level of protection. A similar analysis would apply to the other examples cited in your letter. The discipline provided by Article 712(5) is reasonable and is not burdensome. Since the government established the level of protection it considered appropriate in the first place, it would be surprising for the government to seek then to apply a measure to achieve a level of protection beyond the level that government considered to be appropriate. Your letter also

requested that we provide statements from Canada and Mexico, in a form that would bind future signatories of the NAFTA, that they agree with the interpretation we have provided of the NAFTA provisions applicable to measures to ensure food safety. The best assurance of the meaning and application of these provisions is the text of the NAFTA itself, which has already been agreed to by the governments of Mexico and Canada and which would bind future signatories of the NAFTA. My letter of September 7, 1993 was based on the plain language of the NAFTA. We also intend to make sure that the Statement of Administrative Action reflects the explanation of the NAFTA provisions I provided earlier. As you know, the Statement of Administrative Action is the single, contemporaneous compilation of the Administration's statments of what is in the NAFTA (its terms, how it will work, what it means for the United States) and is approved by the Congress. I will consider your request for statements from Canada and Mexico. However, assurances of the type requested raise some potential difficulties-- they would actually be additional international agreements, requiring that we enter into negotiations with the governments of Mexico and Canada. These negotiations could invite those governments to re-visit the NAFTA provisions. We have received numerous other requests for further agreements with the governments of Mexico and Canada on various provisions of the NAFTA, and I assume those governments have also received similar requests.

## PREEMPTION

Your letter expressed your desire for an opportunity to review the language of the draft NAFTA implementing bill to ensure it does not unnecessarily interfere with state and local laws. I share your concern that the implementing bill not unnecessarily interfere with state and local laws. As you may know, we are currently engaged in a process of extensive consultations and review with the Congress of draft implementing legislative language. I look forward to working with you as we move forward in that process.

Thank you for this opportunity to address your concerns. The NAFTA and the side agreements contain both provisions to ensure that trade liberalization does not come at the expense of environmental protection and provisions to help improve environmental protection.

Sincerely,

Michael Kantor.

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Department of Health and Human Services

## Public Health Service, Food and Drug Administration,

Rockville, MD, November 8, 1993.
Hon. Cardiss Collins,
Chairwoman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

Dear Madam Chairwoman: This is in response to your request at the November 4, 1993, hearing on the North American Free Trade Agreement (NAFTA) before your Subcommittee for the current number of pesticides with Mexican residue limits but without U.S. tolerances.

As indicated at this hearing by the Food and Drug Administration (FDA) witness, Mr. Gary Dykstra, we believe there are presently very few pesticides that have residue limits in Mexico but do not have U.S. tolerances. While testifying, Mr. Dykstra referred to the Government of Mexico's most recent manual of allowed pesticides uses. As Mr. Dykstra stated, FDA just received this manual, but our preliminary review indicates that this number has significantly diminished in the last 2 years.

Unfortunately without a detailed review of the manual, we are unable in the brief time available, to provide you with a specific number. For this reason although it is not current, we are referring you to Appendix II of the June 1992, General Accounting Office (GAO) report entitled "Comparison of U.S. and Mexican Pesticide Standards and Enforcement." This appendix provides a list of 17 pesticide chemicals that GAO determined had Mexican residue limits but no U.S. tolerances. A copy of this list of pesticides is enclosed. It should be noted that GAO indicated in its report that 11 of these pesticides have Mexican residue limits for commodities other than food or for produce not imported into the U.S. and therefore, have no significant impact on U.S.- Mexico Trade.

At the hearing, you also requested that we identify the pesticides from this list for which FDA has analytical detection procedures. The Agency has methods for detecting nearly all of these pesticides and routinely checks for betacyflutrin, carbendazim, isazophos, omethoate, phoxim, pirimicarb, and triazophs.

If we can be of any other assistance, please let us know.

Sincerely,
Carol R. Scheman,
Deputy Commissioner for External Affairs and Acting Associate Commissioner for Legislative Affairs.

Enclosure.

The 17 pesticides with Mexican but no U.S. tolerances. Azocyclotin, Betacyfluthrin, Bitertanol, Carbendazim, Clethodim, Copper 8-Quinolinolate, Edifenphos, Haloxfop-methyl, Isazophos, Omethoate,

Phoxim, Pirimicarb, Propamocarb hydrochloride, Tebucanazole, Triazophos, Triflumuron, and Vamidothion.
Department of Health and Human Services,

## Public Health Service, Food and Drug Administration,

Rockville, MD, November 8, 1993.
Hon. Carlos J. Moorhead,
Ex Officio Member, Committee on Energy and Commerce,

Dear Mr. Moorhead: This letter responds to questions you provided at the November 4, 1993 hearing on the North American Free Trade Agreement (NAFTA) before the Subcommittee on Commerce, Consumer Protection, and Competitiveness, House Committee on Energy and Commerce.

I would like to preface my responses by assuring you that FDA is satisfied that the NAFTA in no way compromises our agency's ability to fulfill its mission to protect the public health from products that may be unsafe, ineffective, of poor quality, or improperly labeled.

As Mr. Gary Dykstra testified, FDA was integrally involved in the negotiations on the texts for Sanitary and Phytosanitary Measures and Standards-Related Measures/Technical Barriers to Trade. In fact, Mr. Walter Batts, who also testified before the Subcommittee, co-chaired with an EPA representative the Subgroup on Health and Environment of the NAFTA negotiations. We believe, as does the United States Trade Representative, that NAFTA is consistent with the laws and regulations implemented by FDA. Under NAFTA, FDA would continue its import program for Mexican products as it has in the past. Also, several enhancements to that program, which Mr. Dykstra outlined, are being developed which will improve the efficiency and effectiveness of our import program.

We have enclosed our responses, which were prepared by FDA's International Affairs Staff, to your specific questions. I hope these answers are responsive to your questions. Please let me know if you need any further information.

Sincerely,
Carol R. Scheman,
Deputy Commissioner for External Affairs and Acting Associate Commissioner for Legislative Affairs.

ANSWERS TO CONGRESSMAN MOORHEAD'S QUESTIONS FROM NOVEMBER 4, 1993, NAFTA HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND COMPETITIVENESS, COMMITTEE ON ENERGY AND COMMERCE

1. Critics of the NAFTA have argued that the agreements on food safety would require the U.S. to put aside food standards like the

federal "Delaney anti-cancer clause" and California's "Proposition 65" carcinogen labeling law because they could be viewed as trade barriers by our NAFTA trading partners. Do you agree with this assessment?

No. We do not agree with that assessment. The NAFTA was carefully drafted, with the Delaney clauses and other provisions of the U.S. law firmly in mind, to safeguard the ability of governments to ensure food safety. As noted above, the choice of the "appropriate" level of protection is a social value call: how much protection do we want as a society from a particular risk? The choice of the level of protection is not required to be based on a risk assessment. The Delaney clauses, in the first instance, establish a level of protection that Congress has deemed appropriate. They express our society's determination that we will accept no risk of cancer from the presence of the regulated substances.

The NAFTA disciplines in Article 712(3) do apply to any measure adopted to give effect to the Delaney clauses. The Delaney clauses are entirely consistent with the NAFTA's requirements in this regard. The determination that a particular substance poses a risk of cancer is a scientific determination, based on an evaluation of the potential for carcinogenic effect. Based on scientific principles, the United States has determined that if a substance induces cancer in animals, it poses some risk of human carcinogenesis. Because the level of protection under the Delaney clauses require that there be zero risk of carcinogenesis, FDA prohibits the substance.

2. Opponents of both NAFTA and GATT Uruguay Round have argued that the harmonization of food safety standards proposed in both documents would force the U.S. to lower its safety standards. Is this true?

No. We do not believe this is true of either NAFTA or the GATT Uruguay Round. However, since GATT negotiations are ongoing, we will confine our specific response to NAFTA. In addressing sanitary and phytosanitary concerns, countries may adopt somewhat different systems or requirements with respect to a particular risk situation. Article 714(1) of the Sanitary and Phytosanitary Measures text of NAFTA establishes a cooperative approach to making those systems or requirements equivalent, where practicable and without reducing the level of protection of human, animal or plant life or health. We anticipate that this work will generally be done through the Committee on Sanitary and Phytosanitary Measures established under the NAFTA and technical working groups or subcommittees under that committee. Any recommendations of those groups could only be implemented in the United States through the normal domestic legal processes--either through legislation or rulemaking consistent with U.S. law.

3. Under the NAFTA, the standard for sanitary and phytosanitary measures is that they must have a "scientific basis." Critics claim that this standard will lead to a situation where NAFTA countries will engage in "dueling science" where one country will try to prove another country's scientific findings false to eliminate their food safety standards. Do you believe that this is a real hazard?

We do not believe the NAFTA provision in Article 712(3)(b), which uses the term "scientific basis," will present problems. "Scientific basis" is defined as "a reason based on data or information derived using scientific methods." The question is not whether the measure was based on the "best" science or the "preponderance" of scientific evidence or whether there is conflicting science.The only question is whether the government maintaining the measure has a scientific basis for it. The NAFTA Sanitary and Phytosanitary Measures text is based on a recognition that there is seldom, if ever, scientific certainty and consequently, any scientific determination may require a judgment among differing scientific opinions. The NAFTA preserves the ability of governments to continue to make those judgments.

4. Will NAFTA permit tainted food to enter U.S. supermarkets?

No. FDA has reviewed its standards for safety, purity, and appropriate labelling of foods and has determined that these standards are consistent with the terms of the NAFTA. This is why no changes in these standards are needed or proposed to implement the NAFTA, and why we believe that our measures could not be successfully challenged in any NAFTA dispute settlement proceeding. FDA would like to emphasize that under NAFTA all products it regulates would continue to be required to meet all applicable U.S. laws and regulations, and FDA would continue to perform its compliance and enforcement activities.

5. There have been a number of criticisms leveled at the text of the food safety measures contained in the Dunkel Draft of the Uruguay Round, including a general lack of specificity of real standards. Is the NAFTA food safety provisions essentially the same as the one contained in the Dunkel Draft? Prior to the NAFTA negotiations, a text on sanitary and phytosanitary measures had been proposed in the context of the Uruguay Round of multilateral trade negotiations under the auspices of the GATT. The Uruguay Round proposed text (referred to as the Dunkel Text) had been the subject of multilateral negotiation, with over 100 countries participating, although final agreement in the Uruguay Round had not been reached when the NAFTA was concluded. The NAFTA provisions on sanitary and phytosanitary measures drew from this available text, as well as from other GATT texts and the U.S.- Canada Free Trade Agreement.

Because the NAFTA negotiations involved only three countries rather than over 100, the three NAFTA parties were able to tailor the NAFTA provisions to their particular needs. While the NAFTA provisions are essentially the same as those in the Dunkel Text, the NAFTA text does contain explicit language that consideration of international standards must not reduce the level of protection of human, animal or plant life or health. Also, the NAFTA is explicit that a country asserting that a sanitary or phytosanitary measure of another country is inconsistent with the text's provisions shall have the burden of establishing the inconsistency. Further, NAFTA is clear that the importing country makes the determination, where it has a scientific basis, whether the exporting country's sanitary or phytosanitary measure achieves the importing country's appropriate level of protection.

6. Would international guidelines for food safety measures become the ceiling for what the U.S. could impose on imported food products?

Recognizing that sanitary and phytosanitary measures of the three NAFTA countries are often different, Article 713 provides for the use of relevant international standards, without reducing the level of protection of human, animal or plant life or health, as a basis for each NAFTA government's own sanitary and phytosanitary measures. The objective in using international standards is to make the NAFTA parties' measures equivalent or, where appropriate, identical, in order to facilitate trade. At the same time, the NAFTA explicitly affirms the right of each government to have a sanitary or phytosanitary measure more stringent than the relevant international standard, as long as the sanitary or phytosanitary measure is consistent with the other provisions of the Sanitary and Phytosanitary Measures text. The NAFTA provisions on sanitary and phytosanitary measures were specifically negotiated to be clear that there would be no "downward harmonization" of such measures. While governments are required to use international standards as "a basis" (but by no means necessarily the only basis) for their sanitary and phytosanitary measures, Article 713(1) explicitly states that this is to be done "without reducing the level of protection of human, animal or plant life or health." (emphasis added) Article 713(3) also explicitly provides that nothing in this requirement "shall be construed to prevent a Party from adopting, maintaining or applying, in accordance with the other provisions of the Section [concerning, for example, not arbitrarily discriminating between its goods and like goods of another Party,] a sanitary or phytosanitary measure that is more stringent than the relevant international standard, guideline or recommendation." 7. Under the NAFTA, would there be any disincentives to increasing in U.S. food safety standards?

FDA does not believe there are any disincentives to strengthening U.S. food safety standards under NAFTA. In fact the agreement, Article 722(2)(a), provides that the committee on Sanitary and Phytosanitary Measures, "should facilitate the enhancement of food safety. * * *" Further, the environmental side agreement provides that "each party shall ensure its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations." The NAFTA makes it clear that each country may adopt, maintain or apply any sanitary or phytosanitary measure necessary for the protection of human, animal or plant life or health, including a measure more stringent than an international standard. Also, the NAFTA is clear that each country has the right to establish its own appropriate levels of protection of human, animal or plant life or health. We feel that these provisions are adequate to allow FDA to set health and safety standards at the level the agency deems appropriate to meet our public health responsibilities.

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## Environmental Protection Agency

Office of International Activities,
Washington, DC.
Hon. Carlos J. Moorhead,
Ranking Member, Committee on Energy and Commerce,
Washington, DC.

Dear Representative Moorhead: It was a pleasure to appear before the Subcommittee on Commerce, Consumer Protection, and Competitiveness last Thursday November 4, 1993. I am pleased to provide answers to the important questions you have posed.

As I testified, the NAFTA and its Environmental Agreement provide unprecedented procedures and resources which will improve environmental and health conditions on the U.S.-Mexican border, provide opportunities to influence future trade agreements, and provide opportunities for U.S. cooperation with a new generation of Mexican leadership which has staked much on the NAFTA. Our passage of the NAFTA will not only cement a new trade relationship, but will mean cleaner, healthier living conditions for many thousands of people living on the border.

Question 1. It is my understanding that environmental problems with Mexico have been ongoing and predated the NAFTA negotiations. To what extent does approval of the NAFTA provide a new opportunity to work out preexisting environmental problems with Mexico?

Answer 1. You are correct that there is nothing new about the environmental problems that have been raised during the NAFTA

debate. NAFTA did not cause these problems. But the NAFTA and President's NAFTA package provide a new opportunity to come to grips with these problems. Without NAFTA, the status quo remains. And the status quo is clearly unacceptable.

NAFTA and its supplemental agreement on environmental cooperation provide a host of new mechanisms for resolving existing environmental problems The supplemental agreement creates a Commission on Environmental Cooperation for free-ranging discussion among the NAFTA countries' top environmental officials of the problems facing the North American environment. The commission will have an independent secretariat to receive comments directly form the public concerning problems of enforcement of environmental laws.

The NAFTA and the supplemental agreement provide open and transparent mechanisms for countries to consult on changes in national standards and regulations related to environmental protection. Without the NAFTA, this avenue to influence Mexican policy-making will be lost.

Regarding dispute settlement, the NAFTA improves on current GATT procedures, to which Canada or Mexico would otherwise have recourse, by establishing explicitly that the trade provisions of certain international environmental agreements take precedence over the NAFTA. The NAFTA provides for establishment of a board of experts to advise dispute settlement panels concerning matters related to health or environmental issues. Finally, the current policy impetus, in the United States and Mexico, to address the funding needs of the border could be lost.

Question 2. What would be the implication for future negotiations over environmental problems with Mexico if the NAFTA were rejected by Congress? Answer 2. A number of existing mechanisms will remain in place, including the 1983 U.S.-Mexico Border Agreement (La Paz Agreement) and the 1992 U.S.- Border Plan. If Congress rejects the NAFTA implementing legislation, though we would expect to see no change in the dedication of the Government of Mexico and SEDESOL (the Mexican health and environmental agency) in particular to address environmental problems, it is impossible to predict the effect on our active program of cooperation. We expect NAFTA to increase wealth in both Mexico and the United States. Empirical studies show that wealthier countries are better able to marshall resources to invest in pollution control and that prosperity encourages people to place greater value on a cleaner environment.

Question 2. There have been concerns that U.S. polluters would flee across the border to escape U.S. clean air and other environmental requirements. Are there tools in existing law that would either prevent that activity, or make such a move more onerous?

Answer 3. Many factors influence a company's decision on where to locate its manufacturing facilities. Pollution abatement costs represent a generally small share of total production costs for U.S. industries, and Mexico in recent years has introduced stringent environmental protection laws and significantly increased its enforcement efforts. So most companies would be ill-advised to flee across the border with the intent to pollute freely. Moreover, NAFTA and its supplemental agreement on environmental cooperation do contain mechanisms to address potential "pollution have" problems. NAFTA's investment chapter contains a provision recognizing that "it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor." If one Party feels another has offered such an encouragement, it may request consultations on the matter, with a view to avoiding such encouragement.

Mexican domestic law has powerful tools in place to provide an effective deterrent against noncompliance with its existing regulations. For example, the ability to shut down a plant on the spot until compliance is achieved provides SEDESOL with strong negotiating leverage and a potent deterrent against noncompliance. SEDESOL has demonstrated its resolve to use those authorities by mobilizing a professional inspectorate, which conducted more than 16,000 inspections, including more than 2400 in the border area, and shutting down more than 1400 plants in little more than a year. Approval of NAFTA and the side agreement will ensure, through bilateral and trilateral cooperation and the threat of sanctions for failure of effective enforcement, that Mexico continues on the path of increasingly aggressive utilization of these authorities.

Question 4. What safeguards exist to prevent the Border Environment Cooperation Commission and the North American Development Bank from becoming a massive financial liability for these projects?

Answer 4. The border environment Cooperation Commission and the NADBank were designed to maximize private sector contributions and to minimize government subsidies to address border environmental infrastructure. The Administration's border infrastructure finance package has three required federal funding components:(1) The U.S. share of BECC administration costs is likely to be in the range of $5 million per year. Mexico is expected to contribute an equal amount. This is a very small price to pay to provide critical assistance to border communities is designing,

constructing and financing environmental infrastructure projects. The BECC will dramatically improve the prospects for private sector investment by leveraging federal money with private sector capital.
(2) The U.S. share of NADBank paid-in capital is $56 million per year for four years, with Mexico contributing an equal amount. Thus, for a total federal appropriation of only $225 million (referred to as "paid-in capital"), the NADBank will be able to provide between $2 and $3 billion in loans and guarantees for projects. Although Congress will be required to authorize the entire $1,275 billion in callable capital, it is unlikely that appropriations beyond the $225 million will be required. Successful examples of this type of financing arrangement include the World Bank and Inter-American Development Bank. There has never been a call on either of these institutions or any other multi-lateral development bank.
Several people have unfairly compared the federal risks of the NADBank to that of the Savings and Loan industry. However, federally liability for the NADBank is considerably different than it is for the savings and loan industry. In contrast to the savings and loan situation, all NADBank loans and guarantees will be approved by the NADBank board of directors (the bank will be governed by a six member board with an equal number of representatives from each country) based on a careful financial analysis of each project. This makes even a partial "bail-out" highly unlikely.
(3) The President's Fiscal Year 1994 budget includes about $100 million annually over the next five years for grants to support projects on both sides of the border. These estimates represent a continuation of existing EPA wastewater treatment programs. However, instead of the current situation in which the federal government provides grants to cover virtually the entire U.S. share of construction and operation costs for binational treatment projects, this new mechanism will allow for significantly more private sector participation. This will reduce the total amount of federal funds required to meet the environmental infrastructure needs in the border.

This concludes our responses to your four questions. Please let me know if can be of further assistance to you.

Sincerely yours,
Alan D. Hecht,
Acting Assistant Administrator.

MEDICAL PROFESSIONALS

Question. NAFTA will allow Mexican doctors, dentists and other medical professionals to practice in the United States without meeting the same requirements that U.S. medical professionals must meet. How can you allow this?

Answer. The NAFTA does not let Mexican or Canadian medical professionals circumvent licensing and certification procedures in the United States. The procedures currently in use in the United States to test, evaluate and certify professional competency will continue. Any one who wants to practice medicine or dentistry in the United States must be licensed by the appropriate regulatory bodies.

However, NAFTA does obligate each Party, at both the federal and state government level, to eliminate any citizenship or permanent residency requirement that a party maintains for licensing or certification of professionals.

The NAFTA provides each country the opportunity to demonstrate that its licensing and certification requirements should be recognized by another NAFTA partner. It also encourages--only encourages--all three countries to work towards recognizing each others' licenses and certifications. In some areas of the professional services sector, we are already engaged in this exercise. For example, there are several Canadian medical schools that are accredited by professional bodies in the United States. However, the NAFTA does not require the U.S. government or state governments to accord recognition to education, experience, licenses or certifications obtained in Canada or Mexico.

Question. Way do NAFTA's temporary entry provisions let Mexican doctors and dentists into the United States to practice based on a Mexican certification or license?

Answer. Temporary entry and providing a service--medical or otherwise--are two different and distinct issues covered in the NAFTA. The services chapter of the agreement contain the provisions on providing a service, including the obligations of the United States concerning licensing and certification procedures. In short, the procedures currently in use in the United States to test, evaluate and certify professional competency will continue. Any one who wants to practice medicine or dentistry in the United States must be licensed by the appropriate regulatory bodies. In addition, there are provisions in the NAFTA relating to temporary entry which allow eligible individuals to enter the United States, Canada or Mexico under certain conditions, but do not convey a right to perform or provide a service.

In Chapter 16, NAFTA provides specific rights for temporary entry of business persons--citizens of the United States, Canada, and Mexico--who engage in trade in goods, the provision of services and the conduct of investment activities. In regard to professional services providers, the specific entry rights are given to certain categories of professionals who meet minimum educational requirements or possess alternative credentials, and who seek to engage in business activities at a professional level in the country they wish to enter.

The categories are set out in a new schedule that tracks the one currently in effect between the United States and Canada. There is an annual numerical limit for temporary admission of Mexican professionals. In essence, we have waived the pre-entry "test" to determine whether a national is available for the position as a requirement for entry into the United States for these professionals. These provisions, however, do not substitute for valid licenses to practice medicine, engineering, accounting or other licensed professionals which are recognized by the appropriate regulatory bodies in the United States.

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## Environmental Protection Agency,

Office of Congressional and Legislative Affairs,
Washington, DC, November 15, 1993.
Hon. Cardiss Collins,
Chairman, Committee on Energy and Commerce,

Dear Madam Chairman: Attached are the responses to follow-up questions which you submitted after your subcommittee's September 23 and November 4, 1993 hearings. The first two questions were submitted by letter after the September 23 hearing. The remaining questions were submitted by staff members after the November 4 hearing. All of the questions concern environmental issues in the North American Free Trade Agreement.

Please let me know if we can be of further assistance.Sincerely yours,
Thomas C. Roberts,
Director, Legislative Analysis Division.

Question 1. EPA has responsibility for the cleanup of hazardous waste sites. How does the Administration plan to pay for hazardous waste cleanup in the border area; will Superfund revenues, planned for use elsewhere in the Southwest U.S., or in other areas of the U.S., be used to pay for the cleanup of hazardous waste sites in the border area; and will any Superfund or any other U.S. funds be used to pay for cleanup on the Mexican side of the border?

Answer. Superfund moneys will be used for hazardous waste cleanup on the U.S. side of the border at sites on the National Priorities List. Therefore, use of Superfund for border cleanup would not be at the expense of other NPL sites not in the border area. Other Superfund moneys may be used for emergency cleanups on the U.S. side of the border. An additional source of funding for cleanup on the U.S. side is through state "superfund" programs and liability schemes. In addition, the liability and cost recovery scheme of the

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) stimulates private hazardous waste cleanup efforts of sites, including those not on the National Priorities List, for example, when in the context of real estate sales or financial transactions. Finally, under the Resource Conservation and Recovery Act (RCRA), facilities with hazardous waste treatment, storage and disposal units are required to conduct corrective action to address releases of hazardous waste constituents. The RCRA corrective action program is implemented through permit mechanisms or through oversight of facilities which have interim status or have failed to seek a permit when required. We believe that these programs, in combination, will be adequate for cleaning up past hazardous waste contamination on the U.S. side of the border.

Superfund will not be used for cleanup of hazardous waste sites in Mexico, where no threat of release to the U.S. environment exists. It may be appropriate in some circumstances to use CERCLA authorities when hazardous waste which was generated in the United States and illegally exported to Mexico is returned to the U.S., and it is necessary to provide for safe transport, handling and disposal of the waste while in the U.S. Our preference would be to use CERCLA's liability provisions to require the exporter to take direct responsibility for proper disposal of the waste after it is returned. When the illegal exporter is not immediately cooperative, however, return of the waste by Mexico could present a potential emergency situation creating a threat of release to the U.S. environment if such waste is not properly dealt with after its arrival in the U.S. In such situations, it may be necessary to use Superfund moneys to effectuate transport and disposal of the waste in the U.S., and seek restitution through CERCLA cost recovery civil authorities or as part of a plea bargain or sentence in a criminal enforcement case.

We would also not rule out the possible use of CERCLA authorities to accomplish cleanup of contamination originating from Mexico where there is a demonstrable release or threatened release to the U.S. environment, within the limits of the statute's subject matter jurisdiction. Such exercise of CERCLA authority would depend upon a judicious assessment of the circumstances if such a case should arise. CERCLA authorities would not, however, be used to facilitate the repatriation of wastes generated by maquiladoras (see Question 3).

Question 2. What funds has Mexico committed towards hazardous waste cleanup on the Mexican side of the border; and does Mexico have a program for hazardous waste cleanup? If so, please describe it in detail, including a description of cleanup activities undertaken under the authority of the program.

Answer: While Mexico does not currently have anything equivalent to the U.S. Superfund program, it can impose liability on responsible parties under the General Ecology Law, which prohibits the unauthorized disposal of hazardous waste. We know of a few discrete examples where Mexico has in fact used the leverage of its legal authorities to obtain cleanup: In the Mexico and Aceite y Lubricantes cases, two recycling operations near Mexicali mismanaged spent hazardous waste solvents generated by maquiladoras. Mexico used its criminal authorities to arrest the operator of the sites, releasing him on a $1 million bond which secured his cooperation in clean-up. Mexico also obtained contribution to the cleanup costs from several of the maquiladoras which generated the wastes which were found improperly disposed at the maquiladora facility. Although some of the wastes found at the facility may have been illegal exports from U.S. sources, Mexico was able to obtain sufficient cooperation from the Mexican parties responsible for the contamination so that it was not necessary to invoke provisions of the La Paz agreement requiring repatriation to the U.S. of drums which may have been illegal exports from the U.S.

In the Alco-Pacifico matter, a lead slag smelter near Tijuana was badly mismanaged, resulting in contamination. Mexico shut the facility down and confiscated the property. Although the owner and operator of the facility, and its U.S. parent corporation, were insolvent, the facility's main U.S. supplier of battery slug, a byproduct shipped to Alco-Pacifico for reclamation, had violated California state hazardous waste regulations in shipping its product to Mexico. Mexico, the U.S., and California shared information on the matter, leading to a criminal prosecution by California. The resulting plea bargain provided Mexico with a $2 million contribution toward the costs of cleaning up the site. Mexico is providing additional funds from its general revenues to assure proper cleanup, which EPA estimates will cost $5-7 million.

Finally, in a matter still under development, hazardous wastes illegally exported from the United States were discovered at a site in Guerrero Negro, Baja California, some 200 miles south of the border. Mexico is using its criminal authorities to obtain the cooperation of the site operator in remediating the site and repatriating the waste back to the United States. In the U.S., an indictment was issued against the generator and exporter, and the case is pending trial. EPA and SEDESOL are actively cooperating in their respective investigations.

In terms of providing a source of funding for cleanup, although Mexico currently has nothing equivalent to the U.S. Superfund, it has a fledgling voluntary program. Through contributions being solicited from industry, SEDESOL hopes to build a fund that will help to provide for the cleanup of abandoned hazardous waste sites. To date,

approximately 20 enterprises have either contributed or expressed a willingness to contribute to this fund. SEDESOL's rule will be to: 1) identify sites; 2) select remedial action; and 3) provide oversight. Industry will be responsible for hiring the contractor and undertaking actual cleanup operations. Mexico realizes that its voluntary program will probably be inadequate to meet cleanup needs in the long run, and is exploring other options, examining the U.S. Superfund program, as well as programs and legal mechanisms in other countries, including the European Community.

While we do not know precisely what funds Mexico has committed from its own budget toward border hazardous waste cleanup, we do know that they anticipate receipt of a $1.9 billion loan from the World Bank, a substantial portion of which will go to support hazardous waste cleanup and enforcement activities in the border area.

In addition to the specific cases discussed above, binational cooperation is enhancing Mexico's capacity to find and clean up hazardous waste sites in other ways. For example, EPA provided a course to SEDESOL's inspectors in interpreting aerial photography to identify abandoned hazardous waste disposal sites and other illegal operations. Moreover, SEDESOL's capacity to conduct hazardous waste cleanups will increase as it builds its domestic capacity for treatment and disposal of hazardous wastes, including remediation wastes as well as newly generated wastes. In February, 1993, SEDESOL officials indicated they were reviewing 26 license applications for hazardous waste recycling, incineration, and land disposal facilities nationwide; many of which were from U.S.-based environmental service companies. By opening the Mexican market, NAFTA will expand the opportunities for U.S. exports of waste management technology and services, to assist Mexico in its efforts to clean up improperly disposed hazardous wastes and manage newly generated wastes in an environmentally sound manner. In addition, although its initial priority will be wastewater treatment, the border infrastructure financing mechanism recently negotiated with Mexico will provide an additional source of funds for Mexico to build treatment and disposal facilities for industrial and municipal wastes.

Question 3. Under Annex III of the La Paz Agreement taken with Article 55 of Mexico's General Ecology Law, there has been since 1988 a binding legal obligation on the United States and U.S. companies operating in Mexico to return all hazardous wastes created through the maquiladora industry to the United States. Is there any U.S. federal regulation implementing this binding international legal obligation, and if so, can you give me the citation? Also, please tell me what percentage of the return of such wastes can the EPA actually document.

Answer. It is not correct that the U.S. has a binding legal obligation to ensure the "return" of hazardous wastes generated by U.S.-owned maquiladoras in Mexico. The requirement to export maquiladora-generated hazardous waste to the country of origin of the raw materials derives solely from Mexican law, and is imposed upon maquiladora operations directly by the Mexican government within its sole, exclusive sovereign jurisdiction. Annex III to the La Paz agreement does not extend this obligation to the United States. Rather, it obligates the U.S. to "readmit" such waste when in fact it is returned "in accordance with applicable national policies, laws, and regulations." This only means that the U.S. will not refuse entry to such waste, provided it is accompanied with a proper U.S. Uniform Hazardous Waste Manifest which destines the waste to a facility authorized to accept that particular waste- stream. As such, this provision of Annex III is a country-to-country obligation only, it does not purport to our require the change of domestic U.S. law. Because it does not impose on the U.S. an obligation to ensure that maquiladoras comply with the Mexican domestic requirement to export such waste, it require no adjustment of the rights and obligations of private persons such that codification by regulation would be required.

Although Annex III does not require the U.S. to ensure the return of maquiladora waste, the La Paz agreement does commit the U.S. and Mexico to provide cooperative assistance; annex III specifically lists cooperation designed to assist the other country in enforcing their respective environmental laws applicable to the transboundary movement of hazardous waste. Because failure to return maquiladora wastes to the U.S. probably means illegal and unsafe disposal in Mexico, cooperative assistance in this area has helped Mexico in building its overall enforcement capacity with respect to maquiladora plants. We have worked together to develop a binational database to track hazardous waste shipments. This tool is not yet perfect; both the U.S. and Mexico need to improve their tools for collecting data, to be sure that we have captured all shipments of maquiladora wastes on both sides of the border. Until this occurs, we cannot say what percentage of all maquiladora shipments we are capturing in the data-base. We do know, however, that although not perfect, our collection of hazardous waste manifests from Customs and state sources has been relatively consistent for the last few years, to enable us to discern a clear trend: the total volume and number of shipments of maquiladora hazardous wastes imported to the U.S., and the number of U.S. waste facilities notifying that they anticipate receiving new waste streams from Mexican sources, have been steadily increasing through 1992, evidencing a marked increase in compliance

by maquiladora operations with Mexico's laws governing the proper disposition of hazardous wastes.

The data, however, only reflects shipments through 1992 at this point. From August 1992 through September, 1993, SEDESOL's new Attorney General for Environmental Protection launched an aggressive new inspection program. More than 16,000 inspections were conducted nationwide, including more than 2,400 in the border area--i.e., enough to visit every maquiladora which generates hazardous wastes at least twice. Hundreds of facility shutdowns resulted, and thousands of other facilities received fines and were slated for follow-up visits when minor violations were discovered. Midway through this period, in February of 1993, SEDESOL estimated that 65% of maquiladoras that generate hazardous wastes and accounted for them by complying with monthly recordkeeping requirements, and 40% of the total complied with the requirement to return them to the country of origin of the raw materials. This figure was up from a 30% estimated compliance rate a year earlier. Since the majority of the inspections in the border area were conducted since the first of the year, we anticipate that this increased enforcement presence, combined with industry's awareness that the U.S. and Mexico are coordinating the tracking of hazardous waste shipments, has increased further since SEDESOL's February estimate.

The attached report from the Hazardous Waste Tracking System provides further information on the quantities of waste shipments captured by the database.

Question 4. Why did Region VI Waste Management Division Director Allyn Davis decline to provide the Texas Center for Policy Studies with Mexico's data on waste shipments from the binational Hazardous Waste Tracking System? Answer. As Dr. Davis stated in this response letter, the La Paz agreement provides that information obtained by one country from the other under the Agreement shall only be provided to third parties by mutual agreement of the Parties. Mexico has expressly advised us that it considers waste export authorization data to be confidential information, and requested that we maintain the confidentiality. Regardless of whether disclosure of analogous U.S. information would be required under our laws, to do otherwise than to respect Mexico's wishes would violate our international obligations. We may want to share information with Mexico someday that we consider confidential, for example, to facilitate cooperative enforcement efforts, and we would expect reciprocity in preserving such confidentiality.

NAFTA and the side agreements, however, encourages greater public participation, and exposure of information about a country's environmental program to public scrutiny. The Commission for

Environmental Cooperation, therefore, would provide a perfect forum for groups like the Texas Center for Policy studies to encourage Mexico to enhance the transparency of its environmental program by making this kind of information available, and we would support such efforts. Mexico has made strides to open its system to greater public participation, for example, by creating within the Office of the Attorney General for Environmental Protection a discrete unit specifically charged with receiving and investigating public complaints about polluters. One of the goals of the North American Agreement on Environmental Cooperation, and its Commission, is to encourage participation. Question. In your statement, you talk about Carbon I and II, the two Mexican coal-fired power plants on the border. I asked EPA at our last hearing, and I would like to ask you now, has Mexico provided EPA copies of the environmental assessment that SEDESOL, Mexico's environmental agency, performed on these plants? I know EPA requested this information seven months ago.

Answer. No. We did receive some information from SEDESOL regarding emissions rates and operating parameters of Carbon I but we never received the official environmental assessment. However, we have received environmental impact information from Mission's environmental contractors. Do you believe the side agreement is critical to successful operation of the NAFTA?

The Administration considers the Environment Agreement critical to the working of the NAFTA. Section 102(b)(2) of the bill provides authority for the President to bring the NAFTA into force for the United States at such time as the supplemental agreement on environmental cooperation, which the three governments signed on September 14, 1993, go into effect. The President has also specifically committed in the Statement of Administrative Action that if Canada or Mexico were to withdraw from a supplemental agreement on a non-consensual basis the Administration will, after thorough consultation with Congress, cease to apply the NAFTA to that country. The U.S. might not withdraw in an instance in which withdrawal by another government is consensual in nature--for example, where Canada and the U.S. withdraw from a supplemental agreement in order to enter into a superseding agreement on environment.

What reason does the Administration have for not wanting to guarantee statutorily that Mexico or Canada, or future U.S. presidents continue to abide by the requirements of the side agreements in order to enjoy the benefits of the basic NAFTA?

Flexibility is built into the process because there may be instances in which we would want to continue to apply NAFTA benefits and rules if one country withdraws from the Agreement--for example, if Canada were to withdraw from the Environmental Agreement we might want

to continue our relationship with Mexico under the NAFTA. It is also important to recognize that because of the involvement of the environmental community and of EPA, FDA and others, the NAFTA itself contains a number of provisions that help promote environmental protection.

If under a future President, one country were to threaten to terminate a supplemental agreement, we would expect that the Administration would take this as a very serious threat to that country's NAFTA benefits. In such a case, Congress also has sufficient authority to ensure that the United States could no longer apply NAFTA benefits as well.

The Administration clearly considers environmental protection to be as important as any other element of the NAFTA. It should be noted that the basic NAFTA agreement was negotiated in the previous administration. While the Clinton Administration considered its content to be sound in the areas that it covers, it spent eight months in negotiations on a pathbreaking Environment Agreement specifically to elevate the level of environmental protection to a status commensurate with President Clinton's general commitment to environmental protection goals. The Clinton Administration feels very strongly that NAFTA is overwhelmingly positive for the environment, and that it is symbolic of the new importance of environmental protection as it relates to trade. NAFTA and the Environment Agreement elevate environmental protection goals to a level far above those of any previous trade agreement, and provide important precedents for future trade negotiations. This is in part due to the efforts of EPA, the Food and Drug Administration, the National Oceanic and Atmospheric Administration, and the numerous environmental groups which are actively supporting NAFTA. If NAFTA is rejected, the U.S. will not have the opportunity to see the substantial environmental benefits that it and the Environmental Agreement provide. Aren't we going to be reluctant to push controversial environmental matters into dispute settlement, because we know that if we push too hard, Mexico could withdraw from the environmental agreement altogether, and that would be embarrassing to us?

The side agreement depend largely on cooperation of the parties, as is normally the case in international agreements. This will not, however, preclude the U.S. from pushing controversial matters in dispute settlement, because it is highly unlikely that Mexico would withdraw from the Environment Agreement, for several reasons. First, withdrawing from the Environment Agreement would severely jeopardize Mexico's rights under the NAFTA. Secondly, we would not be embarrassed if Mexico withdrew from the Agreement-- Mexico would. Because the dispute settlement procedure addresses persistent

patterns of a country's failure to effectively enforce its domestic environmental laws, withdrawal from the Agreement would be tantamount to an admission that Mexico does not take its own domestic environmental responsibilities seriously. This is particularly unlikely under the current Mexican leadership. Under the Salinas government, Mexico has become a leader among developing countries in promoting environmental protection as a priority objective for the international community. Third, the dispute resolution process is structured in such a way that it would not be Mexico's word versus that of the U.S.; it would be Mexico's word versus that of the U.S., Canada, and--in cases initiated through the public complaint mechanism--that of the trinational Secretariat.

## Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown in part 1 the report, filed by the Committee on Ways and Means.

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### I. REPORTS AND OTHER MATERIALS OF THE COMMITTEES

### PRELIMINARY STATEMENT

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

### PART I. REPORT OF THE COMMITTEE ON FINANCE

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

**Summary of Congressional Consideration of the NAFTA**

The various steps involved in Congressional consideration of the

NAFTA, pursuant to procedures established in the Omnibus Trade and Competitiveness Act of 1988 and the Trade Act of 1974, are summarized below.

## A. "Fast Track" Authority In General

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

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

On March 1, 1991, President Bush notified the Congress that he was requesting an extension of fast track procedures until June 1, 1993 in order to complete the Uruguay Round of Multilateral Trade Negotiations and to initiate and complete the NAFTA negotiations with Mexico and Canada. In mid-March, the Chairmen of the Senate Committee on Finance and the House Committee on Ways and Means, and the House Majority Leader, wrote to President Bush conveying a number of concerns about free trade with Mexico, particularly with respect to environmental and labor issues (addressing both concerns about lax Mexican enforcement and the need for an adequate U.S. program to assist workers adversely affected by an agreement).
On May 1, 1991, the President responded to those letters with a set of "action plans" intended to address the environmental and labor concerns, as well as a statement of the Administration's views on the economic impact of the proposed agreement. On May 23, 1991, the House of Representatives, by a vote of 231-to-192, failed to disapprove the extension requested by President Bush. On May 24, 1991, the Senate, by a vote of 59-to-36, also failed to disapprove the extension request.

## B. Notification Prior to Negotiations

Under section 1102(c) of the Omnibus Trade and Competitiveness Act

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

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

### C. Notification of Intent to Enter Into An Agreement

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

The United States commenced the NAFTA negotiations with the Governments of Mexico and Canada in June 1991. The three Governments announced on August 12, 1992 that they had reached an agreement, and the Administration issued a negotiated summary of the agreement. President Bush notified the Congress on September 18, 1992 of his intent to enter into the NAFTA and submitted the

required advisory committee reports, in accordance with the 90-day notice requirement. On October 7, 1992, Presidents Bush and Salinas and Canadian Prime Minister Mulroney met in San Antonio, Texas to discuss plans for implementing the NAFTA, and the three countries' trade ministers initialed the draft legal text of the NAFTA. On December 17, 1992, ninety days after President Bush had provided the required notice, the United States, Mexico, and Canada entered into the NAFTA.

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

### D. Development of the Implementing Legislation

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

In meetings in October 1993, the Committee on Finance considered and made recommendations for the implementing bill. Subsequent to those meetings, the Committees on Finance and Ways and Means resolved differences in the recommendations of the two Committees. Other Committees of the Senate and House also considered provisions of the implementing legislation within their respective jurisdictions. On

November 2, 1993, the Majority Leader of the Senate and the Speaker of the House transmitted proposed implementing legislation, containing the recommendations of the various Committees of jurisdiction, to the U.S. Trade Representative (USTR).

## E. Formal Submission of the Agreement and Legislation

When the President formally submits a trade agreement to the Congress under section 1103, he must include in that submission the final text of the agreement, together with implementing legislation, a Statement of Administrative Action (describing regulatory and other changes that are necessary or appropriate to implement the agreement), and other supporting information. The implementing bill itself must contain provisions formally approving the agreement and the Statement of Administrative Action and proposing amendments to current law or new authority necessary or appropriate to implement the agreement. The implementing legislation is introduced in both Houses of Congress on the day it is submitted by the President and is referred to Committees with jurisdiction over its provisions.

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

## F. Committee and Floor Consideration

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

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

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

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

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

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

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

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

**COMMITTEE ON FINANCE ACTIONS**

From February 1991 through September 1993, the Committee on Finance held 15 hearings on the NAFTA. Five of the hearings were held in 1993. In those hearings, the Committee heard testimony from Ambassadors Hills and Kantor, other officials of the Executive Branch, representatives of U.S. business, labor, agriculture, and environmental organizations, and academics concerning the NAFTA and the supplemental agreements on environmental cooperation and labor cooperation. In addition, the Committee held numerous executive sessions with Ambassadors Hills and Kantor, in which the Committee was briefed extensively on specific provisions of the NAFTA and the supplemental agreements on environmental cooperation and labor cooperation.

[* * *]

As a final matter, the Committee notes that there have been complaints from brokers that they do not get a fair and impartial

hearing at the Headquarters level in broker penalty and liquidated damages claims. It is the Committee's intent that the Customs Service will continue its study of the procedures relating to these claims, especially with regard to the issue of the sufficiency of due process.

[* * *]

**OVERVIEW OF THE NAFTA**

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

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

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

Part Three concerns standards-related measures (technical barriers to trade).
Part Four covers government procurement rules and procedures. Part Five establishes the rules governing investment, cross-border trade in services, telecommunications, financial services, competition policy,

and the temporary entry of business persons. Part Six sets out the rules for protection of intellectual property rights. Part Seven establishes the procedures for review and dispute settlement in antidumping and countervailing duty matters, as well as the general institutional arrangements and dispute settlement procedures. Finally, Part Eight includes both the exceptions from NAFTA coverage and provisions on the entry into force and related matters.

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

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

**Description of the Bill**
**Vote of the Committee in Reporting the Bill**

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

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

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

The Committee on Agriculture, Nutrition, and Forestry to which was

referred the bill S. 1627, having considered the same, reports favorably thereon and recommends that the bill do pass.

**Brief Explanation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Purpose and Need

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

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

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

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

### Committee Consideration

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

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

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

### Roll Call Votes

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

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

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

**Summary of Provisions Within the Jurisdiction of the Commerce Committee**

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

## PART IV. REPORT OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

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

## PART V. REPORT OF THE COMMITTEE ON THE JUDICIARY

Summary of Subtitle C--Intellectual Property Provisions

## PART VI. REPORT OF THE COMMITTEE ON FOREIGN RELATIONS

Introduction

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

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

It also contains provisions which will enable the United States to participate in the Border Environmental Cooperation Commission and the North American Development Bank--two organizations established by the "November 1993 Agreement Between the United States of

America and the Government of the United Mexican States Concerning the Establishment of A Border Environmental Cooperation Commission and a North American Development Bank."

## Committee Action

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

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

## Committee Comments

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

## NAFTA: SUPPLEMENTAL AGREEMENTS ON LABOR AND THE ENVIRONMENT

The NAFTA Supplemental Agreements on Labor and the Environment were signed by the President on September 14, 1993. These agreements encourage Mexico, the United States, and Canada ("the Parties") to address labor and environmental issues in a cooperative

and transparent process, and provide for strong dispute settlement procedures to promote improved enforcement of national standards. Thus, not only will NAFTA boost U.S. exports and its position in Latin America, but it will also ensure that American labor and environmental laws are not degraded, and that Mexican enforcement of its labor and environmental standards will improve significantly.

## NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

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

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

## NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION

The environmental supplemental agreement--the North American Agreement on Environmental Cooperation (NAAEC)--is designed to provide incentives for enforcement of national environmental regulations. It creates a new Commission on Environmental Cooperation, whose Council will consist of the top environmental officials of the three countries. A Joint Advisory Committee, consisting of nongovernmental organizations, will advise the Council. The heart of the Commission will be its Secretariat, whose Executive Director, while under the direction of the Council, will enjoy considerable independence.

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

**BORDER ENVIRONMENT COMMISSION AND THE NORTH AMERICAN BANK**

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

The agreement provides for the establishment of two institutions:

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

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

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

The new agreement represents a significant additional commitment by Mexico and the United States to implement effective solutions to the environmental problems in the border region. It embodies the basic principles for coordinating and financing environmental infrastructure projects set forth by the two governments during their meeting on environmental cooperation in August, 1993. The two new institutions

will help marshall resources from all sources, both public and private, to solve the environmental problems of the border region. The agreement is contingent on the entry into force of the North American Free Trade Agreement.

## BORDER ENVIRONMENT COOPERATION COMMISSION

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

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

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

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

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

The BECC will have a binational board of directors and decision-making procedures structured to ensure that the views of affected states, local

communities, and members of the public will be fully taken into account. Each country shall have five members on the board of directors. Individuals selected to serve on the board shall have expertise in environmental, engineering, economic or financial matters. The board will be composed of the following members from each country:

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

The BECC will be required to consult with an Advisory Council of 18 members--nine from each country--that will include representatives of state or local governments or community groups from each of the border states, and members of the public, including nongovernmental organizations. It will also establish procedures for public participation, including written notice and an opportunity to comment on general guidelines and on applications for certification of projects. The Commission's annual report will be made available to the public.

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

## NORTH AMERICAN DEVELOPMENT BANK

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

The NADBank will use its own capital (contributed equally by the

United States and Mexico), funds raised by it in the financial markets, and other available resources to finance public and private investment in environmental infrastructure projects; and encourage and supplement private investment in environmental infrastructure projects.

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

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

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

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

## FOREIGN POLICY IMPLICATIONS OF NAFTA

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

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

--NAFTA puts aside the historical mistrust between the United States and Mexico, and solidifies a new relationship based on mutual respect and shared opportunity.
--Passage of NAFTA will signal American support for the process of economic and political reform in neighboring Mexico. Defeat of NAFTA would deal a serious blow to those in Mexico who support continued liberalization.

--In addition, passage of NAFTA will send a positive signal to those democratic leaders throughout Latin America and the Caribbean who have liberalized their economic systems and opened their markets to U.S. exports.
--Although NAFTA is not an exclusionary bloc, improved economic cooperation in this hemisphere will enhance our negotiating position in the GATT Uruguay Round talks. This could provide the impetus for a breakthrough in the stalled negotiations.
--Passage of NAFTA will establish the United States as the leader of a global movement toward economic cooperation and openness. International respect for the President's foreign policy leadership will increase, making other countries more receptive to U.S. foreign policy initiatives.

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

**Section-by-Section Analysis[ of Subtitle D]**

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

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## Senate Finance Committee Report

### II. BUDGETARY IMPACT OF THE BILL

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

Congressional Budget Office, U.S. Congress,
Washington, DC, November 18, 1993.

Hon. Daniel Patrick Moynihan, Chairman,
Committee on Finance, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the

enclosed cost estimate for S. 1627, the North American Free Trade Agreement Implementation Act.

Section 12(c) of the concurrent resolution on the budget requires a determination of any legislative proposal's effect on the deficit for fiscal years 1999 through 2003. CBO estimates that this bill would not increase the deficit over this period.

Enactment of S. 1627 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,
Robert D. Reischauer, Director Enclosure

CONGRESSIONAL BUDGET OFFICE

**Cost Estimate**
November 18, 1993
1. BILL NUMBER: S. 1627
2. BILL TITLE: North American Free Trade Agreement Implementation Act
3. BILL STATUS:
As ordered reported by the Senate Committee on Finance on November 18, 1993.
4. BILL PURPOSE:
S. 1627 would approve the North American Free Trade Agreement (NAFTA) entered into on December 17, 1992, with the governments of Canada and Mexico. It would provide for tariff reductions and other changes in law related to implementation of the agreement. The bill also would create a transitional adjustment assistance program for affected workers, require the use of an electronic fund transfer system for collecting certain taxes, and increase certain customs user fees. It also would authorize appropriations for a number of agricultural and other programs.
5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

The following tables summarize CBO's estimate of the budgetary impact of S. 1627. Table 1 shows the impact of the bill on direct spending and revenues. Table 2 details the estimated costs that depend on future appropriation actions.

**TABLE 1. CBO ESTIMATES OF CHANGES IN REVENUES AND DIRECT SPENDING ASSOCIATED WITH S. 1627**
[By fiscal year, in millions of dollars] /1/
/1/ This table does not include any discretionary spending that would be
associated with NAFTA.

**Five-
year
/1/ This table does not include any discretionary spending that would be
associated with NAFTA.**

**1994 1995 1996 1997 1998 total**

**CHANGES IN REVENUES (NET)**

Reduction in tariff rates -214 -489 -547 -609 -672 -2,531
Electronic Federal tax deposit system:/2/
/2/ Estimate provided by the Joint Committee on Taxation.

On-budget 49 262 272 371 1,207 2,161
Off-budget 23 116 135 146 701 1,121
Customs enforcement initiative 17 22 22 23 23 107
Customs modernization provisions -3 -3 -3 -3 -3 -15

**CHANGES IN OUTLAYS**
Increases in Customs fees (offsetting receipts) -93 -203 -221 -241 0 -758
Increased spending for current trade adjustment
assistance program/3/ 10 25 25 20 25 105
/3/ Trade adjustment assitance (TAA) for training costs is currently limited by law to a maximum of $80 million a year. This estimate assumes that this cap is maintained. If it were raised or eliminated, CBO estimates that TAA costs resulting from NAFTA would be a total of $25 million higher over the 1994- 1998 period than shows above.

New trade adjustment assistance benefits/4/ 7 8 9 9 33
/4/ Less than $500,000.

Effects on agricultural price support programs -64 -86 -66 -1 33 -184
North American Development Bank 0 54 2 0 0 56
Customs modernization provisions -5 -5 -5 -5 -5 -25

**EFFECT ON DEFICIT**
Net increase or decrease (-) in deficit:
On-budget -1 0 -1 0 -493 -495
Off-budget -23 -116 -135 -146 -701 -1,121

**TABLE 2. CBO ESTIMATES OF AUTHORIZATIONS OF APPROPRIATIONS ASSOCIATED WITH S. 1627**
**[By fiscal year, in millions of dollars]**

| | 1994 | 1995 | 1996 | 1997 | 1998 | Five-year total |
|---|---|---|---|---|---|---|
| **Agriculture programs:** | | | | | | |
| Estimated authorizations | 96 | 22 | 22 | 22 | 22 | 184 |
| Estimated outlays | 18 | 61 | 34 | 37 | 22 | 172 |
| **North American Development Bank:** | | | | | | |
| Estimated Authorizations | 0 | 0 | 56 | 56 | 56 | 168 |
| Estimated outlays | 0 | 0 | 56 | 56 | 56 | 168 |
| **Other authorizations:** | | | | | | |
| Estimated authorizations | 21 | 16 | 11 | 11 | 11 | 70 |
| Estimated outlays | 16 | 18 | 10 | 11 | 11 | 66 |
| **Total authorizations:** | | | | | | |
| Estimated authorizations | 17 | 38 | 89 | 89 | 89 | 422 |
| Estimated outlays | 34 | 79 | 100 | 104 | 89 | 406 |

**Basis of Estimate:**

**Changes in Revenues**

Tariff Rate Reductions. Under NAFTA, all tariffs on U.S. imports from Mexico would be eliminated by 2008. Tariffs would be phased out for individual products at varying rates according to one of six different timetables ranging from immediate elimination to elimination over 15 years for some goods. Based on the composition of imports from Mexico in 1991, tariffs would be eliminated on about 60 percent of dutiable goods on January 1, 1994, and tariff revenue would be reduced by about 65 percent in calendar year 1994. By 1998, duties on about 70 percent of goods that are currently subject to duty would be eliminated, and tariff revenue would be about 85 percent lower

than under current law.

Goods currently afforded duty-free treatment under the Generalized System of Preferences (GSP) would receive permanent duty-free treatment under NAFTA. Under current law, the GSP program is scheduled to expire after September 30, 1994. Therefore, this estimate includes the revenue loss from extending duty- free treatment to GSP goods imported from Mexico past the GSP's expiration date under current law.

CBO estimates that the provisions of NAFTA that reduce tariff rates would reduce revenues by $2.5 billion over 1994 through 1998, net of income and payroll tax offsets. This estimate is based on Census Bureau data for 1991 and 1992 on imports from Mexico. This estimate includes the effects of increased imports from Mexico that would result from the reduced prices of imported products in the U.S.--reflecting the lower tariff rates--and has been estimated based on the expected substitution between U.S. products and imports from Mexico. In addition, it is likely that some of the increase in U.S. imports from Mexico would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Mexico would displace imports from other countries.

Electronic Federal Tax Deposit System. The new federal tax deposit system would electronically transfer tax deposits to the Treasury, eliminating the need for banks to process paper coupons and checks. The change, which would be phased in gradually over several years, would allow deposits to be credited to the Treasury on the day of deposit instead of the day after deposit. Adoption of this system would not change the amount of taxes paid by taxpayers, but would shift the receipt by the Treasury of certain tax revenues from the beginning of one fiscal year to the end of the preceding year. The Joint Committee on Taxation has estimated that these changes would increase on-budget receipts by $2.2 billion and off-budget receipts by $1.1 billion over the fiscal years 1994 through 1998.

Customs Enforcement Initiative. The bill would allow Customs Service auditors to access IRS income tax return information. This would allow auditors to use businesses' tax information on the valuation of imports and is expected to result in higher customs duty audit assessments. CBO estimates, net of income and payroll tax offsets, that the access to the information would result in increased receipts of $107 million over fiscal years 1994 through 1998.

Customs Modernization. Title VI of S. 1627 would expand the base of goods eligible for customs duty drawbacks and would allow increased exemptions from duty on certain personal articles, decreasing customs duties by $7 million each year. Title VI also would require payment of interest on merchandise revaluations after entering an item through U.S. Customs, increasing receipts by $4 million each year. CBO estimates, net of income and payroll tax offsets, these provisions would decrease receipts by $3 million each year.

**Changes in Direct Spending**

Customs User Fees. S. 1627 would make several changes to user fees charged by the U.S. Customs Service, which are recorded in the budget as offsetting receipts. For the fiscal years 1994 through 1997 only, the current $5 passenger fee would be increased to $6.50 and the exemption granted to passengers arriving in the United States from Canada, Mexico, and the Caribbean would be removed. For fiscal years 1999 through 2003, customs user fees would be extended at the current $5 rate. (Under current law, these fees sunset at the end of fiscal year 1998.) CBO estimates that the $1.50 passenger fee increase and the removal of the exemption would result in additional fee collections of $758 million over the fiscal years 1994 through 1997.

Current Trade Adjustment Assistance (TAA) Program. Under current law, the TAA program provides cash assistance and training to workers who can demonstrate that increased imports contributed importantly to the loss of their job. If NAFTA were to be approved, CBO estimates that approximately 4,500 additional workers annually for fiscal years 1995 through 1998 would become eligible for TAA. The additional workers would not qualify for TAA immediately because workers must exhaust their unemployment benefits prior to collecting TAA. The fiscal year 1994 estimate assumes approximately 1,000 workers would qualify for TAA, assuming that NAFTA becomes effective January 1, 1994. Under current law, TAA recipients are required to participate in job training unless they receive a waiver. Currently, about 60 percent of the recipients train and 40 percent receive waivers. The average training cost is approximately $4,000 per person. Based on an average cash benefit of $4,800, CBO estimates the additional TAA cash assistance would be $5 million in 1994 and $20 million each year for fiscal years 1995 through 1998, and we estimate the additional TAA training benefits would be $5 million in 1994 and $10 million each year for fiscal years 1995 through 1998, if all newly eligible workers were to receive their full training benefit.

Nevertheless, the TAA training program is a capped entitlement. The training benefits are capped at $80 million in fiscal years 1994, 1995, 1996, and 1998. In fiscal year 1997, the cap on funding for TAA training is $70 million. Because CBO's baseline is $5 million below the cap in fiscal years 1994, 1995, 1996, 1998 and equal to the cap in fiscal year 1997, the estimated increase in TAA training costs with the existing caps would be $5 million each year in fiscal years 1994, 1995, 1996, 1998 and zero in fiscal year 1997.

New Trade Adjustment Assistance Benefits. The bill would add a new sub- chapter to the TAA program to allow workers who lose their job because their firm shifts production to Mexico or Canada to qualify for TAA. In addition, workers would be required to enter a job training program by their sixteenth week of unemployment or their sixth week of TAA certification, whichever is later, to be eligible for benefits. Unlike the current TAA program, beneficiaries under this sub-part could not receive a waiver from training and still collect cash assistance. TAA cash and training benefits under this amendment would be available to those who are displaced from their jobs between January 1, 1994, and September 30, 1998. CBO estimates that fewer than 1,000 workers annually would qualify for TAA payments under this provision. The average training benefit would be $4,000 per person, and the average cash benefit would be approximately $6,000 per person. CBO estimates that total TAA payments under this new sub-part would be less than $500,000 in fiscal year 1994, $7 million in fiscal year 1995, $8 million in fiscal year 1996, and $9 million in each of the fiscal years 1997 and 1998.

Effects on Agricultural Price Support Programs. Gradual reductions in tariff and non-tariff barriers on agricultural products under the North American Free Trade Agreement are expected to result in increased trade between the United States and Mexico. An estimated net increase in U.S. exports of commodities currently supported by agriculture programs would result in higher market prices and a reduction in government support payments. While lower acreage reduction program (ARP) requirements (to compensate for increased demand) would mitigate some of the price increase, the ARP level could not be reduced in some years.

The bill also would require end use certificates for imports of wheat and barley. Such certificates would tend to discourage imports and raise the price for domestically produced grain, resulting in slightly lower program payments.

CBO estimates that increased exports and higher prices, combined with the requirement for end use certificates on imports of wheat and barley, would reduce federal expenditures on agricultural programs by $184 million during 1994 through 1998. The majority of these savings would be derived from higher prices and lower program payments for feed grains. The dairy sector and other grains would benefit noticeably from increased exports, leading to a reduction in federal support purchases and lower program costs.

North American Development Bank. Section 542 would authorize the President to accept membership in a North American Development Bank. The bank would be a multilateral bank with stock held by member states. The bill would authorize the United States to subscribe to 150,000 shares of capital stock and the appropriation of $1,500 million to purchase the stock. It would appropriate $56.25 million in 1995 for the first paid-in stock subscription, and would provide an authorization of appropriations for the remaining amount without fiscal year limitation.

The North American Development Bank would have the same structure as other regional development banks. Only 15 percent of the bank's stock would be paid-in, or purchased, by the member states. The balance would be callable capital. Callable capital would secure borrowing by the bank in private capital markets. The bank would relend the funds. Member states would make payments on callable capital subscriptions only to the extent that the bank could not service its debt from earnings on its investments.

The estimate assumes the U.S. government would subscribe to the capital stock in four equal annual installments. The first installment would be funded by the $56.25 million appropriated for paid-in capital and the authorization for callable capital subscriptions provided in section 541(a)(3) of this bill. The estimate assumes that the final three installments of paid-in capital would be provided in appropriations acts in 1996, 1997, and 1998. The estimate assumes that the appropriation for paid-in capital would represent outlays in the year provided. The authorization to subscribe to the callable capital stock is not expected to result in any appropriations or outlays during the period of the estimate.

Section 543 authorizes the President to enter into an agreement with the Bank to receive 10 percent of the paid-in capital actually paid to the Bank by the United States. The bill would authorize the President

to use these funds, without further appropriation, to make loans or loan guarantees through existing federal programs to support the community adjustment and investment program defined in the Cooperation Agreement. CBO estimates this provision would result in a receipt to the government from the Bank of $5.6 million in 1995, and subsequent spending of the same amount through existing community development loan and loan guarantee programs.

Customs Modernization. S. 1627 would make several changes in the administrative procedures of the Customs Service. Customs would be allowed to release unclaimed merchandise for sale or destruction after six months rather than the one-year period mandated by current law. CBO estimates that this provision would decrease storage costs by $6 million annually. In addition, the number of entries that could be filed informally would be increased. Informal entries are assessed a lower customs user fee, and we estimate that this provision would decrease fee collections by $1 million annually. The net effect of these changes would be an outlay reduction of about $5 million a year.

**Spending Subject to Appropriations Action**

Agriculture. Sections 321 and 361 of the bill would authorize a number of program changes that could increase federal outlays in agricultural programs by an estimated $172 million over the 1994-1998 period. The majority of costs would reflect authorizations for assistance to farm workers in markets adversely affected by increased trade with Mexico ($20 million per year) and the construction of a containment facility for agricultural products from Mexico. Other provisions would require the Secretary of Agriculture to provide information and reports on various agriculture markets and to monitor end use certificates.

North American Development Bank. Beyond the amount appropriated for 1994, S. 1627 would authorize additional appropriations of $168 million for paid-in capital of the bank.

Section 543 would authorize the President to enter into an agreement with the Bank to receive 10 percent of the paid-in capital paid to the Bank by the United States. The bill would authorize the President to use the 10 percent portion to make loans or loan guarantees through existing federal programs to support the community adjustment and investment program defined in the Cooperation Agreement. CBO estimates this provision would result in a receipt to the government from the Bank of $5.6 million annually over the 1996-1998 period, and subsequent spending of the same amount through existing community

development loan and loan guarantee programs.

NAFTA Secretariat. Title I would authorize the appropriation of up to $2 million to fund the United States section of the secretariat established by the agreement. These funds would be used to pay for the activities of the secretariat, as well as the commission, several committees and subcommittees, and various working groups subordinate to the secretariat. It also would allow the U.S. section to retain and spend reimbursements from the Mexican or Canadian section. We assume that the U.S. section of the secretariat would be established within the International Trade Administration of the Department of Commerce (DOC), and that the secretariat and the various committees under its jurisdiction would use the full $2 million authorized to pay for personnel and other costs.

Commerce Department Fees. Title III (subtitle E) would require the DOC to make available to the public certain information relating to sanitary procedures and would permit the DOC to charge reasonable fees for this information. Such fees would raise $1 million to $2 million annually and would be available for spending under existing authority.

Customs Automation Program. S. 1627 would establish the National Customs Automation Program, an automated and electronic system for processing information on commercial imports. We estimate that this program would cost $3 million in fiscal year 1994, assuming appropriation of the necessary funds.

Tax Collection Expenses. The bill would authorize the Harbor Maintenance Trust Fund to use, for the first time, up to $5 million annually to cover the administrative costs of collecting the harbor maintenance tax. We estimate that this would result in costs of $5 million annually, assuming appropriation of the necessary funds.

Commissions. Section 532 would authorize an annual appropriation of $5 million for 1994 and 1995 for the United States contributions to the annual budget of the Commission for Environmental Cooperation. This commission is described in article 43 of the North American Agreement on Environmental Cooperation; its purpose is to address environmental issues affecting the continent. Section 533 would authorize annual appropriations of $5 million, starting in 1994, for the Border Environment Cooperation Commission (BECC) that is established by the Border Environment Cooperation Agreement. This commission would assist in developing solutions to environmental problems in the U.S.-Mexico border region. The BECC would certify environmental

construction projects for the North American Development Bank (established by section 541) and other financial institutions.

International Trade Commission. Various provisions of the bill would require the International Trade Commission to monitor certain imports and to investigate and determine petitions for relief from imports benefiting from the agreement.. Based on information supplied by the commission, CBO estimates that these duties will require an additional authorization of less than $1 million per year.

**6. PAY-AS-YOU-GO CONSIDERATIONS:**

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of S. 1627 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill. The following table summarizes CBO's estimate of the pay-as-you-go impact of S. 1627. These figures represent the direct spending estimates in Table 1, excluding the effects on off-budget revenues.

[By fiscal year, in millions of dollars]
1994 1995 1996 1997 1998
Change in outlays -152 -208 -257 -218 62
Change in receipts -151 -208 -256 -218 555

**7. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:**

None.

**8. ESTIMATE COMPARISON:**

None.

**9. PREVIOUS CBO ESTIMATE:**

On November 4, 1993, CBO prepared an estimate, based on draft language, of the direct spending and revenue effects of the North American Free Trade Agreement Implementation Act. That estimate of revenues and direct spending is identical to the estimate for S. 1627.

On November 15, 1993, CBO prepared cost estimates for H.R. 3450, an identical bill ordered reported by the House Committee on Ways and Means, the House Committee on Banking, Finance and Urban Affairs, and the House Committee on Energy and Commerce. Those estimates are identical to this one.

**10. ESTIMATE PREPARED BY:**

Kim Cawley, Mark Grabowicz, Mary Maginniss, Eileen Manfredi, Ian McCormick, John Webb, and Robert Sunshine (226-2860), Cory Oltman (226-2820), Melissa Sampson (226-2720), Linda Radey (226-2693) and Joseph Whitehill (226-2940).

**11. ESTIMATE APPROVED BY:**

C. Nuckols, Assistant Director for Budget Analysis.

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## Senate Finance Committee Report

### III. CHANGES IN EXISTING LAW

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1627, as reported, are shown as follows (existing law proposed to be omitted is ~~enclosed in black brackets~~ [STRIKEOUT], new matter is printed in [roman], existing law in which no change is proposed is shown in roman):

**UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988**
* * * * *

**TITLE III--APPLICATION OF AGREEMENT TO SECTORS AND SERVICES**

**SEC. 301. AGRICULTURE.**

(a) Special Tariff Provisions for Fresh Fruits and Vegetables.--

(1) The Secretary of Agriculture (hereafter in this section referred to as the "Secretary") may recommend to the President the imposition of a temporary duty on any Canadian fresh fruit or vegetable entered into the United States if the Secretary determines that both of the following conditions exist at the time that imposition of the duty is recommended:

(A) For each of 5 consecutive working days the import price of the Canadian fresh fruit or vegetable is below 90 percent of the corresponding 5-year average monthly import price for such fruit or vegetable.

(B) The planted acreage in the United States for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. For the purposes of applying this subparagraph, any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of October 4, 1987, shall be excluded.

Whenever the Secretary makes a determination that the conditions referred to in subparagraphs (A) and (B) regarding any Canadian fresh fruit or vegetable exist, the Secretary shall ~~promptly~~ immediately submit for publication in the Federal Register notice of the determination.

(2) No later than 6 days after publication in the Federal Register of the notice described in paragraph (1), the Secretary shall decide whether to recommend the imposition of a temporary duty to the President, and if the Secretary decides to make such a recommendation, the recommendation shall be forwarded immediately to the President.

~~(2)~~ (3) In determining whether to recommend the imposition of a temporary duty to the President under paragraph (1), the Secretary shall consider whether the conditions in subparagraphs (A) and (B) of such paragraph have led to a distortion in trade between the United States and Canada of the fresh fruit or vegetable and, if so, whether the imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.

~~(3)~~ (4) Not later than 7 days after receipt of a recommendation of the Secretary under paragraph (1), the President, after taking into account the national economic interests of the United States, shall determine whether to impose a temporary duty on the Canadian fresh fruit or vegetable concerned. If the determination is affirmative, the President shall proclaim the imposition and the rate of the temporary duty, but such duty shall not apply to the entry of articles that were in transit to the United States on the first day on which the temporary duty is in effect.

~~(4)~~ (5) A temporary duty imposed under paragraph ~~(3)~~ (4) shall cease to apply with respect to articles that are entered on or after the earlier

of--

(A) the day following the last of 5 consecutive working days with respect to which the Secretary determines that the point of shipment price in Canada for the Canadian fruit or vegetable concerned exceeds 90 percent of the corresponding 5-year average monthly import price; or

(B) the 180th day after the date on which the temporary duty first took effect.

~~(5)~~ (6) No temporary duty may be imposed under this subsection on a Canadian fresh fruit or vegetable during such time as import relief is provided with respect to such fresh fruit or vegetable under chapter 1 of title II of the Trade Act of 1974.

~~(6)~~ (7) For purposes of this subsection:

(A) The term "Canadian fresh fruit or vegetable" means any article originating in Canada (as determined in accordance with section 202) and classified within any of the following headings of the Harmonized System:

(i) 07.01 (relating to potatoes, fresh or chilled);
(ii) 07.02 (relating to tomatoes, fresh or chilled);
(iii) 07.03 (relating to onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled);
(iv) 07.04 (relating to cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled);
(v) 07.05 (relating to lettuce (lactuca sativa) and chicory (cichorium spp.), fresh or chilled);
(vi) 07.06 (relating to carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled);
(vii) 07.07 (relating to cucumbers and gherkins, fresh or chilled);
(viii) 07.08 (relating to leguminous vegetables, shelled or unshelled, fresh or chilled);
(ix) 07.09 (relating to other vegetables (excluding truffles), fresh or chilled);
(x) 08.06.10 (relating to grapes, fresh);
(xi) 08.08.20 (relating to pears and quinces, fresh);
(xii) 08.09 (relating to apricots, cherries, peaches (including nectarines), plums and sloes, fresh); and
(xiii) 08.10 (relating to other fruit (excluding cranberries and blueberries), fresh).

(B) The term "corresponding 5-year average monthly import price" for a particular day means the average import price of a Canadian fresh fruit or vegetable, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(C) The term "import price" has the meaning given such term in article 711 of the Agreement.

(D) The rate of a temporary duty imposed under this subsection with respect to a Canadian fresh fruit or vegetable means a rate that, including the rate of any other duty in effect for such fruit or vegetable, does not exceed the lesser of--

(i) the duty that was in effect for the fresh fruit or vegetable before January 1, 1989, under column one of the Tariff Schedules of the United States for the applicable season in which the temporary duty is applied; or

(ii) the duty in effect for the fresh fruit or vegetable under column one of such Schedules, or column 1 (General) of the Harmonized System, at the time the temporary duty is applied. ~~(7)~~ (8)(A) The Secretary shall, to the extent practicable, administer the provisions of this subsection to the 8-digit level of classification under the Harmonized System.

(B) The Secretary may issue such regulations as may be necessary to implement the provisions of this subsection. ~~(8) For purposes of assisting the Secretary in carrying out this subsection, the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables.~~

(9) For purposes of assisting the Secretary in carrying out this subsection--

(A) the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables, and

(B) importers shall report such information relating to Canadian fresh fruits and vegetables to the Commissioner of Customs at such time and in such manner as the Commissioner requires. ~~(9)~~ (10) The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.

* * * * *

**TITLE IV--BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES**

*** * * * ***

**SEC. 410. TERMINATION OF AGREEMENT.**

(a) In General.--If--

(1) no agreement is entered into between the United States and Canada on a substitute system of rules for antidumping and countervailing duties before the date that is 7 years after the date on which the Agreement enters into force, and

(2) the President decides not to exercise the rights of the United States under article 1906 of the Agreement to terminate the Agreement, the President shall submit to the Congress a report on such decision which explains why continued adherence to the Agreement is in the national economic interest of the United States. In calculating the 7-year period referred to in paragraph (1), any time during which Canada is a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) shall be disregarded.

* * * * *

**TITLE V--EFFECTIVE DATES AND SEVERABILITY**

**1. EFFECTIVE DATES.**

(a) * * *

* * * * *

~~(c) Termination of Provisions and Amendments if Agreement Terminates.--On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection and section 410(b)), and the amendments made by this Act, shall cease to have~~

~~effect.~~

(c) Termination or Suspension of Agreement.--

(1) Termination of agreement.--On the date the Agreement ceases to be in force, the provisions of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.

(2) Effect of agreement suspension.--An agreement by the United States and Canada to suspend the operation of the Agreement shall not be deemed to cause the Agreement to cease to be in force within the meaning of paragraph (1).

(3) Suspension resulting from nafta.--On the date the United States and Canada agree to suspend the operation of the Agreement by reason of the entry into force between them of the North American Free Trade Agreement, the following provisions of this Act are suspended and shall remain suspended until such time as the suspension of the Agreement may be terminated:

(A) Sections 204(a) and (b) and 205(a).

(B) Sections 302 and 304(f).

(C) Sections 404, 409, and 410(b).

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**Tariff Act of 1930**

* * * * *

**TITLE III--SPECIAL PROVISIONS**

PART I--MISCELLANEOUS

* * * * *

**SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.**

(a) * * *

* * * * *

(c) Marking of Certain Pipe and Fittings.--

(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, ~~or engraving~~ engraving, or continuous paint stenciling.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the ~~four~~ five methods specified in paragraph (1), the article may be marked by an equally permanent method of marking ~~such as paint stenciling~~ or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

* * * * *

(e) Marking of Certain Manhole Rings or Frames, Covers, and Assemblies Thereof.--No exception may be made under subsection (a)(3) with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country or origin by means of die stamping, cast-in-mold lettering, etching, ~~or engraving~~ engraving, or an equally permanent method of marking.

* * * * *

(h) Treatment of Goods of a NAFTA Country.--

(1) Application of section.--In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) under the regulations issued by the Secretary to implement Annex 311 of the North American Free Trade Agreement--

(A) the exemption under subsection (a)(3)(H) shall be applied by substituting "reasonably know" for "necessarily know";

(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) if the good--

(i) is an original work of art, or

(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and

(C) subsection (b) does not apply to the usual container of any good described in subsection (a)(3)(E) or (I) or subparagraph (B)(i) or (ii) of this paragraph.

(2) Petition rights of nafta exporters and producers regarding marking determinations.--

(A) Definitions.--For purposes of this paragraph:

(i) The term "adverse marking decision" means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person--

(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

(B) Intervention or petition regarding adverse marking decisions.-- If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth--

(i) a description of the merchandise; and

(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.

(C) Effect of determination regarding decision.--If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision--

(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or

(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.

(D) Judicial review.--For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 516 regarding an issue arising under any of the preceding provisions of this section.

~~(h)~~ (i) Penalties.--Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall--

(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.

* * * * *

**SEC. 306. CATTLE, SHEEP, SWINE, AND MEATS--IMPORTATION PROHIBITED IN CERTAIN CASES**

(a) ~~Rinderpest and Foot-and-Mouth Disease.--If the Secretary of Agriculture~~ In General.--Except as provided in subsection (b), if the

Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals, from such foreign country, is prohibited Provided, That wild ruminants or swine may be imported from any such country upon such conditions, including post entry conditions, to be prescribed in import permits or in regulations, as the Secretary may impose for the purpose of preventing the dissemination of said diseases into or within the United States: And provided further, That the subsequent distribution, maintenance, and exhibition of such animals in the United States shall be limited to zoological parks approved by said Secretary as meeting such standards as he may by regulation prescribe for the purpose of preventing the dissemination of said diseases into or within the United States. The Secretary may at any time seize and dispose of any such animals which are not handled in accordance with the conditions imposed by him or which are distributed to or maintained or exhibited at any place in the United States which is not then an approved zoological park, in such manner as he deems necessary for said purpose.

~~(b) Notwithstanding subsection (a), the Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, the importation of cattle, sheep, or other ruminants, or swine (including embryos of such animals) or the fresh, chilled, or frozen meat of such animals from a region of Canada notwithstanding the existence of rinderpest or foot-and-mouth disease in Canada, if-- (1) the United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and (2) the appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease.~~

(b) Exception.--The Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of cattle, sheep, other ruminants, or swine (including embryos of the animals), or the fresh, chilled, or frozen meat of the animals, from a region if the Secretary determines that the region from which the animal or meat originated is, and is likely to remain, free from rinderpest and foot-and- mouth disease.

* * * * *

**SEC. 311. BONDED MANUFACTURING WAREHOUSES.**

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: Provided, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: Provided further, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

* * * * *

~~No article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.~~

No article manufactured in a bonded warehouse from materials that are goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to a NAFTA country, as defined in section 2(4) of that Act, without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid

before the 61st day after the date of exportation, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of--

(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or

(2) the total amount of customs duties paid on the materials to the NAFTA country. If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada during the period such Agreement is in operation without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.

**SEC. 312. BONDED SMELTING AND REFINING WAREHOUSES.**

(a) * * *

(b) The several charges against such bond may be canceled in whole or in part--

(1) upon the exportation ~~(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free- Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)~~ from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal- bearing materials less wastage provided for in subsection (c)~~, or~~; except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of

that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of--

(A) the total amount of customs duties owed on the materials on importation into the United States, or

(B) the total amount of customs duties paid to the NAFTA country on the product, or

* * * * *

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection

(c), and upon withdrawal from such other warehouse for exportation ~~(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)~~ or domestic consumption the provisions of this section shall apply~~, or~~; except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of--

(A) the total amount of customs duties owed on the materials on importation into the United States, or

(B) the total amount of customs duties paid to the NAFTA country on the product, or

* * * * *

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no charges against such bond may be canceled in whole or part upon an exportation to Canada under paragraph (1) or (4) during the period such Agreement is in operation except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

* * * * *

(d) Upon the exportation ~~(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)~~; of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 508(b)(2)(B)) in an amount not to exceed the lesser of--

(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or

(2) the total amount of customs duties paid to the NAFTA country on the product. If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free Trade Agreement Implementation Act of 1988.

* * * * *

**SEC. 313. DRAWBACK AND REFUNDS.**

(a) Articles Made From Imported Merchandise.--Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by- products produced from ~~wheat imported after ninety days after the date of the enactment of this Act~~ imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.
(b) Substitution For Drawback Purposes.--If imported duty-paid merchandise and ~~duty-free or domestic merchandise~~ any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, but only if those articles have not been used prior to such exportation or destruction; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported

merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.
~~(c) Merchandise not Conforming to Sample or Specifications.--Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.~~
(c) Merchandise Not Conforming to Sample or Specifications.--Upon the exportation, or destruction under the supervision of the Customs Service, of merchandise--

(1) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation;

(2) upon which the duties have been paid;

(3) which has been entered or withdrawn for consumption; and

(4) which, within 3 years after release from the custody of the Customs Service, has been returned to the custody of the Customs Service for exportation or destruction under the supervision of the Customs Service; the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

* * * * *

~~(j) Same Condition Drawback.--(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation-- (A) is, before the close of the three-year period beginning on the date of importation-- (i) exported in the same condition as when imported, or (ii) destroyed under Customs supervision; and (B) is not used within the United States before such exportation or destruction; then upon such exportation or destruction 99 per centum of the amount of each such duty, tax, and fee so paid shall be refunded as drawback.~~
~~(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic) that-- (A) is fungible with such imported merchandise; (B) is, before~~

~~the close of the three-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under Customs supervision; (C) before such exportation or destruction-- (i) is not used within the United States, and (ii) is in the possession of the party claiming drawback under this paragraph; and (D) is in the same condition at the time of exportation or destruction as was the imported merchandise at the time of its importation; then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.~~
~~(3) Packaging material that is imported for use in packaging or repackaging imported merchandise to which paragraph (1) applies shall be eligible under the same conditions provided in such paragraph for refund, as drawback, of 99 per centum of any duty, tax, or fee imposed under Federal law on the importation of such material.~~
~~(4) The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on-- (A) the imported merchandise itself in cases to which paragraph (1) applies, or (B) the merchandise of the same kind and quality in cases to which paragraph (2) applies, that does not amount to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).~~

(j) Unused Merchandise Drawback.--

(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation--

(A) is, before the close of the 3-year period beginning on the date of importation--

(i) exported, or

(ii) destroyed under customs supervision; and

(B) is not used within the United States before such exportation or destruction; then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or

any intermediate party.

(2) ~~If~~ Subject to paragraph (4), if /1/ there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that--
Note /1/ The wording "Subject to paragraph (4), if" and paragraph (4) will take effect on the date the Agreement enters into force with respect to the United States

(A) is commercially interchangeable with such imported merchandise;

(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

(C) before such exportation or destruction--

(i) is not used within the United States, and

(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party--

(I) is the importer of the imported merchandise, or

(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise); then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on--

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies, shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(4) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through

(8) of section 203(a) of that Act, shall not constitute an exportation for purposes of paragraph (2)./2/
Note /2/ Paragraph (4) will take effect on the date the Agreement enters into force with respect to the United States.

* * * * *

(l) Regulations.--Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, ~~the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section 309 (b) of this Act shall be filed and completed,~~ the authority for the electronic submission of drawback entries and the designation of the person to whom any refund or payment of drawback shall be made.

* * * * *

~~(n) For purposes of subsections (a), (b), (f), (h), and (j)(2), the shipment on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free- Trade Agreement Implementation Act of 1988, to~~

~~Canada on an article, except an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of such Act, does not constitute an exportation.~~
~~(o) For purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988. This subsection shall apply to vessels delivered to Canadian account or owner, or to the Government of Canada, on and after January 1, 1994 (or, if later, the date proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free- Trade Agreement Implementation Act of 1988).~~
~~(p) Substitution of Crude Petroleum or Petroleum Derivatives.-- (1) Notwithstanding any other provision of this section, in the case of articles, described in headings 2707 through 2715, 2901 and 2902, or 3901 through 3914 (limited to liquids, pastes, powders, granules, and flakes) of the Harmonized Tariff Schedule of the United States, that-- (A) are-- (i) manufactured or produced under subsection (a) or (b) from crude petroleum or petroleum derivatives, or (ii) imported duty-paid, and (B) are stored in common storage with other articles of the same kind and quality that are otherwise manufactured or produced, drawback shall be paid on the articles withdrawn for export from such common storage (regardless of the source or origination of the articles withdrawn), if the requirements described in paragraph (2) are met. (2) The requirements of this paragraph are met if-- (A) inventory records kept on a calendar month basis (not on a daily or transaction-by-transaction basis) demonstrate sufficient quantities of imported duty-paid articles or articles manufactured or produced under subsection (a) or (b) in the common storage against which such withdrawal is designated; (B) such inventory records reflect deliveries to and withdrawals from such common storage that assure that the drawback paid does not exceed the amount of drawback that would be payable under this section had all of the articles withdrawn from common storage been imported duty-paid or manufactured or produced under subsection (a) or (b); (C) certificates of delivery or certificates of manufacture and delivery, establishing the drawback eligibility of the imported duty- paid articles or articles manufactured or produced under subsection (a) or (b), when required, are filed with the drawback entry; and (D) the inventory records of the operator of such common storage are, upon reasonable notice, available to the Customs Service. (3) For purposes of this subsection-- (A) The term "common storage" includes all articles of the same kind and quality~~

~~stored at a single facility regardless of the number of bins, tanks, or other containers used. (B) The term "same kind and quality" means articles that are commercially interchangeable or that are referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States. (C) The term "single facility" means all storage units under the control and recordkeeping of a single operator adjacent to a manufacturing plant, refinery, warehouse complex, terminal area, airport, bunkering facility, or similar facility.~~

(n)(1) For purposes of this subsection and subsection (o)--

(A) the term "NAFTA Act" means the North American Free Trade Agreement Implementation Act;

(B) the terms "NAFTA country" and "good subject to NAFTA drawback" have the same respective meanings that are given such terms in sections 2(4) and 203(a) of the NAFTA Act; and

(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (o) is subject to section 508(b)(2)(B).

(2) For purposes of subsections (a), (b), (f), (h), (p), and (q), if an article that is exported to a NAFTA country is a good subject to NAFTA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of--

(A) the total amount of customs duties paid or owed on the good on importation into the United States, or

(B) the total amount of customs duties paid on the good to the NAFTA country.

(3) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q), the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988 does not constitute an exportation.

(o)(1)For purposes of subsection (g), if--

(A) a vessel is built for the account and ownership of a resident of a NAFTA country or the government of a NAFTA country, and

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to NAFTA drawback, the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the NAFTA country.

(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988.

(p) Substitution of Finished Petroleum Derivatives.--

(1) In general.--Notwithstanding any other provision of this section, if--

(A) an article (hereafter referred to in this subsection as the "exported article") of the same kind and quality as a qualified article is exported;

(B) the requirements set forth in paragraph (2) are met; and

(C) a drawback claim is filed regarding the exported article; the amount of the duties paid on, or attributable to, such qualified article shall be refunded as drawback to the drawback claimant.

(2) Requirements.--The requirements referred to in paragraph (1) are as follows:

(A) The exporter of the exported article--

(i) manufactured or produced the qualified article in a quantity equal to or greater than the quantity of the exported article,

(ii) purchased or exchanged, directly or indirectly, the qualified article

from a manufacturer or producer described in subsection (a) or (b) in a quantity equal to or greater than the quantity of the exported article,

(iii) imported the qualified article in a quantity equal to or greater than the quantity of the exported article, or

(iv) purchased or exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

(B) In the case of the requirement described in subparagraph

(A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.

(C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.

(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.

(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).

(F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.

(G) The manufacturer, producer, importer, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.

(3) Definition of qualified article, etc.--For purposes of this subsection--

(A) The term "qualified article" means an article--

(i) described in--

(I) headings 2707, 2708, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902 of the Harmonized Tariff Schedule of the United States, or

(II) headings 3901 through 3914 of such Schedule (as such headings apply to liquids, pastes, powders, granules, and flakes), and

(ii) which is--

(I) manufactured or produced as described in subsection (a) or (b) from crude petroleum or a petroleum derivative, or

(II) imported duty-paid.

(B) An exported article is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article.

(C) The term "drawback claimant" means the exporter of the exported article or the refiner, producer, or importer of such article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.

(4) Limitation on drawback.--The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article--

(A) manufactured or produced under subsection (a) or (b) by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

(B) imported under clause (iii) or (iv) of paragraph (2)(A).

(q) Packaging Material.--Packaging material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j), shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax, or fee imposed under Federal law on the importation of such material.

(r) Filing Drawback Claims.--

(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the Customs Service was responsible for the untimely filing.

(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

(s) Designation of Merchandise by Successor.--

(1) For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

(2) For purposes of subsection (j)(2), a drawback successor may designate--

(A) imported merchandise which the predecessor, before the date of succession, imported; or

(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise for which the successor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the successor such merchandise; as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.

(3) For purposes of this subsection, the term "drawback successor" means an entity to which another entity (in this subsection referred to as the "predecessor") has transferred by written agreement, merger, or corporate resolution--

(A) all or substantially all of the rights, privileges, immunities, powers,

duties, and liabilities of the predecessor; or

(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor's records) certifies that--

(A) the transferred merchandise was not and will not be claimed by the predecessor, and

(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.

(t) Drawback Certificates.--Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued.

(u) Eligibility of Entered or Withdrawn Merchandise.--Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

(v) Multiple Drawback Claims.--Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

**SEC. 315. EFFECTIVE DATES OF RATES OF DUTY.**

(a) Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this Act or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the ~~appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the~~

~~Treasury,~~ Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe, except that

(1) * * *

* * * * *

(b) Any article which has been entered for consumption but which, before release from ~~customs custody~~ custody of the Customs Service, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.

(c) Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in ~~paragraph 813~~ chapter 98 of the Harmonized Tariff Schedule of the United States and section 562 of this Act (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

* * * * *

**SEC. 321. ADMINISTRATIVE EXEMPTIONS.**

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to--

(1) disregard a difference ~~of less than $10~~ of an amount specified by the Secretary by regulation, but not less than $20, between the total estimated duties, fees, and taxes deposited, or the total duties fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, and taxes actually accruing thereon; ~~and~~

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of

shipment of articles imported by one person on one day and exempted from the payment of duty ~~shall not exceed --~~ shall not exceed an amount specified by the Secretary by regulation, but not less than--

(A) ~~$50~~ $100 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States

(~~$100~~ $200, in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and America Samoa), or

(B) ~~$25~~ $200 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under subheading 9804.00.30 or 9804.00.70 of this Act, or

(C) ~~$5~~ $200 in any other case~~.~~; and

(3) waive the collection of duties, fees, and taxes due on entered merchandise when such duties, fees, or taxes are less than $20 or such greater amount as may be specified by the Secretary by regulation. The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2).

(b) The Secretary of the Treasury is authorized by regulations ~~to diminish any dollar amount specified in subsection (a) and~~ to prescribe exceptions to any exemption provided for in ~~such subsection~~ subsection (a) whenever he finds that such action is consistent with the purpose of ~~such subsection~~ subsection (a) or is necessary for any reason to protect the revenue or to prevent unlawful importations.
* * * * *

## TITLE IV--ADMINISTRATIVE PROVISIONS

~~PART I--DEFINITIONS~~ PART I--DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

Subpart A--Definitions

### SEC. 401. MISCELLANEOUS.

When used in this title or in Part I of Title III--

(a) * * *

* * * * *

~~(k) Hovering Vessel.--(1) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.~~

~~For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.~~

~~(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which-- (A) has visited any hovering vessel; (B) has received merchandise while in the customs waters beyond the territorial sea; or (C) has received merchandise while on the high seas; shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.~~

(k) The term "hovering vessel" means--

(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws of the United States; and

(2) any vessel which has visited a vessel described in paragraph (1).

* * * * *

(n) The term "electronic transmission" means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

(o) The term "electronic entry" means the electronic transmission of the Customs Service of--

(1) entry information required for the entry of merchandise, and

(2) entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(p) The term "electronic data interchange system" means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

(q) The term "National Customs Automation Program" means the program established under section 411.

(r) The term "import activity summary statement" refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(s) The term "reconciliation" means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest.

* * * * *

Subpart B--National Customs Automation Program

**SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.**

(a) Establishment.--The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the "Program") which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

(1) Existing components:

(A) The electronic entry of merchandise.

(B) The electronic entry summary of required information.

(C) The electronic transmission of invoice information.

(D) The electronic transmission of manifest information.

(E) Electronic payments of duties, fees, and taxes.

(F) The electronic status of liquidation and reliquidation.

(G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

(2) Planned components:

(A) The electronic filing and status of protests.

(B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.

(C) The electronic filing of import activity summary statements and reconciliation.

(D) The electronic filing of bonds.

(E) The electronic penalty process.

(F) The electronic filing of drawback claims, records, or entries.

(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) Participation in Program.--The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. Participation in the Program is voluntary.

**SEC. 412. PROGRAM GOALS.**

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that--

(1) is uniform and consistent;

(2) is as minimally intrusive upon the normal flow of business activity as practicable; and

(3) improves compliance.

**SEC. 413. IMPLEMENTATION AND EVALUATION OF PROGRAM.**

(a) Overall Program Plan.--

(1) In general.--Before the 180th day after the date of the enactment of this Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth--

(A) a general description of the ultimate configuration of the Program;

(B) a description of each of the existing components of the Program listed in section 411(a)(1); and

(C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.

(2) Additional information.--In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding--

(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and

(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on--

(i) importers, brokers, and other users of the Program, and

(ii) Customs Service occupations, operations, processes, and systems.

(b) Implementation Plan, Testing, and Evaluation.--

(1) Implementation plan.--For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall--

(A) develop an implementation plan;

(B) test the component in order to assess its viability;

(C) evaluate the component in order to assess its contribution toward achieving the program goals; and

(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report. In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(2) Implementation.--

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding--

(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) Evaluation and report.--The Secretary shall--

(A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year;

(C) with respect to the existing Program component listed in section 411(a)(1)(G) transmit to the Committees--

(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the

implementation of the planned Program components listed in section 411(a)(2) (B) and (C), and

(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 411(a)(2). In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) Committees.--For purposes of this section, the term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 414. REMOTE LOCATION FILING.

(a) Core Entry Information.--

(1) In general.--A Program participant may file electronically an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a "remote location") if--

(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and

(B) the participant elects to file from the remote location.

(2) Requirements.--

(A) In general.--In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(i) The electronic entry of merchandise.

(ii) The electronic entry summary of required information.

(iii) The electronic transmission of invoice information (when required by the Customs Service).

(iv) The electronic payment of duties, fees, and taxes.

(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

(B) Restriction on exemption from requirements.--The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

(3) Conditions on filing under this section.--The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant--

(i) fails to meet all the compliance requirements and operational standards of remote location filing; or

(ii) fails to adhere to all applicable laws and regulations.

(4) Alternative filing.--Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d).

(b) Additional Entry Information.--

(1) In general.--A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

(2) Requirements.--The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned

components of the Program that a Program participant must have for purposes of this subsection.

(3) Filing of additional information.--

(A) If information electronically acceptable.--A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

(B) Alternative filing.--If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

(C) Appropriate location.--For purposes of subparagraph (B), the "appropriate location" is--

(i) before January 1, 1999, a designated location; and

(ii) after December 31, 1998--

(I) if the paper documentation is required for release, a designated location; or

(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

(D) Other.--A Program participant that is eligible under paragraph

(1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

(c) Post-Entry Summary Information.--A Program participant that is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

(d) Definitions.--As used in this section:

(1) The term "designated location" means a customs office located in the customs district designated by the entry filer for purposes of

customs examination of the merchandise.

(2) The term "Program participant" means, with respect to an entry of merchandise, any party entitled to make the entry under section 484(a)(2)(B).

PART II--REPORT, ENTRY, AND UNLOADING OF VESSELS AND VEHICLES

**SEC. 431. MANIFEST--REQUIREMENT, FORM, AND CONTENTS.**

~~(a) The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain: First. The names of the ports or places at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port: Provided, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo "for orders," and within fifteen days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered. Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel. Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag; and the names of the shippers of such merchandise. Fourth. The names of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state. Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers. Sixth. An account of the sea stores and ship's stores on board of the vessel. (b) Whenever a manifest of articles or persons on board an aircraft is~~

~~required for customs purposes to be signed, or produced or delivered to a customs officer, the manifest may be signed, produced, or delivered by the pilot or person in charge of the aircraft, or by any other authorized agent of the owner or operator of the aircraft, subject to such regulations as the Secretary of the Treasury may prescribe. If any irregularity of omission or commission occurs in any way in respect of any such manifest, the owner or operator of the aircraft shall be liable for any fine or penalty prescribed by law in respect of such irregularity.~~

(a) In General.--Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) shall have a manifest that complies with the requirements prescribed under subsection (d).

(b) Production of Manifest.--Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

* * * * *

(d) Regulations.--

(1) In general.--The Secretary shall by regulation--

(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);

(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;

(C) prescribe the manner of production for, and the delivery or electronic transmittal of the manifest required by subsection (a); and

(D) prescribe the manner for supplementing manifests will bill of

lading data under subsection (b).

(2) Letters and documents shipments.--For purposes of paragraph (1)(B)--

(A) the Customs Service may require with respect to letters and documents shipments--

(i) that they be segregated by country of origin, and

(ii) additional examination procedures that are not necessary for individually manifested shipments;

(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

(C) the term "letters and documents" means--

(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and

(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.

**SEC. 432. MANIFEST TO SPECIFY SEA AND SHIP'S STORES.**

~~The manifest of any vessel arriving from a foreign port or place shall separately specify the articles to be retained on board of such vessel as sea stores, ship's stores, or bunker coal, or bunker oil, and if any other or greater quantity of sea stores, ship's stores, bunker coal, or bunker oil is found on board of any such vessel than is specified in the manifest, of if any such articles, whether shown on the manifest or not, are landed without a permit therefor issued by the appropriate customs officer, all such articles omitted from the manifest or landed without a permit shall be subject to forfeiture, and the master shall be liable to a penalty equal to the value of the articles.~~

**SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.**

(a) Vessel Arrival.--(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of--

(A) any vessel from a foreign port or place;

(B) any foreign vessel from a domestic port; ~~or~~

(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made; or

(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea; the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

* * * * *

(d) Presentation of Documentation.--The master, person in charge of a vehicle, or aircraft pilot shall ~~present to customs officers such~~ present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data, documents, papers, or manifests as the Secretary may by regulation prescribe.

~~(e) Prohibition on Departures and Discharge.--Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands-- (1) depart from the port, place, or airport of arrival; or (2) discharge any passenger or merchandise (including baggage); only in accordance with regulations prescribed by the Secretary.~~

(e) Prohibition on Departures and Discharge.--Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary--

(1) depart from the port, place, or airport of arrival; or

(2) discharge any passenger or merchandise (including baggage).

**SEC. 434. ENTRY OF AMERICAN VESSELS.**

~~Except as otherwise provided by law, and under such regulations as the Secretary of Commerce may prescribe, the master of a vessel of~~

~~the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the appropriate customs officer the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 431 of this Act.~~

**SEC. 434. ENTRY; VESSELS.**

(a) Formal Entry.--Within 24 hours (or such other period of time as may be provided under subsection (c)(2)) after the arrival at any port or place in the United States of--

(1) any vessel from a foreign port or place;

(2) any foreign vessel from a domestic port;

(3) any vessel of the United States having on board bonded merchandise or foreign merchandise for which entry has not been made; or

(4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea; the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(b) Preliminary Entry.--The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

(c) Regulations.--The Secretary may by regulation--

(1) prescribe the manner and format in which entry under subsection (a) or subsection (b), or both, must be made, and such regulations may provide that such any entry may be made electronically pursuant

to an electronic data interchange system;

(2) provide that--

(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

(B) formal entry may be made before arrival; and

(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

**SEC. 435--ENTRY OF FOREIGN VESSELS.**

~~The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the United States, except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the consul of the nation to which such vessel belongs that said documents have been deposited with him: Provided, That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession of the register and other papers of vessels entering the ports of such nations.~~

**SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, ~~AND ENTRY~~ ENTRY, AND CLEARANCE REQUIREMENTS.**

(a) Unlawful Acts.--It is unlawful--

(1) to fail to comply with section ~~433~~ 431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91); ~~(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 433(d) without revealing the facts;~~

(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 431(e), 433(d), or 434 of this Act or

section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) without revealing the facts; or ~~(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or~~

(3) to fail to make entry or to obtain clearance as required by section 434 or 644 of this Act, section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), or section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509); or

* * * * *

**SEC. 437. DOCUMENTS RETURNED AT CLEARANCE.**

~~The register, or document in lieu thereof, deposited in accordance with section 434 or 435 of this Act shall be returned to the master or owner of the vessel upon its clearance.~~

**SEC. 438. UNLAWFUL RETURN OF FOREIGN VESSEL'S PAPERS.**

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section ~~435~~ 434 of this Act, or regulations issued thereunder, until such master shall produce to him a clearance in due form from ~~the appropriate customs officer of the port where such vessel has been entered.~~ the Customs Service in the port in which such vessel has entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than $5,000.

~~**SEC. 439. DELIVERY OF MANIFEST.**~~

~~Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to such employee as the Secretary of the Treasury shall designate, a copy of the manifest, and shall on entering his vessel make affidavit that a true and correct copy was so mailed or delivered, and he shall also mail or deliver to such employee designated by the Secretary a true and correct copy of any correction of such manifest filed on entry of his vessel. Any master who fails so to mail or deliver such copy of the manifest or correction thereof shall be liable to a penalty of not more than $500.~~

**SEC. 440. CORRECTION OF MANIFEST.**

~~If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do shall be liable to a penalty of $500.~~

**SEC. 441. ~~VESSELS NOT REQUIRED TO ENTER.~~ EXCEPTIONS TO VESSSEL ENTRY AND CLEARANCE REQUIREMENTS.**

~~The following vessels shall not be required to make entry at the customhouse:~~ The following vessels shall not be required to make entry under section 434 or to obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91):

(1) * * *

* * * * *

~~(3) Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: Provided, That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: Provided further, That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival.~~

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if--

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if--

(A) the vessel complies with the reporting requirements of section 433, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival;

~~(4)~~ (5) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: Provided, That the master, owner or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; and

~~(5)~~ (6) Tugs ~~enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers~~ documented under chapter 121 of title 46, United States Code, with a Great Lakes endorsement when towing vessels which are required by law to enter and clear.

* * * * *

**SEC. 443. CARGO FOR DIFFERENT PORTS--MANIFEST AND PERMIT.**

~~Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the appropriate customs officer a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board.~~

**SEC. 444. ARRIVAL AT ANOTHER PORT.**

~~Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the appropriate customs officer at such port and shall produce the permit issued by the appropriate customs officer at the port of first arrival, together with the certified copy of his manifest.~~

**SEC. 445. PENALTIES FOR FAILURE TO HAVE PERMIT AND CERTIFIED MANIFEST.**

~~If the master of any such vessel shall proceed to another port or district without having obtained a permit therefor and a certified copy of his manifest, or if he shall fail to produce such permit and certified copy of his manifest to the appropriate customs officer at the port of destination, or if he shall proceed to any port not specified in the permit, he shall be liable to a penalty, for each offense, of not more than $500.~~

* * * * *

**SEC. 447. PLACE OF ENTRY AND UNLADING.**

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: Provided, That upon good cause therefor being shown, the Secretary of Commerce may permit entry of any vessel to be made at a place other than port of entry designated by him, under such conditions as he shall prescribe: And provided further, That any vessel laden with merchandise in bulk may proceed after entry of such vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if ~~the appropriate customs officer shall consider~~ the Customs Service considers the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.

**SEC. 448. UNLADING.**

(a) Permits and Preliminary Entries.--Except as provided in section 441 of this Act (relating to vessels not required to enter or clear), no merchandise, passengers, or baggage shall be unladen from any vessel ~~or vehicle arriving from a foreign port or place~~ required to make entry under section 434, or vehicle required to report arrival under section 433, until entry of such vessel or report of the arrival of such

vehicle has been made and a permit for the unlading of the same issued or transmitted pursuant to an electronic data interchange system by ~~the appropriate customs officer~~ the Customs Service~~: Provided, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall excuse the master from making formal entry of his vessel at the customhouse, as provided by this Act~~. After the entry~~, preliminary or otherwise,~~ of any vessel or report of the arrival of any vehicle, ~~such customs officer~~ the Customs Service may issue a permit, electronically pursuant to an authorized electronic data interchange system or otherwise, to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except a provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefore having been issued. ~~Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by such customs officer, the Customs Service, as provided in section 384, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made.~~ The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 618. Such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490.

* * * * *

**SEC 449. UNLADING AT PORT OF ENTRY.**

Except as provided in sections 442 and 447 of this act (relating to residue cargo and to bulk cargo, respectively), merchandise and baggage imported in such vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the ~~appropriate customs officer of such port issues a permit for the unlading of such merchandise or baggage,~~ Customs Service issues a permit for the unlading of such merchandise or baggage at such port, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be trented as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination.

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~~**SEC. 465. SAME--SUPPLIES.**~~

~~The master of any vessel of the United States documented to engage in the foreign and coasting trade on the northern, north-eastern, and northwestern frontiers shall, upon arrival from a foreign contiguous territory, file with the manifest of such vessel a detailed list of all supplies or other merchandise purchased in such foreign country for use or sale on such vessel, and also a statement of the cost of all repairs to and all equipment taken on board such vessel. The conductor or person in charge of any railway car arriving from a contiguous country shall file with the manifest of such car a detailed list of all supplies or other merchandise purchased in such foreign country for use in the United States. If any such supplies, merchandise, repairs, or equipment shall not be reported, the master, conductor, or other person having charge of such vessel or vehicle shall be liable to a fine of not less than $100 and not more than $500, or to imprisonment for not more than two years, or both.~~

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PART III--ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

**SEC. 481. INVOICE--CONTENTS.**

(a) In General.--~~All invoices of merchandise to be imported into the~~

~~United States shall set forth --~~ All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this action shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:

(1) * * *

* * * * *

~~(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;~~

(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

* * * * *

~~(10) Any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require.~~

(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisement, examination and classification of the merchandise.

* * * * *

~~(c) Purchases in Different Consular Districts.--When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 482 of this Act, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such~~

~~original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.~~

(c) Importer Provision of Information.--Any information required to be set forth on an invoice may alternatively be provided by any of the parties qualifying as an "importer of record" under section 484(a)(2)(B) by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.

(d) Exceptions by Regulations.--The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section.

~~**SEC. 482. CERTIFIED INVOICE.**~~

~~(a) Certification in General.--Every invoice required pursuant to section 484(b) of this Act to be certified shall, at or before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officer of the United States-- (1) For the consular district in which the merchandise was manufactured, or purchased, or from which it was to be delivered pursuant to contract; (2) For the consular district in which the merchandise is assembled and repacked for shipment to the United States, if it has been purchased in different consular districts.~~
~~(b) Declaration.--Such invoices shall have indorsed thereon, when so produced, a verified declaration, in a form prescribed by the Secretary of the Treasury, stating whether the merchandise is sold or agreed to be sold, or whether it is shipped otherwise than in pursuance of a purchase or an agreement to purchase, that there is no other invoice differing from the invoice so produced, and that all the statements contained in such invoice and in such declaration are true and correct.~~
~~(c) Making and Signing.--Every certified invoice shall be made out in triplicate, or, for merchandise intended for immediate transportation under the provisions of section 552 of this Act, in quadruplicate, if desired by the shipper, and shall be signed by the seller or shipper, or the agent of either; but a person who has no interest in the merchandise except as broker or forwarder shall not be competent to sign any such invoice. Where any such invoice is signed by an agent, he shall state thereon the name of his principal.~~
~~(d) Certified Under Existing Law.--Such invoices shall be certified in accordance with the provisions of existing law.~~

~~(e) Disposition.--The original of the invoice and, if made, the quadruplicate shall be delivered to the exporter, to be forwarded to the consignee for use in making entry of the merchandise, and the triplicate shall be promptly transmitted by the consular officer to the appropriate customs officer at the port of entry named in the invoice. The duplicate shall be filed in the office of the consular officer by whom the invoice was certified, to be there kept until no longer needed in conducting the current business of the consular office, at which time it may be disposed of as provided by law.~~
~~(f) Certification by Other than American Consul.--When merchandise is to be shipped from a place so remote from an American consulate as to render impracticable certification of the invoice by an American consular officer, such invoice may be certified by a consular officer of a nation at the time in amity with the United States, or if there be no such consular officer available such invoice shall be executed before a notary public or other officer having authority to administer oaths and having an official seal: Provided, That invoices for merchandise shipped to the United States from the Philippine Islands, the Virgin Islands, American Samoa, the island of Guam, or the Canal Zone may be certified by the appropriate customs officer. (g) Effective Date.--This section shall take effect sixty days after the date of enactment of this Act.~~

**~~SEC. 484. ENTRY OF MERCHANDISE.~~**

~~(a) Requirement and Time.--(1) Except as provided in sections 490, 498, 552, 553, and 336(j) of this Act and in subsections (h) and (i) of this section, one of the parties qualifying as 'importer of record' under paragraph (2)(C) of this subsection, either in person or by an agent authorized by him in writing-- (A) shall make entry therefor by filing with the appropriate customs officer such documentation as is necessary to enable such officer to determine whether the merchandise may be released from customs custody; and (B) shall file (at the time required under paragraph (2)(B) of this subsection) with the appropriate customs officer such other documentation as is necessary to enable such officer to assess properly the duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.~~
~~(2)(A) The documentation required under paragraph (1) of this subsection with respect to any imported merchandise shall be filed at such place within the customs-collection district where the merchandise will be released from customs custody as the Secretary~~

~~shall by regulation prescribe.~~
~~(B) The documentation required under paragraph (1)(B) of this subsection with respect to any imported merchandise shall be filed with the appropriate customs officer when entry of the merchandise is made or at such time within the ten-day period (exclusive of Saturdays, Sundays, and holidays) immediately following the date of entry as the Secretary shall by regulation prescribe.~~
~~(C) When an entry of merchandise is made under this section, the required documentation shall be filed either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641 of this Act. When a consignee declares on entry that he is the owner or purchaser of merchandise, the appropriate customs officer may, without liability, accept the declaration. For the purposes of this title, the importer of record must be one of the parties who is eligible to file the documentation required by this section.~~
~~(D) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data discovered after the release of merchandise shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.~~
~~(b) Production of Certified Invoice.--The Secretary of the Treasury shall provide by regulation for the production of a certified invoice with respect to such merchandise as he deems advisable and for the terms and conditions under which such merchandise may be permitted entry under the provisions of this section without the production of a certified invoice.~~
~~The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this subdivision as he deems advisable.~~
~~(c) Production or Bill of Lading.--The importers of record shall produce the bill of lading at the time of making entry, except that--(1) If the appropriate customs officer is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to such customs officer may be accepted in lieu thereof; (2) The appropriate customs officer is authorized to permit entry and to release merchandise from customs custody without the production of the bill~~

~~of lading if the person making such entry gives a bond satisfactory to such customs officer in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to relieve such customs officer of all liability, to indemnify the collector against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making such customs officer a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and (3) The provisions of this subdivision shall not apply in the case of an entry under subdivision (b) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).~~

~~(d) Signing and Contents.--Such entry shall be signed by the importer of record, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisement, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates, and documents as are required by law and regulations promulgated thereunder.~~

~~(e) Statistical Enumeration.--The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.~~

~~(f) Packages Included.--If any of the certificates or documents necessary to make entry of any part of merchandise arriving on one vessel or vehicle and consigned to one consignee have not arrived, such part may be entered subsequently, and notation of the packages or cases to be omitted from the original entry shall be made thereon. One or more packages arriving on one vessel or vehicle addressed for delivery to one person and imported in another package containing packages addressed for delivery to other persons may be separately entered, under such rules and regulations as the Secretary of the~~

~~Treasury may prescribe. All other merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, unless the Secretary of the Treasury shall authorize the inclusion of portions of such merchandise in separate entries under such rules and regulations as he may prescribe; except that, in the case of articles not subject to a quantitative or tariff-rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section 552 of this Act may be accepted at the port of entry designated by the consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury.~~

~~(g) Statement of Cost Production.--Under such regulations as the Secretary of the Treasury may prescribe, the appropriate customs officer may require a verified statement from the manufacturer or producer sowing the cost of production of the imported merchandise, when necessary to the appraisement of such merchandise.~~

~~(h) The carrier bringing the merchandise into the port at which entry is to be made may certify any person to be the owner, purchaser, or consignee of the merchandise, and that person may be accepted as such by the appropriate customs officer. A carrier shall not certify a person pursuant to this subsection unless it has actual knowledge of or reason to believe in the accuracy of such certification.~~

~~(i) For the purposes of this section, the appropriate customs officer may accept a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry is to be made.~~

~~(j) Release of Merchandise.--Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. The appropriate customs officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made. The customs officer shall not be liable to any person in respect of the delivery of merchandise released from cutoms custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceeding against a customs officer on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by such customs officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the~~

~~Government, no execution shall issue against such customs officer, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose.~~

**SEC. 484. ENTRY OF MERCHANDISE.**

(a) Requirement and Time.--

(1) Except as provided in sections 490, 498, 552, 553, and 336(j), one of the parties qualifying as "importer of record" under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care--

(A) make entry therefore by filing with the Customs Service--

(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and

(ii) notification whether an import activity summary statement will be filed; and

(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to--

(i) properly assess duties on the merchandise,

(ii) collect accurate statistics with respect to the merchandise, and

(iii) determine whether any other applicable requirement of law

(other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, covering entries or warehouse withdrawals made during a calendar month, within such time period as

is prescribed in regulations but not to exceed the 20th day following such calendar month.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.
(b) Reconciliation.--

(1) In general.--A party that electronically transmits an entry summary or import activity summary statement may at the time of filing such summary or statement notify the Customs Service of his intention to file a reconciliation pursuant to such regulations as the Secretary may prescribe. Such reconciliation must be filed by the importer of record within such time period as is prescribed by regulation but no later than 15 months following the filing of the entry summary or import activity summary statement; except that the prescribed time period for reconciliation issues relating to the assessment of antidumping and countervailing duties shall require filing no later than 90 days after the Customs Service advises the importer that a period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

(2) Regulations regarding ad/cv duties.--The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.
(c) Release of Merchandise.--The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.
(d) Signing and Contents.--Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.
(e) Production of Invoice.--The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.
(f) Statistical Enumeration.--The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) Statement of Cost of Production.--Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of

producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.
(h) Admissibility of Data Electronically Transmitted.--Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

**SEC. 485. DECLARATION.**

(a) Requirement--Form and Contents.--Every importer of record making an entry under the provisions of section 484 of this Act shall make and file or transmit electronically therewith, in a form and manner to be prescribed by the Secretary of the Treasury, a declaration under oath, stating--

(1) * * *

* * * * *

(d) ~~A~~ An importer of record shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of ~~a~~ an importer of record.

* * * * *

(g) Exported Merchandise Returned as Undeliverable.--With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.

* * * * *

**SEC. 490. GENERAL ORDERS.**

~~(a) Incomplete Entry.--Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the appropriate customs officer, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the appropriate customs officer believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.~~

(a) Incomplete Entry.--

(1) Whenever--

(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

(D) the Customs Service believes that any merchandise is not correctly and legally invoiced; the carrier (unless subject to subsection (c)) shall notify the bonded warehouse of such unentered merchandise.

(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until--

(A) entry is made or completed and the proper documents are produced;

(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

(C) a bond is given for the production of documents or the transmittal

of data.

(b) ~~At Request of Consignee.--~~ Request for Possession by Customs.--At the request of the consignee of any merchandise, or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the ~~appropriate customs officer~~ Customs Service after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made.
(c) Government Merchandise.--Any imported merchandise that--

(1) is described in any of paragraphs (1) through (4) of subsection (a); and

(2) is consigned to, or owned by, the United States Government; shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.

**SEC. 491. UNCLAIMED MERCHANDISE; DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES AND MALT LIQUOR**

(a) Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in ~~customs custody for one year~~ in a bonded warehouse pursuant to section 490 for 6 months from the date of importation thereof, without all estimated duties ~~and storage~~, taxes, fees, interest, storage, or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the appropriate customs officer at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, taxes, fees, interest, storage, and other charges, if permitted to remain in ~~public store or bonded warehouse for a period of one year~~ pursuant to section 490 in a bonded warehouse for 6 months, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 559 of this Act may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, taxes, fees, interest, storage, and other charges, and expenses that may have accrued thereon, but

such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, taxes, fees, interest, charges, and expenses nor may it be entered for warehouse. The computation of duties, taxes, interest, and fees for the purposes of this section and sections 493 and 559 of this Act shall be at the rate of rates applicable at the time the merchandise becomes subject to sale.
(b) Notice of Title Vesting in the United States.--At the end of the 6-month period referred to in subsection (a), the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day--

(1) the subject merchandise is entered or withdrawn for consumption; and

(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.
(c) Retention, Transfer, Destruction, or Other Disposition.--If title to any merchandise vests in the United States by operation of subsection (b), such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on retained or transferred merchandise shall be paid by the receiving agency.
(d) Petition.--Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b), can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b), or can establish to the satisfaction of the Secretary that the party did not receive notice under subsection (b), the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Treasury of the United States the amount the Secretary believes the party would have received under section 493 had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties.
~~(b)~~ (e) All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by--

(1) * * *

* * * * *

(3) sale by ~~appropriate custom officer~~ Customs Service at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

* * * * *

**SEC. 492. DESTRUCTION OF ABANDONED OR FORFEITED MERCHANDISE.**

Except as provided in section 3369 of the Revised Statutes, as amended (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the ~~appropriate customs officer~~ Customs Service shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed, retained for official use, or otherwise disposed of under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction.

**SEC. 493. PROCEEDS OF SALE.**

The surplus of the proceeds of sales under section 491 of this Act, after the payment of storage charges, expenses, duties, taxes, and fees, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited ~~by the appropriate customs officer~~ in the Treasury of the United States, if claim therefor shall not be filed with ~~such customs officer~~ the Customs Service within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale.

* * * * *

**SEC. 497. PENALTIES FOR FAILURE TO DECLARE.**

(a) In General.--(1) Any article which--

(A) is not included in the declaration and entry as made or transmitted; and
* * * * *
(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to-- ~~(A) if the article is a controlled substance, 1,000 percent of the value of the article; and~~

(A) if the article is a controlled substance, either $500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and
* * * * *

**SEC. 498. ENTRY UNDER REGULATIONS.**

(a) Authorized for Certain Merchandise.--The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of-- ~~(1) Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $1,250, as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions, except that this paragraph does not apply to articles valued in excess of $250 classified in-- (A) chapters 50 through 63; (B) chapters 39 through 43, 61 through 65, 67 and 95; and (C) subchapters III and IV of chapter 99; of the Harmonized Tariff Schedule of the United States, or to any other article for which formal entry is required without regard to value;~~

(1) Merchandise, when--

(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than $2,500; or

(B) different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;

(2) Products of the United States, when the aggregate value of the shipment does not exceed ~~$10,000~~ such amounts as the Secretary may prescribe and the products are imported--

(A) * * *

* * * * *

~~**SEC. 499. EXAMINATION OF MERCHANDISE.**~~

~~Imported merchandise, required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall not be delivered from customs custody, expect under such bond or other security as may be prescribed by the Secretary of the Treasury to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce; until it has been inspected, examined, or appraised and is reported by the appropriate customs officer to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States. Such officer shall designate the packages or quantities covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise and shall order such packages or quantities to be sent to the public stores or other places for such purpose. Not less than one package of every invoice and not less than one package of every ten packages of merchandise, shall be so designated unless the Secretary of the Treasury, from the character and description of the merchandise, is of the opinion that the examination of a less proportion of packages will amply protect the revenue and by special regulation or instruction, the application of which may be restricted to one or more individual ports or to one or more importations or one or more classes of merchandise, permit a less number of packages to be examined. All such special regulations or instructions shall be published in the weekly Treasury Decisions within fifteen days after issuance and before the liquidation of any entries affected thereby. Such officer may require such additional packages or quantities as he may deem necessary. If any package contains any article not specified in the invoice and, in the opinion of the appropriate customs officer, such article was omitted from the invoice with fraudulent intent on the part of the seller, shipper, owner, or agent, the contents of the entire package in which such article is found shall be subject to seizure, but if no such fraudulent intent is apparent, then the value of said article shall be added to the entry and the duties thereon paid accordingly. If a deficiency is found in quantity, weight, or measure in the examination of any package, report thereof shall be made to the appropriate customs officers, who shall make allowance therefore in the liquidation of duties.~~

~~No appraisement made after the effective date of the Customs Administrative Act of 1938 shall be held invalid on the ground that the required number of packages or the required quantity of the merchandise was not designated for examination or, if designated, was not actually examined, unless the party claiming such invalidity shall establish that merchandise in the packages or quantities not designated for examination, or not actually examined, was different from that actually examined and that the difference was such as to establish the incorrectness of the appraisement; and then only as to the merchandise for which the appraisement is shown to be incorrect.~~

**SEC. 499. EXAMINATION OF MERCHANDISE.**

(a) Entry Examination.--

(1) In general.--Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

(2) Examination.--The Customs Service--

(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;

(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;

(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and

(D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.

(3) Unspecified articles.--If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs

Service, the article was omitted from the invoice or entry--

(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or

(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.

(4) Deficiency.--If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.

(5) Information required for release.--If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the port of examination. The absence of such information does not limit the authority of the Customs Service to conduct an examination.

(b) Testing Laboratories.--

(1) Accreditation of private testing laboratories.--The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations--

(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;

(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed $100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service--

(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation. The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 13031(e)(6) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(6)).

(2) Appeal of adverse accreditation decisions.--A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28, United States Code, in the Court of International Trade within 60 days after issuance of the decision or order.

(3) Testing by accredited laboratories.--When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry. Nothing in this subsection shall be construed to limit in any way or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.

(4) Availability of testing procedure, methodologies, and information.--Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are--

(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

(ii) developed by the Customs Service for enforcement purposes.

(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information reveals information which is--

(i) proprietary to the holder of a copyright or patent; or

(ii) developed by the Customs Service for enforcement purposes.

(5) Miscellaneous provisions.--For purposes of this subsection--

(A) any reference to a private laboratory includes a reference to a private gauger; and

(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.

(c) Detentions.--Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

(1) In general.--Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

(2) Notice of detention.--The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of--

(A) the initiation of the detention;

(B) the specific reason for the detention;

(C) the anticipated length of the detention;

(D) the nature of the tests or inquiries to be conducted; and

(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(3) Testing results.--Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(4) Seizure and forfeiture.--If otherwise provided by law, detained merchandise may be seized and forfeited.

(5) Effect of failure to make determination.--

(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 514(a)(4).

(B) For purposes of section 1581 of title 28, United States Code, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.

(C) Notwithstanding section 2639 of title 28, United States Code, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

**SEC. 500. APPRAISEMENT, CLASSIFICATION, AND LIQUIDATION PROCEDURES.**

~~The appropriate customs officer~~ The Customs Service shall, under rules and regulations prescribed by the Secretary--

(a) ~~appraise~~ fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 402, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;

(b) ~~ascertain the~~ fix the final classification and rate of duty applicable to such merchandise;

(c) fix the final amount of duty to be paid on such merchandise and determine any increased or additional duties, taxes, and fees due or any excess of duties, taxes, and fees deposited; ~~(d) liquidate the entry of such merchandise; and (e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.~~

(d) liquidate the entry and reconciliation, if any, of such merchandise; and

(e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.

**SEC. 501. ~~VOLUNTARY RELIQUIDATIONS~~ VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS SERVICE.**

A liquidation made in accordance with section 500 or any reliquidation thereof made in accordance with this section may be reliquidated in any respect by ~~the appropriate customs officer on his own initiative~~ the Customs Service, notwithstanding the filing of a protest, within ninety days from the date on which notice of the original liquidation is given or transmitted to the importer, his consignee or agent. Notice of such reliquidation shall be given or transmitted in the manner prescribed with respect to original liquidations under section 500(e).

**SEC. 502. REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.**

(a) Powers of Secretary of the Treasury.--The Secretary of the Treasury shall establish and promulgate such rules and regulations not

inconsistent with the law (including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry~~, and~~. The Secretary may direct any customs officer to go from one port of entry to another for the purpose of appraising or classifying or assisting in appraising or classifying merchandise imported at ~~such port~~ any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port.
~~(b) Reversal of Secretary's Rulings.--No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.~~
~~(c)~~ (b) /3/ Duties of Customs Officers.--It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs.
Note /3/ The deletion of (b) and the change of (c) to (b) takes effect on the date the Agreement enters into force with respect to the United States.

* * * * *

**SEC. 504. LIMITATION ON LIQUIDATION.**

(a) Liquidation.--~~Except as provided in subsection (b),~~ Unless an entry is extended under subsection (b) or suspended as required by statute or court order, an entry of merchandise not liquidated within one year from:

(1) the date of entry of such merchandise;

(2) the date of the final withdrawal of all such merchandise covered by a warehouse entry; ~~or~~

(3) the date of withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under section 505(a) of this Act, duties may be deposited after the filing of an entry or withdrawal from warehouse; or

(4) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed; shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 500(e) of this Act, notice of liquidation need not be given of an entry deemed liquidated.

~~(b) Extension.--The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if-- (1) information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officer; (2) liquidation is suspended as required by statute or court order; or (3) the importer of record requests such extension and shows good cause therefor.~~

~~(c) Notice of Suspension.--If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer of record concerned and to any authorized agent and surety of such importer of record.~~

~~(d) Limitation.--Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.~~

(b) Extension.--The Secretary may extend the period in which to liquidate an entry if--

(1) the information needed for the proper appraisement or classification of the merchandise, or for insuring compliance with applicable law, is not available to the Customs Service; or

(2) the importer of record requests such extension and shows good cause therefor. The Secretary shall give notice of an extension under this subsection to the importer of record and the surety of such importer of record. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation

prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record at the expiration of 4 years from the applicable date specified in subsection (a).

(c) Notice of Suspension.--If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record and to any authorized agent and surety of such importer of record.

(d) Removal of Suspension.--When a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record. ~~SEC. 505. PAYMENT OF DUTIES.~~

~~(a) Deposit of Estimated Duties.--Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the appropriate customs officer at the time of making entry, or at such later time as the Secretary may prescribe by regulation (but not to exceed thirty days after the date of entry), the amount of duties estimated by such customs officer to be payable thereon.~~

~~(b) Collection or Refund.--The appropriate customs officer shall collect any increased or additional duties due or refund any excess of duties deposited as determined on a liquidation or reliquidation.~~

~~(c) Duties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation, and unless payment of the duties is received by the appropriate customs officer within 30 days after that date, shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation at a rate determined by the Secretary of the Treasury.~~

**SEC. 505. PAYMENT OF DUTIES AND FEES.**

(a) Deposit of Estimated Duties, Fees, and Interest.--Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties

and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.
(b) Collection or Refund of Duties, Fees, and Interest Due Upon Liquidation or Reliquidation.--The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.
(c) Interest.--Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation.
(d) Delinquency.--If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b), any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.

**SEC. 506. ALLOWANCE FOR ABANDONMENT AND DAMAGE.**

Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

(1) Abandonment within thirty days.--Where the importer abandons to the United States, within thirty days after entry in the case of merchandise ~~not sent to the appraiser's stores for~~ released without an examination, or within thirty days after the release ~~of the examination packages or quantities of merchandise~~ in the case of merchandise sent to ~~the appraiser's stores~~ the Customs Service for examination, any

imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice or entry in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the collector directs unless ~~the appropriate customs officer~~ the Customs Service is satisfied that the merchandise is so far destroyed as to be nondeliverable;

(2) Perishable merchandise, condemned.--Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files, electronically or otherwise, with ~~such customs officer~~ the Customs Service ~~written~~ notice thereof, an invoiced description and the location thereof, and the name of the vessel or vehicle in which imported.
* * * * *

**SEC. 508. RECORDKEEPING.**

~~(a) Requirements.--Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which-- (1) pertain to any such importation, or to the information contained in the documents required by this Act in connection with the entry of merchandise; and (2) are normally kept in the ordinary course of business.~~
~~(b) Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to such exportations.~~
~~(c) Period of Time.--The records required by subsections (a) and (b) of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.~~
(a) Requirements.--Any--

(1) owner, importer, consignee, importer of record, entry filer, or other party who--

(A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) agent of any party described in paragraph (1); or

(3) person whose activities require the filing of a declaration or entry, or both; shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which--

(A) pertain to any such activity, or to the information contained in the records required by this Act in connection with any such activity; and

(B) are normally kept in the ordinary course of business.
(b) Exportations to Free Trade Countries.--

(1) Definitions.--As used in this subsection--

(A) The term "associated records" means, in regard to an exported good under paragraph (2), records associated with--

(i) the purchase of, cost of, value of, and payment for, the good;

(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and

(iii) the production of the good. For purposes of this subparagraph, the terms "indirect material," "material," "preferential tariff treatment," "used," and "value" have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.

(B) The term "NAFTA Certificate of Origin" means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) Exports to nafta countries.--

(A) In general.--Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make,

keep, and render for examination and inspection all records relating to the origin of the good (including the Certificate or copies thereof) and the associated records.

(B) Claims for certain waivers, reductions, or refunds of duties or for credit against bonds.--

(i) In general.--Any person that claims with respect to an article--

(I) a waiver or reduction of duty under the last paragraph of section 311, section 312(b)(1) or (4), section 562(2), or the last proviso to section 3(a) of the Foreign Trade Zones Act;

(II) a credit against a bond under section 312(d); or

(III) a refund, waiver, or reduction of duty under section 313(n)(2) or (o)(1); must disclose to the Customs Service the information described in clause (ii).

(ii) Information required.--Within 30 days after making a claim described in clause (i) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either--

(I) prepares a NAFTA Certificate of Origin for the article; or

(II) learns of the existence of such a Certificate for the article; that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.

(iii) Action on claim.--If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (i) is made, the Customs Service may make such adjustments regarding the previous customs treatment of the article as may be warranted under the claim.

(3) Exports under the canadian agreement.--Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies

thereof) which pertain to the exportations.

~~(c)Period of Time.--The records required by subsections (a) and (b) shall be kept for such period of time, not to exceed 5 years from the date of entry or exportation, as appropriate, as the Secretary shall prescribe; except that records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.~~
(c) Period of Time.--The records required by subsections (a) and (b) shall be kept for such periods of time as the Secretary shall prescribe; except that--

(1) no period of time for the retention of the records required under subsection (a) or (b)(3) may exceed 5 years from the date of entry or exportation, as appropriate;

(2) the period of time for the retention of the records required under subsection (b)(2) shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and

(3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim./4/
Note /4/ This version of section (c) takes effect on the date the Agreement enters into force with respect to the United States.

* * * * *

~~(e) Any person who fails to retain records required by subsection (b) or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed $10,000.~~

(e) Subsection (b) Penalties.--

(1) Relating to nafta exports.--Any person who fails to retain records required by paragraph (2) of subsection (b) or the regulations issued to implement that paragraph shall be liable for--

(A) a civil penalty not to exceed $10,000; or

(B) the general recordkeeping penalty that applies under the customs laws; whichever penalty is higher.

(2) Relating to canadian agreement exports.--Any person who fails to retain the records required by paragraph (3) of subsection (b) or the

regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed $10,000.

**SEC. 509. EXAMINATION OF BOOKS AND WITNESSES.**

(a) Authority.--In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees ~~and taxes~~, fees and taxes due or duties, fees ~~and taxes~~, fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may-- ~~(1) examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry; (2) summon, upon reasonable notice-- (A) the person who imported, or knowingly caused to be imported, merchandise into the customs territory of the United States, (B) any officer, employee, or agent of such person, (C) any person having possession, custody, or care of records relating to such importation, or~~

(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that--

(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g);

(2) summon, upon reasonable notice--

(A) the person who--

(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States, ~~(ii) exported merchandise, or knowingly caused merchandise to be exported, to Canada,~~

(ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) or to Canada during such time as the United States Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada,/5/
Note /5/ This version of subsection (ii) takes effect on the date the Agreement enters into force with respect to the United States.

(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

(iv) filed a declaration, entry, or drawback claim with the Customs Service;

(B) any officer, employee, or agent of any person described in subparagraph (A);

(C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or

(D) any other person he may deem proper~~,~~; to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection

(c)(I)(A), and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(b) Regulatory Audit Procedures.--

(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the

course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.

(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.

(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the appropriate regional commissioner, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the appropriate regional commissioner provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, United States Code, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.

~~(b)~~ (c) Service of Summons.--A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable

specificity.

~~(c)~~ (d) Special Procedures for Third-Party Summonses.--(1) For purposes of this subsection--

(A) The term "records" includes ~~statements, declarations, or documents~~ those--
* * * * *

(C) The term "third-party recordkeeper" means--

(i) any customhouse broker, unless such customhouse is the importer of record on an entry;

* * * * *

(2) If--

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the ~~import~~ transactions described in section 508 of any person (other than the person summoned) who is identified in the description of the records contained in such summons; then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

* * * * *

(4) Paragraph (2) of this subsection shall not apply to any summons--

(A) served on the person with respect to whose liability for duties, fees, or taxes the summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the ~~import~~ transactions described in section 508 of an identified person have been made or kept.

* * * * *

(e) List of Records and Information.--The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A).

(f) Recordkeeping Compliance Program.--

(1) In general.--After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 508(a) may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

(2) Certification.--A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it--

(A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

(C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original

records; and

(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.

(g) Penalties.--

(1) Definition.--For purposes of this subsection, the term "information" means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A).

(2) Effects of failure to comply with demand.--Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) the following provisions apply:

(A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(C) In addition to any penalty imposed under subparagraph (A) or

(B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise--

(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 514 or 520, at the applicable column 1 general rate of duty; except that any liquidation or reliquidation under clause (i) or

(ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

(3) Avoidance of penalty.--No penalty may be assessed under this subsection if the person can show--

(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

(4) Penalties not exclusive.--Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for--

(A) a penalty imposed under section 592 for a material omission of the demanded information, or

(B) disciplinary action taken under section 641.

(5) Remission or mitigation.--A penalty imposed under this section may be remitted or mitigated under section 618.

(6) Customs summons.--Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

(7) Alternatives to penalties.--

(A) In general.--When a recordkeeper who--

(i) has been certified as a participant in the recordkeeping compliance program under subsection (f); and

(ii) is generally in compliance with the appropriate procedures and requirements of the program; does not produce a demanded record or

information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(B) Contents of notice.--A notice of violation issued under subparagraph (A) shall--

(i) state that the recordkeeper has violated the recordkeeping requirements;

(ii) indicate the record of information which was demanded; and

(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.

(C) Response to notice.--Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(D) Regulations.--The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.

**SEC. 510. JUDICIAL ENFORCEMENT.**

(a) Order of Court.--If any person summoned under section 509 of this Act does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof and such court may assess a monetary penalty.

* * * * *

~~**SEC. 513. CUSTOMS OFFICER'S IMMUNITY.**~~

~~No customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent might under this Act be entitled to protest or appeal from the decision of such officer.~~

**SEC. 513. CUSTOMS OFFICER'S IMMUNITY.**

No customs officer shall be liable in any way to any person for or on account of--

(1) any ruling or decision regarding the appraisement or the classification of any imported merchandise or regarding the duties, fees, and taxes charged thereon,

(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

(3) any other matter of thing as to which any person might under this Act be entitled to protest or appeal from the decision of such officer.

**SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.**

(a) Finality of Decisions.--Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties), section 520 (relating to refunds and errors), and section 521 (relating to reliquidations on account of fraud) of this Act, decisions of the ~~appropriate customs officer,~~ Customs Service, including the legality of all orders and findings entering into the same, as to--

(1) * * *

* * * * *

(5) the liquidation or reliquidation of an entry, or reconciliation as to

the issues contained therein, or any modification thereof;

(6) the refusal to pay a claim for drawback; ~~and~~ or

(7) the refusal to reliquidate an entry under section 520(c) of this act~~,~~; shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the ~~appropriate customs officer, who~~ Customs Service, which shall take action accordingly.
(b) With respect to determinations made under section 303 of this Act of title VII of this Act which are reviewable under section 516A of this title, determinations of the ~~appropriate customs officer~~ Customs Service are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of the North American Free Trade Agreement or the United States- Canada Free-Trade Agreement.
(c) Protests.--

(1) In general.--~~A protest of a decisions under subsection (a) shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor.~~ A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically--

(A) each decision described in subsection (a) as to which protest is made;

(B) each category of merchandise affected by each decision set forth under paragraph (1);

(C) the nature of each objection and the reasons therefor; and

(D) any other matter required by the Secretary by regulation. Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, that is the subject of a protest are deemed to be part of a single protest. A protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 515 of this Act at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 485(d) and 557(b) of this Act, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by--

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback; ~~or~~

(E) with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or ~~(E)~~ (F) any authorized agent of any of the persons described in ~~clauses (A) through (D)~~ clauses (A)

through (E). ~~(2)~~ (3) Time for filing.--A protest of a decision, order, or finding described in subsection (a) shall be filed with ~~such customs officer~~ the Customs Service within ninety days after but not before--

(A) notice of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

(d) Limitation on Protest of Reliquidation.--The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the ~~customs officer~~ Customs Service upon any question not involved in such reliquidation. A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

(e) Advance Notice of Certain Determinations.--Except as provided in subsection (f), an exporter or producer referred to in subsection (c)(2)(E) shall be provided notice in advance of an adverse determination of origin under section 202 of the North American Free Trade Agreement Implementation Act. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

(f) Denial of Preferential Treatment.--If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act--

(1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and

(2) the advance notice requirement in subsection (e) shall not apply to that person; until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 202.

**SEC. 515. REVIEW OF PROTESTS.**

(a) * * *

* * * * *

(c) If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28, United States Code. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.
(d) If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate district director within 90 days after the date of the protest denial, void the denial of the protest.
* * * * *

**SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTI-DUMPING DUTY PROCEEDINGS.**

(a) Review of Determination.--

(1) * * *

* * * * *

~~(5) Time limits in cases involving canadian merchandise.--~~
~~Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin~~

~~to run, until the 31st day after-- (A) the date of publication in the Federal Register of notice of any determination described in paragraph (1)(B) or any determination described in clause (i), (ii), or (iii) of paragraph (2)(B), (B) the date on which the Government of Canada receives notice of a determination described in clause (vi) of paragraph (2)(B), or (C) the date as of which-- (i) a binational panel has dismissed the binational panel review for lack of jurisdiction, and (ii) any interested party seeking review under paragraph (1), (2), or (3) has provided timely notice under subsection (g)(3)(B), except that if a request for an extraordinary challenge committee has been made with respect to the decision to dismiss, the date under this subparagraph shall not be earlier than the date on which such committee determines that such panel acted properly when it dismissed for lack of jurisdiction.~~

(5) Time limits in cases involving merchandise from free trade area countries.--Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

(A) For a determination described in paragraph (1)(B) or clause

(i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

(B) For a determination described in clause (vi) of paragraph

(2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.

(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8), the day after the date as of which--

(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and

(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this subsection has provided timely notice under subsection (g)(3)(B). If such an interested party files a summons and complaint under this subsection after dismissal by the

binational panel, and if a request for an extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss--

(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and

(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel decision to dismiss.

(D) For a determination for which review by the United States Court of International Trade is provided for--

(i) under subsection (g)(12)(B), the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or

(ii) under subsection (g)(12)(D), the day after the date that notice of settlement is published in the Federal Register.

(b) Standards of Review.--

(1) * * *

* * * * *

(3) Effect of decisions by nafta or united states-canada. binational panels.--In making a decision in any action brought under subsection (a), a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the NAFTA or of the Agreement.

* * * * *

(f) Definitions.--For purposes of this section--

(1) * * *

* * * * *

~~(6) United states secretary.--The term "United States Secretary" means the secretary provided for in paragraph 4 of article 1909 of the~~

~~Agreement. (7) Canadian secretary.--The term "Canada Secretary" means the secretary provided for in paragraph 5 of article 1909 of the Agreement.~~

(6) United states secretary.--The term "United States Secretary" means--

(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

(7) Relevant fta secretary.--The term "relevant FTA Secretary" means the Secretary--

(A) referred to in article 1908 of the NAFTA, or

(B) provided for in paragraph 5 of article 1909 of the Agreement, of the relevant FTA country.

(8) NAFTA.--The term "NAFTA" means the North American Free Trade Agreement.

(9) Relevant fta country.--The term "relevant FTA country" means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

(10) Free trade area country.--The term "free trade area country" means the following:

(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.

(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.

(C) Canada for such time as--

(i) it is not a free trade area country under subparagraph (A); and

(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.

(g) Review of Countervailing Duty and Antidumping Duty Determinations Involving ~~Canadian Merchandise~~ Free Trade Area Country Merchandise.--

(1) Definition of determination.--For purposes of this subsection, the term "determination" means a determination described in--

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (ii), (iii), or (vi) or paragraph (2)(B) of subsection (a), if made in connection with a proceeding regarding a class or kind of ~~Canadian merchandise~~ free trade area country merchandise, as determined by the administering authority.

(2) Exclusive review of determination by binational panels.--If binational panel review of a determination is requested pursuant to article 1904 of the NAFTA or of the Agreement, then, except as provided in paragraphs (3) and (4)--

(A) the determination is not reviewable under subsection (a), and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) Exception to exclusive binational panel review.--

(A) In general.--A determination is reviewable under subsection (a) if the determination sought to be reviewed is--

(i) a determination as to which neither the United States ~~nor Canada~~ nor the relevant FTA country requested review by a binational panel pursuant to article 1904 of the NAFTA or of the Agreement.

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States ~~nor Canada~~ nor the relevant FTA country requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force of the NAFTA or of the Agreement, ~~or~~

(iv) a determination which a binational panel has determined ~~under~~

~~the paragraph (2)(A)~~ is not reviewable by the binational panel~~.~~,

(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or

(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

(B) Special rule.--~~A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination.~~ A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to--

(i) the United States Secretary and the relevant FTA Secretary;

(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

(iii) the administering authority or the Commission, as appropriate. Such notice is timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) Exception to exclusive binational panel review for constitutional issues.--

(A) Constitutionality of binational panel review system.--An action for

declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or the United States-Canada Free-Trade Implementation Agreement Act of 1988 implementing the binational panel dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action. ~~Any action brought under this subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28, United States code.~~

* * * * *

(5) Liquidation of entries.--

(A) Application.--In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).

(B) General rule.--In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) Suspension of liquidation.--

(i) In general.--Notwithstanding the provisions of subparagraph

(B), in the case of a determination described in clause (iii) or

(vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter

arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) Notice.--At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary~~, the Canadian Secretary,~~, the relevant FTA Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) Application of suspension.--If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E) or (F) of section 771(9), the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the NAFTA or of the Agreement.

* * * * *

(6) Injunctive relief.--Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the provisions of subsection (c)(2) shall not apply.

(7) Implementation of international obligations under article 1904 of the nafta or the agreement.--

(A) ~~In general.--~~ Action upon remand.--If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the

United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

* * * * *

(8) Requests for binational panel review.--

(A) Interested party requests for binational panel review.--

(i) General rule.--An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the NAFTA or of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(ii) Suspension of time to request binational panel review under the nafta.--Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.

(B) Service of request for binational panel review.--

(i) * * *

(ii) Service by united states secretary.--If an interested party to the proceeding requests binational panel review of a determination by filing a request with the ~~Canadian Secretary,~~ relevant FTA Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) Limitation on request for binational panel review.--Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review ~~under article 1904 of the Agreement of a determination.~~ of a determination under article

1904 of the NAFTA or the Agreement.

(9) Representation in panel proceedings.--In the case of binational panel proceedings convened under chapter 19 of the NAFTA or of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) Notification of class or kind rulings.--In the case of a determination which is described in paragraph (2)(B)(vi) of subsection

(a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the ~~Government of Canada received notice of the determination under article 1904(4) of the Agreement.~~ Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.

(11) Suspension and termination of suspension of article 1904 of the nafta.--

(A) Suspension of article 1904.--If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.

(B) Termination of suspension of article 1904.--If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

(12) Judicial review upon termination of binational panel or committee review under the nafta.--

(A) Notice of suspension or termination of suspension of article 1904.--

(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the operation of article 1904 of the NAFTA has been suspended in accordance with

paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

(B) Transfer of final determinations for judicial review upon suspension of article 1904.--If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA--

(i) upon the request of an authorized person described in subparagraph (C), any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a); or

(ii) in a case in which--

(I) a binational panel review was completed fewer than 30 days before the suspension, and

(II) extraordinary challenge committee review has not been requested, upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

(C) Persons authorized to request transfer of final determinations for judicial review.--A request that a final determination be transferred to the Court of International Trade under subparagraph

(B) may be made by--

(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was

suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA--

(I) the government of the relevant country described in subsection (f)(10)(A) or (B),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or

(ii) if a country described in subsection (f)(10)(A) or (B) made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA--

(I) the government of that country,

(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

(D)(i) Transfer for judicial review upon settlement.--If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

(ii) A request referred to in clause (i) is a request made by--

(I) the country referred to in clause (i),

(II) an interested party that was a party to the panel or committee

review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

* * * * *

**SEC. 520. REFUNDS AND ERRORS.**

(a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

(1) Excess deposits.--Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

* * * * *

(4) Prior to liquidation.--Prior to the liquidation of an entry or reconciliation, whenever it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid by reason of clerical error.

* * * * *

(c) Notwithstanding a valid protest was not filed, the ~~appropriate customs officer~~ Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry or reconciliation to correct--

(1) a clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in electronic transmission, not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the ~~appropriate customs officer~~ Customs Service within one year after the date of liquidation or exaction; or

(2) any assessment of duty on household or personal effects in respect of which an application for refund has been filed, with such employee as the Secretary of the Treasury shall designate, within one year after

the date of entry.
~~(d) If a determination is made to reliquidate an entry as a result of a protest filed under section 514 of this Act or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as increased or additional duties under section 505(c) of this Act at the annual rate established pursuant to that section and determined as of the 15th day after the date of liquidation or reliquidation. The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 28, United States Code, whichever occurs first.~~
(d) Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes--

(1) a written declaration that the good qualified under those rules at the time of importation;

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1)); and

(3) such other documentation relating to the importation of the goods as the Customs Service may require.

**~~SEC. 521. RELIQUIDATION ON ACCOUNT OF FRAUD~~.**

~~If the appropriate customs officer finds probable cause to believe there is fraud in the case, he may reliquidate an entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation.~~

* * * * *

**SEC. 526. MERCHANDISE BEARING AMERICAN TRADE-MARK.**

(a) * * *

* * * * *

(e) Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the goods seized--

(1) * * *

* * * * *

(3) more than ~~1 year~~ 90 days after the date of forfeiture, by sale by ~~appropriate customs officers~~ the Customs Service at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or

* * * * *

**SEC. 529. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.**

The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government agency for any reason.

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Part IV--Transportation in Bond and Warehousing of Merchandise

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**SEC. 553A. RECORDKEEPING FOR MERCHANDISE TRANSPORTED BY PIPELINE.**

Merchandise in Customs custody that is transported by pipeline may be accounted for on a quantitative basis, based on the bill of lading, or

equivalent document of receipt, issued by the pipeline carrier. Unless the Customs Service has reasonable cause to suspect fraud, the Customs Service may accept the bill of lading, or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee to maintain identity. The shipper, pipeline operator, and consignee shall be subject to the recordkeeping requirements of sections 508 and 509.
* * * * *

**SEC. 557. ENTRY FOR WAREHOUSE--WAREHOUSE PERIOD--DRAWBACK.**

(a)(1) Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner purchaser, importer, or consignee. Such merchandise may be withdrawn, at any time within 5-years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port~~: Provided, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation.~~; except that--

(A) the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation; and

(B) turbine fuel may be withdrawn for use under section 309 without the payment of duty if an amount equal to the quantity of fuel withdrawn is shown to be used within 30 days after the day of withdrawal, but duties

(together with interest payable from the date of the withdrawal at the rate of interest established under section 6621 of title 26, United States Code) shall be deposited by the 40th day after the day of withdrawal on fuel that was withdrawn in excess of the quantity shown to have been so used during such 30-day period.

(2) Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within 5 years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

* * * * *

**SEC. 562. MANIPULATION IN WAREHOUSE.**

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same; except that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom ~~without payment of duties-- (1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that-- (A) is only cleaned, sorted, or repacked in a bonded warehouse, or (B) is a drawback eligible good under section 204(a) of such Act of 1988; (2) for exportation to any foreign country except Canada; and (3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.~~

(1) without payment of duties for exportation to a NAFTA country, as

defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the merchandise is of a kind described in any of paragraphs (1) through (8) of section 203(a) of that Act;

(2) for exportation to a NAFTA country if the merchandise consists of goods subject to NAFTA drawback, as defined in section 203(a) of that Act, except that--

(A) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition, and

(B) duty shall be paid on the merchandise before the 61st day after the date of exportation, but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the merchandise, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of--

(i) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or

(ii) the total amount of customs duties paid on the merchandise to the NAFTA country;

(3) without payment of duties for exportation to any foreign country other than to a NAFTA country or to Canada when exports to that country are subject to paragraph (4);

(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise that--

(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

(B) is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988; and

(5) without payment of duties for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam. merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph ~~(1)~~ (4) of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse.

* * * * *

**SEC. 565. CARTAGE.**

~~The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond, in a penal sum to be fixed by such customs officer, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted.~~ The cartage of merchandise entered for warehouse shall be done by--

(1) cartmen appointed and licensed by the Customs Services; or

(2) carriers designated under section 551 to carry bonded merchandise; who shall give bond, in a penal sum to be fixed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the customs officer

as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.

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Part V--Enforcement Provisions

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~~**SEC. 583. CERTIFICATION OF MANIFEST.**~~

~~The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the original manifest to the inspection thereof and return the same to the master of other person in charge.~~

**SEC. 584. FALSITY OR LACK OF MANIFEST--PENALTIES.**

(a) General Rule.--(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the ~~officer demanding the same~~ officer (whether of the Customs Service or the Coast Guard) demanding the same shall be liable to a penalty of $1,000, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest" immediately after "or the owner of such vessel or vehicle shall be liable to a penalty equal to the lesser of $10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest" immediately after "or the owner of such vessel or

vehicle shall be subject to a penalty of $1,000: Provided, That if the ~~appropriate customs officer~~ Customs Service shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason or clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the term "clerical error" means a nonnegligent, inadvertent, or typographical mistake in the preparation; assembly, or submission (electronically or otherwise) of the manifest.

(2) If any of such merchandise so found consists of heroin, morphine, or cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine; isonipecaine, or opiate being in such merchandise shall be liable to a penalty of $1,000 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise shall be liable to a penalty of $500 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of $200 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 594 of this Act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the ~~appropriate customs officer~~ Customs Service, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms "opiate" and "marihuana" shall have the same meaning given those terms by

sections 102(17) and 102(15), respectively, of the Controlled Substances Act.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 7 of the Anti-Smuggling Act and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: Provided, That if the ~~appropriate customs officer~~ Customs Service shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.

(b) Procedures.--(1) If ~~the appropriate customs officer~~ the Customs Service has reasonable cause to believe that there has been a violation of subsection (a)(1) and determines that further proceedings are warranted, ~~he~~ the Customs Service shall issue or electronically transmit to the person concerned a ~~written~~ notice of ~~his intention~~ intent to issue or electronically transmit a claim for a monetary penalty. Such notice shall--

(A)* * *

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(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued. No notice is required under this subsection for any violation of subsection (a)(1) for which the proposed penalty is $1,000 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), ~~the appropriate customs officer~~ the Customs Service shall determine whether any violations of subsection (a)(1), as alleged in the notice, has occurred. If ~~such officer~~ the Customs Service determines that there was no violation, ~~he~~ the Customs Service shall promptly issue or electronically transmit a ~~written~~ statement of the determination to the

person to whom the notice was sent. If ~~such officer~~ the Customs Service determines that there was a violation, ~~he~~ the Customs Service shall issue or electronically transmit a ~~written~~ penalty claim to such person. The ~~written~~ penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

~~**SEC. 585. DEPARTURE BEFORE REPORT OR ENTRY.**~~

~~If any vessel or vehicle from a foreign port or place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a report or entry under the provisions of this Act, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of $5,000, and the person in charge of such vehicle shall be liable to a penalty of $500, and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the United States.~~

**SEC. 586. UNLAWFUL UNLADING OR TRANSSHIPMENT**

(a) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.
(b) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transshipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise

by not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.
(c) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists, of any spirits, wines, or other alcoholic liquors, to be unlade without permit to unlade, at any place upon the high seas adjacent to the customs water of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

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(f) Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify ~~the appropriate customs officer of the~~ the Customs Service at the district within which such unlading or transshipment has occurred, or ~~the appropriate customs officer within the~~ the Customs Service at the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if ~~the appropriate customs officer is~~ the Customs Service is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred.

* * * * *

**SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.**

(a) Prohibition.--

(1) General rule.--Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no

person, by fraud, gross negligence, or negligence--

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of--

(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) Exception.--Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) Procedures.--

(1) Pre-penalty notice.--

(A) In general.--If the ~~appropriate customs officer~~ Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, ~~he~~ it shall issue to the person concerned a written notice of ~~his~~ its intention to issue a claim for a monetary penalty. Such notice shall--

(i) describe the merchandise;

(ii) set forth the details of entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

* * * * *

(2) Penalty claim.--After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the ~~appropriate customs officer~~ Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If ~~such officer~~ the Customs Service determines that there was no violation, ~~he~~ it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If ~~such officer~~ the Customs Service determines that there was a violation, ~~he~~ it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided

under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the ~~appropriate customs officer~~ Customs Service shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum Penalties.--

(1) * * *

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(4) Prior disclosure.--If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed--

(A) if the violation resulted from fraud--

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the ~~time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his~~ time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the ~~time of disclosure or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his~~ time of disclosure, or

within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount. The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) Prior disclosure regarding nafta claims.--An importer shall not be subject to penalties under subsection (a) for making an incorrect claim for preferential tariff treatment under section 202 of the North American Free Trade Agreement Implementation Act if the importer--

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 508(b)(1)) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

~~(5)~~ (6) Seizure.--If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

* * * * *

(d) Deprivation of Lawful Duties, Taxes or Fees.--Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a), ~~the appropriate customs officer~~ the Customs Service shall require that such lawful duties, taxes or fees be restored, whether or not a monetary penalty is assessed.

* * * * *

(f) False Certifications Regarding Exports To NAFTA Countries.--

(1) In general.--Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 508(b)(1)) that a good to be exported to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) qualifies under the rules of origin set out in section 202 of that Act.

(2) Applicable provisions.--The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of paragraph (1), except that--

(A) subsection (d) does not apply, and

(B) subsection (c)(5) applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(3) Exception.--A person may not be considered to have violated paragraph (1) if--

(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

**SEC. 593A. PENALTIES FOR FALSE DRAWBACK CLAIMS.**

(A) Prohibition.--

(1) General rule.--No person, by fraud, or negligence--

(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of--

(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

(ii) any omission which is material; or

(B) may aid or abet any other person to violate subparagraph (A).

(2) Exception.--Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere noninternational repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) Procedures.--

(1) Prepenalty notice.--

(A) In general.--If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, the Customs Service shall issue to the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall--

(i) identify the drawback claim;

(ii) set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud or negligence;

(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the

amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) Exceptions.--The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

(C) Prior approval.--No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

(2) Penalty claim.--After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection

(a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum Penalties.--

(1) Fraud.--A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) Negligence.--

(A) In general.--A negligent violation of subsection (a) is punishable by

a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

(B) Repetitive violations.--If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

(3) Prior disclosure.--

(A) In general.--Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection

(a) before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed--

(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1986 on the amount of actual revenue of which the United States is or may be deprived during the period that--

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.

(B) Condition affecting penalty limitations.--The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under subsection (c) apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

(C) Burden of proof.--The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(4) Commencement of investigation.--For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) Exclusivity.--Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection

(a).

(d) Deprivation of Lawful Revenue.--Notwithstanding section 514, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a), the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.
(e) Drawback Compliance Program.--

(1) In general.--After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

(2) Certification.--A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it--

(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.
(f) Alternatives to Penalties.--

(1) In general.--When a party that--

(A) has been certified as a participant in the drawback compliance program under subsection (e); and

(B) is generally in compliance with the appropriate procedures and requirements of the program; commits a violation of subsection (a), the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(2) Contents of notice.--A notice of violation issued under paragraph

(1) shall--

(A) state that the party has violated subsection (a);

(B) explain the nature of the violation; and

(C) warn the party that future violations of subsection (a) may result in the imposition of monetary penalties.

(3) Response to notice.--Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(g) Repetitive Violations.--

(1) A party who has been issued a written notice under subsection

(f)(1) and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

(A) 2d violation.--An amount not to exceed 20 percent of the loss of revenue.

(B) 3d violation.--An amount not to exceed 50 percent of the loss of revenue.

(C) 4th and subsequent violations.--An amount not to exceed 100 percent of the loss of revenue.

(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) commits an alleged violation which was not repetitive, the party shall be issued a "warning letter", and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

(h) Regulation.--The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsection (g), a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

(i) Court of International Trade Proceedings.--Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section--

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.

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**SEC. 596. AIDING UNLAWFUL IMPORTATION.**

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(a) * * *

~~(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited.~~

(c) Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

(1) The merchandise shall be seized and forfeited if it--

(A) is stolen, smuggled, or clandestinely imported or introduced;

(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law; or

(C) is a contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781).

(2) The merchandise may be seized and forfeited if--

(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;

(B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;

(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 42, 43, or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125, or 1127), section 506 or 509 of title 17, United States Code, or section 2318 or 2320 of title 18, United States Code);

(D) it is trade dress merchandise involved in the violation of a court order citing section 43 of such Act of July 5, 1946 (15 U.S.C. 1125);

(E) it is merchandise which is marked intentionally in violation of section 304; or

(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 304.

(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 499 unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification of value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 592.

(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may--

(A) remit the forfeiture under section 618, or

(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

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**SEC. 612. SEIZURE; SUMMARY SALE.**

(a) Whenever it appears to ~~the appropriate customs officer~~ the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 607, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, ~~such officer~~ the Customs Service shall proceed forthwith to advistise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607, ~~such officer~~ the Customs Service shall forthwith transmit ~~the appraiser's return and his~~ its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by ~~the customs officer~~ the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

~~(b) If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.~~

(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.

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**SEC. 621. LIMITATION OF ACTIONS.**

No suit or action to recover any duty under section 593A(d), or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was ~~discovered: Provided, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.~~ discovered; except that--

(1) in the case of an alleged violation of section 592 or 593A, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.

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**SEC. 623. BONDS AND OTHER SECURITY.**

(a) * * *

(b) Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may--

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: Provided, That in the case of an alleged violation of section 592 of this Act arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: Provided further, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law,

regulation, or instruction.
* * * * *
(d) No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond. Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.

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**SEC. 625. PUBLICATION OF DECISIONS.**

~~Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this Act with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.~~

**SEC. 625. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.**

(a) Publication.--Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.
(b) Appeals.--A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.
(c) Modification and Revocation.--A proposed interpretive ruling or decision which would--

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions; shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

(d) Publication of Customs Decisions That Limit Court Decisions.--A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.
(e) Public Information.--The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5, United States Code.

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**SEC. 628. EXCHANGE OF INFORMATION.**

(a) * * *
* * * * *
(c) The Secretary may authorize customs officers to exchange information with any government agency of a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the Secretary--

(1) reasonably believes the exchange of information is necessary to implement chapter 3, 4, or 5 of the North American Free Trade Agreement, and

(2) obtains assurances from such country that the information will be held in confidence and used only for governmental purposes.

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**SEC. 630. AUTHORITY TO SETTLE CLAIMS.**

(a) In General.--With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Secretary may settle, for not more than $50,000 in any one case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Customs Service and acting within the scope of his or her employment.
(b) Limitations.--The Secretary may not pay a claim under subsection (a) that--

(1) concerns commercial property;

(2) is presented to the Secretary more than 1 year after it occurs; or

(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

(c) Final Settlement.--A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.

**SEC. 631. USE OF PRIVATE COLLECTION AGENCIES.**

(a) In General.--Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.
(b) Contract Requirements.--Any contract entered into under subsection (a) shall provide that--

(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to--

(A) section 552a of title 5, United States Code, to the extent provided in subsection (m) as such section; and

(B) laws and regulations of the United States Government and State governments related to debt collection practices.

Part VI--Miscellaneous Provisions

**SEC. 641. CUSTOMS BROKERS.**

(a) Definitions.--As used in this section:

(1) The term "customs broker" means any person granted a customs broker's license by the Secretary under subsection (b).

(2) The term "customs business" means those activities involving transaction with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

* * * * *

(c) Customs Broker's Permits.-- ~~(1) In general.--Each person granted a customs broker's license under subsection (b) shall--(A) be issued a permit, in accordance with regulations prescribed under this section, for each customs district in which that person conducts customs business; and (B) except as provided in paragraph (2), regularly employ in each customs district for which a permit is so issued at least one individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.~~

(1) In general.--Each person granted a customs broker's license under subsection (b) shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.

* * * * *

(4) Appointment of subagents.--Notwithstanding subsection (c)(1), upon the implementation by the Secretary under section 413(b)(2) of the component of the National Customs Automation Program referred to in section 411(a)(2)(B), a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.

(d) Disciplinary Proceedings.--

(1) * * *

(2) Procedures.--

(A) * * *

(B) Revocation or suspension.--~~The appropriate customs officers~~ The Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or ~~the appropriate customs officer~~ the Customs Service determines that the revocation or suspension is still warranted, ~~he~~ it shall notify the customs broker in writing of a hearing to be held within ~~15~~ 30 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105

of title 5, United States Code, who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to ~~the appropriate customs officer and the customs broker; they~~ the Customs Service and the customs broker; which shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with ~~his~~ the findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth his findings of fact and the reasons ~~for his decision~~ for the decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed $30,000, then was contained in the notice to show cause.

* * * * *

(f) Regulations by the Secretary.--The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the ~~United States Customs Service.~~ Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the

data may be retained in a centralized basis according to such broker's business system.

* * * * *

## TITLE VII--COUNTERVAILING AND ANTIDUMPING DUTIES

* * * * *

Subtitle D--General Provisions

### SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title--

(1) * * *

* * * * *

~~(18)~~ (21) United states-canada agreement.--The term "United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.

(22) NAFTA.--The term "NAFTA" means the North American Free Trade Agreement.

(23) Entry.--The term "entry" includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in section 401(s), that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this title, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

* * * * *

### SEC. 777. ACCESS TO INFORMATION.

(a) * * *
* * * * *

(f) Disclosure of Proprietary Information Under Protective Orders Issued Pursuant to the North American Free Trade Agreement or the United States- Canada Agreement.--

(1) Issuance of protective orders.--

(A) In general.--If binational panel review of a determination under this title is requested pursuant to article 1904 of the NAFTA or the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the NAFTA or the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material in the administrative record made during the proceeding in question. If the administrating authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel or extraordinary challenge committee finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel or committee as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).

(B) Authorized persons.--For purposes of this subsection, the term "authorized persons" means--

(i) * * *

* * * * *

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement, and

(iv) any officer or employee of the ~~Government of Canada designated by an authorized agency of Canada~~ Government of a free trade area country (as defined in section 516A(f)(10)) designated by an authorized agency of such country to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary

challenge committees under chapter 19 of the NAFTA or the Agreement.

* * * * *

(2) Contents of protective order.--Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding, including any extraordinary challenge, equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) Prohibited acts.--It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized ~~agency of Canada~~ agency of a free trade area country (as defined in section 516A(f)(10)) to protect proprietary material during binational panel or extraordinary challenge committee review pursuant to article 1904 of the NAFTA or the United States-Canada Agreement.

(4) Sanctions for violation of protective orders.--Any person, except a judge appointed to a binational panel or an extraordinary challenge committee under section 402(b) of the North American Free Trade Agreement Implementation Act, who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, or inducement of a

violation or receipt of information with reason to know that such information was disclosed in violation, of an undertaking entered into by any person with an authorized ~~agency of Canada~~ agency of a free trade area country (as defined in section 516A(f)(10)).

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**Section 3 of the Act of June 18, 1934 (Commonly Known as the Foreign Trade Zones Act)**

AN ACT To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes

* * * * *

Sec. 3. (a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: Provided, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and

irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: Provided further, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: Provided further, That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: Provided further, That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of--

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder. Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615 (f) of the

Tariff Act of 1930, as amended: Provided further, That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraph 367 or paragraph 368 of the Tariff Act of 1930, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this Act prior to July 1, 1949: Provided further, That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section, may, on such importation, be entered as American goods returned: Provided further, That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 2(4) of that Act, without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930) in an amount that does not exceed the lesser of (1) the total amount of cutoms duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country: Provided further, That, if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, No article manufactured or otherwise changed in condition (except a change by cleaning, testing

or repacking) shall be exported to Canada ~~on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988,~~ during the period such Agreement is in operation without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested.

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**Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985**

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.
(a) Schedule of Fees.--In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

(1) * * *

* * * * *

~~(5) For the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)), $5.~~

(5)(A) For fiscal years 1994, 1995, 1996, and 1997, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States, $6.50.

(B) For fiscal year 1998 and each fiscal year thereafter, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A) of this section), $5.
(b) Limitation on Fees.--(1) No fee may be charged under subsection (a) for customs services provided in connection with--

(A) the arrival of any passenger whose journey--

(i) * * *

* * * * *

Subparagraph (A) shall not apply to fiscal years 1994, 1995, 1996, and 1997.

* * * * *

~~(10) The fee charged under subsection (a) (9) or (10) of this section with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) shall be in accordance with article 403 of the United States-Canada Free-Trade Agreement. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.~~

(10)(A) The fee charged under subsection (a) (9) or (10) with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement) when the United States-Canada Free-Trade Agreement is in force shall be in accordance with section 403 of that Agreement.

(B) For goods qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, the fee under subsection (a) (9) or (10)--

(i) may not be charged with respect to goods that qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement, for such time as Canada is a NAFTA country, as defined in section 2(4) of such Implementation Act; and

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(f) Disposition of Fees.--There is established in the general fund of the Treasury a separate account which shall be known as the "Customs User Fee Account". Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) ~~except that portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations~~ except--

(A) the portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations, and

(B) the portion of such fees that is determined by the Secretary to be excess fees under paragraph (5).

* * * * *

(3)(A) The Secretary of the Treasury, in accordance with section 524 of the Tariff Act of 1930 and subject to subparagraph (B), shall directly reimburse, from the fees collected under subsection (a) ~~(other than subsection (a) (9) or (10)~~ other than the fees under subsection (a) (9) and (10) and the excess fees determined by the Secretary under paragraph

(5)), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary--

(i) * * *

* * * * *

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed ~~under subsection (a)~~ under subsection (a) (other than the excess fees determined by the Secretary under paragraph (5)) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

(5) At the close of each of fiscal years 1994, 1995, 1996, and 1997, the Secretary of the Treasury shall determine the amount of the fees collected under paragraph (5)(A) of subsection (a) for that fiscal year that exceeds the amount of such fees that would have been collected for such fiscal year if the fees that were in effect on the day before the effective date of this paragraph applied to such fiscal year. The

amount of the excess fees determined under the preceding sentence shall be deposited in the Customs User Fee Account and shall be available for reimbursement of inspectional costs (including passenger processing costs) not otherwise reimbursed under this section, and shall be available only to the extent provided in appropriations Acts.

(g) Regulations and Enforcement.--(1) ~~In addition to the regulations required under paragraph (2), the~~The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section. ~~(2) The Secretary of the Treasury shall prescribe regulations governing the work shifts of customs personnel at airports. Such regulations shall provide, among such other factors considered appropriate by the Secretary, that -- (A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime; (B) the work shifts will not be arbitrarily reduced or compressed; and (C) consultation with the Advisory Committee on Commercial Operations of the United States Customs Service (established under section 9501(c) of the Omnibus Budget Reconciliation Act of 1987) will be carried out before adjustments are made in the work shifts.~~ ~~(3)~~ (2) Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee prescribed under subsection (a) of this section, and with respect to persons liable therefor, as if such fee is a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the amount of the fee assessed. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any fee prescribed under subsection (a) of this section shall be treated as if such fee is a customs duty.

* * * * *

(j) Effective Dates.--(1) * * *

* * * * *

(3) Fees may not be charged under subsection (a) after ~~September 30, 1998.~~ September 30, 2003.

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**Trade Act of 1974**

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**TITLE I--NEGOTIATING AND OTHER AUTHORITY**

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## CHAPTER 8--IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

* * * * *

## SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.

(a) * * *
* * * * *
(f) Special Rule for Actions Affecting United States Cultural Industries.--

(1) In general.--By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the Trade Representative shall identify any act, policy, or practice of Canada which--

(A) affects cultural industries,

(B) is adopted or expanded after December 17, 1992, and

(C) is actionable under article 2106 of the North American Free Trade Agreement.

(2) Special rules for identifications.--For purposes of section 302(b)(2)(A), an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2), unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall--

(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 135, and appropriate officers of the Federal Government, and

(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be

submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b).

(3) Cultural industries.--For purposes of this subsection, the term "cultural industries" means persons engaged in any of the following activities:

(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.

(B) The production, distribution, sale, or exhibition of film or video recordings.

(C) The production, distribution, sale, or exhibition of audio or video music recordings.

(D) The publication, distribution, or sale of music in print or machine readable form.

(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.

**TITLE II--RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION**

**CHAPTER 1--POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS**

* * * * *

**SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.**

(a) Petitions and Adjustment Plans.--

(1) * * *

* * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall

apply with respect to information received by the Commission in the course of investigations conducted under this chapter and part 1 of title III of the North American Free Trade Agreement Implementation Act.

* * * * *

(d) Provisional Relief.--

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if--

(i) the imported product is a perishable agricultural product or citrus product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

* * * * *

(C) If a petition filed under subsection (a)--

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under paragraph (2) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports; the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either--

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

* * * * *

(5) For purposes of this subsection:

(A) The term "citrus product" means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate. ~~(A)~~ (B) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account--

(i) whether the article has--

* * * * *

~~(B)~~ (C) The term "provisional relief" means--

(i) any increase in, or imposition of, any duty;

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**CHAPTER 2--ADJUSTMENT ASSISTANCE FOR WORKERS**

Subchapter A--Petitions and Determinations

**SEC. 221. PETITIONS.**

(a) A petition for a certification of eligibility to apply for adjustment assistance under this ~~chapter~~ subchapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

* * * * *

**SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.**

(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this ~~chapter~~ subchapter if he determines--

(1) * * *

* * * * *

**SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR.**

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this ~~chapter~~ subchapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

* * * * *

**SEC. 225. BENEFIT INFORMATION TO WORKERS.**

(a) * * *

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A or subchapter D of this chapter--

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under

subchapter A or subchapter D in newspapers of general circulation in the areas in which such workers reside.

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Subchapter C--General Provisions

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**SEC. 245. AUTHORIZATION OF APPROPRIATIONS.**

~~There~~ (a) In General.--There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998, such sums as may be necessary to carry out the purposes of this chapter, other than subchapter D.

(b) Subchapter D.--There are authorized to be appropriated to the Department of Labor, for each of fiscal years 1994, 1995, 1996, 1997, and 1998, such sums as may be necessary to carry out the purposes of subchapter D of this chapter.

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**SEC. 249A. NONDUPLICATION OF ASSISTANCE.**

No worker may receive assistance relating to a separation pursuant to certifications under both subchapters A and D of this chapter.
Subchapter D--NAFTA Transitional Adjustment Assistance Program

**SEC. 250. ESTABLISHMENT OF TRANSITIONAL PROGRAM.**

(a) Group Eligibility Requirements.--

(1) Criteria.--A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified as eligible to apply for adjustment assistance under this subchapter pursuant to a petition filed under subsection (b) if the Secretary determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated, and either--

(A) that--

(i) the sales or production, or both, of such firm or subdivision have decreased absolutely,

(ii) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and

(iii) the increase in imports under clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(B) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

(2) Definition of contributed importantly.--The term "contributed importantly", as used in paragraph (1)(A)(iii), means a cause which is important but not necessarily more important than any other cause.

(3) Regulations.--The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).

(b) Preliminary Findings and Basic Assistance.--

(1) Filing of petitions.--A petition for certification of eligibility to apply for adjustment assistance under this subchapter may be filed by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which such workers' firm or subdivision thereof is located.

(2) Findings and assistance.--Upon receipt of a petition under paragraph (1), the Governor shall--

(A) notify the Secretary that the Governor has received the petition;

(B) within 10 days after receiving the petition--

(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1) (and for purposes of this clause the criteria described under subparagraph (A)(iii) of such subsection shall be disregarded), and

(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons therefor, to the Secretary for action under subsection (c); and

(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

(c) Review of Petitions by Secretary; Certifications.--

(1) In general.--The Secretary, within 30 days after receiving a petition under subsection (b), shall determine whether the petition meets the criteria described in subsection (a)(1). Upon a determination that the petition meets such criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for assistance described in subsection (d).

(2) Denial of certification.--Upon denial of certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of subchapter A to determine if the workers may be certified under such subchapter.
(d) Comprehensive Assistance.--Workers covered by certification issued by the Secretary under subsection (c) shall be provided, in the same manner and to the same extent as workers covered under a certification under subchapter A, the following:

(1) Employment services described in section 235.

(2) Training described in section 236, except that notwithstanding the provisions of section 236(a)(2)(A), the total amount of payments for training under this subchapter for any fiscal year shall not exceed $30,000,000.

(3) Trade readjustment allowances described in sections 231 through 234, except that--

(A) the provisions of sections 231(a)(5)(C) and 231(c), authorizing the payment of trade readjustment allowances upon a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of such allowances under this subchapter; and

(B) notwithstanding the provisions of section 233(b), in order for a

worker to qualify for trade readjustment allowances under this subchapter, the worker shall be enrolled in a training program approved by the Secretary under section 236(a) by the later of--

(i) the last day of the 16th week of such worker's initial unemployment compensation benefit period, or

(ii) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker. In cases of extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for a period not to exceed 30 days .

(4) Job search allowances described in section 237.

(5) Relocation allowances described in section 238.

(e) Administration.--The provisions of subchapter C shall apply to the administration of the program under this subchapter in the same manner and to the same extent as such provisions apply to the administration of the program under subchapters A and B, except that the agreement between the Secretary and the States described in section 239 shall specify the procedures that will be used to carry out the certification process under subsection (c) and the procedures for providing relevant data by the Secretary to assist the States in making preliminary findings under subsection (b).

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## CHAPTER 5--MISCELLANEOUS PROVISIONS

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## SEC. 284. JUDICIAL REVIEW.

(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 or section 250(c) of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action

in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

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**SEC. 285. TERMINATION.**

(a) * * *

* * * * *

(c) ~~No~~ (1) Except as provided in paragraph (2), no assistance, vouchers, allowances, or other payments may be provided under chapter 2, and no technical assistance may be provided under chapter 3, after September 30, 1998.
(2)(A) Except as provided in subparagraph (B), no assistance, vouchers, allowances, or other payments may be provided under subchapter D of chapter 2 after the day that is the earlier of--

(i) September 30, 1998, or

(ii) the date on which legislation, establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by such subchapter D, becomes effective.
(B) Notwithstanding subparagraph (A), if, on or before the day described in subparagraph (A), a worker--

(i) is certified as eligible to apply for assistance, under subchapter D of chapter 2; and

(ii) is otherwise eligible to receive assistance in accordance with section 250, such worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements of such section.

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**Meat Import Act of 1979**
**Sec. 2. (a) This section may be cited as the "Meat Import Act of 1979".**

(b) For purposes of this section--

(1) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(2) The term "meat articles" means the articles provided for in the Tariff Schedules of the United States (19 U.S.C. 1202) under--

(A) item 106.10 (relating to fresh, chilled, or frozen cattle meat);

(B) items 106.22 and 106.25 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and

(C) items 107.55 and 107.62 (relating to prepared and preserved beef and veal (except sausage)), if the articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved. ~~Such term does not include any article described in subparagraph (A), (B), or (C) originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988).~~

(3) The term "meat articles" does not include any article described in paragraph (2) that--

(A) originates in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act), or

(B) originates in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies such Agreement to, Canada. [(3)] (4) The term 'Secretary' means the Secretary of Agriculture.

(5) The term "NAFTA Act" means the North American Free Trade Agreement Implementation Act.

(6) The term "NAFTA country" has the meaning given such term in section 2(4) of the NAFTA Act.

* * * * *

(f)(1) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than (A) 1,193,000,000 pounds if no import limitation on Canadian products is in effect under subsection (1), or (B) 1,250,000,000 pounds if an import limitation on Canadian products is in effect under subsection (1). The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in item 107.61 of the Tariff Schedules of the United States (relating to high-quality beef specially processed into fancy cuts~~.~~ , except that the President may exclude any such article originating in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act) or, if paragraph (3)(B) applies, any such article originating in Canada as determined in accordance with such paragraph (3)(B).

* * * * *

(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries other than Canada and Mexico on the basis of the shares of the United States market for meat articles such countries other than Canada and Mexico supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may affect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

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**Section 358e of the Agricultural Adjustment Act of 1938**
**SEC. 358e. MARKETING PENALTIES AND DISPOSITION OF ADDITIONAL PEANUTS FOR 1991 THROUGH 1997 CROPS OF PEANUTS.**

(a) * * *

* * * * *

(d) Handling and Disposal of Additional Peanuts.--

(1) * * *

* * * * *

~~(6) Reentry of exported peanuts.--If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer thereof shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.~~

(6) Reentry of exported peanuts.--

(A) Penalty.--If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer of the peanuts shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.

(B) Records.--Each person, firm, or handler who imports peanuts into the United States shall maintain such records and documents as are required by the Secretary to ensure compliance with this subsection.

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**Section 1542 of the Food, Agriculture, Conservation, and Trade Act of 1990**

**SEC. 1542. PROMOTION OF AGRICULTURAL EXPORTS TO EMERGING DEMOCRACIES.**

(a) * * *

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(d) E (Kika) de la Garza Agricultural Fellowship Program.--The Secretary of Agriculture (hereafter in this section referred to as the "Secretary") shall establish a program, to be known as the "E (Kika) de la Garza Agricultural Fellowship Program", to develop agricultural markets in emerging democracies and to promote cooperation and

exchange of information between agricultural institutions and agribusinesses in the United States and the Soviet Union, as follows:

(1) * * *

* * * * *

(3) Agricultural fellowships for nafta countries.--

(A) In general.--The Secretary shall grant fellowships to individuals from countries that are parties to the North American Free Trade Agreement (referred to in this paragraph as "NAFTA") to study agriculture in the United States, and to individuals in the United States to study agriculture in other NAFTA countries.

(B) Purpose.--The purpose of fellowships granted under this paragraph is--

(i) to allow the recipients to expand their knowledge and understanding of agricultural systems and practices in other NAFTA countries;

(ii) to facilitate the improvement of agricultural systems in NAFTA countries; and

(iii) to establish and expand agricultural trade linkages between the United States and other NAFTA countries.

(C) Eligible recipients.--The Secretary may provide fellowships under this paragraph to agricultural producers and consultants, government officials, and other individuals from the private and public sectors.

(D) Acceptance of gifts.--The Secretary may accept money, funds, property, and services of every kind of gift, devise, bequest, grant, or otherwise, and may in any manner, dispose of all of the holdings and use the receipts generated from the disposition to carry out this paragraph. Receipts under this paragraph shall remain available until expended.

(E) Authorization of appropriation.--There are authorized to be appropriated such sums as are necessary to carry out this paragraph.

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**Section 104 of Title 35, United States Code**

~~Sec. 104. Invention made abroad~~

~~In proceedings in the Patent and Trademark Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.~~ Sec. 104. Invention made abroad

(a) In General.--In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States or a NAFTA country and serving in any other country in connection with operations by or on behalf of the United States or a NAFTA country, the person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States or a NAFTA country. To the extent that any information in a NAFTA country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

(b) Definition.--As used in this section, the term "NAFTA country" has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act.

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**Section 4 of the Record Rental Amendment of 1985**

**EFFECTIVE DATE**

Sec. 4. (a) * * *

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~~(c) The amendments made by this Act shall not apply to rentals, leasings, lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring after the date which is 13 years after the date of the enactment of this Act.~~

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**Trademark Act of 1946**

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**TITLE I--THE PRINCIPAL REGISTER**

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**MARKS REGISTRABLE ON THE PRINCIPAL REGISTER**

Sec. 2. No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it--

(a) * * *

* * * * *

~~(e) Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 4 hereof, or (3) is primarily merely a surname.~~

(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 4, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, or (4) is primarily merely a surname.

(f) Except as expressly excluded in paragraphs (a), (b), (c), ~~and (d)~~ (d), and (e)(3) of this section, nothing herein shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become

distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before the date of the enactment of the North American Free Trade Agreement Implementation Act.

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**TITLE II--THE SUPPLEMENTAL REGISTER**

Sec. 23. (a) In addition to the principal register, the Commissioner shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trade-marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under subsections (a), (b), (c), ~~and (d)~~ (d), and (e)(3) of section 2 of this Act, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1 so far as they are applicable. Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this Act, that is declared to be unregistrable under section 2(e)(3), if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before the date of the enactment of the North American Free Trade Agreement Implementation Act.

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**Title 17, United States Code**

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Chapter 1--Subject Matter and Scope of Copyright
Sec. 101. Definitions.
102. Subject matter of copyright: In general.
103. Subject matter of copyright: Compilations and derivative works.
104. Subject matter of copyright: National origin.
104A. Copyright in certain motion pictures.

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**Sec. 104A. Copyright in certain motion pictures**

(a) Restoration of Copyright.--Subject to subsections (b) and (c)--

(1) any motion picture that is first fixed or published in the territory of a NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act to which Annex 1705.7 of the North American Free Trade Agreement applies, and

(2) any work included in such motion picture that is first fixed in or published with such motion picture. that entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by section 401, 402, or 403 of this title, the absence of which has not been excused by the operation of section 405 of this title, as such sections were in effect during that period, shall have copyright protection under this title for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice.

(b) Effective Date of Protection.--The protection provided under subsection (a) shall become effective, with respect to any motion picture or work included in such motion picture meeting the criteria of that subsection, 1 year after the date on which the North American Free Trade Agreement enters into force with respect to, and the United States applies the Agreement to, the country in whose territory the motion picture was first fixed or published if, before the end of that 1-year period, the copyright owner in the motion picture or work files with the Copyright Office a statement of intent to have copyright protection restored under subsection (a). The Copyright Office shall publish in the Federal Register promptly after that effective date a list of motion pictures, and works included in such motion pictures, for which protection is provided under subsection (a).

(c) Use of Previously Owned Copies.--A national or domiciliary of the

United States who, before the date of the enactment of the North American Free Trade Agreement Implementation Act, made or acquired copies of a motion picture, or other work included in such motion picture, that is subject to protection under subsection (a), may sell or distribute such copies or continue to perform publicly such motion picture and other work without liability for such sale, distribution, or performance, for a period of 1 year after the date on which the list of motion pictures, and works included in such motion pictures, that are subject to protection under subsection (a) is published in the Federal Register under subsection (b).

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**Section 214 of the Immigration and Nationality Act**
**ADMISSION OF NONIMMIGRANTS**
**Sec. 214.**
(a) * * *

* * * * *

(e)(1) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C-- Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.
(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15). The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term "citizen of Mexico" means "citizen" as defined in Annex 1608

of NAFTA.
(3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit--

(A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and

(B) shall cease to apply as provided for in paragraph 3 of such Appendix.
(4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if--

(A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);

(B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth--

(i) the action proposed to be taken and the reasons therefor, and

(ii) the advice obtained under subparagraph (A);

(C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and

(B) with respect to such action has expired; and

(D) the President has consulted with such committees regarding the proposed action during the period referred to in subparagraph (C).

(5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 212(m), in the case of a registered nurse, or the application requirement of section 212(n), in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition

requirement of subsection (c), to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 212(m) and 212(n), and the Attorney General, with respect to subsection (c).

* * * * *

(j) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this subsection shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this subsection, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such Agreement.

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**Trade Agreements Act of 1979**
**SECTION 1. SHORT TITLE; TABLE OF CONTENTS; PURPOSES.**

(a) Short Title.--This Act may be cited as the "Trade Agreements Act of 1979".
(b) Table of Contents.--
Sec. 1. Short title; table of contents; purposes.
Sec. 2. Approval of trade agreements.
Sec. 3. Relationship of trade agreements to United States law.

TITLE I--COUNTERVAILING AND ANTIDUMPING DUTIES

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TITLE IV--TECHNICAL BARRIERS TO TRADE (STANDARDS)

Subtitle A--Obligations of the United States
Sec. 401. Certain standards-related activities.
Sec. 402. Federal standards-related activities.
Sec. 403. State and private standards-related activities.

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## TITLE III--GOVERNMENT PROCUREMENT

### SEC. 301. GENERAL AUTHORITY TO MODIFY DISCRIMINATORY PURCHASING REQUIREMENTS

(a) Presidential Waiver of Discriminatory Purchasing Requirements.--~~The President~~ Subject to subsection (f) of this section, the President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded--

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) Designation of Eligible Countries and Instrumentalities.--The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality--

(1) is a country or instrumentality which (A) has become a party to the Agreement or the North American Free Trade Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

* * * * *

(e) Procurement Procedures by Certain Federal Agencies.--Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a-2 of the North American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.

(f) Small Business and Minority Preferences.--The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.

**SEC. 302. AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.**

(a) Authority To Bar Procurement From Non-Designated Countries.--With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products--

(1) shall prohibit the procurement, after the date on which any waiver under section 301(a) first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and (B) which ~~would otherwise be eligible products~~ are products covered under the Agreement for procurement by the United States; and

* * * * *

**SEC. 308. DEFINITIONS.**

As used in this title--

(1) * * *
* * * * *

(4) Eligible products.-- ~~(A) In general.--The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.~~

(A) In general.--The term "eligible product" means, with respect to any foreign country or instrumentality that is--

(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States; or

(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States.

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## TITLE IV--TECHNICAL BARRIERS TO TRADE (STANDARDS)

* * * * *

Subtitle B--Functions of Federal Agencies

### SEC. 411. FUNCTIONS OF ~~SPECIAL~~ TRADE REPRESENTATIVE.

(a) In General.The ~~Special~~ Trade Representative shall coordiante the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this title.
(b) Negotiating Functions.--The ~~Special~~ Trade Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standard-related activities. In carrying out this responsibility, the ~~Special~~ Trade Representative shall inform and consult with any Federal agency having expertise in the matter
(c) Cross Reference.--

* * * * *

### SEC. 412. ESTABLISHMENT AND OPERATION OF TECHNICAL OFFICES.

(a) Establishment.--

(1) For nonagricultural products.--The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) with respect to nonagricultural products.

(2) For agricultural products.--The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) with respect to agricultural products.
(b) Functions of Offices.--The President shall prescribe for each technical office established under subsection (a) such functions as the President deems necessary or appropriate to implement this title.

### SEC. 413. REPRESENTATION OF UNITED STATES INTERESTS BEFORE INTERNATIONAL STANDARDS ORGANIZATIONS.

(a) Oversight and Consultation.--The Secretary concerned shall--

(1) inform, and consult and coordinate with, the ~~Special~~ Trade Representative with respect to international standards-related activities identified under paragraph (2);

* * * * *

**SEC. 415 CONTRACTS AND GRANTS.**

(a) In General.--For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the ~~Special~~ Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities--

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 413, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports. No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) Terms and Conditions.--Any contract entered into, or any grant made, under subsection (a) shall be subject to such terms and conditions as the ~~Special~~ Trade Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) Limitations.--Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the ~~Special~~ Trade Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The

non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.
(d) Audit.--Each recipient of a grant or contract under this section shall make available to the ~~Special~~ Trade Representative or Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper and record that is pertinent to the funds received under such grant or contract.

**SEC. 416. TECHNICAL ASSISTANCE.**

The ~~Special~~ Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this title.

**SEC. 417. CONSULTATIONS WITH REPRESENTATIVES OF DOMESTIC INTERESTS.**

In carrying out the functions for which responsible under this title, the ~~Special~~ Trade Representative or Secretary concerned shall solicit technical and policy advice from the committees, established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

Subtitle C--Administrative and Judicial Proceedings Regarding Standards- Related Activities

CHAPTER 1--REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OR OBLIGATIONS

**SEC. 421. RIGHTS OF ACTION UNDER THIS CHAPTER.**

Except as provided under this chapter, the provisions of this subtitle do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

**SEC. 422. REPRESENTATIONS.**

Any--

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the ~~Special~~ Trade Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement: may make a representation to the ~~Special~~ Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the ~~Special~~ Trade Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

**SEC. 423. ACTION AFTER RECEIPT OF REPRESENTATIONS.**

(a) Review.--Upon receipt of any representation made under section 422, the ~~Special~~ Trade Representative shall review the issues concerned in consultation with--

(1) the agency or person alleged to be engaging in violations under the Agreement;

(2) the member agencies of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872((A));

(3) other appropriate Federal agencies; and

(4) appropriate representatives referred to in section 417.

(b) Resolution.--The ~~Special~~ Trade Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

**SEC. 424. PROCEDURE AFTER FINDING BY INTERNATIONAL FORUM.**

(a) In General.--If an appropriate international forum finds that a standards-related activity being engaged in within the United States

conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) shall review the finding and the matters related thereto with a view to recommending appropriate action.
(b) Cross Reference.--
For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

CHAPTER 2--OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

**SEC. 441. FINDINGS OF RECIPROCITY REQUIRED IN ADMINISTRATIVE PROCEEDINGS.**

(a) In General.--Except as provided under chapter 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in with the United States and is covered by the Agreement, unless the ~~Special~~ Trade Representative finds, and informs the agency concerned in writing, that--

(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and

(2) the dispute settlement procedures provided under the Agreement are not appropriate.
(b) Exemptions.--This section does not apply with respect to causes of action arising under--

(1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or

(2) statutes administered by the Secretary of Agriculture. This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

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Subtitle D--Definitions and Miscellaneous Provisions

**SEC. 451. DEFINITIONS.**

As used in this title--

(1) Agreement.--The term "Agreement" means the Agreement on Technical Barriers to Trade approved under section 2(a) of this Act.

* * * * *

~~(12) Special representative.--The term "Special Representative" means the Special Representative for Trade Negotiations.~~

(12) Trade representative.--The term "Trade Representative" means the United States Trade Representative.

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**SEC. 453. REPORTS TO CONGRESS ON OPERATION OF AGREEMENT.**

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period, the ~~Special~~ Trade Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

**SEC. 454. EFFECTIVE DATE.**

This title shall take effect on January 1, 1980, of the Agreement enters into force with respect to the United States by that date. Subtitle E--Standards and Measures Under the North American Free Trade Agreement

CHAPTER 1--SANITARY AND PHYTOSANITARY MEASURES

**SEC. 461. GENERAL.**

Nothing in this chapter may be construed--

(1) to prohibit a Federal agency or State agency from engaging in activity related to sanitary or phytosanitary measures to protect human, animal, or plant life or health; or

(2) to limit the authority of a Federal agency or State agency to determine the level of protection of human, animal, or plant life or health the agency considers appropriate.

**SEC. 462. INQUIRY POINT.**

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding--

(1) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure proposed, adopted, or maintained by a Federal or State agency;

(2) the procedures of a Federal or State agency for risk assessment, and factors the agency considers in conducting the assessment and in establishing the levels of protection that the agency considers appropriate;

(3) the membership and participation of the Federal Government and State governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements; and

(4) the location of notices of the type required under article 719 of the NAFTA, or where the information contained in such notices can be obtained.

**SEC. 463. CHAPTER DEFINITIONS.**

Notwithstanding section 451, for purposes of this chapter--

(1) Animal.--The term "animal" includes fish, bees, and wild fauna.

(2) Approval procedure.--The term "approval procedure" means any registration, notification, or other mandatory administrative procedure for--

(A) approving the use of an additive for a stated purpose or under stated conditions, or

(B) establishing a tolerance for a stated purpose or under stated conditions for a contaminant, in a food, beverage, or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage, or feedstuff containing the additive or contaminant.

(3) Contaminant.--The term "contaminant" includes pesticide and veterinary drug residues and extraneous matter.

(4) Control or inspection procedure.--The term "control or inspection procedure" means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing, or use of a good, but does not mean an approval procedure.

(5) Plant.--The term "plant" includes wild flora.

(6) Risk assessment.--The term "risk assessment" means an evaluation of--

(A) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or

(B) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff.

(7) Sanitary or phytosanitary measure.--

(A) In general.--The term "sanitary or phytosanitary measure" means a measure to--

(i) protect animal or plant life or health in the United States from risks arising from the introduction, establishment, or spread of a pest or disease;

(ii) protect human or animal life or health in the United States from

risks arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food, beverage, or feedstuff;

(iii) protect human life or health in the United States from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or

(iv) prevent or limit other damage in the United States arising from the introduction, establishment, or spread of a pest.

(B) Form.--The form of a sanitary or phytosanitary measure includes--

(i) end product criteria;

(ii) a product-related processing or production method;

(iii) a testing, inspection, certification, or approval procedure;

(iv) a relevant statistical method;

(v) a sampling procedure;

(vi) a method of risk assessment;

(vii) a packaging and labeling requirement directly related to food safety; and

(viii) a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation.

CHAPTER 2--STANDARDS-RELATED MEASURES

**SEC. 471. GENERAL.**

(a) No Bar To Engaging in Standards Activity.--Nothing in this chapter shall be construed--

(1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment or consumers; or

(2) to limit the authority of a Federal agency to determine the level it

considers appropriate of safety or of protection of human, animal, or plant life or health, the environment or consumers.
(b) Exclusion.--This chapter does not apply to--

(1) technical specifications prepared by a Federal agency for production or consumption requirements of the agency; or

(2) sanitary or phytosanitary measures under chapter 1.

**SEC. 472. INQUIRY POINT.**

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding--

(1) the membership and participation of the Federal Government, State governments, and relevant nongovernmental bodies in the United States in international and regional standardizing bodies and conformity assessment systems, and in bilateral and multilateral arrangements regarding standards-related measures, and the provisions of those systems and arrangements;

(2) the location of notices of the type required under article 909 of the NAFTA, or where the information contained in such notice can be obtained; and

(3) the Federal agency procedures for assessment of risk, and factors the agency considers in conducting the assessment and establishing the levels of protection that the agency considers appropriate.

**SEC. 473. CHAPTER DEFINITIONS.**

Notwithstanding section 451, for purposes of this chapter--

(1) Approval procedure.--The term "approval procedure" means any registration, notification, or other mandatory administrative procedure for granting permission for a good or service to be produced, marketed, or used for a stated purpose or under stated conditions.

(2) Conformity assessment procedure.--The term "conformity assessment procedure" means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation,

verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure.

(3) Objective.--The term "objective" includes--

(A) safety,

(B) protection of human, animal, or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and

(C) sustainable development, but does not include the protection of domestic production.

(4) Service.--The term "service" means a land transportation service or a telecommunications service.

(5) Standard.--The term "standard" means--

(A) characteristics for a good or a service,

(B) characteristics, rules, or guidelines for--

(i) processes or production methods relating to such good, or

(ii) operating methods relating to such service, and

(C) provisions specifying terminology, symbols, packaging, marking, or labelling for--

(i) a good or its related process or production methods, or

(ii) a service or its related operating methods, for common and repeated use, including explanatory and other related provisions set out in a document approved by a standardizing body, with which compliance is not mandatory.

(6) Standards-related measure.--The term "standards-related measure" means a standard, technical regulation, or conformity assessment procedure.

(7) Technical regulation.--The term "technical regulation" means--

(A) characteristics or their related processes and production methods for a good,

(B) characteristics for a service or its related operating methods, or

(C) provisions specifying terminology, symbols, packaging, marking, or labelling for--

(i) a good or its related process or production method, or

(ii) a service or its related operating method, set out in a document, including applicable administrative, explanatory, and other related provisions, with which compliance is mandatory.

(8) Telecommunications service.--The term "telecommunications service" means a service provided by means of the transmission and reception of signals by any electromagnetic means, but does not mean the cable, broadcast, or other electromagnetic distribution of radio or television programming to the public generally.

CHAPTER 3--SUBTITLE DEFINITIONS

**SEC. 481. DEFINITIONS.**

Notwithstanding section 451, for purposes of this subtitle--

(1) NAFTA.--The term "NAFTA" means the North American Free Trade Agreement.

(2) State.--The term "State" means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

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**Section 302 of the Federal Seed Act**

Sec. 302. (a) * * *

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(e) The provisions of this title requiring certain seeds to be stained shall not apply--

(1) to alfalfa or clover seed originating in Canada or Mexico, or

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**Act of August 30, 1890**
**Chapter 839.--**
An act providing for an inspection of meats for exportation, prohibiting the importation of adulterated articles of food or drink, and authorizing the President to make proclamation in certain cases, and for other purposes.

* * * * *

**Sec. 6.**
The importation of cattle, sheep, and other ruminants, and swine, which are diseased or infected with any disease, or which shall have been exposed to such infection within sixty days next before their exportation, is prohibited~~: Provided, That the Secretary of Agriculture, within his discretion and under such regulations as he may prescribe, is authorized to permit the admission from Mexico into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom, and the admission from the British Virgin Islands into the Virgin Islands of the United States, for slaughter only, of cattle which have been infested with or exposed to ticks upon being freed therefrom.~~ , except that the Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may (1) permit the importation of cattle, sheep, or other ruminants, and swine, from Canada or Mexico, and (2) permit the importation from the British Virgin Islands into the Virgin Islands of the United States, for slaughter only, of cattle that have been infested with or exposed to ticks on being freed from the ticks. Any person who knowingly violates any provision of this section or sections 7 through 10 of this Act or any regulation prescribed by the Secretary of Agriculture under any such section shall be guilty of a misdemeanor and shall, on conviction, be punished by a fine not exceeding $5,000 by imprisonment not exceeding one year, or both. Any person who violates any such provision or any such regulation may be assessed a civil penalty by the Secretary of Agriculture not exceeding $1,000. The Secretary may issue an order assessing such civil penalty only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable under chapter 158 of title 28, United States Code. The validity of such order may not be reviewed in an action to collect such civil penalty.

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**Sec. 10. Inspection of Animals.**

~~Sec. 10. That the Secretary of Agriculture shall~~--(a) In General.--Except as provided in subsection (b), the Secretary of Agriculture shall cause careful inspection to be made by a suitable officer of all imported animals described in this act, to ascertain whether such animals are infected with contagious diseases or have been exposed to infection so as to be dangerous to other animals, which shall then either be placed in quarantine or dealt with according to the regulations of the Secretary of Agriculture; and all food, litter, manure, clothing, utensils, and other appliances that have been so related to such animals on board ship as to be judged liable to convey infection shall be dealt with according to the regulations of the Secretary of Agriculture; and the Secretary of Agriculture may cause inspection to be made of all animals described in this act intended for exportation, and provide for the disinfection of all vessels engaged in the transportation thereof, and of all barges or other vessels used in the conveyance of such animals intended for export to the ocean steamer or other vessels, and of all attendants and their clothing, and of all head-ropes and other appliances used in such exportation, by such orders and regulations as he may prescribe; and if, upon such inspection, any such animals shall be adjudged, under the regulations of the Secretary of Agriculture, to be infected or to have been exposed to infection so as to be dangerous to other animals, they shall not be allowed to be placed upon any vessel for exportation; the expense of all the inspection and disinfection provided for in this section to be borne by the owners of the vessels on which such animals are exported.

(b) Exception.--The Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may waive any provision of subsection (a) in the case of shipments between the United States and Canada or Mexico.

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**Section 1 of the Act of August 31, 1922**
**(Commonly referred to as the Honeybee Act)**

CHAPTER. 301.--An Act To regulate foreign commerce in the importation into the United States of the adult honeybee (Apis mellifica).

Be it enacted by the Senate and House of Representatives of the

United States of America in Congress assembled,

(a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germ plasma of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States--

(1) by the United States Department of Agriculture for experimental or scientific purposes ~~, or~~;

(2) from countries determined by the Secretary of Agriculture--

(A) to be free of disease or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

(B) to have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful disease or parasites, or undesirable species or subspecies, of honeybees exist~~.~~; or

(3) from Canada or Mexico, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees.

(b) Honeybee semen may be imported into the United States only from (1) countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honeybees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen, or (2) Canada or Mexico, if the Secretary of Agriculture determines that the region of Canada or Mexico from which the imports originate is, and is likely to remain, free of undesirable species or subspecies of honeybees:

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**Section 17 of the Poultry Products Inspection Act**
**IMPORTS**

Sec. 17. (a) * * *

* * * * *

(d)(1) Notwithstanding any other provision of law, except as provided in paragraph (2), all poultry, or parts or products thereof, capable of use as human food offered for importation into the United States shall--

(A) be subject to the same inspection, sanitary, quality, species verification, and residue standards applied to products produced in the United States; and

(B) have been processed in facilities and under conditions that are the same as those under which similar products are processed in the United States.

(2)(A) Notwithstanding any other provision of law, all poultry, or parts or products of poultry, capable of use as human food offered for importation into the United States from Canada and Mexico shall--

(i) comply with paragraph (1); or

(ii)(I) be subject to inspection, sanitary, quality, species verification, and residue standards that are equivalent to United States standards; and

(II) have been processed in facilities and under conditions that meet standards that are equivalent to United States standards.

(B) The Secretary may treat as equivalent to a United States standard a standard of Canada or Mexico described in subparagraph (A)(ii) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the standard of the exporting country achieves the level of protection that the Secretary considers appropriate.

(C) The Secretary may--

(i) determine, on a scientific basis, that the standard of the exporting country does not achieve the level of protection that the Secretary considers appropriate; and

(ii) provide the basis for the determination in writing to the exporting country on request.

~~(2)~~ (3) Any such imported poultry article that does not meet such standards shall not be permitted entry into the United States.

~~(3)~~ (4) The Secretary shall enforce this subsection through--

(A) random inspections for such species verification and for residues; and

(B) random sampling and testing of internal organs and fat of carcasses for residues at the point of slaughter by the exporting country, in accordance with methods approved by the Secretary.

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**Section 20 of the Federal Meat Inspection Act**

Sec. 20. (a) * * *

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(e) Not later than March 1 of each year the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate a comprehensive and detailed written report with respect to the administration of this section during the immediately preceding calendar year. Such report shall include, but shall ~~not be limited to--~~ not be limited to the following:

(1)(A) Subject to subparagraphs (B) and (C), a certification by the Secretary that foreign plants in Canada and Mexico that export carcasses or meat or meat products referred to in subsection (a) have complied with paragraph (2) or with requirements that are equivalent to United States requirements with regard to all inspection and building construction standards, and all other provisions of this Act and regulations issued under this Act.

(B) Subject to subparagraph (C), the Secretary may treat as equivalent to a United States requirement a requirement described in subparagraph

(A) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the requirement or standard of the exporting

country achieves the level of protection that the Secretary considers appropriate.

(C) The Secretary may--

(i) determine, on a scientific basis, that a requirement of an exporting country does not achieve the level of protection that the Secretary considers appropriate; and

(ii) provide the basis for the determination to the exporting country in writing on request.

(2) A certification by the Secretary that, except as provided in paragraph (1), foreign plants that export carcasses or meat or meat products referred to in subsection (a) have complied with requirements that are at least equal to all inspection and building construction standards and all other provisions of this Act and regulations issued under this Act. ~~(1) a certification by the Secretary that foreign plants exporting carcasses or meat or meat products referred to in subsection (a) of this section have complied with requirements at least equal to all the inspection, building construction standards, and all other provisions of this Act and regulations issued thereunder;~~ ~~(2) the~~ (3) The names and locations of plants authorized or permitted to have imported into the United States therefrom carcasses or meat or meat products referred to in subsection (a) of this section~~;~~. ~~(3) the~~ (4) The number of inspectors employed by the Department of Agriculture in the calendar year concerned who were assigned to inspect plants referred to in paragraph (e)(2) hereof and the frequency with which each such plant was inspected by such inspectors~~;~~. ~~(4) the~~ (5) The number of inspectors licensed by each country from which any imports subject to the provisions of this section were imported who were assigned, during the calendar year concerned, to inspect such imports and the facilities in which such imports were handled and the frequency and effectiveness of such inspections~~;~~. ~~(5) the~~ (6) The total volume of carcasses or meat or meat products referred to in subsection (a) of this section which was imported into the United States during the calendar year concerned from each country, including a separate itemization of the volume of each major category of such imports from each country during such year, and a detailed report of rejections of plants and products because of failure to meet appropriate standards prescribed by this Act~~; and~~. ~~(6) the~~ (7) The name of each foreign country that applies standards for the importation of meat articles from the United States that are described in subsection (h)(2).

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**Section 503 of the Motor Vehicle Information and Cost Savings Act**
**DETERMINATION OF AVERAGE FUEL ECONOMY**

Sec. 503. (a) * * *

(b)(1) * * *

(2) For purposes of this subsection:

(A) * * *

* * * * *

(E) ~~An~~ Except as provided in subparagraph (G), an automobile shall be considered domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year. The EPA Administrator may prescribe rules for purposes of carrying out ~~this subparagraph~~ this subparagraph and subparagraph (G).

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(G)(i) In accordance with the schedule set out in clause (ii), an automobile shall be considered domestically manufactured in a model year if at least 75 percent of the cost to the manufacturer of the automobile is attributable to value added in the United States, Canada, or Mexico, unless the assembly of the automobile is completed in Canada or Mexico and the automobile is not imported into the United States prior to the expiration of 30 days following the end of that model year.

(ii) Clause (i) shall apply to all automobiles manufactured by a manufacturer and sold in the United States, wherever assembled, in accordance with the following schedule:

(I) With respect to a manufacturer that initiated the assembly of automobiles in Mexico before model year 1992, the manufacturer may

elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election.

(II) With respect to a manufacturer initiating the assembly of automobiles in Mexico after model year 1991, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994, or the model year commencing after the date that the manufacturer initiates the assembly of automobiles in Mexico, whichever is later.

(III) With respect to a manufacturer not described by subclause (I) or (II) assembling automobiles in the United States or Canada but not in Mexico, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election, except that if such manufacturer initiates the assembly of automobiles in Mexico before making such election, this subclause shall not apply and the manufacturer shall be subject to clause (II).

(IV) With respect to a manufacturer not assembling automobiles in the United States, Canada, or Mexico, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994.

(V) With respect to a manufacturer authorized to make an election under subclause (I) or (III) which has not made that election within the specified period, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 2004.

(iii) The Secretary shall prescribe reasonable procedures for elections under this subparagraph, and the EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.

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**Section 401 of the Rural Electrification Act of 1938**

Sec. 401. The Act entitled "An Act to provide for rural electrification, and for other purposes", approved May 20, 1936 (49 Stat. 1363), is hereby amended as follows: (a) By inserting in subsection (a) of section 3 thereof immediately following the date "June 30, 1937" the phrase "and $100,000,000 for the fiscal year ending June 30, 1939"

and (b) by striking out the date "June 30, 1937" appearing at the end of subsection (e) of such section 3 and inserting in lieu thereof the date "June 30, 1939".

In making loans pursuant to this title and pursuant to the Rural Electrification Act of 1936, the Administrator of the Rural Electrification Administration shall require that, to the extent practicable and the cost of which is not unreasonable, the borrower agree to use in connection with the expenditure of such funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, Mexico, or Canada substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, Mexico, or Canada.

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**Title 28, United States Code**

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**PART IV--JURISDICTION AND VENUE**

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**CHAPTER 95--COURT OF INTERNATIONAL TRADE**

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Sec. 1581. Civil actions against the United States and agencies and officers thereof. 1582. Civil actions commenced by the United States. 1583. Counterclaims, cross-claims, and third-party actions. ~~1584. Civil actions under the United States-Canada Free-Trade Agreement.~~ 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.

**Sec. 1581. Civil actions against the United States and agencies and officers thereof**

(a) * * *

* * * * *

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review--

(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or

(c)(2) of such Act; ~~and~~

(2) any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930~~.~~; and

(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

* * * * *

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for--

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-

(h) of this section. This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement, and section 516A(g) of the Tariff Act of 1930.

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**Sec. 1582. Civil actions commenced by the United States**

The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States--

(1) to recover a civil penalty under section 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

* * * * *

**Sec. 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement**

The United States Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section ~~777(d)~~ 777(f) of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking.

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**PART VI--PARTICULAR PROCEEDINGS**

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**CHAPTER 151--DECLARATORY JUDGMENTS**

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**Sec. 2201. Creation of remedy**

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under action 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of ~~Canadian merchandise~~ merchandise of a free trade area country (as defined in section 516(f)(1) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have

the force and effect of a final judgment or decree and shall be reviewable as much.

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## CHAPTER 169--COURT OF INTERNATIONAL TRADE PROCEDURE

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### Sec. 2631. Persons entitled to commence a civil action

(a) * * *

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(g)(1)* * *

* * * * *

(3) A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.

* * * * *

### Sec. 2635. Filing of official documents

~~(a)(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record-- (A) the consumption or other entry and the entry summary; (B) the commercial invoice; (C) the special customs invoice; (D) a copy of the protest or petition; (E) a copy of the denial, in whole or in part, of the protest or petition; (F) the importer's exhibits; (G) the official and other representative samples; (H) any official laboratory reports; and (I) a copy of any board relating to the entry.~~

~~(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.~~

(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any document, paper, information or data relating to the entry of merchandise and the administrative determination that is the subject of the protest or petition.

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**Sec. 2636. Time for commencement of action**

(a) * * *

* * * * *

(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.

~~(h)~~(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsection (a)-(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

* * * * *

**Sec. 2640. Scope and standard of review**

(a) * * *

* * * * *

(d) In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.

~~(d)~~ (e) In any civil action not specified in the section, the Court of

International Trade shall review the matter as provided in section 706 of title 5.

* * * * *

**Sec. 2642. Analysis of imported merchandise**

The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States or laboratories accredited by the Customs Services under section 499(b) of the Tariff Act of 1930.

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**CHAPTER 169--COURT OF INTERNATIONAL TRADE PROCEDURE**

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Sec. 2643. Relief

(a) * * *

* * * * *

(c)(1) * * *

* * * * *

(5) In any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of ~~Canadian merchandise,~~ merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, the Court of International Trade may not order declaratory relief.

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**INTERNAL REVENUE CODE**

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**Subtitle C--Employment Taxes**

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## CHAPTER 23--FEDERAL UNEMPLOYMENT TAX ACT

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### SEC. 3304. APPROVAL OF STATE LAWS.

(a) Requirements.--The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that--

(1) * * *

* * * * *

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that--

(A) * * *

* * * * *

(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act; ~~and~~

(E) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; and

(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t));

* * * * *

### SEC. 3306. DEFINITIONS.

(a) * * *

* * * * *

(f) Unemployment Fund.--For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State

law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that--

(1) * * *

* * * * *

(3) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act; ~~and~~

(4) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor~~.~~; and

(5) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).

* * * * *

(t) Self-Employment Assistance Program.--For the purposes of this chapter, the term "self-employment assistance program" means a program under which--

(1) individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(2) the allowance payable to individuals pursuant to paragraph (1) is a payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment

compensation under the State law, except that--

(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

(C) such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation, as long as such individuals meet the requirements applicable under this subsection;

(3) individuals may receive the allowance described in paragraph (1) if such individuals--

(A) are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation and

(C) are participating in self-employment assistance activities which--

(i) include entrepreneurial training, business counseling, and technical assistance; and

(ii) are approved by the State agency; and

(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time;

(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in

excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.

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**Subtitle F--Procedure and Administration**

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**CHAPTER 61--INFORMATION AND RETURNS**

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Subchapter B--Miscellaneous Provisions

* * * * *

**SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.**

(a) * * *

* * * * *

(l) Disclosure of Returns and Return Information for Purposes Other Than Tax Administration.--

(1) * * *

* * * * *

(14) Disclosure of return information to united states customs service.--The Secretary may, upon written request from the Commissioner of the United States Customs Service, disclose to officers and employees of the Department of the Treasury such return information with respect to taxes imposed by chapters 1 and 6 as the Secretary may prescribe by regulations, solely for the purpose of, and only to the extent necessary in--

(A) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 (19 U.S.C. 1509), or

(B) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

* * * * *

(p) Procedure and Recordkeeping.--

(1) * * *

* * * * *

(3) Records of inspection and disclosure.--

(A) System of recordkeeping.--Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4), (7)(A)(ii), or (8), (k)(1), (2), or (6), (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), ~~or (13)~~ (13), or (14), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

* * * * *

(4) Safeguards.--Any Federal agency described in subsection (h)(2), (h)(6), (i)(1), (2), (3), (5), or (8), (j)(1) or (2), (l)(1), (2), (3), (5), (10), (11), ~~or (13)~~ (13), or (14), or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (8) or (l)(6), (7), (8), (9), or (12) shall, as a condition for receiving returns or return information--

(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason or such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission or the General Accounting Office for ensuring the confidentiality of returns and return information required by this paragraph; and

(F) upon completion of use of such returns or return information--

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), (9), return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,

(ii) in the case of an agency described in subsections (h)(2), (h)(6), (i)(1), (2), (3), (5), or (8), (j)(1) or (2), (l)(1), (2), (3), (5), (10), (11), (12), ~~or (13)~~ (13), or (14), or (o)(1), or the General Accounting Office, either--

(I) return to the Secretary such returns or return information (along with any copies made therefrom),

(II) otherwise make such returns or return information undisclosable, or

(III) to the extent not so returned or make undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information, and

(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing the notification for which the information was obtained, so as to make such information undisclosable; except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency body, or commission or the General Accounting Office until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under paragraph (2), (4), (6), or (7) of subsection (m) and which discloses any such mailing address to any agent or which receives any information under subsection (l)(12)(B) and which discloses any such information to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).

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## CHAPTER 64--COLLECTION

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Subchapter A--General Provisions

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**SEC. 6302. MODE OR TIME OF COLLECTION.**

(a) * * *

* * * * *

(h) Use of Electronic Fund Transfer System for Collection of Certain Taxes.--

(1) Establishment of system.--

(A) In general.--The Secretary shall prescribe such regulations as may be necessary for the development and implementation of an electronic fund transfer system which is required to be used for the collection of depository taxes. Such system shall be designed in such manner as may be necessary to ensure that such taxes are credited to the general account of the Treasury on the date on which such taxes would otherwise have been required to be deposited under the Federal tax deposit system.

(B) Exemptions.--The regulations prescribed under subparagraph (A) may contain such exemptions as the Secretary may deem appropriate.

(2) Phase-in requirements.--

(A) In general.--Except as provided in subparagraph (B), the regulations referred to in paragraph (1)--

(i) shall contain appropriate procedures to assure that an orderly conversion from the Federal tax deposit system to the electronic fund transfer system is accomplished, and

(ii) may provide for a phase-in of such electronic fund transfer system by classes of taxpayers based on the aggregate undeposited taxes of such taxpayers at the close of specified periods and any other factors the Secretary may deem appropriate.

(B) Phase-in requirements.--The phase-in of the electronic fund transfer system shall be designed in such manner as may be necessary to ensure that--

(i) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total depository taxes imposed by chapters 21, 22, and 24 shall be collected by means of electronic fund transfer, and

(ii) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total other depository taxes shall be collected by means of electronic fund transfer.

(C) Applicable required percentage.--

(i) In the case of the depository taxes imposed by chapters 21, 22, and 24, the applicable required percentage is--

(I) 3 percent for fiscal year 1994,

(II) 16.9 percent for fiscal year 1995,

(III) 20.1 percent for fiscal year 1996,

(IV) 58.3 percent for fiscal years 1997 and 1998, and

(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.

(ii) In the case of other depository taxes, the applicable required percentage is--

(I) 3 percent for fiscal year 1994,

(II) 20 percent for fiscal year 1995,

(III) 30 percent for fiscal year 1996,

(IV) 60 percent for fiscal years 1997 and 1998, and

(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.

(3) Definitions.--For purposes of this subsection--

(A) Depository tax.--The term "depository tax" means any tax if the Secretary is authorized to require deposits of such tax.

(B) Electronic fund transfer.--The term "electronic fund transfer" means any transfer of funds, other than a transaction originated by

check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution or other financial intermediary to debit or credit an account.

(4) Coordination with other electronic fund transfer requirements.--

(A) Coordination with certain excise taxes.--In determining whether the requirements of subparagraph (B) of paragraph (2) are met, taxes required to be paid by electronic fund transfer under sections 5061(e) and 5703(b) shall be disregarded.

(B) Additional requirement.--Under regulations, any tax required to be paid by electronic fund transfer under section 5061(e) or 5703(b) shall be paid in such a manner as to ensure that the requirements of the second sentence of paragraph (1)(A) of this subsection are satisfied.

~~(h)~~ (i) Cross References.-- For treatment of earned income advance amounts as payment of withholding and FICA taxes, see section 3507(d).

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**Subtitle I--Trust Fund Code**

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**CHAPTER 98--TRUST FUND CODE**

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Subchapter A--Establishment of Trust Funds

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**SEC. 9505. HARBOR MAINTENANCE TRUST FUND.**

(a) * * *

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(c) Expenditures From Harbor Maintenance Trust Fund.--Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriation Acts, for making expenditures--

(1) * * *

* * * * *

~~(3) for the payment of all expenses of administration incurred-- (A) by the Department of The Treasury in administering subchapter A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year, and (B) for periods during which no fee applies under paragraph (9) or (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985.~~

(3) for the payment of all expenses of administration incurred by the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce related to the administration of subchapter A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year.

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**Section 303 of the Social Security Act**
**PROVISIONS OF STATE LAWS**

Sec. 303. (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for--

(1) * * *

* * * * *

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act: Provided, That an mount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: Provided further, That the amounts specified by section 903(c)(2) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: Provided further, That nothing in this paragraph

shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: Provided further, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g): Provided further, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor ~~; and~~ : Provided further, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and

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**Caribbean Basin Economic Recovery Act**

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**TITLE II--CARIBBEAN BASIN INITIATIVE**
**SEC. 201. SHORT TITLE.**

This title may be cited as the "Caribbean Basin Economic Recovery Act".
Subtitle A--Duty-Free Treatment

* * * * *

**SEC. 219. CENTER FOR THE STUDY 0F WESTERN HEMISPHERIC TRADE.**

(a) Establishment.--The Commissioner of Customs, after consultation with appropriate officials in the State of Texas, is authorized and directed to make grants to an institution (or a consortium of such institutions) to assist such institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (hereafter in this section referred to as the "Center". The Commissioner of Customs shall make the first grant not later than December 1, 1994, and the Center shall be established not later than February 1, 1995.

(b) Scope of the Center.--The Center shall be a year-round program operated by an institution located in the State of Texas (or a

consortium of such institutions), the purpose of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine--

(1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere,

(2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and

(3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

(c) Consultation; Selection Criteria.--The Commissioner of Customs shall consult with appropriate officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. In selecting the appropriate institution, the Commissioner of Customs shall give consideration to--

(1) the institution's ability to carry out the programs and activities described in this section; and

(2) any resources the institution can provide the Center in addition to Federal funds provided under this program.

(d) Programs and Activities.--The Center shall conduct the following activities:

(1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere, including the impact of the NAFTA on individual economies and the desirability and feasibility of possible accessions to the NAFTA by such countries.

(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population.

(3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries.

(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries.

(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the center.

(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center at the University of Miami at Coral Gables.

(e) Definitions.--For purposes of this section--

(a) Nafta.--The term "NAFTA" means the North American Free Trade Agreement.

(2) Western hemisphere countries.--The terms "Western Hemisphere countries", "countries in the Western Hemisphere", and "Western Hemisphere" means Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by section 212), the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(f) Fees for Seminars and Publications.--Notwithstanding any other provision of law, a grant made under this section may provide that the Center may charge a reasonable fee for attendance at seminars and conferences and for copies of publications, studies, reports, and other documents the Center publishes. The Center may waive such fees in any case in which it determines imposing a fee would impose a financial hardship and the purposes of the Center would be served by granting such a waiver.

(g) Duration of Grant.--The Commissioner of Customs is directed to make grants to any institution or institutions selected as the Center for fiscal years 1994, 1995, 1996, and 1997.

(h) Report.--The Commissioner of Customs shall, no later than July 1, 1994, and annually thereafter for years for which grants are made,

submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The first report shall include--

(1) a statement identifying the institution or institutions selected as the Center,

(2) the reasons for selecting the institution or institutions as the Center, and

(3) the plan of such institution or institutions for operating the Center. Each subsequent report shall include information with respect to the operations of the Center, the collaboration of the Center with, and dissemination of information to, Government policymakers and the business community with respect to the study of Western Hemispheric trade by the Center, and the plan and efforts of the Center to continue operations after grants under this section have expired.

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**Revised Statutes of the United States**

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**TITLE XXXIV--COLLECTION OF DUTIES UPON IMPORTS**

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**CHAPTER FOUR--ENTRY OF MERCHANDISE**

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~~**Sec. 2792.**~~
~~Vessels used exclusively as ferry-boats carrying passengers, baggage, and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests, but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law.~~
~~Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from entrance and clearance fees and tonnage taxes while such service~~

~~triweekly or oftener is maintained.~~

**Sec. 2793.**

~~Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States,~~ Documented vessels with a coastwise, Great Lakes endorsement, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees or tonnage tax, as if from or to foreign ports~~; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of Commerce may prescribe, notwithstanding any other provisions of law: Provided, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel~~.

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## CHAPTER ELEVEN--PROVISIONS APPLYING TO COMMERCE WITH CONTIGUOUS COUNTRIES

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**~~Sec. 3111.~~**

~~If any vessel enrolled or licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States shall touch at any port in the adjacent British provinces, and the master of such vessel shall purchase any merchandise for the use of the vessel, the master of the vessel shall report the same, with cost and quantity thereof, to an officer of the customs at the first port in the United States at which he shall next arrive, designating them as "sea- stores"; and in the oath to be taken by such master of such vessel, on making such report, he shall declare that the articles so specified or designated "sea-stores" are truly intended for the use exclusively of the vessel, and are not intended for sale, transfer, or private use. If any greater quantity of dutiable articles shall be found on board such vessel than are specified in such report or entry of such articles, or any part thereof shall be landed without a permit from an~~

~~officer of the customs, such articles, together with the vessel, her apparel, tackle, and furniture, shall be forfeited.~~

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**~~Sec. 3118.~~**

~~The master of any vessel so enrolled or licensed shall, before departing from a port in one collection-district to a place in another collection-district, where there is no custom-house, file his manifest, and obtain a clearance in the same manner, and make oath to the manifest, which manifest and clearance shall be delivered to the proper officer of customs at the port at which the vessel next arrives after leaving the place of destination specified in the clearance.~~

**~~Sec. 3119.~~**

~~Nothing contained in the three preceding sections shall exempt masters of vessels from reporting, as now required by law, any merchandise destined for any foreign port. No permit shall be required for the unloading of cargo brought from an American port.~~

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**~~Sec. 3122.~~**

~~The master of any vessel so enrolled or licensed, destined with a cargo from a place in the United States, at which there may be no custom-house, to a port where there may be a custom-house, shall, within twenty-four hours after arrival at the port of destination, deliver to the proper officer of the customs a manifest, subscribed by him, setting forth the cargo laden at the place of departure, or laden or unladen at any intermediate port, or place, to the truth or which manifest he shall make oath before such officer. If the vessel, however, have no cargo, the master shall not be required to deliver such manifest.~~

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**~~Sec. 3124.~~**

~~The manifests, certificates of clearance, and oaths, provided for by the eight preceding sections, shall be in such form, and prepared, filled up, and executed in such manner as the Secretary of the Treasury may from time to time prescribe.~~

**~~Sec. 3125.~~**

~~If the master of any enrolled or licensed vessel shall neglect or fail to comply with any of the provisions or requirements of the nine preceding sections, such master shall forfeit and pay to the United States the sum of twenty dollars for each and every failure or neglect,~~

~~and for which sum the vessel shall be liable, and may be summarily proceeded against, by way of libel, in any district court of the United States.~~

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**Sec. 3126.**

~~Any vessel, on being duly registered in pursuance of the laws of the United States,~~ Any United States documented vessel with a registry or coastwise endorsement, or both may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers and their baggage, and letters, and mails. ~~All such vessels shall be furnished by the appropriate customs officers of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages; by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed.~~

**Sec. 3127.**

Any foreign merchandise taken in at one port of the United States to be conveyed ~~in registered vessels~~ a United States documented vessel with a registry or coastwise endorsement, or both, to any other port within the same, either under the provisions relating to warehouses, or under the laws regulating the transportation coastwise of merchandise entitled to drawback, as well as any merchandise not entitled to drawback, but on which the import duties chargeable by law shall have been duly paid, shall not become subject to any import duty by reason of the vessel in which they may arrive having touched at a foreign port during the voyage.

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**Title 46--Shipping**

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## TITLE XLVIII--REGULATION OF COMMERCE AND NAVIGATION
## Chapter One--Registry and Recording

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**Sec. 4136.**
~~The Secretary of Commerce may issue a register or enrollment~~ The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for any vessel wrecked on the coasts of the United States or her possessions or adjacent waters, when purchased by a citizen or citizens of the United States and thereupon repaired in a shipyard in the United States or her possessions, if it shall be proved to the satisfaction of the ~~Secretary of Commerce~~ Secretary of Transportation, if he deems it necessary , through a board of three appraisers appointed by him, that the said repairs put upon such vessels are equal to three times the appraised salved value of the vessel: Provided, That the expense of the appraisal herein provided for shall be borne by the owner of the vessel: Provided further, That if any of the material matters of fact sworn to or represented by the owner, or at his instance, to obtain the register of any vessel are not true, there shall be a forfeiture to the United States of the vessel in respect to which the oath shall have been made, together with tackel, apparel, and furniture thereof.

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## Chapter Two--Clearance and Entry

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~~**Sec. 4197.**~~
~~The master or person having the charge or command of any vessel bound to a foreign port shall deliver to the collector of the district from which such vessel is about to depart a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo, but without specifying the particulars thereof in the clearance, unless required by the master or other person having the charge or command of such vessel so to do. In any vessel bound to a foreign port (other than a licensed yacht or an undocumented American pleasure vessel not engaged in any trade nor in any way violating the customs or navigation laws of the United States) departs from any port or place in the United States without a~~

~~clearance, or if the master delivers a false manifest, or does not answer truly the questions demanded of him, or, having received a clearance adds to the cargo of such vessel without having mentioned in the report outwards the intention to do so, or if the departure of the vessel is delayed beyond the second day after obtaining clearance without reporting the delay to the collector, the master or other person having the charge or command of such vessel shall be liable to a penalty of not more than $1,000 nor less the $500, or if the cargo consists in any part of narcotic drugs, or any spirits, wines, or other alcoholic liquors (sea stores excepted), a penalty of not more than $5,000 nor less than $1,000 for each offense, and the vessel shall be detained in any port of the United States until the said penalty is paid or secured: Provided, That in order that the commerce of the United States may move with expedition and without undue delay, the Secretary of Commerce is hereby authorized to make regulations permitting the master of any vessel taking on cargo for a foreign port or for a port in noncontiguous territory belonging to the United States to file a manifest as hereinbefore provided, and if the manifest be not a complete manifest and it so appears upon such manifest, the collector of customs may grant clearance to the vessel in case of an incomplete manifest, taking from the owner of the vessel, who may act in the premises by a duly authorized attorney in fact, a bond with security approved by the collector of customs in the penal sum of $1,000, conditioned that the master or someone for him will file a completed outward manifest not later than the fourth business day after the clearance of the vessel. In the event that the said complete outward manifest be not filed as required by the provisions of this section and the regulations made by the Secretary of Commerce in pursuance hereof, then a penalty of $50 for each day's delinquency beyond the allowed period of four days for filing the completed manifest shall be exacted, and if the completed manifest be not filed within the three days following the four-day period, then for each succeeding day of delinquency a penalty of $100 shall be exacted. Suit may be instituted in the name of the United States against the principal and surety on the bond for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.~~

**SEC. 4197. CLEARANCE; VESSELS.**

(a) When Required; Vessels of the United States.--Except as otherwise provided by law, any vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States--

(1) for a foreign port or place;

(2) for another port or place in the United States if the vessel has on board bonded merchandise or foreign merchandise for which entry has not been made; or

(3) outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.

(b) When Required; Other Vessels.--Except as otherwise provided by law, any vessel that is not a vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States--

(1) for a foreign port or place;

(2) for another port or place in the United States; or

(3) outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.

(c) Regulations.--The Secretary of the Treasury may by regulation--

(1) prescribe the manner in which clearance under this section is to obtained, including the documents, data or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;

(2) permit the Customs Service to grant clearance for vessel under this section before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary of the Treasury conditioned upon the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary of the Treasury; and

(3) authorize the Customs Service to permit clearance of any vessel to be obtained at a place other than a designated port of entry, under such conditions as he may prescribe.

~~**Sec. 4198.**~~
~~The oath to be taken by the master or commander of the vessel shall be as follows:~~
~~District of~~
~~I, (insert the name), master or commander of the (insert the~~

~~denomination and name of the vessel), bound from the port of (insert the name of the port or place sailing from) to ((insert the name of the port or place bound to), do solemnly, sincerely, and truly swear (or affirm, as the case may be) that the manifest of the cargo on board the said (insert denomination and name of the vessel), now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said (insert denomination and name of vessel) previous to her sailing from this port, I will immediately report the same to the said collector. I do also swear (or affirm) that I verily believe that duties on all the foreign merchandise therein specified have been paid or secured, according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such distress or accident may happen. So help me God.~~

**Sec. 4199.**

~~(a) Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest required under this chapter shall be attached to such manifest and delivered to the appropriate officer of the United States Customs Service at the time such manifest is delivered.~~

~~(b) The following information shall be included on such manifest, or on attached copies of bills of lading or equivalent commercial documents: (1) Name and address of shipper. (2) Description of the cargo. (3) Number of packages and gross weight. (4) Name of vessel or carrier. (5) Port of exit. (6) Port of destination.~~

~~(c) Except as provided in subsection (d), the following information contained on such manifest, or on attached copies of bills of lading or equivalent commercial documents, shall be available for public disclosure: (1) Name and address of shipper, unless the shipper has made a biennial certification claiming confidential treatment pursuant to procedures adopted by the Secretary of the Treasury. (2) General character of the cargo. (3) Number of packages and gross weight. (4) Name of vessel or carrier. (5) Port of exit. (6) Port of destination. (7) Country of destination.~~

~~(d) The information listed in subsection (c) shall not be available for public disclosure if -- (1) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or (2) the information is exempt under the provisions of section 552(b)(1) of title 5 of the United States Code.~~

~~(e) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in subsection (c) above, is authorized to establish procedures to provide access to manifests, or attached bills of lading or equivalent commercial documents which shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests or attached bills of lading, or equivalent commercial documents.~~

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**~~Sec. 4201.~~**

~~The form of a clearance, to be granted to a ship or vessel on her departure to a foreign port or place, shall be as follows: District of ------, ss, ------~~

~~Port of ------:------~~

~~These are to certify all whom it doth concern, that --------, master or commander of the --------, burden -------- tons, or thereabouts, mounted with -------- guns, navigated with -------- men, -------- built, and bound for --------, having on board --------, hath here entered and cleared his said vessel according to law. Given under our hands and seals, at the custom-house of --------, this -------- day of --------, one thousand --------, and in the -------- year of the Independence of the United States of America.~~

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**~~Sec. 4207.~~**

~~Whenever any clearance is granted to any vessel of the United States, duly registered as such, and bound on any foreign voyage, the collector of the district shall annex thereto, in every case, a copy of the rates or tariffs of fees which diplomatic and consular officers are entitled, by the regulations prescribed by the President, to receive for their services.~~

**~~Sec. 4208.~~**

~~The master or person having charge or command of any steamboat on~~

~~Lake Champlain, when going from the United States into the province of Quebec, may deliver a manifest of the cargo on board, and take a clearance from the collector of the district through which any such boat shall last pass, when leaving the United States, without regard to the place from which any such boat shall have commenced her voyage, or where her cargo shall have been taken on board.~~

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**~~Sec. 4213.~~**
~~It shall be the duty of all masters of vessels for whom any official services shall be performed by any consular officer, without the payment of a fee, to require a written statement of such services from such consular officer, and, after certifying as to whether such statement is correct, to furnish it to the collector of the district in which such vessels shall first arrive on their return to the United States; and if any such master of a vessel shall fail to furnish such statement, he shall be liable to a fine of not exceeding fifty dollars, unless such master shall state under oath that no such statement was furnished him by said consular officer. And it shall be the duty of every collector to forward to the Secretary of the Treasury all such statements as shall have been furnished to him, and also a statement of all certified invoices which shall have come to his office, giving the dates of the certificates, and the names of the persons for whom and of the consular officer by whom the same were certified.~~

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## Chapter Three--Tonnage Duties

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**~~Sec. 4221.~~**
~~In cases of vessels making regular daily trips between any port of the United States and any port in the Dominion of Canada, wholly upon interior waters not navigable to the ocean, no tonnage or clearance fees shall be charged against such vessel by the officers of the United States, except upon the first clearing of such vessel in each year.~~

**Sec. 4222.**
~~No consul or consular agent of the United States shall exact tonnage fees from any vessel of the United States, touching at or near ports in Canada, on her regular voyage from one port to another within the United States, unless such consul or consular agent shall perform~~

~~some official services, required by law for such vessel, when she shall thus touch at a Canadian port.~~

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## TITLE XLIX--REGULATION OF VESSELS IN FOREIGN COMMERCE

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**~~Sec. 4306.~~**
~~Every vessel of the United States, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector for the district where such vessel may be, with a passport, the form for which shall be prescribed by the Secretary of State. In order to be entitled to such passport, the master of every such vessel shall be bound, with sufficient sureties, to the Treasury of the United States, in the penalty of two thousand dollars, conditioned that the passport shall not be applied to the use or protection of any other vessel than the one described in it; and that, in case of the loss or sale of any vessel having such passport, the same shall, within three months, be delivered up to the collector from whom it was received, if the loss or sale take place within the United States; or within six months, if the same shall happen at any place nearer than the Cape of Good Hope; and within eighteen months, if at a more distant place.~~

**Sec. 4307.**
~~If any vessel of the United States shall depart therefrom, and shall be found to any foreign country, other than to some port in America, without such passport, the master of such vessel shall be liable to a penalty of two hundred dollars for every such offense.~~

**Sec. 4308.**
~~Every unregistered vessel owned by a citizen of the United States, and sailing with a sea-letter, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector of the district where such vessel may be with a passport, for which the master shall be subject to the rules and conditions prescribed for vessels of the United States.~~

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## TITLE L--REGULATION OF VESSELS IN DOMESTIC COMMERCE

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**~~Sec. 4332.~~**

~~Every surveyor who certifies a manifest, or grants any permit, or who receives any certified manifest, or any permit, as is provided for in this Title, shall make return thereof monthly, or sooner, if it can conveniently be made, to the collector of the district where such surveyor resides.~~

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**Sec. 4336.**

Any officer concerned in the collection of the revenue may at all times inspect the ~~register or enrollment or license of any vessel~~ certificate of documentation of any documented vessel or any document in lieu thereof; and if the master or other person in charge or command of any such vessel shall not exhibit the same, when required by such officer, unless the vessel is one which by regulation of the ~~Secretary of the Treasury is not required to have its register or enrollment or license~~ Secretary of Transportation is not required to have its certificate of documentation or document in lieu thereof on board, such master or person in charge or command shall be liable to a penalty of $100, unless the failure to do so is willful, in which case he shall be liable to a penalty of $1,000 and to a fine of not more than $1,000 or imprisonment for not more than one year, or both.

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**Sec. 4348.**

~~The seacoasts and navigable rivers of the United States and Porto Rico shall be divided into five great districts: The first to include all the collection districts on the seacoasts and navigable rivers between the northern boundary of the State of Maine and the southern boundary of the State of Texas; the second to consist of the island of Porto Rico; the third to include the collection districts on the seacoasts and navigable rivers between the southern boundary of the State of California and the northern boundary of the State of Washington; the fourth to consist of the Territory of Alaska; the fifth to consist of the Territory of Hawaii.~~

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**~~Sec. 4358.~~**

~~The coasting trade between the territory ceded to the United States by~~

~~the Emperor of Russia and any other portion of the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts.~~

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**~~Sec. 4361.~~**

~~Whenever any vessel of the United States, registered according to law, is employed in going from any one district in the United States to any other district, such vessel, and the master thereof, with the goods she may have on board previous to her departure from the district where she may be, and also upon her arrival in any other district, shall be subject, except as to the payment of fees, to the same regulations, provisions, penalties, and forfeitures, and the like duties are imposed on like officers, as are provided for vessels licensed for carrying on the coasting-trade. Nothing herein contained shall be construed to extend to registered vessels of the United States having on board merchandise of foreign growth or manufacture, brought into the United States, in such vessel, from a foreign port, and on which the duties have not been paid according to law.~~

**Sec. 4362.**

~~The collector of the district of Philadelphia may grant permits for the transportation of merchandise of foreign growth or manufacture across the State of New Jersey to the district of New York, or across the State of Delaware to any district in the State of Maryland or Virginia; and the collector of the district of New York may grant like permits for transportation across the State of New Jersey; and the collector of any district of Maryland or Virginia may grant like permits for transportation across the State of Delaware to the district of Philadelphia. Every such permit shall express the name of the owner, or person sending the merchandise, and of the person to whom the merchandise is consigned, with the marks, numbers, and description of the packages, whether bale, box chest, or otherwise, and the kind of goods contained therein, and the date when granted; and the owner, or person sending such goods, shall swear that they were legally imported, and the duties paid. Where the merchandise, to be so transported, shall be of less value than eight hundred dollars, the permit shall not be deemed necessary.~~

**Sec. 4363.**

~~The owner or consignee of all merchandise transported under the provisions of the preceding section and for the transportation whereof a permit is necessary, shall, within twenty-four hours after the arrival~~

~~thereof at the place to which such merchandise was permitted to be transported, report the same to the collector of the district where it has arrived, and shall deliver up the permit accompanying the same; and if the owner or consignee shall neglect or refuse to make due entry of such merchandise within the time and in the manner directed, all such merchandise shall be subject to forfeiture; and if the permit granted shall not be given up within the time limited for making the report, the person to whom it was granted, neglecting or refusing to deliver it up, shall be liable to a penalty of fifty dollars for every twenty-four hours it shall be withheld afterward.~~

**Sec. 4364.**

~~Whenever any vessel, licensed for carrying on the fishery, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port.~~

**Sec. 4365.**

~~Whenever a vessel, licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the value of five hundred dollars, without having such permission as is directed by the preceding section, such vessel, together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture.~~

**Sec. 4366.**

~~The master of every vessel employed in the transportation of merchandise from district to district, that shall put into a port other than the one to which she was bound, shall, within twenty-four hours of his arrival, if there be an officer residing at such port, and she continue there so long, make report of his arrival to such officer, with the name of the place he came from, and to which he is bound, with an account of his lading; and every master who neglects or refuses so to do shall be liable to a penalty of twenty dollars.~~

**Sec. 4367.**

~~The master of every foreign vessel bound from a district in the United States to any other district within the same, shall, in all cases previous~~

~~to her departure from such district, deliver to the collector of such district duplicate manifests of the lading on board such vessel, if there be any, or, if there be none, he shall declare that such is the case; and to the truth of such manifest or declaration he shall swear, and also obtain a permit from the collector, authorizing him to proceed to the place of his destination.~~

**Sec. 4368.**

~~The master of every foreign vessel, on his arrival within any district from any other district, shall, in all cases, within forty-eight hours after his arrival, and previous to the unlading of any goods from on board such vessel, deliver to the collector of the district where he may have arrived, a manifest of the goods laden on board such vessel, if any there be; or if in ballast only, he shall so declare; he shall swear to the truth of such manifest or declaration, and shall also swear that such manifest contains an account of all the merchandise which was on board such vessel at the time, or has been since her departure for the place from whence she shall be reported last to have sailed; and he shall also deliver to such collector the permit which was given him from the collector of the district from whence he sailed.~~

**Sec. 4369.**

~~Every master of any foreign vessel who neglects or refuses to comply with any of the requirements of the two preceding sections, shall be liable to a penalty of one hundred dollars. Nothing therein contained shall, however, be construed as affecting the payment of tonnage, or any other requirements to which such vessels are subject by law.~~

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## TITLE LIII--MERCHANT SEAMEN

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## Chapter Five--Protection and Relief

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**~~Sec. 4573.~~**

~~Before a clearance is granted to any vessel bound on a foreign voyage or engaged in the whale-fishery, the master thereof shall deliver to the collector of the customs a list containing the names, places of birth and residence, and description of the persons who compose his ship's company; to which list the oath of the captain shall be annexed, that~~

~~the list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents.~~

**Sec. 4574.**

~~In all cases of private vessels of the United States sailing from a port in the United States to a foreign port, the list of the crew shall be examined by the collector for the district from which the vessel shall clear, and, if approved of by him, shall be certified accordingly. No person shall be admitted or employed on board of any such vessel unless his name shall have been entered in the list of the crew, approved and certified by the collector for the district from which the vessel shall clear. The collector, before he delivers the list of the crew, approved and certified, to the master or proper officer of the vessel to which the same belongs, shall cause the same to be recorded in a book by him for that purpose to be provided, and the record shall be open for the inspection of all persons, and a certified copy thereof shall be admitted in evidence in any court in which any question may arise under any of the provisions of the Title.~~

**Sec. 4575.**

~~The following rules shall be observed with reference to vessels bound on any foreign voyage:~~

~~First. The duplicate list of the ship's company, required to be made out by the master and delivered to the collector of the customs, under section forty-five hundred and seventy-three, shall be a fair copy in one uniform handwriting, without erasure or interlineation.~~

~~Second. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made, a true and certified copy of the shipping-articles, containing the names of the crew, which shall be written in a uniform hand, without erasures of interlineations.~~

~~Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.~~

~~Fourth. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes~~

~~and the provisions of law which guard the rights of mariners.~~
~~Fifth. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this section, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of one hundred dollars for each offense.~~
~~Sixth. It shall be the duty of the boarding-officer to report all violations of this section to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury and to the United States attorney in his district.~~

**Sec. 4576.**
~~The master of every vessel bound on a foreign voyage or engaged in the whale fishery shall exhibit the certified copy of the list of the crew to the first boarding officer at the first port in the United States at which he shall arrive on his return, and also produce the persons named therein to the boarding officer, whose duty it shall be to examine the men with such list and to report the same to the collector; and it shall be the duty of the collector at the port of arrival, where the same is different from the port from which the vessel originally sailed, to transmit a copy of the list so reported to him to the collector of the port from which such vessel originally sailed. For each failure to produce any person on the certified copy of the list of the crew the master and owner shall be severally liable to a penalty of four hundred dollars, to be sued for, prosecuted, and disposed of in such manner as penalties and forfeitures which may be incurred for offenses against the laws relating to the collection of duties; but such penalties shall not be incurred on account of the master not producing to the first boarding officer any of the persons contained in the list who may have been discharged in a foreign country with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, certified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew, nor on account of any such person dying or absconding or being forcibly impressed into other service of which satisfactory proof shall also be exhibited to the collector.~~

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## TITLE LXII.--NATIONAL BANKS

## Chapter One--Organization and Powers

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**Sec. 5136.**

Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power--

First. To adopt and use a corporate seal.

Second. To have succession from the date of the approval of this Act, or from the date of its organization if organized after such date of approval until such time as it be dissolved by the act of its shareholders owning two- thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock:

Provided, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act, or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary" pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110 (h) of the Housing Act of 1949) as are secured by an

agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge or both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: Provided, That in carrying on the business commonly known as the safe-deposit business the association shall not invest in

the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the North American Development Bank, the Asian Development Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: Provided, That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: Provided, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association

at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: Provided further, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees, but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the associations capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph--

(1) * * *

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**Harmonized Tariff Schedule of the United States**

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**General notes**

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4. Exemptions. For the purposes of general note 1--

(a) * * *

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(c) records, diagrams and other data with regard to any business, engineering or exploration operation whether on paper, cards, photographs, blueprints, tapes or other media, ~~and~~

(d) articles returned from space within the purview of section 484a of the Tariff Act of 1930, and

(e) articles exported from the United States which are returned within 45 days after such exportation from the United States as undeliverable and which have not left the custody of the carrier or foreign customs service, are not goods subject to the provisions of the tariff schedule. No exportation referred to in subdivision (e) may be treated as satisfying any requirement for exportation in order to receive a benefit from, or meet an obligation to, the United States as a result of such exportation.

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**SECTION XVII--VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT**

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**Chapter 86--Railway or Tramway Locomotives, Rolling Stock and Parts Thereof; Railway or Tramway Track Fixtures and Fittings and Parts Thereof; Mechanical (Including Electro-Mechanical) Traffic Signaling Equipment of all Kinds Notes**

1. * * *

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4. Railway locomotives (provided for in headings 8601 and 8602) and railway freight cars (provided for in heading 8606) on which no duty is owed are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish

appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.

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**SECTION XXII--SPECIAL CLASSIFICATION PROVISIONS; TEMPORARY LEGISLATION; TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO TRADE LEGISLATION; ADDITIONAL IMPORT RESTRICTIONS ESTABLISHED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED**
**Chapter 98--Special Classification Provisions**

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**SUBCHAPTER III--SUBSTANTIAL CONTAINERS OR HOLDERS**

U.S. Notes

1. * * *

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4. Instruments of international traffic, such as containers, lift vans, rail cars and locomotives, truck cabs and trailers, etc, are exempt from formal entry procedures but are required to be accounted for when imported and exported into and out of the United States, respectively, through the manifesting procedures required for all international carriers by the United States Customs Service. Fees associated with the importation of such instruments of international traffic shall be reported and paid on a periodic basis as required by regulations issued by the Secretary of the Treasury and in accordance with 1956 Customs Convention on Containers (20 UST 30; TIAS 6634).

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**Chapter 99--Temporary Legislation; Temporary Modifications Established Pursuant to Trade Legislation; Additional Import Restrictions Established Pursuant to Section 22 of the Agricultural Adjustment Act, as Amended**

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**SUBCHAPTER V--TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO THE UNITED STATES-CANADA FREE TRADE AGREEMENT**

U.S. Notes

1. * * *

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9. Railway freight cars provided for in subheadings 9905.86.05 and 9905.86.10 are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.

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**Section 9703 of Title 31, United States Code**
**Sec. 9703. Department of the Treasury Forfeiture Fund**

(a) In General.--There is established in the Treasury of the United States a fund to be known as the "Department of the Treasury Forfeiture Fund" (referred to in this section as the "Fund"). The Fund shall be available to the Secretary, without fiscal year limitation, with respect to seizures and forfeitures made pursuant to any law (other than section 7301 or 7302 of the Internal Revenue Code of 1986) enforced or administered by the Department of the Treasury or the United States Coast Guard for the following law enforcement purposes:

(1) * * *

(2) At the discretion of the Secretary--

(A) * * *

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(E) the payment of claims against employees of the Customs Service settled by the Secretary under section 630 of the Tariff Act of 1930; ~~(E)~~ (F) payment for equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the vessel, vehicle, or aircraft will be used in joint law enforcement operations with a Department of the Treasury law

enforcement organization; ~~(F)~~ (G) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State or local law enforcement officers that are incurred in joint law enforcement operations with a Department of the Treasury law enforcement organization; ~~(G)~~ (H) reimbursement of private persons for expenses incurred by such persons in cooperating with a Department of the Treasury law enforcement organization in investigations and undercover law enforcement operations; ~~(H)~~ (I) payment for training foreign law enforcement personnel with respect to seizure or forfeiture activities of the Department of the Treasury; and ~~(I)~~ (J) payment made pursuant to guidelines promulgated by the Secretary, if such payment is necessary and directly related to seizure and forfeiture program expenses for--

(i) the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

* * * * *

(e) Investments.--Amounts in the Fund, and in any holding accounts associated with the Fund, which are not currently needed for the purposes of this section ~~shall~~ may be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments ~~shall~~ may be deposited in the Fund.

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**Act of June 16, 1937**

~~AN ACT To expedite the dispatch of vessels from certain ports of call. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to expedite the dispatch of vessels carrying passengers operating on regular schedules and arriving at night or on a Sunday or a holiday at a port in the United States at which such vessel is required by law to report arrival and make entry and from which it is required to obtain a clearance, the appropriate customs officer, if the vessel departs during the same night, Sunday, or holiday on which it arrives may, under such regulations as may be prescribed the Secretary of the Treasury, receive the report of arrival and entry of such vessel from and give clearance for such vessel to the master or other proper officer thereof on board such vessel: Provided, That bond, as prescribed in section~~

~~451 of the Tariff Act of 1930, is given to secure reimbursement to the Government for the compensation of, and expenses incurred by, such customs officers in performing such services, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to lading or unlading at night or on Sunday or a holiday.~~

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**Section 965 of Title 18, United States Code**
**Sec. 965. Verified statements as prerequisite to vessel's departure**

(a) During a war in which the United States is a neutral nation, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall, in addition to the facts required by ~~sections 91, 92, and 94 of Title 46~~ section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, deliver to the ~~collector of customs for the district wherein such vessel is then located~~ Customs Service a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same manner and under the same conditions deliver to the ~~collector~~ Customs Service like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively.

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**Section 9 of the Act To Prevent Pollution From Ships**

Sec. 9. (a) * * *

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(e) If any ship subject to the MARPOL Protocol or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, ~~shall refuse or revoke-- (1) the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91); or (2) a permit to proceed under section 4367 of the revised Statutes of the United States (46 U.S.C. 313) or section 443 of the Tariff Act 1930, as amended (19 U.S.C. 1443). Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.~~ shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

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**Act of October 3, 1913**
**CHAPTER 16.--An Act To reduce tariff duties and to provide revenue for the Government, and for other purposes.**

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**Section IV.**

**A. * * ***

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**J. SUBSECTION 1.**

A discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States, or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at

the time of such importation by treaty or convention or Act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to goods, wares, and merchandise imported in a vessel owned by citizens of the United States, but not a vessel of the United States, if such vessel, after entering an American port, shall before leaving the same be ~~registered as a vessel of the United States,~~ documented under chapter 121 of title 46, United States Code, nor to such foreign products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade.

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**J. SUBSECTION 3.**

Section 130 of this title shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against ~~vessels of the United States~~ United States documented vessels nor to any vessel owned by citizens of the United States but not a vessel of the United States if such vessel after entering an American port shall, before leaving the same, be ~~registered as a vessel of the United States.~~ documented under chapter 121 of title 46, United States Code.

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**Act of August 5, 1935**

AN ACT To protect the revenue of the United States and provide measures for the more effective enforcement of the laws respecting the revenue, to prevent smuggling, to authorize customs-enforcement areas, and for other purposes.

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

**TITLE I**
**Section 1.**
(a) * * *

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**Sec. 4.**
Subject to appeal to the Secretary of Commerce and under such regulations as he may prescribe, ~~whenever the collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, licensed, or numbered~~ when the Secretary of Transportation is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever, from the design or fitting of any vessel or the nature of any repairs made thereon, it is apparent to ~~such collector~~ the Secretary of Transportation that such vessel has been built or adapted for the purpose of smuggling merchandise, the ~~said collector shall revoke the registry, enrollment, license, or number of said vessel~~ the Secretary of Transportation shall revoke any endorsement on the vessel's certificate of documentation or number (when the Secretary is the authority issuing the number under chapter 123 of title 46, United States Code) or refuse the same if application be made therefor, as the case may be. ~~Such collector and all persons~~ The Secretary of Transportation and all persons acting by or under his direction shall be indemnified from any penalties or actions for damages for carrying out the provisions of this section.

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**Sec. 201**
[Repealed.]

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**Act of November 6, 1966**
AN ACT To require evidence of adequate financial responsibility to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages, to establish minimum standards for passenger vessels and to require disclosure of construction details on passenger vessels, and for other purposes.

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**Sec. 2.**
(a) * * *

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(e) ~~The collector of customs at~~ At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

**Sec. 3.**
(a) * * *

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**Section 1 of the Act of February 10, 1900**
**CHAPTER 15.--An Act Relating to Cuban vessels.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. ~~That vessels owned by citizens of Cuba and documented as such by officers of the United States shall hereafter be entitled in ports of the United States to the rights and privileges of vessels of the most favored nation, and they and their cargoes shall be subject to no higher charges in ports of the United States than are imposed on the vessels and cargoes of the most favored nation in the same trade.~~

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**Section 2 of the Act of April 29, 1908**
**CHAPTER 152.--An Act To repeal an Act approved April thirtieth, nineteen hundred and six, entitled "An Act to regulate shipping in trade between ports of the United States and ports or places in the Philippine Archipelago, between ports or places in the Philippine Archipelago, and for other purposes," and for other purposes.**

Be it enacted by the Senate and House of Representatives of the

United States of America in Congress assembled, That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago.

**Sec. 2.**
~~That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United States from the Philippine Islands which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries.~~

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**Section 1 of the Act of July 1, 1916**
**CHAPTER 209.--An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and seventeen, namely:

* * * * *

~~That the internal-revenue taxes imposed by the Philippine Legislature under the law enacted by that body on December twenty-first, nineteen hundred and fifteen, as amended by the law enacted by that body on February fourth, nineteen hundred and sixteen, and the tonnage tax on vessels engaged in foreign trade enacted by that body on February fourth, nineteen hundred and sixteen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is hereby legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed.~~

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**The Act of July 3, 1926**

**CHAPTER 757.--An Act To create a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That there is hereby created, in addition to the five great districts provided by section 4348 of the Revised Statutes as amended by the Act of May 12, 1906, a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York.~~

**Sec. 2.**

~~Enrolled and licensed vessels operating in the great district herein created shall be subject to all of the requirements of licensed and enrolled and licensed vessels imposed by sections 4349, 4350, 4351, and 4352 of the Revised Statutes and amendments and laws supplementary thereto: Provided, That nothing herein shall affect the rights or privileges reserved to seamen under existing law.~~

**Sec. 3.**

Sections 3116 and 3117 of the Revised Statutes are hereby repealed.

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**Act of May 4, 1934**

**AN ACT Authorizing pursers or licensed deck officers of vessels to perform the duties of the masters of such vessels in relation to entrance and clearance of same.**

~~Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, under any provision or provisions of any statute of the United States, it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or purser of such vessel, such acts shall have the same force and effect as if performed by masters of such vessels: Provided, That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels.~~

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**Section 1403 of the Water Resources Development Act of 1986**
**SEC. 1403. CREATION OF HARBOR MAINTENANCE TRUST FUND.**

(a) * * *

~~(b) Authorization of Appropriations.--There are authorized to be appropriated to the Department of the Treasury (from the fees collected under paragraphs (9) and (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985) such sums as may be necessary to pay all expenses of administration incurred by such Department in administering subchapter A of chapter 36 of the Internal Revenue Code of 1954 for periods to which such fees apply.~~

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**Section 9501 of the Omnibus Budget Reconciliation Act of 1987**
**SEC. 9501. CUSTOMS USER FEES.**

(a) * * *

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(c) Analysis Regarding the CES Program; Effect on Implementation of Program.--

(1) * * *

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(3) The Commissioner of Customs is authorized to obtain from the operators of centralized cargo examination stations information regarding the fees paid to them for the provision of services at these stations.

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**Section 123 of the Customs and Trade Act of 1990**
**SEC. 123. ANNUAL NATIONAL TRADE AND CUSTOMS LAW VIOLATION ESTIMATES AND ENFORCEMENT STRATEGY.**

(a) * * *

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(d) Compliance Program.--The Commissioner of Customs shall--

(1) devise and implement a methodology for estimating the level of compliance with the laws administered by the Customs Service; and

(2) include as an additional part of the report required to be submitted under subsection (a) for each of fiscal years 1994, 1995, and 1996, an evaluation of the extent to which such compliance was obtained during the 12-month period preceding the 60th day before each such fiscal year.

~~(d)~~ (e) Confidentiality.--The contents of any report submitted to the Committees under subsection (a) or (c)(2) are confidential and disclosure of all or part of the contents is restricted to--

(1) officers and employees of the United States designated by the Commissioner of Customs;

(2) the chairman of each of the Committees; and

(3) those members of each of the Committees and staff persons of each of the Committees who are authorized by the Chairman thereof to have access to the contents.

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# House Ways & Means Committee

## MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

### Vote of the Committee in Reporting the Bill

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill: H.R. 3450 was ordered favorably reported by the Committee, by a rollcall vote of 25 ayes, 12 noes on November 9, 1993.

### Oversight Findings

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee concludes, on the basis of hearing testimony, numerous studies and reports on the potential impact of the NAFTA, correspondence from Members of Congress and the private sector, and from extensive review of the provisions of the NAFTA, that approval and implementation of the North American Free Trade Agreement would be in the overall economic interest of the United States.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

### Budgetary Authority and Cost Estimates, Including Estimates of the Congressional Budget Office

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that there are no tax expenditures created by the bill.

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee agrees with cost estimates furnished by the Congressional Budget Office on H.R. 3450 and required to be included herein:

U.S. Congress,
Congressional Budget Office,

Washington, DC, November 15, 1993. Hon. Dan Rostenkowski,
Chairman, Committee on Ways and Means, House of Representatives,
Washington, DC.

Dear Mr. Chairman:
The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3450, the North American Free Trade Agreement Implementation Act.
Enactment of H.R. 3450 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.
If you wish further details on this estimate, we will be pleaded to provide them.

Sincerely,
Robert D. Reischauer, Director.

**Congressional Budget Office Cost Estimate**

1. Bill number: H.R. 3450.
2. Bill title: North American Free Trade Agreement Implementation Act.
3. Bill status: As ordered reported by the House Committee on Ways and Means on November 9, 1993.
4. Bill purpose: H.R. 3450 would approve the North American Free Trade Agreement (NAFTA) entered into on December 17, 1992, with the governments of Canada and Mexico. It would provide for tariff reductions and other changes in law related to implementation of the agreement. The bill also would create a transitional adjustment assistance program for affected workers, require the use of an electronic fund transfer system for collecting certain taxes, and increase certain customs user fees. It also would authorize appropriations for a number of agricultural and other programs.
5. Estimated cost to the Federal Government: The following tables summarize CBO's estimate of the budgetary impact of H.R. 3450. Table 1 shows the impact of the bill on direct spending and revenues. Table 2 details the estimated costs that depend on future appropriation actions.

**TABLE 1.--CBO ESTIMATES OF CHANGES IN REVENUES AND DIRECT SPENDING ASSOCIATED WITH H.R. 3450**

[By fiscal year, in millions of dollars] /1/
/1/ This table does not include any discretionary spending that would be associated with NAFTA.

Five-
year
/1/ This table does not include any discretionary spending that would be associated with NAFTA.

**1994 1995 1996 1997 1998 total**

CHANGES IN REVENUES (NET)

Reduction in tariff rates -214 -489 -547 -609 -672 -2,531
Electronic Federal tax deposit system:/2/
/2/ Estimate provided by the Joint Committee on Taxation.

On-budget 49 262 272 371 1,207 2,161
Off-budget 23 116 135 146 701 1,121
Customs enforcement initiative 17 22 22 23 23 107
Customs modernization provisions -3 -3 -3 -3 -3 -15

CHANGES IN OUTLAYS
Increases in Customs fees (offsetting receipts) -93 -203 -221 -241 0 -758
Increased spending for current trade adjustment
assistance program/3/ 10 25 25 20 25 105
/3/ Trade adjustment assitance (TAA) for training costs is currently limited by law to a maximum of $80 million a year. This estimate assumes that this cap is maintained. If it were raised or eliminated, CBO estimates that TAA costs resulting from NAFTA would be a total of $25 million higher over the 1994- 1998 period than shows above.

New trade adjustment assistance benefits/4/ 7 8 9 9 33
/4/ Less than $500,000.

Effects on agricultural price support programs -64 -86 -66 -1 33 -184
North American Development Bank 0 54 2 0 0 56
Customs modernization provisions -5 -5 -5 -5 -5 -25

EFFECT ON DEFICIT
Net increase or decrease (-) in deficit:
On-budget -1 0 -1 0 -493 -495
Off-budget -23 -116 -135 -146 -701 -1,121

**TABLE 2.--CBO ESTIMATES OF AUTHORIZATIONS OF APPROPRIATIONS ASSOCIATED WITH H.R. 3450**

[By fiscal year, in millions of dollars]

| | 1994 | 1995 | 1996 | 1997 | 1998 | Five-year total |
|---|---|---|---|---|---|---|
| Agriculture programs: | | | | | | |
| Estimated authorizations | 96 | 22 | 22 | 22 | 22 | 184 |
| Estimated outlays | 18 | 61 | 34 | 37 | 22 | 172 |
| North American Development Bank: | | | | | | |
| Estimated Authorizations | 0 | 0 | 56 | 56 | 56 | 168 |
| Estimated outlays | 0 | 0 | 56 | 56 | 56 | 168 |
| Other authorizations: | | | | | | |
| Estimated authorizations | 21 | 16 | 11 | 11 | 11 | 70 |
| Estimated outlays | 16 | 18 | 10 | 11 | 11 | 66 |
| Total authorizations: | | | | | | |
| Estimated authorizations | 17 | 38 | 89 | 89 | 89 | 422 |
| Estimated outlays | 34 | 79 | 100 | 104 | 89 | 406 |

**Basis of estimate**

**Changes in revenues**

Tariff Rate Reductions. Under NAFTA, all tariffs on U.S. imports from Mexico would be eliminated by 2008. Tariffs would be phased out for individual products at varying rates according to one of six different timetables ranging from immediate elimination to elimination over 15 years for some goods. Based on the composition of imports from Mexico in 1991, tariffs would be eliminated about 60 percent of dutiable goods on January 1, 1994, and tariff revenue would be reduced by about 65 percent in calendar year 1994. By 1998, duties on about 70 percent of goods that are currently subject to duty would be eliminated, and tariff revenue would be about 85 percent lower than under current law.

Goods currently afforded duty-free treatment under the Generalized System of Preferences (GSP) would receive permanent duty-free treatment under NAFTA. Under current law, the GSP program is scheduled to expire after September 30, 1994. Therefore, this estimate includes the revenue loss from extending duty- free treatment of GSP goods imported from Mexico past the GSP's expiration date under current law.

CBO estimates that the provisions of NAFTA that reduce tariff rates

would reduce revenues by $2.5 billion over 1994 through 1998, net of income and payroll tax offsets. This estimate is based on Census Bureau data for 1991 and 1992 on imports from Mexico. This estimate includes the effects of increased imports from Mexico that would result from the reduced prices of imported products in the U.S.--reflecting the lower tariff rates--and has been estimated based on the expected substitution between U.S. products and imports from Mexico. In addition, it is likely that some of the increase in U.S. imports from Mexico would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Mexico would displace imports from other countries.

Electronic Federal Tax Deposit System.--The new federal tax deposit system would electronically transfer tax deposits to the Treasury, eliminating the need for banks to process paper coupons and checks. The change, which would be phased in gradually over several years, would allow deposits to be credited to the Treasury on the day of deposit instead of the day after deposit. Adoption of this system would not change the amount of taxes paid by taxpayers, but would shift the receipt by the Treasury of certain tax revenues from the beginning of one fiscal year to the end of the preceding year. The Joint Committee on Taxation has estimated that these changes would increase on-budget receipts by $2.2 billion and off-budget receipts by $1.1 billion over the fiscal years 1994 through 1998.

Customs Enforcement Initiative.--The bill would allow Customs Service auditors to access IRS income tax return information. This would allow auditors to use businesses' tax information on the valuation of imports and is expected to result in higher customs duty audit assessments. CBO estimates, net of income and payroll tax offsets, that the access to the information would result in increased receipts of $107 million over fiscal years 1994 through 1998.

Customs Modernization.--Title VI of H.R. 3450 would expand the base of goods eligible for customs duty drawbacks and would allow increased exemptions from duty on certain personal articles, decreasing customs duties by $7 million each year. Title VI also would require payment of interest on merchandise revaluations after entering an item through U.S. Customs, increasing receipts by $4 million each year. CBO estimates, net of income and payroll tax offsets, these provisions would decrease receipts by $3 million each year.

**Changes in direct spending**

Customs User Fees.--H.R. 3450 would make several changes to user fees charged by the U.S. Customs Service, which are recorded in the budget as offsetting receipts. For the fiscal years 1994 through 1997 only, the current $5 passenger fee would be increased to $6.50 and the exemption granted to passengers arriving in the United States from Canada, Mexico, and the Caribbean would be removed. For fiscal years 1999 through 2003, customs user fees would be extended at the current $5 rate. (Under current law, these fees sunset at the end of fiscal year 1998.) CBO estimates that the $1.50 passenger fee increase and the removal of the exemption would result in addition fee collections of $758 million over the fiscal years 1994 through 1997.
Current Trade Adjustment Assistance (TAA) Program.--Under current law, the TAA program provides cash assistance and training to workers who can demonstrate that increased imports contributed importantly to the loss of their job. If NAFTA were to be approved, CBO estimates that approximately 4,500 additional workers annually for fiscal years 1995 through 1998 would become eligible for TAA. The additional workers would not qualify for TAA immediately because workers must exhaust their unemployment benefits prior to collecting TAA. The fiscal year 1994 estimate assumes approximately 1,000 workers would qualify for TAA, assuming that NAFTA becomes effective January 1, 1994. Under current law, TAA recipients are required to participate in job training unless they receive a waiver. Currently, about 60 percent of the recipients train and 40 percent receive waivers. The average training cost is approximately $4,000 per person. Based on an average cash benefit of $4,800, CBO estimates the additional TAA cash assistance would be $5 million in 1994 and $20 million each year for fiscal years 1995 through 1998, and we estimate the additional TAA training benefits would be $5 million in 1994 and $10 million each year for fiscal years 1995 through 1998, if all newly eligible workers were to receive their full training benefit.
Nevertheless, the TAA training program is a capped entitlement. The training benefits are capped at $80 million in fiscal years 1994, 1995, 1996, and 1998. In fiscal year 1997, the cap on funding for TAA training is $70 million. Because CBO's baseline is $5 million below the cap in fiscal years 1994, 1995, 1996, 1998 and equal to the cap in fiscal year 1997, the estimated increase in TAA training costs with the existing caps would be $5 million each year in fiscal years 1994, 1995, 1996, 1998 and zero in fiscal year 1997.
New Trade Adjustment Assistance Benefits.--The bill would add a new sub- chapter to the TAA program to allow workers who lose their job because their firm shifts production to Mexico or Canada to qualify for TAA. In addition, workers would be required to enter a job training program by their sixteenth week of unemployment or their sixth week

of TAA certification, whichever is later, to be eligible for benefits. Unlike the current TAA program, beneficiaries under this sub-part could not receive a waiver from training and still collect cash assistance TAA cash and training benefits under this amendment would be available to those who are displaced from their jobs between January 1, 1994, and September 30, 1998. CBO estimates that fewer than 1,000 workers annually would qualify for TAA payments under this provision. The average training benefit would be $4,000 per person, and the average cash benefit would be approximately $6,000 per person. CBO estimates that total TAA payments under this new sub-part would be less than $500,000 in fiscal year 1994, $7 million in fiscal year 1995, $8 million in fiscal year 1996, and $9 million in each of the fiscal years 1997 and 1998.

Effects on Agricultural Price Support Programs.--Gradual reductions in tariff and non-tariff barriers on agricultural products under the North American Free Trade Agreement are expected to result in increased trade between the United States and Mexico. An estimated net increase in U.S. exports of commodities currently supported by agriculture programs would result in higher market prices and a reduction in government support payments. While lower acreage reduction program (ARP) requirements (to compensate for increased demand) would mitigate some of the price increase, the ARP level could not be reduced in some years.

The bill also would require end use certificates for imports of wheat and barley. Such certificates would tend to discourage imports and raise the price for domestically produced grain, resulting in slightly lower program payments.

CBO estimates that increased exports and higher prices, combined with the requirement for end use certificates on imports of wheat and barley, would reduce federal expenditures on agricultural programs by $184 million during 1994 through 1998. The majority of these savings would be derived from higher prices and lower program payments for feed grains. The dairy sector and other grains would benefit noticeably from increased exports, leading to a reduction in federal support purchases and lower program costs.

North American Development Bank.--Section 542 would authorize the President to accept membership in a North American Development Bank. The bank would be a multilateral bank with stock held by members states. The bill would authorize the United States to subscribe to 150,000 shares of capital stock and the appropriation of $1,500 million to purchase the stock. It would appropriate $56.25 million in 1995 for the first paid-in stock subscription, and would provide an authorization of appropriations for the remaining amount without fiscal year limitation.

The North American Development Bank would have the same structure as other regional development banks. Only 15 percent of the bank's stock would be paid-in, or purchased, by the member states. The balance would be callable capital. Callable capital would secure borrowing by the bank in private capital markets. The bank would relend the funds. Member states would make payments on callable capital subscriptions only to the extent that the bank could not service its debt from earnings on its investments.

The estimate assumes the U.S. government would subscribe to the capital stock in four equal annual installments. The first installment would be funded by the $56.25 million appropriated for paid-in capital and the authorization for callable capital subscriptions provided in section 541(a)(3) of this bill. The estimate assumes that the final three installments of paid-in capital would be provided in appropriations acts in 1996, 1997, and 1998. The estimate assumes that the appropriation for paid-in capital would represent outlays in the year provided. The authorization to subscribe to the callable capital stock is not expected to result in any appropriations or outlays during the period of the estimate.

Section 543 authorizes the President to enter into an agreement with the Bank to receive 10 percent of the paid-in capital actually paid to the Bank by the United States. The bill would authorize the President to use these funds, without further appropriation, to make loans or loan guarantees through existing federal programs to support the community adjustment and investment program defined in the Cooperation Agreement. CBO estimates this provision would result in a receipt to the government from the Bank of $5.6 million in 1995, and subsequent spending of the same amount through existing community development loan and loan guarantee programs.

Customs Modernization.--H.R. 3450 would make several changes in the administrative procedures of the Customs Service. Customs would be allowed to release unclaimed merchandise for sale or destruction after six months rather than the one-year period mandated by current law. CBO estimates that this provision would decrease storage costs by $6 million annually. In addition, the number of entries that could be filed informally would be increased. Informal entries are assessed a lower customs user fee, and we estimate that this provision would decrease fee collections by $1 million annually. The net effect of these changes would be an outlay reduction of about $5 million a year.

**Spending subject to appropriations action**

Agriculture.--Sections 321 and 361 of the bill would authorize a

number of program changes that could increase federal outlays in agricultural programs by an estimated $172 million over the 1994-1998 period. The majority of costs would reflect authorizations for assistance to farm workers in markets adversely affected by increased trade with Mexico ($20 million per year) and the construction of a containment facility for agricultural products from Mexico. Other provisions would require the Secretary of Agriculture to provide information and reports on various agriculture markets and to monitor end use certificates.

North American Development Bank.--Beyond the amount appropriated for 1994, H.R. 3450 would authorize additional appropriations of $168 million for paid- in capital of the bank.

Section 543 would authorize the President to enter into an agreement with the Bank to receive 10 percent of the paid-in capital paid to the Bank by the United States. The bill would authorize the President to use the 10 percent portion to make loans or loan guarantees through existing federal programs to support the community adjustment and investment program defined in the Cooperation Agreement. CBO estimates this provisions would result in a receipt to the government from the Bank of $5.6 million annually over the 1996-1998 period, and subsequent spending of the same amount through existing community development loan and loan guarantee programs.

NAFTA Secretariat.--Title I would authorize the appropriation of up to $2 million to fund the United States section of the secretariat established by the agreement. These funds would be used to pay for the activities of the secretariat, as well as the commission, several committees and subcommittees, and various working groups subordinate to the secretariat. It also would allow the U.S. section to retain and spend reimbursements from the Mexican or Canadian section. We assume that the U.S. section of the secretariat would be established within the International Trade Administration of the Department of Commerce (DOC), and that the secretariat and the various committees under its jurisdiction would use the full $2 million authorized to pay for personnel and other costs.

Commerce Department Fees.--Title III (subtitle E) would require the DOC to make available to the public certain information relating to sanitary procedures and would permit the DOC to charge reasonable fees for this information. Such fees would raise $1 million to $2 million annually and would be available for spending under existing authority.

Customs Automation Program.--H.R. 3450 would establish the National Customs Automation Program, an automated and electronic system for processing information on commercial imports. We estimate that this program would cost $3 million in fiscal year 1994 assuming appropriation of the necessary funds.

Tax Collection Expenses.--The bill would authorize the Harbor Maintenance Trust Fund to use, for the first time, up to $5 million annually to cover the administrative costs of collecting the harbor maintenance tax. We estimate that this would result in costs of $5 million annually, assuming appropriation of the necessary funds.
Commissions.--Section 532 would authorize an annual appropriation of $5 million for 1994 and 1995 for the United States contributions to the annual budget of the Commission for Environmental Cooperation. This commission is described in article 43 of the North American Agreement on Environmental Cooperation; its purposes is to address environmental issues affecting the continent. Section 533 would authorize annual appropriations of $5 million, starting in 1994, for the Border Environment Cooperation Commission (BECC) that is established by the Border Environment Cooperation Agreement. This commission would assist in developing solutions to environmental problems in the U.S.-Mexico border region. The BECC would certify environmental construction projects for the North American Development Bank (established by section 541) and other financial institutions.
International Trade Commission.--Various provisions of the bill would require the International Trade Commission to monitor certain imports and to investigate and determine petitions for relief for imports benefiting from the agreement. Based on information supplied by the commission, CBO estimates that these duties will require an additional authorization of less than $1 million per year.
6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 3450 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill. The following table summarizes CBO's estimate of the pay-as-you-go impact of H.R. 3450. These figures represent the direct spending estimates in Table 1, excluding the effects on off-budget revenues.

[By fiscal year, in million of dollars]

| | 1994 | 1995 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|
| Change in outlays | -152 | -208 | -257 | -218 | 62 |
| Change in receipts | -151 | -208 | -256 | -218 | 555 |

7. Estimated cost to State and local governments: None.
8. Estimate Comparison: None.

9. Previous CBO estimate
On November 4, 1993, CBO prepared an estimate, based on draft language, of the direct spending and revenue effects of the North American Free Trade Agreement Implementation Act. That estimate of revenues and direct spending is identical to the estimate for H.R. 3450.
10. Estimate prepared by: Kim Cawly, Mark Grabowicz, Mary Maginniss, Eileen Manfredi, Ian McCormick, John Webb, and Robert Sunshine, Cory Oltman Melissa Sampson, Linda Radey and Joseph Whitehill.
11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

## Inflationary Impact

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 3450 would not have an inflationary impact on prices and costs in the operation of the general economy.

## Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black
brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988

* * * * *

## TITLE III--APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

### SEC. 301. AGRICULTURE.

(a) Special Tariff Provisions for Fresh Fruits and Vegetables.--
(1) The Secretary of Agriculture (hereafter in this section referred to as the "Secretary") may recommend to the President the imposition of a temporary duty on any Canadian fresh fruit or vegetable entered into the United States if the Secretary determines that both of the following conditions exist at the time that imposition of the duty is recommended:
(A) For each of 5 consecutive working days the import price of the Canadian fresh fruit or vegetable is below 90 percent of the corresponding 5-year average monthly import price for such fruit or vegetable.
(B) The planted acreage in the United States for the like fresh fruit or vegetable is no higher than the average planted acreage over the preceding 5 years, excluding the years with the highest and lowest acreage. For the purposes of applying this subparagraph, any acreage increase attributed directly to a reduction in the acreage that was planted to wine grapes as of October 4, 1987, shall be excluded.
Whenever the Secretary makes a determination that the conditions referred to in subparagraphs (A) and (B) regarding any Canadian fresh fruit or vegetable exist, the Secretary shall ~~promptly~~ immediately submit for publication in the Federal Register notice of the determination.
(2) No later than 6 days after publication in the Federal Register of the notice described in paragraph (1), the Secretary shall decide whether to recommend the imposition of a temporary duty to the President, and if the Secretary decides to make such a recommendation, the recommendation shall be forwarded immediately to the President.
~~(2)~~ (3) In determining whether to recommend the imposition of a temporary duty to the President under paragraph (1), the Secretary shall consider whether the conditions in subparagraphs (A) and (B) of such paragraph have led to a distortion in trade between the United States and Canada of the fresh fruit or vegetable and, if so, whether the imposition of the duty is appropriate, including consideration of whether it would significantly correct this distortion.
~~(3)~~ (4) Not later than 7 days after receipt of a recommendation of the Secretary under paragraph (1), the President, after taking into account the national economic interests of the United States, shall determine whether to impose a temporary duty on the Canadian fresh fruit or vegetable concerned. If the determination is affirmative, the President shall proclaim the imposition and the rate of the temporary duty, but such duty shall not apply to the entry of articles that were in transit to the United States on the first day on which the temporary duty is in effect.
~~(4)~~ (5) A temporary duty imposed under paragraph ~~(3)~~ (4) shall cease

to apply with respect to articles that are entered on or after the earlier of--

(A) the day following the last of 5 consecutive working days with respect to which the Secretary determines that the point of shipment price in Canada for the Canadian fruit or vegetable concerned exceeds 90 percent of the corresponding 5-year average monthly import price; or

(B) the 180th day after the date on which the temporary duty first took effect.

~~(5)~~ (6) No temporary duty may be imposed under this subsection on a Canadian fresh fruit or vegetable during such time as import relief is provided with respect to such fresh fruit or vegetable under chapter 1 of title II of the Trade Act of 1974.

~~(6)~~ (7) For purposes of this subsection:

(A) The term "Canadian fresh fruit or vegetable" means any article originating in Canada (as determined in accordance with section 202) and classified within any of the following headings of the Harmonized System:

(i) 07.01 (relating to potatoes, fresh or chilled);

(ii) 07.02 (relating to tomatoes, fresh or chilled);

(iii) 07.03 (relating to onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled);

(iv) 07.04 (relating to cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled);

(v) 07.05 (relating to lettuce (lactuca sativa) and chicory (cichorium spp.), fresh or chilled);

(vi) 07.06 (relating to carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled);

(vii) 07.07 (relating to cucumbers and gherkins, fresh or chilled);

(viii) 07.08 (relating to leguminous vegetables, shelled or unshelled, fresh or chilled);

(ix) 07.09 (relating to other vegetables (excluding truffles), fresh or chilled);

(x) 08.06.10 (relating to grapes, fresh);

(xi) 08.08.20 (relating to pears and quinces, fresh);

(xii) 08.09 (relating to apricots, cherries, peaches (including nectarines), plums and sloes, fresh); and

(xiii) 08.10 (relating to other fruit (excluding cranberries and blueberries), fresh).

(B) The term "corresponding 5-year average monthly import price" for a particular day means the average import price of a Canadian fresh fruit or vegetable, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(C) The term "import price" has the meaning given such term in article 711 of the Agreement.
(D) The rate of a temporary duty imposed under this subsection with respect to a Canadian fresh fruit or vegetable means a rate that, including the rate of any other duty in effect for such fruit or vegetable, does not exceed the lesser of--
(i) the duty that was in effect for the fresh fruit or vegetable before January 1, 1989, under column one of the Tariff Schedules of the United States for the applicable season in which the temporary duty is applied; or
(ii) the duty in effect for the fresh fruit or vegetable under column one of such Schedules, or column 1 (General) of the Harmonized System, at the time the temporary duty is applied.
~~(7)~~ (8)(A) The Secretary shall, to the extent practicable, administer the provisions of this subsection to the 8-digit level of classification under the Harmonized System.
(B) The Secretary may issue such regulations as may be necessary to implement the provisions of this subsection.
~~(8) For purposes of assisting the Secretary in carrying out this subsection, the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables.~~
(9) For purposes of assisting the Secretary in carrying out this subsection--
(A) the Commissioner of Customs and the Director of the Bureau of Census shall cooperate in providing the Secretary with timely information and data relating to the importation of Canadian fresh fruits and vegetables, and
(B) importers shall report such information relating to Canadian fresh fruits and vegetables to the Commissioner of Customs at such time and in such manner as the Commissioner requires.
~~(9)~~ (10) The authority to impose temporary duties under this subsection expires on the 20th anniversary of the date on which the Agreement enters into force.

* * * * *

**TITLE IV--BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES**

* * * * *

## SEC. 410. TERMINATION OF AGREEMENT.

(a) In General.--If--
(1) no agreement is entered into between the United States and Canada on a substitute system of rules for antidumping and countervailing duties before the date that is 7 years after the date on which the Agreement enters into force, and
(2) the President decides not to exercise the rights of the United States under article 1906 of the Agreement to terminate the Agreement, the President shall submit to the Congress a report on such decision which explains why continued adherence to the Agreement is in the national economic interest of the United States. In calculating the 7-year period referred to in paragraph (1), any time during which Canada is a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) shall be disregarded.

* * * * *

# TITLE V--EFFECTIVE DATES AND SEVERABILITY

## SEC. 501. EFFECTIVE DATES.

(a) * * *

* * * * *

~~(c) Termination of Provisions and Amendments if Agreement Terminates.--On the date on which the Agreement ceases to be in force, the provisions of this Act (other than this subsection and section 410(b)), and the amendments made by this Act, shall cease to have effect.~~
(c) Termination or Suspension of Agreement.--
(1) Termination of agreement.--On the date the Agreement ceases to be in force, the provisions of this Act (other than this paragraph and section 410(b)), and the amendments made by this Act, shall cease to have effect.
(2) Effect of agreement suspension.--An agreement by the United States and Canada to suspend the operation of the Agreement shall not be deemed to cause the Agreement to cease to be in force within

the meaning of paragraph (1).
(3) Suspension resulting from nafta.--On the date the United States and Canada agree to suspend the operation of the Agreement by reason of the entry into force between them of the North American Free Trade Agreement, the following provisions of this Act are suspended and shall remain suspended until such time as the suspension of the Agreement may be terminated:
(A) Sections 204(a) and (b) and 205(a).
(B) Sections 302 and 304(f).
(C) Sections 404, 409, and 410(b).

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**Tariff Act of 1930**

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**TITLE III--SPECIAL PROVISIONS**

PART I--MISCELLANEOUS

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**SEC. 304. MARKING OF IMPORTED ARTICLES AND CONTAINERS.**

(a) * * *

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(c) Marking of Certain Pipe and Fittings.--(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, ~~or engraving~~ engraving, or continuous paint stenciling.
(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the ~~four~~ five methods specified in paragraph (1), the article may be marked by an equally

permanent method of marking ~~such as paint stenciling~~ or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

* * * * *

(e) Marking of Certain Manhole Rings or Frames, Covers, and Assemblies Thereof.--No exception may be made under subsection (a)(3) with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country or origin by means of die stamping, cast-in-mold lettering, etching, ~~or engraving~~ engraving, or an equally permanent method of marking.

* * * * *

(h) Treatment of Goods of a NAFTA Country.--
(1) Application of section.--In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) under the regulations issued by the Secretary to implement Annex 311 of the North American Free Trade Agreement--
(A) the exemption under subsection (a)(3)(H) shall be applied by substituting "reasonably know" for "necessarily know";
(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) if the good--
(i) is an original work of art, or
(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and
(C) subsection (b) does not apply to the usual container of any good described in subsection (a)(3)(E) or (I) or subparagraph (B)(i) or (ii) of this paragraph.
(2) Petition rights of nafta exporters and producers regarding marking determinations.--
(A) Definitions.--For purposes of this paragraph:
(i) The term "adverse marking decision" means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.
(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person--
(I) if claiming to be the exporter, is located in a NAFTA country and is

required to maintain records in that country regarding exportations to NAFTA countries; or
(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.
(B) Intervention or petition regarding adverse marking decisions.-- If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth--
(i) a description of the merchandise; and
(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.
(C) Effect of determination regarding decision.--If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision--
(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or
(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.
(D) Judicial review.--For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 516 regarding an issue arising under any of the preceding provisions of this section.
~~(h)~~ (i) Penalties.--Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall--
(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and
(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.

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**SEC. 306. CATTLE, SHEEP, SWINE, AND MEATS-- IMPORTATION PROHIBITED IN CERTAIN CASES.**

(a)~~ Rinderpest and Foot-and-Mouth Disease.--If the Secretary of Agriculture~~ In General.--Except as provided in subsection (b), if the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals, from such foreign country, is prohibited Provided, That wild ruminants or swine may be imported from any such country upon such conditions, including post entry conditions, to be prescribed in import permits or in regulations, as the Secretary may impose for the purpose of preventing the dissemination of said diseases into or within the United States: And provided further, That the subsequent distribution, maintenance, and exhibition of such animals in the United States shall be limited to zoological parks approved by said Secretary as meeting such standards as he may by regulation prescribe for the purpose of preventing the dissemination of said diseases into or within the United States. The Secretary may at any time seize and dispose of any such animals which are not handled in accordance with the conditions imposed by him or which are distributed to or maintained or exhibited at any place in the United States which is not then an approved zoological park, in such manner as he deems necessary for said purpose.

~~(b) Notwithstanding subsection (a), the Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, the importation of cattle, sheep, or other ruminants, or swine (including embryos of such animals) or the fresh, chilled, or frozen meat of such animals from a region of Canada notwithstanding the existence of rinderpest or foot-and-mouth disease in Canada, if--~~

~~(1) the United States and Canada have entered into an agreement delineating the criteria for recognizing that a geographical region of either country is free from rinderpest or foot-and-mouth disease; and~~

~~(2) the appropriate official of the government of Canada certifies that the region of Canada from which the animal or meat originated is free from rinderpest and foot-and-mouth disease.~~

(b) Exception.--The Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of cattle, sheep, other ruminants, or swine (including embryos of the animals), or the fresh, chilled, or frozen meat of the animals, from a region if the Secretary determines that the region from which the animal or meat originated is, and is likely to remain, free from rinderpest and foot-and- mouth disease.

* * * * *

**SEC. 311. BONDED MANUFACTURING WAREHOUSES.**

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: Provided, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: Provided further, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses. Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

* * * * *

~~No article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988, without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.~~

No article manufactured in a bonded warehouse from materials that are goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to a NAFTA country, as defined in section 2(4) of that Act, without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid before the 61st day after the date of exportation, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of--
(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or
(2) the total amount of customs duties paid on the materials to the NAFTA country. If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada during the period such Agreement is in operation without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.

**SEC. 312. BONDED SMELTING AND REFINING WAREHOUSES.**

(a) * * *
(b) The several charges against such bond may be canceled in whole or in part--
(1) upon the exportation ~~(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988)~~ from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal- bearing materials less wastage provided for in subsection (c)~~, or~~; except that in the case of a withdrawal for

exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of--
(A) the total amount of customs duties owed on the materials on importation into the United States, or
(B) the total amount of customs duties paid to the NAFTA country on the product, or

* * * * *

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection
(c), and upon withdrawal from such other warehouse for exportation (other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of such Act of 1988) or domestic consumption the provisions of this section shall apply~~, or~~; except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of--
(A) the total amount of customs duties owed on the materials on

importation into the United States, or
(B) the total amount of customs duties paid to the NAFTA country on the product, or

* * * * *

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no charges against such bond may be canceled in whole or part upon an exportation to Canada under paragraph (1) or (4) during the period such Agreement is in operation except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.

* * * * *

(d) Upon the exportation ~~(other than exportation to Canada on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, except to the extent that the product is a drawback eligible good under section 204(a) of such Act of 1988)~~; of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 508(b)(2)(B)) in an amount not to exceed the lesser of--
(1) the total amount of customs duties paid or owed on the materials on importation into the United States, or
(2) the total amount of customs duties paid to the NAFTA country on the product. If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this

subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free Trade Agreement Implementation Act of 1988.

* * * * *

**SEC. 313. DRAWBACK AND REFUNDS.**

(a) Articles Made From Imported Merchandise.--Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by- products produced from ~~wheat imported after ninety days after the date of the enactment of this Act~~ imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.
(b) Substitution For Drawback Purposes.--If imported duty-paid merchandise and ~~duty-free or domestic merchandise~~ any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, but only if those articles have not been used prior to such exportation or destruction; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise. ~~(c) Merchandise not Conforming to Sample or Specifications.--Upon the exportation of merchandise not conforming to sample or specifications~~

~~or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.~~

(c) Merchandise Not Conforming to Sample or Specifications.--Upon the exportation, or destruction under the supervision of the Customs Service, of merchandise--

(1) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation;

(2) upon which the duties have been paid;

(3) which has been entered or withdrawn for consumption; and

(4) which, within 3 years after release from the custody of the Customs Service, has been returned to the custody of the Customs Service for exportation or destruction under the supervision of the Customs Service; the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

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~~(j) Same Condition Drawback.--(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation--~~

~~(A) is, before the close of the three-year period beginning on the date of importation--~~

~~(i) exported in the same condition as when imported, or~~

~~(ii) destroyed under Customs supervision; and~~

~~(B) is not used within the United States before such exportation or destruction; then upon such exportation or destruction 99 per centum of the amount of each such duty, tax, and fee so paid shall be refunded as drawback.~~

~~(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic) that--~~

~~(A) is fungible with such imported merchandise;~~

~~(B) is, before the close of the three-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under Customs supervision;~~

~~(C) before such exportation or destruction--~~

~~(i) is not used within the United States, and~~

~~(ii) is in the possession of the party claiming drawback under~~

~~this paragraph; and~~
~~(D) is in the same condition at the time of exportation or destruction as was the imported merchandise at the time of its importation; then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.~~
~~(3) Packaging material that is imported for use in packaging or repackaging imported merchandise to which paragraph (1) applies shall be eligible under the same conditions provided in such paragraph for refund, as drawback, of 99 per centum of any duty, tax, or fee imposed under Federal law on the importation of such material.~~
~~(4) The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on--~~
~~(A) the imported merchandise itself in cases to which paragraph (1) applies, or~~
~~(B) the merchandise of the same kind and quality in cases to which paragraph (2) applies, that does not amount to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).~~
(j) Unused Merchandise Drawback.--
(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation--
(A) is, before the close of the 3-year period beginning on the date of importation--
(i) exported, or
(ii) destroyed under customs supervision; and
(B) is not used within the United States before such exportation or destruction; then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.
(2) Subject to paragraph (4), if there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that--
(A) is commercially interchangeable with such imported merchandise;
(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

(C) before such exportation or destruction--
(i) is not used within the United States, and
(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party--
(I) is the importer of the imported merchandise, or
(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise); then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.
(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on--
(A) the imported merchandise itself in cases to which paragraph (1) applies, or
(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies, shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).
(4) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through
(8) of section 203(a) of that Act, shall not constitute an exportation for purposes of paragraph (2).

* * * * *

(l) Regulations.--Allowance of the privileges provided for in this section

shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, ~~the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section 309 (b) of this Act shall be filed and completed,~~ the authority for the electronic submission of drawback entries and the designation of the person to whom any refund or payment of drawback shall be made.

* * * * *

~~(n) For purposes of subsections (a), (b), (f), (h), and (j)(2), the shipment on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free- Trade Agreement Implementation Act of 1988, to Canada on an article, except an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of such Act, does not constitute an exportation.~~
~~(o) For purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988. This subsection shall apply to vessels delivered to Canadian account or owner, or to the Government of Canada, on and after January 1, 1994 (or, if later, the date proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free- Trade Agreement Implementation Act of 1988).~~
~~(p) Substitution of Crude Petroleum or Petroleum Derivatives.--~~
~~(1) Notwithstanding any other provision of this section, in the case of articles, described in headings 2707 through 2715, 2901 and 2902, or 3901 through 3914 (limited to liquids, pastes, powders, granules, and flakes) of the Harmonized Tariff Schedule of the United States, that--~~
~~(A) are--~~
~~(i) manufactured or produced under subsection (a) or (b) from crude petroleum or petroleum derivatives, or~~
~~(ii) imported duty-paid, and~~
~~(B) are stored in common storage with other articles of the same kind and quality that are otherwise manufactured or produced, drawback shall be paid on the articles withdrawn for export from such common storage (regardless of the source or origination of the articles withdrawn), if the requirements described in paragraph (2) are met.~~
~~(2) The requirements of this paragraph are met if--~~
~~(A) inventory records kept on a calendar month basis (not on a daily~~

~~or transaction-by-transaction basis) demonstrate sufficient quantities of imported duty-paid articles or articles manufactured or produced under subsection (a) or (b) in the common storage against which such withdrawal is designated;~~
~~(B) such inventory records reflect deliveries to and withdrawals from such common storage that assure that the drawback paid does not exceed the amount of drawback that would be payable under this section had all of the articles withdrawn from common storage been imported duty-paid or manufactured or produced under subsection (a) or (b);~~
~~(C) certificates of delivery or certificates of manufacture and delivery, establishing the drawback eligibility of the imported duty- paid articles or articles manufactured or produced under subsection (a) or (b), when required, are filed with the drawback entry; and~~
~~(D) the inventory records of the operator of such common storage are, upon reasonable notice, available to the Customs Service.~~
~~(3) For purposes of this subsection--~~
~~(A) The term "common storage" includes all articles of the same~~ kind and quality stored at a single facility regardless of the number of bins, tanks, or other containers used.
~~(B) The term "same kind and quality" means articles that are~~ commercially interchangeable or that are referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States.
~~(C) The term "single facility" means all storage units under the~~ control and recordkeeping of a single operator adjacent to a manufacturing plant, refinery, warehouse complex, terminal area, airport, bunkering facility, or similar facility.
(n)(1) For purposes of this subsection and subsection (o)--
(A) the term "NAFTA Act" means the North American Free Trade Agreement Implementation Act;
(B) the terms "NAFTA country" and "good subject to NAFTA drawback" have the same respective meanings that are given such terms in sections 2(4) and 203(a) of the NAFTA Act; and
(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (o) is subject to section 508(b)(2)(B).
(2) For purposes of subsections (a), (b), (f), (h), (p), and (q), if an article that is exported to a NAFTA country is a good subject to NAFTA drawback, no customs duties on the good may be refunded, waived, or reduced in an amount that exceeds the lesser of--
(A) the total amount of customs duties paid or owed on the good on importation into the United States, or
(B) the total amount of customs duties paid on the good to the NAFTA

country.
(3) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsections (a), (b), (f), (h), (j)(2), and (q), the shipment to Canada during the period such Agreement is in operation of an article made from or substituted for, as appropriate, a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988 does not constitute an exportation.
(o)(1)For purposes of subsection (g), if--
(A) a vessel is built for the account and ownership of a resident of a NAFTA country or the government of a NAFTA country, and
(B) imported materials that are used in the construction and equipment of the vessel are goods subject to NAFTA drawback, the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the NAFTA country.
(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988.
(p) Substitution of Finished Petroleum Derivatives.--
(1) In general.--Notwithstanding any other provision of this section, if--
(A) an article (hereafter referred to in this subsection as the "exported article") of the same kind and quality as a qualified article is exported;
(B) the requirements set forth in paragraph (2) are met; and
(C) a drawback claim is filed regarding the exported article; the amount of the duties paid on, or attributable to, such qualified article shall be refunded as drawback to the drawback claimant.
(2) Requirements.--The requirements referred to in paragraph (1) are as follows:
(A) The exporter of the exported article--
(i) manufactured or produced the qualified article in a quantity equal to or greater than the quantity of the exported article,
(ii) purchased or exchanged, directly or indirectly, the qualified article

from a manufacturer or producer described in subsection (a) or (b) in a quantity equal to or greater than the quantity of the exported article,
(iii) imported the qualified article in a quantity equal to or greater than the quantity of the exported article, or
(iv) purchased or exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.
(B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.
(C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.
(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.
(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).
(F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.
(G) The manufacturer, producer, importer, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.
(3) Definition of qualified article, etc.--For purposes of this subsection--
(A) The term "qualified article" means an article--
(i) described in--
(I) headings 2707, 2708, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902 of the Harmonized Tariff Schedule of the United States, or
(II) headings 3901 through 3914 of such Schedule (as such headings apply to liquids, pastes, powders, granules, and flakes), and
(ii) which is--
(I) manufactured or produced as described in subsection (a) or (b) from crude petroleum or a petroleum derivative, or
(II) imported duty-paid.
(B) An exported article is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the

same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article.
(C) The term "drawback claimant" means the exporter of the exported article or the refiner, producer, or importer of such article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.
(4) Limitation on drawback.--The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article--
(A) manufactured or produced under subsection (a) or (b) by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or
(B) imported under clause (iii) or (iv) of paragraph (2)(A).
(q) Packaging Material.--Packaging material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j), shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax, or fee imposed under Federal law on the importation of such material.
(r) Filing Drawback Claims.--
(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the Customs Service was responsible for the untimely filing.
(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.
(s) Designation of Merchandise by Successor.--
(1) For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.
(2) For purposes of subsection (j)(2), a drawback successor may designate--
(A) imported merchandise which the predecessor, before the date of succession, imported; or
(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially

interchangeable merchandise for which the successor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the successor such merchandise; as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.
(3) For purposes of this subsection, the term "drawback successor" means an entity to which another entity (in this subsection referred to as the "predecessor") has transferred by written agreement, merger, or corporate resolution--
(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or
(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.
(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor's records) certifies that--
(A) the transferred merchandise was not and will not be claimed by the predecessor, and
(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.
(t) Drawback Certificates.--Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued.
(u) Eligibility of Entered or Withdrawn Merchandise.--Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.
(v) Multiple Drawback Claims.--Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

## SEC. 315. EFFECTIVE DATES OF RATES OF DUTY.

(a) Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this Act or any other law on any article entered for consumption or withdrawn from warehouse for

consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the ~~appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury,~~ Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe, except that
(1) * * *

* * * * *

(b) Any article which has been entered for consumption but which, before release from ~~customs custody~~ custody of the Customs Service, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.
(c) Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in ~~paragraph 813~~ chapter 98 of the Harmonized Tariff Schedule of the United States and section 562 of this Act (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

* * * * *

**SEC. 321. ADMINISTRATIVE EXEMPTIONS.**

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to--
(1) disregard a difference ~~of less than $10~~ of an amount specified by the Secretary by regulation, but not less than $20, between the total estimated duties, fees, and taxes deposited, or the total duties fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, and taxes actually accruing thereon; ~~and~~

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty ~~shall not exceed--~~ shall not exceed an amount specified by the Secretary by regulation, but not less than--
(A) ~~$50~~ $100 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States (~~$100~~ $200, in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and America Samoa), or
(B) ~~$25~~ $200 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under subheading 9804.00.30 or 9804.00.70 of this Act, or
(C) ~~$5~~ $200 in any other case~~.~~; and
(3) waive the collection of duties, fees, and taxes due on entered merchandise when such duties, fees, or taxes are less than $20 or such greater amount as may be specified by the Secretary by regulation. The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2).
(b) The Secretary of the Treasury is authorized by regulations ~~to diminish any dollar amount specified in subsection (a) and~~ to prescribe exceptions to any exemption provided for in ~~such subsection~~ subsection (a) whenever he finds that such action is consistent with the purpose of ~~such subsection~~ subsection (a) or is necessary for any reason to protect the revenue or to prevent unlawful importations.

* * * * *

**TITLE IV--ADMINISTRATIVE PROVISIONS**

~~PART I--DEFINITIONS~~

PART I--DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

Subpart A--Definitions

**SEC. 401. MISCELLANEOUS.**

When used in this title or in Part I of Title III--
(a) * * *

* * * * *

(k) Hovering Vessel.--(1) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.
~~For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.~~
~~(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which--~~
~~(A) has visited any hovering vessel;~~
~~(B) has received merchandise while in the customs waters beyond the territorial sea; or~~
~~(C) has received merchandise while on the high seas; shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.~~
(k) The term "hovering vessel" means--
(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws of the United States; and
(2) any vessel which has visited a vessel described in paragraph (1).

* * * * *

(n) The term "electronic transmission" means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.
(o) The term "electronic entry" means the electronic transmission of the Customs Service of--
(1) entry information required for the entry of merchandise, and
(2) entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.
(p) The term "electronic data interchange system" means any established mechanism approved by the Commissioner of Customs

through which information can be transferred electronically.
(q) The term "National Customs Automation Program" means the program established under section 411.
(r) The term "import activity summary statement" refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.
(s) The term "reconciliation" means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest.

* * * * *

Subpart B--National Customs Automation Program

**SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.**

(a) Establishment.--The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the "Program") which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:
(1) Existing components:
(A) The electronic entry of merchandise.
(B) The electronic entry summary of required information.
(C) The electronic transmission of invoice information.
(D) The electronic transmission of manifest information.
(E) Electronic payments of duties, fees, and taxes.
(F) The electronic status of liquidation and reliquidation.
(G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).
(2) Planned components:
(A) The electronic filing and status of protests.
(B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.

(C) The electronic filing of import activity summary statements and reconciliation.
(D) The electronic filing of bonds.
(E) The electronic penalty process.
(F) The electronic filing of drawback claims, records, or entries.
(G) Any other component initiated by the Customs Service to carry out the goals of this subpart.
(b) Participation in Program.--The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. Participation in the Program is voluntary.

**SEC. 412. PROGRAM GOALS.**

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that--
(1) is uniform and consistent;
(2) is as minimally intrusive upon the normal flow of business activity as practicable; and
(3) improves compliance.

**SEC. 413. IMPLEMENTATION AND EVALUATION OF PROGRAM.**

(a) Overall Program Plan.--
(1) In general.--Before the 180th day after the date of the enactment of this Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth--
(A) a general description of the ultimate configuration of the Program;
(B) a description of each of the existing components of the Program listed in section 411(a)(1); and
(C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.
(2) Additional information.--In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding--
(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and
(B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on--
(i) importers, brokers, and other users of the Program, and
(ii) Customs Service occupations, operations, processes, and systems.
(b) Implementation Plan, Testing, and Evaluation.--

(1) Implementation plan.--For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall--
(A) develop an implementation plan;
(B) test the component in order to assess its viability;
(C) evaluate the component in order to assess its contribution toward achieving the program goals; and
(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report. In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.'
(2) Implementation.--
(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.
(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding--
(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and
(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.
(3) Evaluation and report.--The Secretary shall--
(A) develop a user satisfaction survey of parties participating in the Program;
(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2d fiscal year;
(C) with respect to the existing Program component listed in section 411(a)(1)(G) transmit to the Committees--
(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the implementation of the planned Program components listed in section 411(a)(2) (B) and (C), and
(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and
(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed

in section 411(a)(2). In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.
(c) Committees.--For purposes of this section, the term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

**SEC. 414. REMOTE LOCATION FILING.**

(a) Core Entry Information.--
(1) In general.--A Program participant may file electronically an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a "remote location") if--
(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and
(B) the participant elects to file from the remote location.
(2) Requirements.--
(A) In general.--In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:
(i) The electronic entry of merchandise.
(ii) The electronic entry summary of required information.
(iii) The electronic transmission of invoice information (when required by the Customs Service).
(iv) The electronic payment of duties, fees, and taxes.
(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.
(B) Restriction on exemption from requirements.--The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.
(3) Conditions on filing under this section.--The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant--
(i) fails to meet all the compliance requirements and operational standards of remote location filing; or
(ii) fails to adhere to all applicable laws and regulations.
(4) Alternative filing.--Any Program participant that is eligible to file entry information electronically from a remote location but chooses not

to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d).
(b) Additional Entry Information.--
(1) In general.--A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.
(2) Requirements.--The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.
(3) Filing of additional information.--
(A) If information electronically acceptable.--A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.
(B) Alternative filing.--If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.
(C) Appropriate location.--For purposes of subparagraph (B), the "appropriate location" is--
(i) before January 1, 1999, a designated location; and
(ii) after December 31, 1998--
(I) if the paper documentation is required for release, a designated location; or
(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.
(D) Other.--A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.
(c) Post-Entry Summary Information.--A Program participant that is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.
(d) Definitions.--As used in this section:
(1) The term "designated location" means a customs office located in the customs district designated by the entry filer for purposes of

customs examination of the merchandise.
(2) The term "Program participant" means, with respect to an entry of merchandise, any party entitled to make the entry under section 484(a)(2)(B).

PART II--REPORT, ENTRY, AND UNLOADING OF VESSELS AND VEHICLES

## SEC. 431. MANIFEST--REQUIREMENT, FORM, AND CONTENTS.

~~(a) The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:~~
~~First. The names of the ports or places at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port: Provided, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo "for orders," and within fifteen days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.~~
~~Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel.~~
~~Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag; and the names of the shippers of such merchandise.~~
~~Fourth. The names of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.~~
~~Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.~~

~~Sixth. An account of the sea stores and ship's stores on board of the vessel.~~
~~(b) Whenever a manifest of articles or persons on board an aircraft is required for customs purposes to be signed, or produced or delivered to a customs officer, the manifest may be signed, produced, or delivered by the pilot or person in charge of the aircraft, or by any other authorized agent of the owner or operator of the aircraft, subject to such regulations as the Secretary of the Treasury may prescribe. If any irregularity of omission or commission occurs in any way in respect of any such manifest, the owner or operator of the aircraft shall be liable for any fine or penalty prescribed by law in respect of such irregularity.~~
(a) In General.--Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) shall have a manifest that complies with the requirements prescribed under subsection (d).
(b) Production of Manifest.--Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

* * * * *

(d) Regulations.--
(1) In general.--The Secretary shall by regulation--
(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);
(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;
(C) prescribe the manner of production for, and the delivery or electronic transmittal of the manifest required by subsection (a); and
(D) prescribe the manner for supplementing manifests will bill of lading data under subsection (b).
(2) Letters and documents shipments.--For purposes of paragraph

(1)(B)--
(A) the Customs Service may require with respect to letters and documents shipments--
(i) that they be segregated by country of origin, and
(ii) additional examination procedures that are not necessary for individually manifested shipments;
(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and
(C) the term "letters and documents" means--
(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,
(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and
(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.

## ~~SEC. 432. MANIFEST TO SPECIFY SEA AND SHIP'S STORES.~~

~~The manifest of any vessel arriving from a foreign port or place shall separately specify the articles to be retained on board of such vessel as sea stores, ship's stores, or bunker coal, or bunker oil, and if any other or greater quantity of sea stores, ship's stores, bunker coal, or bunker oil is found on board of any such vessel than is specified in the manifest, of if any such articles, whether shown on the manifest or not, are landed without a permit therefor issued by the appropriate customs officer, all such articles omitted from the manifest or landed without a permit shall be subject to forfeiture, and the master shall be liable to a penalty equal to the value of the articles.~~

## SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

(a) Vessel Arrival.--(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of--
(A) any vessel from a foreign port or place;
(B) any foreign vessel from a domestic port; ~~or~~
(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made; or
(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea; the master of the vessel

shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

* * * * *

(d) Presentation of Documentation.--The master, person in charge of a vehicle, or aircraft pilot shall ~~present to customs officers such~~ present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data, documents, papers, or manifests as the Secretary may by regulation prescribe.
~~(e) Prohibition on Departures and Discharge.--Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands--~~
~~(1) depart from the port, place, or airport of arrival; or~~
~~(2) discharge any passenger or merchandise (including baggage); only in accordance with regulations prescribed by the Secretary.~~
(e) Prohibition on Departures and Discharge.--Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary--
(1) depart from the port, place, or airport of arrival; or
(2) discharge any passenger or merchandise (including baggage).

**~~SEC. 434. ENTRY OF AMERICAN VESSELS.~~**

~~Except as otherwise provided by law, and under such regulations as the Secretary of Commerce may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the appropriate customs officer the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 431 of this Act.~~

**SEC. 434. ENTRY; VESSELS.**

(a) Formal Entry.--Within 24 hours (or such other period of time as may be provided under subsection (c)(2)) after the arrival at any port

or place in the United States of--
(1) any vessel from a foreign port or place;
(2) any foreign vessel from a domestic port;
(3) any vessel of the United States having on board bonded merchandise or foreign merchandise for which entry has not been made; or
(4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea; the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.
(b) Preliminary Entry.--The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.
(c) Regulations.--The Secretary may by regulation--
(1) prescribe the manner and format in which entry under subsection (a) or subsection (b), or both, must be made, and such regulations may provide that such any entry may be made electronically pursuant to an electronic data interchange system;
(2) provide that--
(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and
(B) formal entry may be made before arrival; and
(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

**~~SEC. 435. ENTRY OF FOREIGN VESSELS.~~**

~~The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the United States, except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the consul of the nation to which such vessel belongs that said documents have been deposited with him: Provided, That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession~~

~~of the register and other papers of vessels entering the ports of such nations.~~

**SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, ~~AND ENTRY~~ ENTRY, AND CLEARANCE REQUIREMENTS.**

(a) Unlawful Acts.--It is unlawful--
(1) to fail to comply with section ~~433~~ 431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91);
~~(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 433(d) without revealing the facts;~~
(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 431(e), 433(d), or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) without revealing the facts; or
~~(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or~~
(3) to fail to make entry or to obtain clearance as required by section 434 or 644 of this Act, section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), or section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509); or

* * * * *

~~**SEC. 437. DOCUMENTS RETURNED AT CLEARANCE.**~~

~~The register, or document in lieu thereof, deposited in accordance with section 434 or 435 of this Act shall be returned to the master or owner of the vessel upon its clearance.~~

**SEC. 438. UNLAWFUL RETURN OF FOREIGN VESSEL'S PAPERS.**

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section ~~435~~ 434 of this Act, or regulations issued thereunder, until such master shall produce

to him a clearance in due form from ~~the appropriate customs officer of the port where such vessel has been entered.~~ the Customs Service in the port in which such vessel has entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than $5,000.

**~~SEC. 439. DELIVERY OF MANIFEST.~~**

~~Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to such employee as the Secretary of the Treasury shall designate, a copy of the manifest, and shall on entering his vessel make affidavit that a true and correct copy was so mailed or delivered, and he shall also mail or deliver to such employee designated by the Secretary a true and correct copy of any correction of such manifest filed on entry of his vessel. Any master who fails so to mail or deliver such copy of the manifest or correction thereof shall be liable to a penalty of not more than $500.~~

**~~SEC. 440. CORRECTION OF MANIFEST.~~**

~~If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do shall be liable to a penalty of $500.~~

**SEC. 441. ~~VESSELS NOT REQUIRED TO ENTER.~~ EXCEPTIONS TO VESSSEL ENTRY AND CLEARANCE REQUIREMENTS.**

~~The following vessels shall not be required to make entry at the customhouse:~~ The following vessels shall not be required to make entry under section 434 or to obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91):
(1) * * *

* * * * *

~~(3) Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: Provided, That such vessels do not in any way violate the~~

~~customs or navigation laws of the United States and have not visited any hovering vessel: Provided further, That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival.~~

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if--

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if--

(A) the vessel complies with the reporting requirements of section 433, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival;

~~(4)~~ (5) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: Provided, That the master, owner or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; and

~~(5)~~ (6) Tugs ~~enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers~~ documented under chapter 121 of title 46, United States Code, with a Great Lakes endorsement when towing vessels which are required by law to enter and clear.

* * * * *

**~~SEC. 443. CARGO FOR DIFFERENT PORTS--MANIFEST AND PERMIT.~~**

~~Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the appropriate customs officer a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board.~~

**~~SEC. 444. ARRIVAL AT ANOTHER PORT.~~**

~~Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the appropriate customs officer at such port and shall produce the permit issued by the appropriate customs officer at the port of first arrival, together with the certified copy of his manifest.~~

**~~SEC. 445. PENALTIES FOR FAILURE TO HAVE PERMIT AND CERTIFIED MANIFEST.~~**

~~If the master of any such vessel shall proceed to another port or district without having obtained a permit therefor and a certified copy of his manifest, or if he shall fail to produce such permit and certified copy of his manifest to the appropriate customs officer at the port of destination, or if he shall proceed to any port not specified in the permit, he shall be liable to a penalty, for each offense, of not more than $500.~~

* * * * *

**SEC. 447. PLACE OF ENTRY AND UNLADING.**

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: Provided, That upon good cause therefor being shown, the Secretary of Commerce may permit entry of any vessel to be made at a place other than port of entry designated by him, under such conditions as he shall prescribe: And provided further, That any vessel laden with merchandise in bulk may proceed after entry of such vessel laden with merchandise in bulk may proceed after entry of such vessel to any

place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if ~~the appropriate customs officer shall consider~~ the Customs Service considers the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.

**SEC. 448. UNLADING.**

(a) Permits and Preliminary Entries.--Except as provided in section 441 of this Act (relating to vessels not required to enter or clear), no merchandise, passengers, or baggage shall be unladen from any vessel ~~or vehicle arriving from a foreign port or place~~ required to make entry under section 434, or vehicle required to report arrival under section 433, until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unlading of the same issued or transmitted pursuant to an electronic data interchange system by ~~the appropriate customs officer~~ the Customs Service~~: Provided, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall excuse the master from making formal entry of his vessel at the customhouse, as provided by this Act~~. After the entry~~, preliminary or otherwise,~~ of any vessel or report of the arrival of any vehicle, ~~such customs officer~~ the Customs Service may issue a permit, electronically pursuant to an authorized electronic data interchange system or otherwise, to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except a provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefore having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by such customs officer, the Customs Service, as provided in section 384, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner

in the case of baggage, until entry thereof is made. The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 618. Such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490.

* * * * *

**SEC 449. UNLADING AT PORT OF ENTRY.**

Except as provided in sections 442 and 447 of this act (relating to residue cargo and to bulk cargo, respectively), merchandise and baggage imported in such vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the ~~appropriate customs officer of such port issues a permit for the unlading of such merchandise or baggage,~~ Customs Service issues a permit for the unlading of such merchandise or baggage at such port, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be trented as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination.

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~~**SEC. 465. SAME--SUPPLIES.**~~

~~The master of any vessel of the United States documented to engage in the foreign and coasting trade on the northern, north-eastern, and northwestern frontiers shall, upon arrival from a foreign contiguous territory, file with the manifest of such vessel a detailed list of all supplies or other merchandise purchased in such foreign country for~~

~~use or sale on such vessel, and also a statement of the cost of all repairs to and all equipment taken on board such vessel. The conductor or person in charge of any railway car arriving from a contiguous country shall file with the manifest of such car a detailed list of all supplies or other merchandise purchased in such foreign country for use in the United States. If any such supplies, merchandise, repairs, or equipment shall not be reported, the master, conductor, or other person having charge of such vessel or vehicle shall be liable to a fine of not less than $100 and not more than $500, or to imprisonment for not more than two years, or both.~~

* * * * *

PART III--ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

**SEC. 481. INVOICE--CONTENTS.**

(a) In General.--~~All invoices of merchandise to be imported into the United States shall set forth--~~All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this action shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:
(1) * * *

* * * * *

~~(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;~~
(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

* * * * * (10) Any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require.

(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisement, examination and classification of the merchandise.

* * * * *

~~(c) Purchases in Different Consular Districts.--When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 482 of this Act, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.~~

(c) Importer Provision of Information.--Any information required to be set forth on an invoice may alternatively be provided by any of the parties qualifying as an "importer of record" under section 484(a)(2)(B) by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.

(d) Exceptions by Regulations.--The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section.

**SEC. 482. CERTIFIED INVOICE.**

~~(a) Certification in General.--Every invoice required pursuant to section 484(b) of this Act to be certified shall, at or before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officer of the United States--~~

~~(1) For the consular district in which the merchandise was manufactured, or purchased, or from which it was to be delivered pursuant to contract;~~

~~(2) For the consular district in which the merchandise is assembled and repacked for shipment to the United States, if it has been purchased in different consular districts.~~

~~(b) Declaration.--Such invoices shall have indorsed thereon, when so produced, a verified declaration, in a form prescribed by the Secretary~~

~~of the Treasury, stating whether the merchandise is sold or agreed to be sold, or whether it is shipped otherwise than in pursuance of a purchase or an agreement to purchase, that there is no other invoice differing from the invoice so produced, and that all the statements contained in such invoice and in such declaration are true and correct.~~
~~(c) Making and Signing.--Every certified invoice shall be made out in triplicate, or, for merchandise intended for immediate transportation under the provisions of section 552 of this Act, in quadruplicate, if desired by the shipper, and shall be signed by the seller or shipper, or the agent of either; but a person who has no interest in the merchandise except as broker or forwarder shall not be competent to sign any such invoice. Where any such invoice is signed by an agent, he shall state thereon the name of his principal.~~
~~(d) Certified Under Existing Law.--Such invoices shall be certified in accordance with the provisions of existing law.~~
~~(e) Disposition.--The original of the invoice and, if made, the quadruplicate shall be delivered to the exporter, to be forwarded to the consignee for use in making entry of the merchandise, and the triplicate shall be promptly transmitted by the consular officer to the appropriate customs officer at the port of entry named in the invoice. The duplicate shall be filed in the office of the consular officer by whom the invoice was certified, to be there kept until no longer needed in conducting the current business of the consular office, at which time it may be disposed of as provided by law.~~
~~(f) Certification by Other than American Consul.--When merchandise is to be shipped from a place so remote from an American consulate as to render impracticable certification of the invoice by an American consular officer, such invoice may be certified by a consular officer of a nation at the time in amity with the United States, or if there be no such consular officer available such invoice shall be executed before a notary public or other officer having authority to administer oaths and having an official seal: Provided, That invoices for merchandise shipped to the United States from the Philippine Islands, the Virgin Islands, American Samoa, the island of Guam, or the Canal Zone may be certified by the appropriate customs officer.~~
~~(g) Effective Date.--This section shall take effect sixty days after the date of enactment of this Act.~~

**~~SEC. 484. ENTRY OF MERCHANDISE.~~**

~~(a) Requirement and Time.--(1) Except as provided in sections 490, 498, 552, 553, and 336(j) of this Act and in subsections (h) and (i) of this section, one of the parties qualifying as 'importer of record' under~~

~~paragraph (2)(C) of this subsection, either in person or by an agent authorized by him in writing --~~

~~(A) shall make entry therefor by filing with the appropriate customs officer such documentation as is necessary to enable such officer to determine whether the merchandise may be released from customs custody; and~~

~~(B) shall file (at the time required under paragraph (2)(B) of this subsection) with the appropriate customs officer such other documentation as is necessary to enable such officer to assess properly the duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.~~

~~(2)(A) The documentation required under paragraph (1) of this subsection with respect to any imported merchandise shall be filed at such place within the customs-collection district where the merchandise will be released from customs custody as the Secretary shall by regulation prescribe.~~

~~(B) The documentation required under paragraph (1)(B) of this subsection with respect to any imported merchandise shall be filed with the appropriate customs officer when entry of the merchandise is made or at such time within the ten-day period (exclusive of Saturdays, Sundays, and holidays) immediately following the date of entry as the Secretary shall by regulation prescribe.~~

~~(C) When an entry of merchandise is made under this section, the required documentation shall be filed either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641 of this Act. When a consignee declares on entry that he is the owner or purchaser of merchandise, the appropriate customs officer may, without liability, accept the declaration. For the purposes of this title, the importer of record must be one of the parties who is eligible to file the documentation required by this section.~~

~~(D) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data discovered after the release of merchandise shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of~~

~~imported merchandise.~~
~~(b) Production of Certified Invoice.--The Secretary of the Treasury shall provide by regulation for the production of a certified invoice with respect to such merchandise as he deems advisable and for the terms and conditions under which such merchandise may be permitted entry under the provisions of this section without the production of a certified invoice.~~
~~The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this subdivision as he deems advisable.~~
~~(c) Production or Bill of Lading.--The importers of record shall produce the bill of lading at the time of making entry, except that--~~
~~(1) If the appropriate customs officer is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to such customs officer may be accepted in lieu thereof;~~
~~(2) The appropriate customs officer is authorized to permit entry and to release merchandise from customs custody without the production of the bill of lading if the person making such entry gives a bond satisfactory to such customs officer in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to relieve such customs officer of all liability, to indemnify the collector against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making such customs officer a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and~~
~~(3) The provisions of this subdivision shall not apply in the case of an entry under subdivision (b) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).~~
~~(d) Signing and Contents.--Such entry shall be signed by the importer of record, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisement, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates, and documents as are required by law and regulations promulgated thereunder.~~
~~(e) Statistical Enumeration.--The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise~~

~~imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.~~

~~(f) Packages Included.--If any of the certificates or documents necessary to make entry of any part of merchandise arriving on one vessel or vehicle and consigned to one consignee have not arrived, such part may be entered subsequently, and notation of the packages or cases to be omitted from the original entry shall be made thereon. One or more packages arriving on one vessel or vehicle addressed for delivery to one person and imported in another package containing packages addressed for delivery to other persons may be separately entered, under such rules and regulations as the Secretary of the Treasury may prescribe. All other merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, unless the Secretary of the Treasury shall authorize the inclusion of portions of such merchandise in separate entries under such rules and regulations as he may prescribe; except that, in the case of articles not subject to a quantitative or tariff-rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section 552 of this Act may be accepted at the port of entry designated by the consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury.~~

~~(g) Statement of Cost Production.--Under such regulations as the Secretary of the Treasury may prescribe, the appropriate customs officer may require a verified statement from the manufacturer or producer sowing the cost of production of the imported merchandise, when necessary to the appraisement of such merchandise.~~

~~(h) The carrier bringing the merchandise into the port at which entry is to be made may certify any person to be the owner, purchaser, or consignee of the merchandise, and that person may be accepted as such by the appropriate customs officer. A carrier shall not certify a person pursuant to this subsection unless it has actual knowledge of or reason to believe in the accuracy of such certification.~~

~~(i) For the purposes of this section, the appropriate customs officer may accept a duplicate bill of lading signed or certified to be genuine~~

~~by the carrier bringing the merchandise to the port at which entry is to be made.~~
~~(j) Release of Merchandise.--Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. The appropriate customs officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made. The customs officer shall not be liable to any person in respect of the delivery of merchandise released from cutoms custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceeding against a customs officer on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by such customs officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such customs officer, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose.~~

**SEC. 484. ENTRY OF MERCHANDISE.**

(a) Requirement and Time.--
(1) Except as provided in sections 490, 498, 552, 553, and 336(j), one of the parties qualifying as "importer of record" under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care--
(A) make entry therefore by filing with the Customs Service--
(i) such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and
(ii) notification whether an import activity summary statement will be filed; and
(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to--
(i) properly assess duties on the merchandise,
(ii) collect accurate statistics with respect to the merchandise, and
(iii) determine whether any other applicable requirement of law

(other than a requirement relating to release from customs custody) is met.
(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, covering entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month.
(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.
(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.
(b) Reconciliation.--
(1) In general.--A party that electronically transmits an entry summary or import activity summary statement may at the time of filing such summary or statement notify the Customs Service of his intention to file a reconciliation pursuant to such regulations as the Secretary may prescribe. Such reconciliation must be filed by the importer of record within such time period as is prescribed by regulation but no later than 15 months following the filing of the entry summary or import activity summary statement; except that the prescribed time period for reconciliation issues relating to the assessment of antidumping and countervailing duties shall require filing no later than 90 days after the Customs Service advises the

importer that a period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

(2) Regulations regarding ad/cv duties.--The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.

(c) Release of Merchandise.--The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

(d) Signing and Contents.--Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(e) Production of Invoice.--The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) Statistical Enumeration.--The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) Statement of Cost of Production.--Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.
(h) Admissibility of Data Electronically Transmitted.--Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

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**SEC. 485. DECLARATION.**

(a) Requirement--Form and Contents.--Every importer of record making an entry under the provisions of section 484 of this Act shall make and file or transmit electronically therewith, in a form and manner to be prescribed by the Secretary of the Treasury, a declaration under oath, stating--
(1) * * *

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(d) ~~A~~ An importer of record shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of ~~a~~ an importer of record.

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(g) Exported Merchandise Returned as Undeliverable.--With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.

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SEC. 490. GENERAL ORDERS.

~~(a) Incomplete Entry.--Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the appropriate customs officer, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the appropriate customs officer believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.~~

(a) Incomplete Entry.--

(1) Whenever--

(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

(D) the Customs Service believes that any merchandise is not correctly and legally invoiced; the carrier (unless subject to subsection (c)) shall notify the bonded warehouse of such unentered merchandise.

(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until--

(A) entry is made or completed and the proper documents are produced;

(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

(C) a bond is given for the production of documents or the transmittal of data.

(b) ~~At Request of Consignee.--~~ Request for Possession by Customs.--At the request of the consignee of any merchandise, or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the ~~appropriate customs officer~~ Customs Service after the expiration of one day after the entry of the vessel or report of the vehicle and may

be unladen and held at the risk and expense of the consignee until entry thereof is made.
(c) Government Merchandise.--Any imported merchandise that--
(1) is described in any of paragraphs (1) through (4) of subsection (a); and
(2) is consigned to, or owned by, the United States Government; shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.

**SEC. 491. UNCLAIMED MERCHANDISE; DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES AND MALT LIQUOR**

(a) Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in ~~customs custody for one year~~ in a bonded warehouse pursuant to section 490 for 6 months from the date of importation thereof, without all estimated duties ~~and storage~~, taxes, fees, interest, storage, or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the appropriate customs officer at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, taxes, fees, interest, storage, and other charges, if permitted to remain in ~~public store or bonded warehouse for a period of one year~~ pursuant to section 490 in a bonded warehouse for 6 months, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 559 of this Act may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, taxes, fees, interest, storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, taxes, fees, interest, charges, and expenses nor may it be entered for warehouse. The computation of duties, taxes, interest, and fees for the purposes of this section and sections 493 and 559 of this Act shall be at the rate of rates applicable at the time the merchandise becomes subject to sale.
(b) Notice of Title Vesting in the United States.--At the end of the 6-month period referred to in subsection (a), the Customs Service may, in lieu of sale of the merchandise, provide notice to all known

interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day--

(1) the subject merchandise is entered or withdrawn for consumption; and

(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

(c) Retention, Transfer, Destruction, or Other Disposition.--If title to any merchandise vests in the United States by operation of subsection (b), such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on retained or transferred merchandise shall be paid by the receiving agency.

(d) Petition.--Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b), can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b), or can establish to the satisfaction of the Secretary that the party did not receive notice under subsection (b), the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Treasury of the United States the amount the Secretary believes the party would have received under section 493 had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties.

~~(b)~~ (e) All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by--

(1) * * *

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(3) sale by ~~appropriate custom officer~~ Customs Service at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

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**SEC. 492. DESTRUCTION OF ABANDONED OR FORFEITED MERCHANDISE.**

Except as provided in section 3369 of the Revised Statutes, as amended (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the ~~appropriate customs officer~~ Customs Service shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed, retained for official use, or otherwise disposed of under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction.

**SEC. 493. PROCEEDS OF SALE.**

The surplus of the proceeds of sales under section 491 of this Act, after the payment of storage charges, expenses, duties, taxes, and fees, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited ~~by the appropriate customs officer~~ in the Treasury of the United States, if claim therefor shall not be filed with ~~such customs officer~~ the Customs Service within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale.

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**SEC. 497. PENALTIES FOR FAILURE TO DECLARE.**

(a) In General.--(1) Any article which--
(A) is not included in the declaration and entry as made or transmitted; and

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(2) The amount of the penalty imposed under paragraph (1) with

respect to any article is equal to--
~~(A) if the article is a controlled substance, 1,000 percent of the value of the article; and~~
(A) if the article is a controlled substance, either $500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

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**SEC. 498. ENTRY UNDER REGULATIONS.**

(a) Authorized for Certain Merchandise.--The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of-- (1) Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $1,250, as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions, except that this paragraph does not apply to articles valued in excess of $250 classified in--
~~(A) chapters 50 through 63;~~
~~(B) chapters 39 through 43, 61 through 65, 67 and 95; and~~
~~(C) subchapters III and IV of chapter 99; of the Harmonized~~
Tariff Schedule of the United States, or to any other article for which formal entry is required without regard to value;
(1) Merchandise, when--
(A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than $2,500; or
(B) different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;
(2) Products of the United States, when the aggregate value of the shipment does not exceed ~~$10,000~~ such amounts as the Secretary may prescribe and the products are imported--
(A) * * *

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~~**SEC. 499. EXAMINATION OF MERCHANDISE.**~~

~~Imported merchandise, required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall not~~

~~be delivered from customs custody, expect under such bond or other security as may be prescribed by the Secretary of the Treasury to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce; until it has been inspected, examined, or appraised and is reported by the appropriate customs officer to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States. Such officer shall designate the packages or quantities covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise and shall order such packages or quantities to be sent to the public stores or other places for such purpose. Not less than one package of every invoice and not less than one package of every ten packages of merchandise, shall be so designated unless the Secretary of the Treasury, from the character and description of the merchandise, is of the opinion that the examination of a less proportion of packages will amply protect the revenue and by special regulation or instruction, the application of which may be restricted to one or more individual ports or to one or more importations or one or more classes of merchandise, permit a less number of packages to be examined. All such special regulations or instructions shall be published in the weekly Treasury Decisions within fifteen days after issuance and before the liquidation of any entries affected thereby. Such officer may require such additional packages or quantities as he may deem necessary. If any package contains any article not specified in the invoice and, in the opinion of the appropriate customs officer, such article was omitted from the invoice with fraudulent intent on the part of the seller, shipper, owner, or agent, the contents of the entire package in which such article is found shall be subject to seizure, but if no such fraudulent intent is apparent, then the value of said article shall be added to the entry and the duties thereon paid accordingly. If a deficiency is found in quantity, weight, or measure in the examination of any package, report thereof shall be made to the appropriate customs officers, who shall make allowance therefore in the liquidation of duties.~~

~~No appraisement made after the effective date of the Customs Administrative Act of 1938 shall be held invalid on the ground that the required number of packages or the required quantity of the merchandise was not designated for examination or, if designated, was not actually examined, unless the party claiming such invalidity shall establish that merchandise in the packages or quantities not designated for examination, or not actually examined, was different from that actually examined and that the difference was such as to establish the incorrectness of the appraisement; and then only as to~~

~~the merchandise for which the appraisement is shown to be incorrect.~~

**SEC. 499. EXAMINATION OF MERCHANDISE.**

(a) Entry Examination.--
(1) In general.--Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.
(2) Examination.--The Customs Service--
(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;
(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;
(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and
(D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.
(3) Unspecified articles.--If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry--
(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or
(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.
(4) Deficiency.--If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.
(5) Information required for release.--If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the port of examination. The absence of such information does not limit the

authority of the Customs Service to conduct an examination.
(b) Testing Laboratories.--
(1) Accreditation of private testing laboratories.--The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations--
(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;
(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed $100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service--
(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and
(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and
(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation. The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 13031(e)(6) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(6)).
(2) Appeal of adverse accreditation decisions.--A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28, United States Code, in the Court of International Trade within 60 days after issuance of the decision or order.
(3) Testing by accredited laboratories.--When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry.

Nothing in this subsection shall be construed to limit in any way or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.
(4) Availability of testing procedure, methodologies, and information.--Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:
(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are--
(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or
(ii) developed by the Customs Service for enforcement purposes.
(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information reveals information which is--
(i) proprietary to the holder of a copyright or patent; or
(ii) developed by the Customs Service for enforcement purposes.
(5) Miscellaneous provisions.--For purposes of this subsection--
(A) any reference to a private laboratory includes a reference to a private gauger; and
(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.
(c) Detentions.--Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:
(1) In general.--Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.
(2) Notice of detention.--The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of--
(A) the initiation of the detention;
(B) the specific reason for the detention;
(C) the anticipated length of the detention;

(D) the nature of the tests or inquiries to be conducted; and
(E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.
(3) Testing results.--Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.
(4) Seizure and forfeiture.--If otherwise provided by law, detained merchandise may be seized and forfeited.
(5) Effect of failure to make determination.--
(A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 514(a)(4).
(B) For purposes of section 1581 of title 28, United States Code, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.
(C) Notwithstanding section 2639 of title 28, United States Code, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

**SEC. 500. APPRAISEMENT, CLASSIFICATION, AND LIQUIDATION PROCEDURES.**

~~The appropriate customs officer~~ The Customs Service shall, under rules and regulations prescribed by the Secretary--
(a) ~~appraise~~ fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 402, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;

(b) ~~ascertain the~~ fix the final classification and rate of duty applicable to such merchandise;
(c) fix the final amount of duty to be paid on such merchandise and determine any increased or additional duties, taxes, and fees due or any excess of duties, taxes, and fees deposited;
~~(d) liquidate the entry of such merchandise; and~~
~~(e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.~~
(d) liquidate the entry and reconciliation, if any, of such merchandise; and
(e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.

**SEC. 501. ~~VOLUNTARY RELIQUIDATIONS~~ VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS SERVICE.**

A liquidation made in accordance with section 500 or any reliquidation thereof made in accordance with this section may be reliquidated in any respect by ~~the appropriate customs officer on his own initiative~~ the Customs Service, notwithstanding the filing of a protest, within ninety days from the date on which notice of the original liquidation is given or transmitted to the importer, his consignee or agent. Notice of such reliquidation shall be given or transmitted in the manner prescribed with respect to original liquidations under section 500(e).

**SEC. 502. REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.**

(a) Powers of Secretary of the Treasury.--The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law (including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry~~, and~~. The Secretary may direct any customs officer to go from one port of entry to another for the purpose of appraising or classifying or assisting in appraising or classifying merchandise imported at ~~such port~~ any port,

and may direct any customs officer at any port to review entries of merchandise filed at any other port.
~~(b) Reversal of Secretary's Rulings.--No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement.~~
~~(c)~~ (b) Duties of Customs Officers.--It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs.

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**SEC. 504. LIMITATION ON LIQUIDATION.**

(a) Liquidation.--~~Except as provided in subsection (b),~~ Unless an entry is extended under subsection (b) or suspended as required by statute or court order, an entry of merchandise not liquidated within one year from:
(1) the date of entry of such merchandise;
(2) the date of the final withdrawal of all such merchandise covered by a warehouse entry; ~~or~~
(3) the date of withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under section 505(a) of this Act, duties may be deposited after the filing of an entry or withdrawal from warehouse; or
(4) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed; shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 500(e) of this Act, notice of liquidation need not be given of an entry deemed liquidated.
~~(b) Extension.--The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if--~~
~~(1) information needed for the proper appraisement or classification of~~

~~the merchandise is not available to the appropriate customs officer;~~
~~(2) liquidation is suspended as required by statute or court order; or~~
~~(3) the importer of record requests such extension and shows good cause therefor.~~
~~(c) Notice of Suspension.--If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer of record concerned and to any authorized agent and surety of such importer of record.~~
~~(d) Limitation.--Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.~~
(b) Extension.--The Secretary may extend the period in which to liquidate an entry if--
(1) the information needed for the proper appraisement or classification of the merchandise, or for insuring compliance with applicable law, is not available to the Customs Service; or
(2) the importer of record requests such extension and shows good cause therefor. The Secretary shall give notice of an extension under this subsection to the importer of record and the surety of such importer of record. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record at the expiration of 4 years from the applicable date specified in subsection (a).
(c) Notice of Suspension.--If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record and to any authorized agent and surety of such importer of record.
(d) Removal of Suspension.--When a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record.

~~**SEC. 505. PAYMENT OF DUTIES.**~~

~~(a) Deposit of Estimated Duties.--Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the appropriate customs officer at the time of making entry, or at such later time as the Secretary may prescribe by regulation (but not to exceed thirty days after the date of entry), the amount of duties estimated by such customs officer to be payable thereon.~~
~~(b) Collection or Refund.--The appropriate customs officer shall collect any increased or additional duties due or refund any excess of duties deposited as determined on a liquidation or reliquidation.~~
~~(c) Duties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation, and unless payment of the duties is received by the appropriate customs officer within 30 days after that date, shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation at a rate determined by the Secretary of the Treasury.~~

**SEC. 505. PAYMENT OF DUTIES AND FEES.**

(a) Deposit of Estimated Duties, Fees, and Interest.--Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.
(b) Collection or Refund of Duties, Fees, and Interest Due Upon Liquidation or Reliquidation.--The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest

thereon, shall be paid within 30 days of liquidation or reliquidation.
(c) Interest.--Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation.
(d) Delinquency.--If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b), any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.

## SEC. 506. ALLOWANCE FOR ABANDONMENT AND DAMAGE.

Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:
(1) Abandonment within thirty days.--Where the importer abandons to the United States, within thirty days after entry in the case of merchandise not sent to the appraiser's stores for released without an examination, or within thirty days after the release ~~of the examination packages or quantities of merchandise~~ in the case of merchandise sent to ~~the appraiser's stores~~ the Customs Service for examination, any imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice or entry in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the collector directs unless ~~the appropriate customs officer~~ the Customs Service is satisfied that the merchandise is so far destroyed as to be nondeliverable;
(2) Perishable merchandise, condemned.--Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files, electronically or otherwise, with ~~such customs officer~~ the Customs Service ~~written~~ notice thereof, an invoiced

description and the location thereof, and the name of the vessel or vehicle in which imported.

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**SEC. 508. RECORDKEEPING.**

~~(a) Requirements.--Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which--~~
~~(1) pertain to any such importation, or to the information contained in the documents required by this Act in connection with the entry of merchandise; and~~
~~(2) are normally kept in the ordinary course of business.~~
~~(b) Any person who exports, or who knowingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to such exportations.~~
~~(c) Period of Time.--The records required by subsections (a) and (b) of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.~~
(a) Requirements.--Any--
(1) owner, importer, consignee, importer of record, entry filer, or other party who--
(A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or
(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;
(2) agent of any party described in paragraph (1); or
(3) person whose activities require the filing of a declaration or entry, or both; shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which--
(A) pertain to any such activity, or to the information contained in the records required by this Act in connection with any such activity; and
(B) are normally kept in the ordinary course of business.
(b) Exportations to Free Trade Countries.--
(1) Definitions.--As used in this subsection--

(A) The term "associated records" means, in regard to an exported good under paragraph (2), records associated with--
(i) the purchase of, cost of, value of, and payment for, the good;
(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and
(iii) the production of the good. For purposes of this subparagraph, the terms "indirect material,"
"material," "preferential tariff treatment," "used," and "value" have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.
(B) The term "NAFTA Certificate of Origin" means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.
(2) Exports to nafta countries.--
(A) In general.--Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the Certificate or copies thereof) and the associated records.
(B) Claims for certain waivers, reductions, or refunds of duties or for credit against bonds.--
(i) In general.--Any person that claims with respect to an article--
(I) a waiver or reduction of duty under the last paragraph of section 311, section 312(b)(1) or (4), section 562(2), or the last proviso to section 3(a) of the Foreign Trade Zones Act;
(II) a credit against a bond under section 312(d); or
(III) a refund, waiver, or reduction of duty under section 313(n)(2) or (o)(1); must disclose to the Customs Service the information described in clause (ii).
(ii) Information required.--Within 30 days after making a claim described in clause (i) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either--
(I) prepares a NAFTA Certificate of Origin for the article; or
(II) learns of the existence of such a Certificate for the article; that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.
(iii) Action on claim.--If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (i) is made, the Customs Service

may make such adjustments regarding the previous customs treatment of the article as may be warranted under the claim.
(3) Exports under the canadian agreement.--Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall make, keep, and render for examination and inspection such records
(including certifications of origin or copies thereof) which pertain to the exportations.
(c) Period of Time.--The records required by subsections (a) and (b) shall be kept for such periods of time as the Secretary shall prescribe; except that--
(1) no period of time for the retention of the records required under subsection (a) or (b)(3) may exceed 5 years from the date of entry or exportation, as appropriate;
(2) the period of time for the retention of the records required under subsection (b)(2) shall be at least 5 years from the date of signature of the NAFTA Certificate of Origin; and
(3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.

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~~(e)Any person who fails to retain records required by subsection (b) or the regulations issued to implement that subsection shall be liable to a civil penalty not to exceed $10,000.~~
(e) Subsection (b) Penalties.--
(1) Relating to nafta exports.--Any person who fails to retain records required by paragraph (2) of subsection (b) or the regulations issued to implement that paragraph shall be liable for--
(A) a civil penalty not to exceed $10,000; or
(B) the general recordkeeping penalty that applies under the customs laws; whichever penalty is higher.
(2) Relating to canadian agreement exports.--Any person who fails to retain the records required by paragraph (3) of subsection (b) or the regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed $10,000.

**SEC. 509. EXAMINATION OF BOOKS AND WITNESSES.**

(a) Authority.--In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining

the liability of any person for duty, fees ~~and taxes~~, fees and taxes due or duties, fees ~~and taxes~~, fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may-- (1) examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry;

~~(2) summon, upon reasonable notice--~~

~~(A) the person who imported, or knowingly caused to be imported,~~ merchandise into the customs territory of the United States,

~~(B) any officer, employee, or agent of such person,~~

~~(C) any person having possession, custody, or care of records~~ relating to such importation, or

(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that--

(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g);

(2) summon, upon reasonable notice--

(A) the person who--

(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

(ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act),

(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

(iv) filed a declaration, entry, or drawback claim with the Customs Service;

(B) any officer, employee, or agent of any person described in

subparagraph (A);
(C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or

* * * * *

(D) any other person he may deem proper~~,~~; to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (c)(I)(A), and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and
(b) Regulatory Audit Procedures.--
(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.
(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.
(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the appropriate regional commissioner, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.
(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the appropriate regional commissioner provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, United States Code, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.
(b) (c) Service of Summons.--A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.
~~(c)~~ (d) Special Procedures for Third-Party Summonses.--(1) For purposes of this subsection--
(A) The term "records" includes ~~statements, declarations, or documents~~ those--

* * * * *

(C) The term "third-party recordkeeper" means--
(i) any customhouse broker, unless such customhouse is the importer of record on an entry;

* * * * *

(2) If--
(A) any summons is served on any person who is a third-party recordkeeper; and
(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the ~~import~~ transactions described in section 508 of any person (other than the person summoned) who is identified in the description of the records contained in such summons; then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

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(4) Paragraph (2) of this subsection shall not apply to any summons--
(A) served on the person with respect to whose liability for duties, fees, or taxes the summons is issued, or any officer or employee of such person; or
(B) to determine whether or not records of the ~~import~~ transactions described in section 508 of an identified person have been made or kept.

* * * * *

(e) List of Records and Information.--The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A).
(f) Recordkeeping Compliance Program.--
(1) In general.--After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 508(a) may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.
(2) Certification.--A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it--
(A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;
(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;
(C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;
(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;
(E) has a record maintenance procedure approved by the Customs

Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and
(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.
(g) Penalties.--
(1) Definition.--For purposes of this subsection, the term "information" means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A).
(2) Effects of failure to comply with demand.--Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) the following provisions apply:
(A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.
(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.
(C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise--
(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or
(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 514 or 520, at the applicable column 1 general rate of duty; except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.
(3) Avoidance of penalty.--No penalty may be assessed under this subsection if the person can show--
(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or
(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.
(4) Penalties not exclusive.--Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for--
(A) a penalty imposed under section 592 for a material omission of the demanded information, or
(B) disciplinary action taken under section 641.
(5) Remission or mitigation.--A penalty imposed under this section may be remitted or mitigated under section 618.
(6) Customs summons.--Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.
(7) Alternatives to penalties.--
(A) In general.--When a recordkeeper who--
(i) has been certified as a participant in the recordkeeping compliance program under subsection (f); and
(ii) is generally in compliance with the appropriate procedures and requirements of the program; does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.
(B) Contents of notice.--A notice of violation issued under subparagraph (A) shall--
(i) state that the recordkeeper has violated the recordkeeping requirements;
(ii) indicate the record of information which was demanded; and
(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.
(C) Response to notice.--Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.
(D) Regulations.--The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide

guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.

**SEC. 510. JUDICIAL ENFORCEMENT.**

(a) Order of Court.--If any person summoned under section 509 of this Act does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof and such court may assess a monetary penalty.

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~~**SEC. 513. CUSTOMS OFFICER'S IMMUNITY.**~~

~~No customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent might under this Act be entitled to protest or appeal from the decision of such officer.~~

**SEC. 513. CUSTOMS OFFICER'S IMMUNITY.**

No customs officer shall be liable in any way to any person for or on account of--

(1) any ruling or decision regarding the appraisement or the classification of any imported merchandise or regarding the duties, fees, and taxes charged thereon,

(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

(3) any other matter of thing as to which any person might under this Act be entitled to protest or appeal from the decision of such officer.

**~~SEC. 514. FINALITY OF DECISIONS; PROTESTS.~~ SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.**

(a) Finality of Decisions.--Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties), section 520 (relating to refunds and errors), and section 521 (relating to reliquidations on account of fraud) of this Act, decisions of the ~~appropriate customs officer,~~ Customs Service, including the legality of all orders and findings entering into the same, as to--
(1) * * *

* * * * *

(5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof;
(6) the refusal to pay a claim for drawback; ~~and~~ or
(7) the refusal to reliquidate an entry under section 520(c) of this act~~,~~;
shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the ~~appropriate customs officer, who~~ Customs Service, which shall take action accordingly.
(b) With respect to determinations made under section 303 of this Act of title VII of this Act which are reviewable under section 516A of this title, determinations of the ~~appropriate customs officer~~ Customs Service are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of the North American Free Trade Agreement or the United States- Canada Free-Trade Agreement.
(c) Protests.--
(1) In general.-~~-A protest of a decisions under subsection (a) shall be filed in writing with the appropriate customs officer designated in~~

~~regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor.~~ A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically--

(A) each decision described in subsection (a) as to which protest is made;

(B) each category of merchandise affected by each decision set forth under paragraph (1);

(C) the nature of each objection and the reasons therefor; and

(D) any other matter required by the Secretary by regulation. Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, that is the subject of a protest are deemed to be part of a single protest. A protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 515 of this Act at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 485(d) and 557(b) of this Act, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by--

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback; ~~or~~

(E) with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, any exporter or producer of the merchandise subject to that determination,

if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or
~~(E)~~ (F) any authorized agent of any of the persons described in clauses (A) through (D) clauses (A) through (E). (2) (3) Time for filing.--A protest of a decision, order, or finding described in subsection (a) shall be filed with ~~such customs officer~~ the Customs Service within ninety days after but not before--
(A) notice of liquidation or reliquidation, or
(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.
(d) Limitation on Protest of Reliquidation.--The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the ~~customs officer~~ Customs Service upon any question not involved in such reliquidation. A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.
(e) Advance Notice of Certain Determinations.--Except as provided in subsection (f), an exporter or producer referred to in subsection (c)(2)(E) shall be provided notice in advance of an adverse determination of origin under section 202 of the North American Free Trade Agreement Implementation Act. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.
(f) Denial of Preferential Treatment.--If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act--
(1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and
(2) the advance notice requirement in subsection (e) shall not apply to that person; until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 202.

**SEC. 515. REVIEW OF PROTESTS.**

(a) * * *

* * * * *

(c) If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28, United States Code. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.
(d) If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate district director within 90 days after the date of the protest denial, void the denial of the protest.

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**SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTI-DUMPING DUTY PROCEEDINGS.**

(a) Review of Determination.--
(1) * * *

* * * * * (5) Time limits in cases involving canadian merchandise.--Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the 31st day after--

~~(A) the date of publication in the Federal Register of notice of~~
any determination described in paragraph (1)(B) or any determination described in clause (i), (ii), or (iii) of paragraph (2)(B),
~~(B) the date on which the Government of Canada receives notice of~~
a determination described in clause (vi) of paragraph (2)(B), or
~~(C) the date as of which--~~
~~(i) a binational panel has dismissed the binational panel~~
review for lack of jurisdiction, and
~~(ii) any interested party seeking review under paragraph (1),~~
(2), or (3) has provided timely notice under subsection (g)(3)(B), except that if a request for an extraordinary challenge committee has been made with respect to the decision to dismiss, the date under this subparagraph shall not be earlier than the date on which such committee determines that such panel acted properly when it dismissed for lack of jurisdiction.
(5) Time limits in cases involving merchandise from free trade area countries.--Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:
(A) For a determination described in paragraph (1)(B) or clause (i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.
(B) For a determination described in clause (vi) of paragraph (2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.
(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8), the day after the date as of which--
(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and
(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this subsection has provided timely notice under subsection (g)(3)(B). If such an interested party files a summons and complaint under this subsection after dismissal by the binational panel, and if a request for an extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss--
(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and
(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel

decision to dismiss.
(D) For a determination for which review by the United States Court of International Trade is provided for--
(i) under subsection (g)(12)(B), the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or
(ii) under subsection (g)(12)(D), the day after the date that notice of settlement is published in the Federal Register.
(b) Standards of Review.--
(1) * * *

* * * * *

(3) Effect of decisions by nafta or united states-canada. binational panels.--In making a decision in any action brought under subsection (a), a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the NAFTA or of the Agreement.

* * * * *

(f) Definitions.--For purposes of this section--
(1) * * *

* * * * *
(6) United states secretary.--The term "United States Secretary" means the secretary provided for in paragraph 4 of article 1909 of the Agreement.
~~(7) Canadian secretary.--The term "Canada Secretary" means the secretary provided for in paragraph 5 of article 1909 of the Agreement.~~
(6) United states secretary.--The term "United States Secretary" means--
(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and
(B) the secretary of the United States Section provided for in article 1909 of the Agreement.
(7) Relevant fta secretary.--The term "relevant FTA Secretary" means the Secretary--
(A) referred to in article 1908 of the NAFTA, or
(B) provided for in paragraph 5 of article 1909 of the Agreement, of the relevant FTA country.
(8) NAFTA.--The term "NAFTA" means the North American Free Trade

Agreement.
(9) Relevant fta country.--The term "relevant FTA country" means the free trade area country to which an antidumping or countervailing duty proceeding pertains.
(10) Free trade area country.--The term "free trade area country" means the following:
(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.
(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.
(C) Canada for such time as--
(i) it is not a free trade area country under subparagraph (A); and
(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.
(g) Review of Countervailing Duty and Antidumping Duty Determinations Involving ~~Canadian Merchandise~~ Free Trade Area Country Merchandise.--
(1) Definition of determination.--For purposes of this subsection, the term "determination" means a determination described in--
(A) paragraph (1)(B) of subsection (a), or
(B) clause (i), (ii), (iii), or (vi) or paragraph (2)(B) of subsection (a), if made in connection with a proceeding regarding a class or kind of Canadian merchandise free trade area country merchandise, as determined by the administering authority.
(2) Exclusive review of determination by binational panels.--If binational panel review of a determination is requested pursuant to article 1904 of the NAFTA or of the Agreement, then, except as provided in paragraphs (3) and (4)--
(A) the determination is not reviewable under subsection (a), and
(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.
(3) Exception to exclusive binational panel review.--
(A) In general.--A determination is reviewable under subsection (a) if the determination sought to be reviewed is--
(i) a determination as to which neither the United States ~~nor~~ Canada nor the relevant FTA country requested review by a binational panel pursuant to article 1904 of the NAFTA or of the Agreement.
(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States ~~nor Canada~~ nor the relevant FTA country requested review of the original determination,
(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force of

the NAFTA or of the Agreement, ~~or~~
(iv) a determination which a binational panel has determined ~~under the paragraph (2)(A)~~ is not reviewable by the binational panel~~.~~,
(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or
(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.
(B) Special rule.--~~A determination described in subparagraph~~
(A)(i) or (iv) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to the United States Secretary, the Canadian
Secretary, all interested parties who were parties to the proceeding in connection with which the matter arises, and the administering authority or the Commission, as appropriate. Such notice is provided timely if the notice is delivered by no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to--
(i) the United States Secretary and the relevant FTA Secretary;
(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and
(iii) the administering authority or the Commission, as appropriate. Such notice is timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.
(4) Exception to exclusive binational panel review for constitutional issues.--
(A) Constitutionality of binational panel review system.--An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or the United States-Canada Free-Trade

Implementation Agreement Act of 1988 implementing the binational panel dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action. ~~Any action brought under this~~ subparagraph shall be heard and determined by a 3-judge court in accordance with section 2284 of title 28, United States code.

* * * * *

(5) Liquidation of entries.--
(A) Application.--In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).
(B) General rule.--In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.
(C) Suspension of liquidation.--
(i) In general.--Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.
(ii) Notice.--At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary~~, the Canadian Secretary,~~, the relevant FTA Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.
(iii) Application of suspension.--If the interested party requesting

continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E) or (F) of section 771(9), the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the NAFTA or of the Agreement.

* * * * *

(6) Injunctive relief.--Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the provisions of subsection (c)(2) shall not apply.
(7) Implementation of international obligations under article 1904 of the nafta or the agreement.--
(A) ~~In general.--~~ Action upon remand.--If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

* * * * *

(8) Requests for binational panel review.--
(A) Interested party requests for binational panel review.--
(i) General rule.--An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational

panel review within the meaning of article 1904(4) of the NAFTA or of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.
(ii) Suspension of time to request binational panel review under the nafta.--Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.
(B) Service of request for binational panel review.--
(i) * * *
(ii) Service by united states secretary.--If an interested party to the proceeding requests binational panel review of a determination by filing a request with the ~~Canadian~~
Secretary, relevant FTA Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.
(C) Limitation on request for binational panel review.--Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review ~~under article 1904~~
of the Agreement of a determination. of a determination under article 1904 of the NAFTA or the Agreement.
(9) Representation in panel proceedings.--In the case of binational panel proceedings convened under chapter 19 of the NAFTA or of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.
(10) Notification of class or kind rulings.--In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the ~~Government of Canada received notice of the determination under article 1904(4) of the Agreement.~~
Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.
(11) Suspension and termination of suspension of article 1904 of the nafta.--
(A) Suspension of article 1904.--If a special committee established

under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.
(B) Termination of suspension of article 1904.--If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.
(12) Judicial review upon termination of binational panel or committee review under the nafta.--
(A) Notice of suspension or termination of suspension of article 1904.--
(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.
(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.
(B) Transfer of final determinations for judicial review upon suspension of article 1904.--If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA--
(i) upon the request of an authorized person described in subparagraph (C), any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a); or
(ii) in a case in which--
(I) a binational panel review was completed fewer than 30 days before the suspension, and
(II) extraordinary challenge committee review has not been requested, upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).
(C) Persons authorized to request transfer of final determinations for

judicial review.--A request that a final determination be transferred to the Court of International Trade under subparagraph
(B) may be made by--
(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA--
(I) the government of the relevant country described in subsection (f)(10)(A) or (B),
(II) an interested party that was a party to the panel or committee review, or
(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or
(ii) if a country described in subsection (f)(10)(A) or (B) made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA--
(I) the government of that country,
(II) an interested party that is a person of that country and that was a party to the panel or committee review, or
(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.
(D)(i) Transfer for judicial review upon settlement.--If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).
(ii) A request referred to in clause (i) is a request made by--
(I) the country referred to in clause (i),
(II) an interested party that was a party to the panel or committee review, or
(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

* * * * *

**SEC. 520. REFUNDS AND ERRORS.**

(a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:
(1) Excess deposits.--Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

* * * * *

(4) Prior to liquidation.--Prior to the liquidation of an entry or reconciliation, whenever it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid by reason of clerical error.

* * * * *

(c) Notwithstanding a valid protest was not filed, the ~~appropriate customs officer~~ Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry or reconciliation to correct--
(1) a clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in electronic transmission, not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the ~~appropriate customs officer~~ Customs Service within one year after the date of liquidation or exaction; or
(2) any assessment of duty on household or personal effects in respect of which an application for refund has been filed, with such employee as the Secretary of the Treasury shall designate, within one year after the date of entry.
~~(d) If a determination is made to reliquidate an entry as a result of a protest filed under section 514 of this Act or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as increased or additional duties under section 505(c) of this Act at the annual rate established pursuant to that section and determined as of the 15th day after the date of liquidation or reliquidation. The interest shall be calculated from the date of payment~~

~~to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 28, United States Code, whichever occurs first.~~
(d) Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes--
(1) a written declaration that the good qualified under those rules at the time of importation;
(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1)); and
(3) such other documentation relating to the importation of the goods as the Customs Service may require.

**~~SEC. 521. RELIQUIDATION ON ACCOUNT OF FRAUD.~~**

~~If the appropriate customs officer finds probable cause to believe there is fraud in the case, he may reliquidate an entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation.~~

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**SEC. 526. MERCHANDISE BEARING AMERICAN TRADE-MARK.**

(a) * * *

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(e) Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the

goods seized--
(1) * * *

* * * * *

(3) more than ~~1 year~~ 90 days after the date of forfeiture, by sale by ~~appropriate customs officers~~ the Customs Service at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or

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**SEC. 529. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.**

The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government agency for any reason.

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Part IV--Transportation in Bond and Warehousing of Merchandise

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**SEC. 553A. RECORDKEEPING FOR MERCHANDISE TRANSPORTED BY PIPELINE.**

Merchandise in Customs custody that is transported by pipeline may be accounted for on a quantitative basis, based on the bill of lading, or equivalent document of receipt, issued by the pipeline carrier. Unless the Customs Service has reasonable cause to suspect fraud, the Customs Service may accept the bill of lading, or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee to maintain identity. The shipper, pipeline operator, and consignee shall be subject to the recordkeeping requirements of sections 508 and 509.

* * * * *

**SEC. 557. ENTRY FOR WAREHOUSE--WAREHOUSE PERIOD--DRAWBACK.**

(a)(1) Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner purchaser, importer, or consignee. Such merchandise may be withdrawn, at any time within 5-years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port~~: Provided, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation.~~; except that--

(A) the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation; and

(B) turbine fuel may be withdrawn for use under section 309 without the payment of duty if an amount equal to the quantity of fuel withdrawn is shown to be used within 30 days after the day of withdrawal, but duties

(together with interest payable from the date of the withdrawal at the rate of interest established under section 6621 of title 26, United States Code) shall be deposited by the 40th day after the day of withdrawal on fuel that was withdrawn in excess of the quantity shown to have been so used during such 30-day period.

(2) Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within 5 years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry

or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

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**SEC. 562. MANIPULATION IN WAREHOUSE.**

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same; except that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom ~~without payment of duties--~~
~~(1) for exportation to Canada, but on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, such exemption from the payment of duties applies only in the case of the exportation to Canada of merchandise that--~~
~~(A) is only cleaned, sorted, or repacked in a bonded warehouse,~~
or
~~(B) is a drawback eligible good under section 204(a) of such Act~~
of 1988;
~~(2) for exportation to any foreign country except Canada; and~~
~~(3) for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam.~~
(1) without payment of duties for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the merchandise is of a kind described in any of paragraphs (1) through (8) of section 203(a) of that Act;
(2) for exportation to a NAFTA country if the merchandise consists of goods subject to NAFTA drawback, as defined in section 203(a) of that Act, except that--
(A) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity,

and at its weight, at the time of withdrawal from the warehouse with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition, and

(B) duty shall be paid on the merchandise before the 61st day after the date of exportation, but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the merchandise, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of--

(i) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or

(ii) the total amount of customs duties paid on the merchandise to the NAFTA country;

(3) without payment of duties for exportation to any foreign country other than to a NAFTA country or to Canada when exports to that country are subject to paragraph (4);

(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise that--

(A) is only cleaned, sorted, or repacked in a bonded warehouse, or

(B) is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988; and

(5) without payment of duties for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam. merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph ~~(1)~~ (4) of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs

custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse.

* * * * *

~~The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond, in a penal sum to be fixed by such customs officer, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted.~~ The cartage of merchandise entered for warehouse shall be done by--
(1) cartmen appointed and licensed by the Customs Services; or
(2) carriers designated under section 551 to carry bonded merchandise; who shall give bond, in a penal sum to be fixed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the customs officer as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.

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Part V--Enforcement Provisions

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**~~SEC. 583. CERTIFICATION OF MANIFEST.~~**

~~The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the original manifest to the inspection thereof and return the same to the master of other person in charge.~~

**SEC. 584. FALSITY OR LACK OF MANIFEST--PENALTIES.**

(a) General Rule.--(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the ~~officer demanding the same~~ officer (whether of the Customs Service or the Coast Guard) demanding the same shall be liable to a penalty of $1,000, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest" immediately after "or the owner of such vessel or vehicle shall be liable to a penalty equal to the lesser of $10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest" immediately after "or the owner of such vessel or vehicle shall be subject to a penalty of $1,000: Provided, That if the ~~appropriate customs officer~~ Customs Service shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason or clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the term "clerical error" means a nonnegligent, inadvertent, or typographical mistake in the preparation; assembly, or submission (electronically or otherwise) of the manifest.
(2) If any of such merchandise so found consists of heroin, morphine, or cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine; isonipecaine, or opiate being in such merchandise shall be liable to a penalty of $1,000 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise shall be liable to

a penalty of $500 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of $200 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 594 of this Act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the ~~appropriate customs officer~~ Customs Service, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms "opiate" and "marihuana" shall have the same meaning given those terms by sections 102(17) and 102(15), respectively, of the Controlled Substances Act.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 7 of the Anti-Smuggling Act and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: Provided, That if the ~~appropriate customs officer~~ Customs Service shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.

(b) Procedures.--(1) If ~~the appropriate customs officer~~ the Customs

Service has reasonable cause to believe that there has been a violation of subsection (a)(1) and determines that further proceedings are warranted, ~~he~~ the Customs Service shall issue or electronically transmit to the person concerned a ~~written~~ notice of ~~his intention~~ intent to issue or electronically transmit a claim for a monetary penalty. Such notice shall--
(A)* * *

* * * * *

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued. No notice is required under this subsection for any violation of subsection (a)(1) for which the proposed penalty is $1,000 or less.
(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), ~~the appropriate customs officer~~ the Customs Service shall determine whether any violations of subsection (a)(1), as alleged in the notice, has occurred. If ~~such officer~~ the Customs Service determines that there was no violation, ~~he~~ the Customs Service shall promptly issue or electronically transmit a ~~written~~ statement of the determination to the person to whom the notice was sent. If ~~such officer~~ the Customs Service determines that there was a violation, ~~he~~ the Customs Service shall issue or electronically transmit a ~~written~~ penalty claim to such person. The ~~written~~ penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

**~~SEC. 585. DEPARTURE BEFORE REPORT OR ENTRY.~~**

~~If any vessel or vehicle from a foreign port or place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a report or entry under the provisions of this Act, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of $5,000, and the person in charge of such vehicle shall be liable to a penalty of $500, and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the United States.~~

**SEC. 586. UNLAWFUL UNLADING OR TRANSSHIPMENT**

(a) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

(b) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transshipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise by not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(c) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists, of any spirits, wines, or other alcoholic liquors, to be unlade without permit to unlade, at any place upon the high seas adjacent to the customs water of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than $10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

* * * * *

(f) Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify ~~the appropriate customs officer of the~~ the Customs Service at the district within which such unlading or transshipment has occurred, or ~~the appropriate customs officer within the~~ the Customs Service at the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if ~~the appropriate customs officer is~~ the Customs Service is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred.

* * * * *

**SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.**

(a) Prohibition.--
(1) General rule.--Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence--
(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of--
(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or
(ii) any omission which is material, or
(B) may aid or abet any other person to violate subparagraph (A).
(2) Exception.--Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.
(b) Procedures.--
(1) Pre-penalty notice.--
(A) In general.--If the ~~appropriate customs officer~~ Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, ~~he~~ it shall issue to the person concerned a written notice of ~~his~~ its intention to issue a claim for a monetary penalty. Such notice shall--

(i) describe the merchandise;
(ii) set forth the details of entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

* * * * *

(2) Penalty claim.--After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the ~~appropriate customs officer~~ Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If ~~such officer~~ the Customs Service determines that there was no violation, ~~he~~ it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If ~~such officer~~ the Customs Service determines that there was a violation, ~~he~~ it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the ~~appropriate customs officer~~ Customs Service shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.
(c) Maximum Penalties.--
(1) * * *

* * * * *

(4) Prior disclosure.--If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed--
(A) if the violation resulted from fraud--
(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the ~~time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his~~ time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the ~~time of disclosure or~~

within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount. The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) Prior disclosure regarding nafta claims.--An importer shall not be subject to penalties under subsection (a) for making an incorrect claim for preferential tariff treatment under section 202 of the North American Free Trade Agreement Implementation Act if the importer--

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 508(b)(1)) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

~~(5)~~ (6) Seizure.--If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other

merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

* * * * *

(d) Deprivation of Lawful Duties, Taxes or Fees.--Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a), ~~the appropriate customs officer~~ the Customs Service shall require that such lawful duties, taxes or fees be restored, whether or not a monetary penalty is assessed.

* * * * *

(f) False Certifications Regarding Exports To NAFTA Countries.--
(1) In general.--Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 508(b)(1)) that a good to be exported to a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) qualifies under the rules of origin set out in section 202 of that Act.
(2) Applicable provisions.--The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of paragraph (1), except that--
(A) subsection (d) does not apply, and
(B) subsection (c)(5) applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.
(3) Exception.--A person may not be considered to have violated paragraph (1) if--
(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and
(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

**SEC. 593A. PENALTIES FOR FALSE DRAWBACK CLAIMS.**

(A) Prohibition.--
(1) General rule.--No person, by fraud, or negligence--
(A) may seek, induce or affect, or attempt to seek, induce, or affect,

the payment or credit to that person or others of any drawback claim by means of--
(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or
(ii) any omission which is material; or
(B) may aid or abet any other person to violate subparagraph (A).
(2) Exception.--Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere noninternational repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.
(b) Procedures.--
(1) Prepenalty notice.--
(A) In general.--If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, the Customs Service shall issue to the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall--
(i) identify the drawback claim;
(ii) set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;
(iii) specify all laws and regulations allegedly violated;
(iv) disclose all the material facts which establish the alleged violation;
(v) state whether the alleged violation occurred as a result of fraud or negligence;
(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the amount of the proposed monetary penalty; and
(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.
(B) Exceptions.--The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.
(C) Prior approval.--No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.
(2) Penalty claim.--After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection
(a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall

promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

(c) Maximum Penalties.--

(1) Fraud.--A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) Negligence.--

(A) In general.--A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

(B) Repetitive violations.--If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

(3) Prior disclosure.--

(A) In general.--Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection

(a) before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed--

(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1986 on the amount of actual revenue of which the United States is or may be deprived during the period that--

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.
(B) Condition affecting penalty limitations.--The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under subsection (c) apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.
(C) Burden of proof.--The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.
(4) Commencement of investigation.--For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.
(5) Exclusivity.--Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection (a).
(d) Deprivation of Lawful Revenue.--Notwithstanding section 514, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a), the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.
(e) Drawback Compliance Program.--
(1) In general.--After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.
(2) Certification.--A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it--
(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;
(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;
(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of Customs Service;
(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or recordkeeping formats other than the original records; and
(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.
(f) Alternatives to Penalties.--
(1) In general.--When a party that--
(A) has been certified as a participant in the drawback compliance program under subsection (e); and
(B) is generally in compliance with the appropriate procedures and requirements of the program; commits a violation of subsection (a), the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.
(2) Contents of notice.--A notice of violation issued under paragraph (1) shall--
(A) state that the party has violated subsection (a);
(B) explain the nature of the violation; and
(C) warn the party that future violations of subsection (a) may result in the imposition of monetary penalties.
(3) Response to notice.--Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.
(g) Repetitive Violations.--
(1) A party who has been issued a written notice under subsection (f)(1) and subsequently commits a repeat negligent violation involving

the same issue is subject to the following monetary penalties:
(A) 2d violation.--An amount not to exceed 20 percent of the loss of revenue.
(B) 3d violation.--An amount not to exceed 50 percent of the loss of revenue.
(C) 4th and subsequent violations.--An amount not to exceed 100 percent of the loss of revenue.
(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) commits an alleged violation which was not repetitive, the party shall be issued a "warning letter", and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).
(h) Regulation.--The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsection (g), a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.
(i) Court of International Trade Proceedings.--Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section--
(1) all issues, including the amount of the penalty, shall be tried de novo;
(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and
(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.

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**SEC. 596. AIDING UNLAWFUL IMPORTATION.**

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(a) * * *
~~(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited.~~
(c) Merchandise which is introduced or attempted to be introduced into

the United States contrary to law shall be treated as follows:
(1) The merchandise shall be seized and forfeited if it--
(A) is stolen, smuggled, or clandestinely imported or introduced;
(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law; or
(C) is a contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781).
(2) The merchandise may be seized and forfeited if--
(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;
(B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;
(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 42, 43, or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125, or 1127), section 506 or 509 of title 17, United States Code, or section 2318 or 2320 of title 18, United States Code);
(D) it is trade dress merchandise involved in the violation of a court order citing section 43 of such Act of July 5, 1946 (15 U.S.C. 1125);
(E) it is merchandise which is marked intentionally in violation of section 304; or
(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 304.
(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 499 unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.
(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification of value of merchandise and there are no issues as to the admissibility of the

merchandise into the United States, it shall not be seized except in accordance with section 592.
(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may--
(A) remit the forfeiture under section 618, or
(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

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**SEC. 612. SEIZURE; SUMMARY SALE.**

(a) Whenever it appears to ~~the appropriate customs officer~~ the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 607, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, ~~such officer~~ the Customs Service shall proceed forthwith to advistise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607, ~~such officer~~ the Customs Service shall forthwith transmit ~~the appraiser's return and his~~ its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by ~~the customs officer~~ the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.
~~(b) If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.~~
(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate

to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.

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**SEC. 621. LIMITATION OF ACTIONS.**

No suit or action to recover any duty under section 593A(d), or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was ~~discovered: Provided, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.~~ discovered; except that--

(1) in the case of an alleged violation of section 592 or 593A, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.

* * * * *

**SEC. 623. BONDS AND OTHER SECURITY.**

(a) * * *

(b) Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may--

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service, and fix the amount of penalty thereof, whether for the payment of liquidated

damages or of a penal sum: Provided, That in the case of an alleged violation of section 592 of this Act arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: Provided further, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

* * * * *

(d) No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond. Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.

* * * * *

**~~SEC. 625. PUBLICATION OF DECISIONS.~~**

~~Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this Act with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.~~

**SEC. 625. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.**

(a) Publication.--Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

(b) Appeals.--A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de

novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.
(c) Modification and Revocation.--A proposed interpretive ruling or decision which would--
(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or
(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions; shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.
(d) Publication of Customs Decisions That Limit Court Decisions.--A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.
(e) Public Information.--The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5, United States Code.

* * * * *

**SEC. 628. EXCHANGE OF INFORMATION.**

(a) * * *

* * * * *

(c) The Secretary may authorize customs officers to exchange information with any government agency of a NAFTA country, as

defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the Secretary--
(1) reasonably believes the exchange of information is necessary to implement chapter 3, 4, or 5 of the North American Free Trade Agreement, and
(2) obtains assurances from such country that the information will be held in confidence and used only for governmental purposes.

* * * * *

**SEC. 630. AUTHORITY TO SETTLE CLAIMS.**

(a) In General.--With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Secretary may settle, for not more than $50,000 in any one case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Customs Service and acting within the scope of his or her employment.
(b) Limitations.--The Secretary may not pay a claim under subsection (a) that--
(1) concerns commercial property;
(2) is presented to the Secretary more than 1 year after it occurs; or
(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.
(c) Final Settlement.--A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.

**SEC. 631. USE OF PRIVATE COLLECTION AGENCIES.**

(a) In General.--Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.
(b) Contract Requirements.--Any contract entered into under subsection (a) shall provide that--
(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the

Attorney General to bring a civil action; and
(2) the person is subject to--
(A) section 552a of title 5, United States Code, to the extent provided in subsection (m) as such section; and
(B) laws and regulations of the United States Government and State governments related to debt collection practices.

Part VI--Miscellaneous Provisions

**SEC. 641. CUSTOMS BROKERS.**

(a) Definitions.--As used in this section:
(1) The term "customs broker" means any person granted a customs broker's license by the Secretary under subsection (b).
(2) The term "customs business" means those activities involving transaction with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

* * * * *

(c) Customs Broker's Permits.--
~~(1) In general.--Each person granted a customs broker's license under subsection (b) shall--~~
~~(A) be issued a permit, in accordance with regulations prescribed~~ under this section, for each customs district in which that person conducts customs business; and
~~(B) except as provided in paragraph (2), regularly employ in each~~ customs district for which a permit is so issued at least one individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.
(1) In general.--Each person granted a customs broker's license under subsection (b) shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.
(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.

* * * * *

(4) Appointment of subagents.--Notwithstanding subsection (c)(1), upon the implementation by the Secretary under section 413(b)(2) of the component of the National Customs Automation Program referred to in section 411(a)(2)(B), a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.
(d) Disciplinary Proceedings.--
(1) * * *
(2) Procedures.--
(A) * * *
(B) Revocation or suspension.--~~The appropriate customs officers~~ The Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or ~~the~~ appropriate customs officer the Customs Service determines that the revocation or suspension is still warranted, ~~he~~ it shall notify the customs broker in writing of a hearing to be held within ~~15~~ 30 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5, United States Code, who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all

proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to ~~the appropriate customs officer and the customs broker; they~~ the Customs Service and the customs broker; which shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with ~~his~~ the findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth his findings of fact and the reasons ~~for his~~
decision for the decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed $30,000, then was contained in the notice to show cause.

* * * * *

(f) Regulations by the Secretary.--The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the ~~United States Customs Service.~~ Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

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## TITLE VII--COUNTERVAILING AND ANTIDUMPING DUTIES

* * * * *

Subtitle D--General Provisions

### SEC. 771. DEFINITIONS; SPECIAL RULES.

For purposes of this title--
(1) * * *

* * * * *

~~(18)~~ (21) United states-canada agreement.--The term "United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.
(22) NAFTA.--The term "NAFTA" means the North American Free Trade Agreement.
(23) Entry.--The term "entry" includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in section 401(s), that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this title, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

* * * * *

### SEC. 777. ACCESS TO INFORMATION.

(a) * * *

* * * * *

(f) Disclosure of Proprietary Information Under Protective Orders Issued Pursuant to the North American Free Trade Agreement or the United States- Canada Agreement.--

(1) Issuance of protective orders.--
(A) In general.--If binational panel review of a determination under this title is requested pursuant to article 1904 of the NAFTA or the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the NAFTA or the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material in the administrative record made during the proceeding in question. If the administrating authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel or extraordinary challenge committee finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel or committee as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).
(B) Authorized persons.--For purposes of this subsection, the term "authorized persons" means--
(i) * * *

* * * * *

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement, and
(iv) any officer or employee of the ~~Government of Canada~~ designated by an authorized agency of Canada Government of a free trade area country (as defined in section 516A(f)(10)) designated by an authorized agency of such country to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement.

* * * * *

(2) Contents of protective order.--Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by

regulation to be appropriate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding, including any extraordinary challenge, equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) Prohibited acts.--It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized ~~agency of Canada~~ agency of a free trade area country (as defined in section 516A(f)(10)) to protect proprietary material during binational panel or extraordinary challenge committee review pursuant to article 1904 of the NAFTA or the United States-Canada Agreement.

(4) Sanctions for violation of protective orders.--Any person, except a judge appointed to a binational panel or an extraordinary challenge committee under section 402(b) of the North American Free Trade Agreement Implementation Act, who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (3) shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, or inducement of a violation or receipt of information with reason to know that such information was disclosed in violation, of an undertaking entered into by any person with an authorized ~~agency of Canada~~ agency of a free trade area country (as defined in section 516A(f)(10)).

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**Section 3 of the Act of June 18, 1934 (Commonly Known as the Foreign Trade Zones Act)**

AN ACT To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes

* * * * *

Sec. 3. (a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: Provided, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: Provided further, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury

may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: Provided further, That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: Provided further, That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of--

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder. Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615 (f) of the Tariff Act of 1930, as amended: Provided further, That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraph 367 or paragraph 368 of the Tariff Act of 1930, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this Act prior to July 1, 1949:

Provided further, That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section, may, on such importation, be entered as American goods returned: Provided further, That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 2(4) of that Act, without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930) in an amount that does not exceed the lesser of (1) the total amount of cutoms duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country: Provided further, That, if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, No article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada ~~on or after January 1, 1994, or such later date as may be proclaimed by the President under section 204(b)(2)(B) of such Act of 1988,~~ during the period such Agreement is in operation without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested.

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**Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985**

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) Schedule of Fees.--In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:
(1) * * *

* * * * *

~~(5) For the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)), $5.~~
(5)(A) For fiscal years 1994, 1995, 1996, and 1997, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States, $6.50.
(B) For fiscal year 1998 and each fiscal year thereafter, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A) of this section), $5.
(b) Limitation on Fees.--(1) No fee may be charged under subsection (a) for customs services provided in connection with--
(A) the arrival of any passenger whose journey--
(i) * * *

* * * * * Subparagraph (A) shall not apply to fiscal years 1994, 1995, 1996, and 1997.

* * * * *

~~(10) The fee charged under subsection (a) (9) or (10) of this section with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) shall be in accordance with article 403 of the United States-Canada Free-Trade Agreement. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.~~

(10)(A) The fee charged under subsection (a) (9) or (10) with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement) when the United States-Canada Free-Trade Agreement is in force shall be in accordance with section 403 of that Agreement.
(B) For goods qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, the fee under subsection (a) (9) or (10)--
(i) may not be charged with respect to goods that qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement, for such time as Canada is a NAFTA country, as defined in section 2(4) of such Implementation Act; and
(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.
(f) Disposition of Fees.--There is established in the general fund of the Treasury a separate account which shall be known as the "Customs User Fee Account". Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) ~~except that portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations~~ except--
(A) the portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations, and
(B) the portion of such fees that is determined by the Secretary to be excess fees under paragraph (5).

* * * * *

(3)(A) The Secretary of the Treasury, in accordance with section 524 of the Tariff Act of 1930 and subject to subparagraph (B), shall directly reimburse, from the fees collected under subsection (a) ~~(other than subsection (a) (9) or (10)~~ other than the fees under subsection (a) (9) and (10) and the excess fees determined by the Secretary under paragraph
(5)), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary--
(i) * * *

* * * * *

(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed ~~under subsection (a)~~ under subsection (a) (other than the excess fees determined by the Secretary under paragraph (5)) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

(5) At the close of each of fiscal years 1994, 1995, 1996, and 1997, the Secretary of the Treasury shall determine the amount of the fees collected under paragraph (5)(A) of subsection (a) for that fiscal year that exceeds the amount of such fees that would have been collected for such fiscal year if the fees that were in effect on the day before the effective date of this paragraph applied to such fiscal year. The amount of the excess fees determined under the preceding sentence shall be deposited in the Customs User Fee Account and shall be available for reimbursement of inspectional costs (including passenger processing costs) not otherwise reimbursed under this section, and shall be available only to the extent provided in appropriations Acts.

(g) Regulations and Enforcement.--(1) ~~In addition to the regulations required under paragraph (2), the~~The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section. ~~(2) The Secretary of the Treasury shall prescribe regulations governing the work shifts of customs personnel at airports. Such regulations shall provide, among such other factors considered appropriate by the Secretary, that--~~

~~(A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime;~~

~~(B) the work shifts will not be arbitrarily reduced or compressed; and~~

~~(C) consultation with the Advisory Committee on Commercial Operations of the United States Customs Service (established under section 9501(c) of the Omnibus Budget Reconciliation Act of 1987) will be carried out before adjustments are made in the work shifts. (3)~~ (2) Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee prescribed under subsection (a) of this section, and with respect to persons liable therefor, as if such fee is a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the amount of the fee assessed. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any fee prescribed under subsection (a) of this section shall be treated as if such fee is a customs duty.

* * * * *

(j) Effective Dates.--(1) * * *

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(3) Fees may not be charged under subsection (a) after ~~September 30, 1998.~~ September 30, 2003.

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## Trade Act of 1974

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Sec. 249. Subpena power. Sec. 249A. Nonduplication of assistance.

Subchapter D--NAFTA Transitional Adjustment Assistance Program

Sec. 250. Establishment of transitional program.

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**TITLE I--NEGOTIATING AND OTHER AUTHORITY**

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CHAPTER 8--IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

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**SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.**

(a) * * *

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(f) Special Rule for Actions Affecting United States Cultural Industries.--

(1) In general.--By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the Trade Representative shall

identify any act, policy, or practice of Canada which--
(A) affects cultural industries,
(B) is adopted or expanded after December 17, 1992, and
(C) is actionable under article 2106 of the North American Free Trade Agreement.
(2) Special rules for identifications.--For purposes of section 302(b)(2)(A), an act, policy, or practice identified under this subsection shall be treated as an act, policy, or practice that is the basis for identification of a country under subsection (a)(2), unless the United States has already taken action pursuant to article 2106 of the North American Free Trade Agreement in response to such act, policy, or practice. In deciding whether to identify an act, policy, or practice under paragraph (1), the Trade Representative shall--
(A) consult with and take into account the views of representatives of the relevant domestic industries, appropriate committees established pursuant to section 135, and appropriate officers of the Federal Government, and
(B) take into account the information from such sources as may be available to the Trade Representative and such information as may be submitted to the Trade Representative by interested persons, including information contained in reports submitted under section 181(b).
(3) Cultural industries.--For purposes of this subsection, the term "cultural industries" means persons engaged in any of the following activities:
(A) The publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing.
(B) The production, distribution, sale, or exhibition of film or video recordings.
(C) The production, distribution, sale, or exhibition of audio or video music recordings.
(D) The publication, distribution, or sale of music in print or machine readable form.
(E) Radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television, and cable broadcasting undertakings and all satellite programming and broadcast network services.

**TITLE II--RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION**

CHAPTER 1--POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

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**SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.**

(a) Petitions and Adjustment Plans.--
(1) * * *

* * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter and part 1 of title III of the North American Free Trade Agreement Implementation Act.

* * * * *

(d) Provisional Relief.--
(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if--
(i) the imported product is a perishable agricultural product or citrus product; and
(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

* * * * *

(C) If a petition filed under subsection (a)--
(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under

paragraph (2) for not less than 90 days; and
(ii) requests that provisional relief be provided under this subsection with respect to such imports; the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either--
(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or
(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

* * * * *

(5) For purposes of this subsection:
(A) The term "citrus product" means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.
~~(A)~~ (B) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account--
(i) whether the article has--

* * * * *

~~(B)~~ (C) The term "provisional relief" means--
(i) any increase in, or imposition of, any duty;

* * * * *

CHAPTER 2--ADJUSTMENT ASSISTANCE FOR WORKERS

Subchapter A--Petitions and Determinations

**SEC. 221. PETITIONS.**

(a) A petition for a certification of eligibility to apply for adjustment assistance under this ~~chapter~~ subchapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative.

Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

* * * * *

**SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.**

(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this ~~chapter~~ subchapter if he determines--
(1) * * *

* * * * *

**SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR.**

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this ~~chapter~~ subchapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

* * * * *

**SEC. 225. BENEFIT INFORMATION TO WORKERS.**

(a) * * *
(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A or subchapter D of this chapter--
(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or
(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A or subchapter D in newspapers of general circulation in the areas in which such workers reside.

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Subchapter C--General Provisions

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**SEC. 245. AUTHORIZATION OF APPROPRIATIONS. ~~There~~ (a) In General.--There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1993, 1994, 1995, 1996, 1997, and 1998, such sums as may be necessary to carry out the purposes of this chapter, other than subchapter D.**

(b) Subchapter D.--There are authorized to be appropriated to the Department of Labor, for each of fiscal years 1994, 1995, 1996, 1997, and 1998, such sums as may be necessary to carry out the purposes of subchapter D of this chapter.

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**SEC. 249A. NONDUPLICATION OF ASSISTANCE.**

No worker may receive assistance relating to a separation pursuant to certifications under both subchapters A and D of this chapter.

Subchapter D--NAFTA Transitional Adjustment Assistance Program

**SEC. 250. ESTABLISHMENT OF TRANSITIONAL PROGRAM.**

(a) Group Eligibility Requirements.--
(1) Criteria.--A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified as eligible to apply for adjustment assistance under this subchapter pursuant to a petition filed under subsection (b) if the Secretary determines that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially

separated, and either--
(A) that--
(i) the sales or production, or both, of such firm or subdivision have decreased absolutely,
(ii) imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and
(iii) the increase in imports under clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or
(B) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.
(2) Definition of contributed importantly.--The term "contributed importantly", as used in paragraph (1)(A)(iii), means a cause which is important but not necessarily more important than any other cause.
(3) Regulations.--The Secretary shall issue regulations relating to the application of the criteria described in paragraph (1) in making preliminary findings under subsection (b) and determinations under subsection (c).
(b) Preliminary Findings and Basic Assistance.--
(1) Filing of petitions.--A petition for certification of eligibility to apply for adjustment assistance under this subchapter may be filed by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative with the Governor of the State in which such workers' firm or subdivision thereof is located.
(2) Findings and assistance.--Upon receipt of a petition under paragraph (1), the Governor shall--
(A) notify the Secretary that the Governor has received the petition;
(B) within 10 days after receiving the petition--
(i) make a preliminary finding as to whether the petition meets the criteria described in subsection (a)(1) (and for purposes of this clause the criteria described under subparagraph (A)(iii) of such subsection shall be disregarded), and
(ii) transmit the petition, together with a statement of the finding under clause (i) and reasons therefor, to the Secretary for action under subsection (c); and
(C) if the preliminary finding under subparagraph (B)(i) is affirmative, ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.
(c) Review of Petitions by Secretary; Certifications.--
(1) In general.--The Secretary, within 30 days after receiving a petition under subsection (b), shall determine whether the petition

meets the criteria described in subsection (a)(1). Upon a determination that the petition meets such criteria, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for assistance described in subsection (d).
(2) Denial of certification.--Upon denial of certification with respect to a petition under paragraph (1), the Secretary shall review the petition in accordance with the requirements of subchapter A to determine if the workers may be certified under such subchapter.
(d) Comprehensive Assistance.--Workers covered by certification issued by the Secretary under subsection (c) shall be provided, in the same manner and to the same extent as workers covered under a certification under subchapter A, the following:
(1) Employment services described in section 235.
(2) Training described in section 236, except that notwithstanding the provisions of section 236(a)(2)(A), the total amount of payments for training under this subchapter for any fiscal year shall not exceed $30,000,000.
(3) Trade readjustment allowances described in sections 231 through 234, except that--
(A) the provisions of sections 231(a)(5)(C) and 231(c), authorizing the payment of trade readjustment allowances upon a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of such allowances under this subchapter; and
(B) notwithstanding the provisions of section 233(b), in order for a worker to qualify for trade readjustment allowances under this subchapter, the worker shall be enrolled in a training program approved by the Secretary under section 236(a) by the later of--
(i) the last day of the 16th week of such worker's initial unemployment compensation benefit period, or
(ii) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker. In cases of extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for a period not to exceed 30 days .
(4) Job search allowances described in section 237.
(5) Relocation allowances described in section 238.
(e) Administration.--The provisions of subchapter C shall apply to the administration of the program under this subchapter in the same manner and to the same extent as such provisions apply to the administration of the program under subchapters A and B, except that the agreement between the Secretary and the States described in section 239 shall specify the procedures that will be used to carry out the certification process under subsection (c) and the procedures for

providing relevant data by the Secretary to assist the States in making preliminary findings under subsection (b).

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CHAPTER 5--MISCELLANEOUS PROVISIONS

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**SEC. 284. JUDICIAL REVIEW.**

(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 or section 250(c) of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

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**SEC. 285. TERMINATION.**

(a) * * *

* * * * *

(c) ~~No~~ (1) Except as provided in paragraph (2), no assistance, vouchers, allowances, or other payments may be provided under chapter 2, and no technical assistance may be provided under chapter 3, after September 30, 1998.
(2)(A) Except as provided in subparagraph (B), no assistance, vouchers, allowances, or other payments may be provided under

subchapter D of chapter 2 after the day that is the earlier of--
(i) September 30, 1998, or
(ii) the date on which legislation, establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided by such subchapter D, becomes effective.
(B) Notwithstanding subparagraph (A), if, on or before the day described in subparagraph (A), a worker--
(i) is certified as eligible to apply for assistance, under subchapter D of chapter 2; and
(ii) is otherwise eligible to receive assistance in accordance with section 250, such worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements of such section.

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**Meat Import Act of 1979**

Sec. 2. (a) This section may be cited as the "Meat Import Act of 1979".
(b) For purposes of this section--
(1) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.
(2) The term "meat articles" means the articles provided for in the Tariff Schedules of the United States (19 U.S.C. 1202) under--
(A) item 106.10 (relating to fresh, chilled, or frozen cattle meat);
(B) items 106.22 and 106.25 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and
(C) items 107.55 and 107.62 (relating to prepared and preserved beef and veal (except sausage)), if the articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved. ~~Such term does not include any article described in subparagraph (A), (B), or (C) originating in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988).~~
(3) The term "meat articles" does not include any article described in paragraph (2) that--
(A) originates in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act), or
(B) originates in Canada (as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) during such time as the United States-

Canada Free-Trade Agreement is in force with respect to, and the United States applies such Agreement to, Canada.

~~[(3)]~~ (4) The term 'Secretary' means the Secretary of Agriculture.

(5) The term "NAFTA Act" means the North American Free Trade Agreement Implementation Act.

(6) The term "NAFTA country" has the meaning given such term in section 2(4) of the NAFTA Act.

* * * * *

(f)(1) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than (A) 1,193,000,000 pounds if no import limitation on Canadian products is in effect under subsection (1), or (B) 1,250,000,000 pounds if an import limitation on Canadian products is in effect under subsection (1). The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in item 107.61 of the Tariff Schedules of the United States (relating to high-quality beef specially processed into fancy cuts~~.~~ , except that the President may exclude any such article originating in a NAFTA country (as determined in accordance with section 202 of the NAFTA Act) or, if paragraph (3)(B) applies, any such article originating in Canada as determined in accordance with such paragraph (3)(B).

* * * * *

(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries other than Canada and Mexico on the basis of the shares of the United States market for meat articles such countries other than Canada and Mexico supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may affect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

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**Section 358e of the Agricultural Adjustment Act of 1938**

SEC. 358e. MARKETING PENALTIES AND DISPOSITION OF ADDITIONAL PEANUTS FOR 1991 THROUGH 1997 CROPS OF PEANUTS.

(a) * * *

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(d) Handling and Disposal of Additional Peanuts.--
(1) * * *

* * * * *

~~(6) Reentry of exported peanuts.--If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer thereof shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.~~
(6) Reentry of exported peanuts.--
(A) Penalty.--If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer of the peanuts shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.
(B) Records.--Each person, firm, or handler who imports peanuts into the United States shall maintain such records and documents as are required by the Secretary to ensure compliance with this subsection.

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**Section 1542 of the Food, Agriculture, Conservation, and Trade Act of 1990**

SEC. 1542. PROMOTION OF AGRICULTURAL EXPORTS TO EMERGING DEMOCRACIES.

(a) * * *

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(d) E (Kika) de la Garza Agricultural Fellowship Program.--The Secretary of Agriculture (hereafter in this section referred to as the "Secretary") shall establish a program, to be known as the "E (Kika) de la Garza Agricultural Fellowship Program", to develop agricultural markets in emerging democracies and to promote cooperation and exchange of information between agricultural institutions and agribusinesses in the United States and the Soviet Union, as follows:
(1) * * *

* * * * *

(3) Agricultural fellowships for nafta countries.--
(A) In general.--The Secretary shall grant fellowships to individuals from countries that are parties to the North American Free Trade Agreement (referred to in this paragraph as "NAFTA") to study agriculture in the United States, and to individuals in the United States to study agriculture in other NAFTA countries.
(B) Purpose.--The purpose of fellowships granted under this paragraph is--
(i) to allow the recipients to expand their knowledge and understanding of agricultural systems and practices in other NAFTA countries;
(ii) to facilitate the improvement of agricultural systems in NAFTA countries; and
(iii) to establish and expand agricultural trade linkages between the United States and other NAFTA countries.
(C) Eligible recipients.--The Secretary may provide fellowships under this paragraph to agricultural producers and consultants, government officials, and other individuals from the private and public sectors.
(D) Acceptance of gifts.--The Secretary may accept money, funds, property, and services of every kind of gift, devise, bequest, grant, or otherwise, and may in any manner, dispose of all of the holdings and use the receipts generated from the disposition to carry out this paragraph. Receipts under this paragraph shall remain available until expended.
(E) Authorization of appropriation.--There are authorized to be appropriated such sums as are necessary to carry out this paragraph.

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## Section 104 of Title 35, United States Code

~~Sec. 104. Invention made abroad~~

~~In proceedings in the Patent and Trademark Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States and serving in a foreign country in connection with operations by or on behalf of the United States, he shall be entitled to the same rights of priority with respect to such invention as if the same had been made in the United States.~~ Sec. 104. Invention made abroad

(a) In General.--In proceedings in the Patent and Trademark Office, in the courts, and before any other competent authority, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country other than a NAFTA country, except as provided in sections 119 and 365 of this title. Where an invention was made by a person, civil or military, while domiciled in the United States or a NAFTA country and serving in any other country in connection with operations by or on behalf of the United States or a NAFTA country, the person shall be entitled to the same rights of priority in the United States with respect to such invention as if such invention had been made in the United States or a NAFTA country. To the extent that any information in a NAFTA country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has not been made available for use in a proceeding in the Office, a court, or any other competent authority to the same extent as such information could be made available in the United States, the Commissioner, court, or such other authority shall draw appropriate inferences, or take other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the proceeding.

(b) Definition.--As used in this section, the term "NAFTA country" has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act.

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**Section 4 of the Record Rental Amendment of 1985**

EFFECTIVE DATE

Sec. 4. (a) * * *

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(c) The amendments made by this Act shall not apply to rentals, leasings, lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring after the date which is 13 years after the date of the enactment of this Act.

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**Trademark Act of 1946**

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**TITLE I--THE PRINCIPAL REGISTER**

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MARKS REGISTRABLE ON THE PRINCIPAL REGISTER

**Sec. 2. No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it--**

(a) * * *

* * * * *

~~(e) Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 4 hereof, or (3) is primarily~~

~~merely a surname.~~
(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 4, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, or (4) is primarily merely a surname.
(f) Except as expressly excluded in paragraphs (a), (b), (c), ~~and (d)~~ (d), and (e)(3) of this section, nothing herein shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before the date of the enactment of the North American Free Trade Agreement Implementation Act.

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**TITLE II--THE SUPPLEMENTAL REGISTER**

**Sec. 23. (a) In addition to the principal register, the Commissioner shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trade-marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under subsections (a), (b), (c), ~~and (d)~~ (d), and (e)(3) of section 2 of this Act, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental**

**register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1 so far as they are applicable. Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this Act, that is declared to be unregistrable under section 2(e)(3), if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before the date of the enactment of the North American Free Trade Agreement Implementation Act.**

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## TITLE 17, UNITED STATES CODE

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Chapter 1--Subject Matter and Scope of Copyright

Sec. 101. Definitions. 102. Subject matter of copyright: In general. 103. Subject matter of copyright: Compilations and derivative works. 104. Subject matter of copyright: National origin. 104A. Copyright in certain motion pictures.

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### Sec. 104A. Copyright in certain motion pictures

(a) Restoration of Copyright.--Subject to subsections (b) and (c)--
(1) any motion picture that is first fixed or published in the territory of a NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act to which Annex 1705.7 of the North American Free Trade Agreement applies, and
(2) any work included in such motion picture that is first fixed in or published with such motion picture. that entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by section 401, 402, or 403 of this title, the absence of which has not been excused by the operation of section 405 of this title, as such

sections were in effect during that period, shall have copyright protection under this title for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice.
(b) Effective Date of Protection.--The protection provided under subsection (a) shall become effective, with respect to any motion picture or work included in such motion picture meeting the criteria of that subsection, 1 year after the date on which the North American Free Trade Agreement enters into force with respect to, and the United States applies the Agreement to, the country in whose territory the motion picture was first fixed or published if, before the end of that 1-year period, the copyright owner in the motion picture or work files with the Copyright Office a statement of intent to have copyright protection restored under subsection (a). The Copyright Office shall publish in the Federal Register promptly after that effective date a list of motion pictures, and works included in such motion pictures, for which protection is provided under subsection (a).
(c) Use of Previously Owned Copies.--A national or domiciliary of the United States who, before the date of the enactment of the North American Free Trade Agreement Implementation Act, made or acquired copies of a motion picture, or other work included in such motion picture, that is subject to protection under subsection (a), may sell or distribute such copies or continue to perform publicly such motion picture and other work without liability for such sale, distribution, or performance, for a period of 1 year after the date on which the list of motion pictures, and works included in such motion pictures, that are subject to protection under subsection (a) is published in the Federal Register under subsection (b).

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**Section 214 of the Immigration and Nationality Act**

ADMISSION OF NONIMMIGRANTS Sec. 214. (a) * * *

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(e)(1) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C-- Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional

level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.
(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15). The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of NAFTA.
(3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit--
(A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and
(B) shall cease to apply as provided for in paragraph 3 of such Appendix.
(4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if--
(A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);
(B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth--
(i) the action proposed to be taken and the reasons therefor, and
(ii) the advice obtained under subparagraph (A);
(C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and
(B) with respect to such action has expired; and
(D) the President has consulted with such committees regarding the

proposed action during the period referred to in subparagraph (C).
(5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 212(m), in the case of a registered nurse, or the application requirement of section 212(n), in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition requirement of subsection (c), to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 212(m) and 212(n), and the Attorney General, with respect to subsection (c).

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(j) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this subsection shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this subsection, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such Agreement.

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**Trade Agreements Act of 1979**

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; PURPOSES.

(a) Short Title.--This Act may be cited as the "Trade Agreements Act of 1979".
(b) Table of Contents.-- Sec. 1. Short title; table of contents; purposes. Sec. 2. Approval of trade agreements. Sec. 3. Relationship of trade agreements to United States law.

TITLE I--COUNTERVAILING AND ANTIDUMPING DUTIES

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TITLE IV--TECHNICAL BARRIERS TO TRADE (STANDARDS)
Subtitle A--Obligations of the United States
Sec. 401. Certain standards-related activities. Sec. 402. Federal standards-related activities. Sec. 403. State and private standards-related activities.

* * * * *

**TITLE III--GOVERNMENT PROCUREMENT**

**SEC. 301. GENERAL AUTHORITY TO MODIFY DISCRIMINATORY PURCHASING REQUIREMENTS**

(a) Presidential Waiver of Discriminatory Purchasing Requirements.--~~The President~~ Subject to subsection (f) of this section, the President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b), and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded--
(1) to United States products and suppliers of such products; or
(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.
(b) Designation of Eligible Countries and Instrumentalities.--The President may designate a foreign country or instrumentality for purposes of subsection (a) only if he determines that such country or instrumentality--
(1) is a country or instrumentality which (A) has become a party to the Agreement or the North American Free Trade Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

* * * * *

(e) Procurement Procedures by Certain Federal Agencies.--Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a-2 of the North

American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.
(f) Small Business and Minority Preferences.--The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.

**SEC. 302. AUTHORITY TO ENCOURAGE RECIPROCAL COMPETITIVE PROCUREMENT PRACTICES.**

(a) Authority To Bar Procurement From Non-Designated Countries.--With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products--
(1) shall prohibit the procurement, after the date on which any waiver under section 301(a) first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 301(b), and (B) which ~~would otherwise be eligible products~~ are products covered under the Agreement for procurement by the United States; and

* * * * *

**SEC. 308. DEFINITIONS.**

As used in this title--
(1) * * *

* * * * *

(4) Eligible products.--
~~(A) In general.--The term "eligible product" means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.~~
(A) In general.--The term "eligible product" means, with respect to any foreign country or instrumentality that is--
(i) a party to the Agreement, a product or service of that country or

instrumentality which is covered under the Agreement for procurement by the United States; or
(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States.

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## TITLE IV--TECHNICAL BARRIERS TO TRADE (STANDARDS)

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Subtitle B--Functions of Federal Agencies

### SEC. 411. FUNCTIONS OF ~~SPECIAL~~ TRADE REPRESENTATIVE.

(a) In General.The ~~Special~~ Trade Representative shall coordiante the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this title.
(b) Negotiating Functions.--The ~~Special~~ Trade Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standard-related activities. In carrying out this responsibility, the ~~Special~~ Trade Representative shall inform and consult with any Federal agency having expertise in the matter
(c) Cross Reference.--

### SEC. 412. ESTABLISHMENT AND OPERATION OF TECHNICAL OFFICES.

(a) Establishment.--
(1) For nonagricultural products.--The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) with respect to nonagricultural products.
(2) For agricultural products.--The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) with respect to agricultural products.

(b) Functions of Offices.--The President shall prescribe for each technical office established under subsection (a) such functions as the President deems necessary or appropriate to implement this title.

**SEC. 413. REPRESENTATION OF UNITED STATES INTERESTS BEFORE INTERNATIONAL STANDARDS ORGANIZATIONS.**

(a) Oversight and Consultation.--The Secretary concerned shall--
(1) inform, and consult and coordinate with, the ~~Special~~ Trade Representative with respect to international standards-related activities identified under paragraph (2);

* * * * *

**SEC. 415 CONTRACTS AND GRANTS.**

(a) In General.--For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the ~~Special~~ Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities--
(1) to increase awareness of proposed and adopted standards-related activities;
(2) to facilitate international trade through the appropriate international and domestic standards-related activities;
(3) to provide, if appropriate, and pursuant to section 413, adequate United States representation in international standards-related activities; and
(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports. No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.
(b) Terms and Conditions.--Any contract entered into, or any grant made, under subsection (a) shall be subject to such terms and conditions as the ~~Special~~ Trade Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.
(c) Limitations.--Financial assistance extended under this section shall

not exceed 75 percent of the total costs (as established by the ~~Special~~ Trade Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.
(d) Audit.--Each recipient of a grant or contract under this section shall make available to the ~~Special~~ Trade Representative or Secretary concerned, as the case may be, and to the Comptroller General of the United States, for purposes of audit and examination, any book, document, paper and record that is pertinent to the funds received under such grant or contract.

**SEC. 416. TECHNICAL ASSISTANCE.**

The ~~Special~~ Trade Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this title.

**SEC. 417. CONSULTATIONS WITH REPRESENTATIVES OF DOMESTIC INTERESTS.**

In carrying out the functions for which responsible under this title, the ~~Special~~ Trade Representative or Secretary concerned shall solicit technical and policy advice from the committees, established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

Subtitle C--Administrative and Judicial Proceedings Regarding Standards-Related Activities

CHAPTER 1--REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OR OBLIGATIONS

**SEC. 421. RIGHTS OF ACTION UNDER THIS CHAPTER.**

Except as provided under this chapter, the provisions of this subtitle

do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

**SEC. 422. REPRESENTATIONS.**

Any--
(1) Party to the Agreement; or
(2) foreign country that is not a Party to the Agreement but is found by the ~~Special~~ Trade Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement: may make a representation to the ~~Special~~ Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the ~~Special~~ Trade Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

**SEC. 423. ACTION AFTER RECEIPT OF REPRESENTATIONS.**

(a) Review.--Upon receipt of any representation made under section 422, the ~~Special~~ Trade Representative shall review the issues concerned in consultation with--
(1) the agency or person alleged to be engaging in violations under the Agreement;
(2) the member agencies of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872((A));
(3) other appropriate Federal agencies; and
(4) appropriate representatives referred to in section 417.
(b) Resolution.--The ~~Special~~ Trade Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

**SEC. 424. PROCEDURE AFTER FINDING BY INTERNATIONAL FORUM.**

(a) In General.--If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) shall review the finding and the matters related thereto with a view to recommending appropriate action.
(b) Cross Reference.--

For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 301 of the Trade Act of 1974 (19 U.S.C. 2411).

CHAPTER 2--OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

**SEC. 441. FINDINGS OF RECIPROCITY REQUIRED IN ADMINISTRATIVE PROCEEDINGS.**

(a) In General.--Except as provided under chapter 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in with the United States and is covered by the Agreement, unless the ~~Special~~ Trade Representative finds, and informs the agency concerned in writing, that--
(1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and
(2) the dispute settlement procedures provided under the Agreement are not appropriate.
(b) Exemptions.--This section does not apply with respect to causes of action arising under--
(1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or
(2) statutes administered by the Secretary of Agriculture. This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

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Subtitle D--Definitions and Miscellaneous Provisions

**SEC. 451. DEFINITIONS.**

As used in this title--
(1) Agreement.--The term "Agreement" means the Agreement on Technical Barriers to Trade approved under section 2(a) of this Act.

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~~(12) Special representative.--The term "Special Representative" means the Special Representative for Trade Negotiations.~~
(12) Trade representative.--The term "Trade Representative" means the United States Trade Representative.

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**SEC. 453. REPORTS TO CONGRESS ON OPERATION OF AGREEMENT.**

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period, the ~~Special~~ Trade Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

**SEC. 454. EFFECTIVE DATE.**

This title shall take effect on January 1, 1980, of the Agreement enters into force with respect to the United States by that date.

Subtitle E--Standards and Measures Under the North American Free Trade Agreement

CHAPTER 1--SANITARY AND PHYTOSANITARY MEASURES

**SEC. 461. GENERAL.**

Nothing in this chapter may be construed--

(1) to prohibit a Federal agency or State agency from engaging in activity related to sanitary or phytosanitary measures to protect human, animal, or plant life or health; or
(2) to limit the authority of a Federal agency or State agency to determine the level of protection of human, animal, or plant life or health the agency considers appropriate.

**SEC. 462. INQUIRY POINT.**

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding--
(1) any sanitary or phytosanitary measure of general application, including any control or inspection procedure or approval procedure proposed, adopted, or maintained by a Federal or State agency;
(2) the procedures of a Federal or State agency for risk assessment, and factors the agency considers in conducting the assessment and in establishing the levels of protection that the agency considers appropriate;
(3) the membership and participation of the Federal Government and State governments in international and regional sanitary and phytosanitary organizations and systems, and in bilateral and multilateral arrangements regarding sanitary and phytosanitary measures, and the provisions of those systems and arrangements; and
(4) the location of notices of the type required under article 719 of the NAFTA, or where the information contained in such notices can be obtained.

**SEC. 463. CHAPTER DEFINITIONS.**

Notwithstanding section 451, for purposes of this chapter--
(1) Animal.--The term "animal" includes fish, bees, and wild fauna.
(2) Approval procedure.--The term "approval procedure" means any registration, notification, or other mandatory administrative procedure for--
(A) approving the use of an additive for a stated purpose or under stated conditions, or
(B) establishing a tolerance for a stated purpose or under stated conditions for a contaminant, in a food, beverage, or feedstuff prior to permitting the use of the additive or the marketing of a food, beverage, or feedstuff containing the additive or contaminant.
(3) Contaminant.--The term "contaminant" includes pesticide and veterinary drug residues and extraneous matter.

(4) Control or inspection procedure.--The term "control or inspection procedure" means any procedure used, directly or indirectly, to determine that a sanitary or phytosanitary measure is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, certification, or other procedure involving the physical examination of a good, of the packaging of a good, or of the equipment or facilities directly related to production, marketing, or use of a good, but does not mean an approval procedure.
(5) Plant.--The term "plant" includes wild flora.
(6) Risk assessment.--The term "risk assessment" means an evaluation of--
(A) the potential for the introduction, establishment or spread of a pest or disease and associated biological and economic consequences; or
(B) the potential for adverse effects on human or animal life or health arising from the presence of an additive, contaminant, toxin or disease-causing organism in a food, beverage, or feedstuff.
(7) Sanitary or phytosanitary measure.--
(A) In general.--The term "sanitary or phytosanitary measure" means a measure to--
(i) protect animal or plant life or health in the United States from risks arising from the introduction, establishment, or spread of a pest or disease;
(ii) protect human or animal life or health in the United States from risks arising from the presence of an additive, contaminant, toxin, or disease-causing organism in a food, beverage, or feedstuff;
(iii) protect human life or health in the United States from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or
(iv) prevent or limit other damage in the United States arising from the introduction, establishment, or spread of a pest.
(B) Form.--The form of a sanitary or phytosanitary measure includes--
(i) end product criteria;
(ii) a product-related processing or production method;
(iii) a testing, inspection, certification, or approval procedure;
(iv) a relevant statistical method;
(v) a sampling procedure;
(vi) a method of risk assessment;
(vii) a packaging and labeling requirement directly related to food safety; and
(viii) a quarantine treatment, such as a relevant requirement associated with the transportation of animals or plants or with material necessary for their survival during transportation.

CHAPTER 2--STANDARDS-RELATED MEASURES

## SEC. 471. GENERAL.

(a) No Bar To Engaging in Standards Activity.--Nothing in this chapter shall be construed--
(1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment or consumers; or
(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment or consumers.
(b) Exclusion.--This chapter does not apply to--
(1) technical specifications prepared by a Federal agency for production or consumption requirements of the agency; or
(2) sanitary or phytosanitary measures under chapter 1.

## SEC. 472. INQUIRY POINT.

The standards information center maintained under section 414 shall, in addition to the functions specified therein, make available to the public relevant documents, at such reasonable fees as the Secretary of Commerce may prescribe, and information regarding--
(1) the membership and participation of the Federal Government, State governments, and relevant nongovernmental bodies in the United States in international and regional standardizing bodies and conformity assessment systems, and in bilateral and multilateral arrangements regarding standards-related measures, and the provisions of those systems and arrangements;
(2) the location of notices of the type required under article 909 of the NAFTA, or where the information contained in such notice can be obtained; and
(3) the Federal agency procedures for assessment of risk, and factors the agency considers in conducting the assessment and establishing the levels of protection that the agency considers appropriate.

## SEC. 473. CHAPTER DEFINITIONS.

Notwithstanding section 451, for purposes of this chapter--
(1) Approval procedure.--The term "approval procedure" means any registration, notification, or other mandatory administrative procedure for granting permission for a good or service to be produced,

marketed, or used for a stated purpose or under stated conditions.
(2) Conformity assessment procedure.--The term "conformity assessment procedure" means any procedure used, directly or indirectly, to determine that a technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration, or approval used for such a purpose, but does not mean an approval procedure.
(3) Objective.--The term "objective" includes--
(A) safety,
(B) protection of human, animal, or plant life or health, the environment or consumers, including matters relating to quality and identifiability of goods or services, and
(C) sustainable development, but does not include the protection of domestic production.
(4) Service.--The term "service" means a land transportation service or a telecommunications service.
(5) Standard.--The term "standard" means--
(A) characteristics for a good or a service,
(B) characteristics, rules, or guidelines for--
(i) processes or production methods relating to such good, or
(ii) operating methods relating to such service, and
(C) provisions specifying terminology, symbols, packaging, marking, or labelling for--
(i) a good or its related process or production methods, or
(ii) a service or its related operating methods, for common and repeated use, including explanatory and other related provisions set out in a document approved by a standardizing body, with which compliance is not mandatory.
(6) Standards-related measure.--The term "standards-related measure" means a standard, technical regulation, or conformity assessment procedure.
(7) Technical regulation.--The term "technical regulation" means--
(A) characteristics or their related processes and production methods for a good,
(B) characteristics for a service or its related operating methods, or
(C) provisions specifying terminology, symbols, packaging, marking, or labelling for--
(i) a good or its related process or production method, or
(ii) a service or its related operating method, set out in a document, including applicable administrative, explanatory, and other related provisions, with which compliance is mandatory.
(8) Telecommunications service.--The term "telecommunications service" means a service provided by means of the transmission and

reception of signals by any electromagnetic means, but does not mean the cable, broadcast, or other electromagnetic distribution of radio or television programming to the public generally.

CHAPTER 3--SUBTITLE DEFINITIONS

**SEC. 481. DEFINITIONS.**

Notwithstanding section 451, for purposes of this subtitle--
(1) NAFTA.--The term "NAFTA" means the North American Free Trade Agreement.
(2) State.--The term "State" means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

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**Section 302 of the Federal Seed Act**

Sec. 302. (a) * * *

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(e) The provisions of this title requiring certain seeds to be stained shall not apply--
(1) to alfalfa or clover seed originating in Canada or Mexico, or

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**Act of August 30, 1890**

**Chapter 839**

.--An act providing for an inspection of meats for exportation, prohibiting the importation of adulterated articles of food or drink, and authorizing the President to make proclamation in certain cases, and for other purposes.

* * * * *

**Sec. 6.**

The importation of cattle, sheep, and other ruminants, and swine, which are diseased or infected with any disease, or which shall have been exposed to such infection within sixty days next before their exportation, is prohibited~~: Provided, That the Secretary of Agriculture, within his discretion and under such regulations as he may prescribe, is authorized to permit the admission from Mexico into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom, and the admission from the British Virgin Islands into the Virgin Islands of the United States, for slaughter only, of cattle which have been infested with or exposed to ticks upon being freed therefrom.~~ , except that the Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may (1) permit the importation of cattle, sheep, or other ruminants, and swine, from Canada or Mexico, and (2) permit the importation from the British Virgin Islands into the Virgin Islands of the United States, for slaughter only, of cattle that have been infested with or exposed to ticks on being freed from the ticks. Any person who knowingly violates any provision of this section or sections 7 through 10 of this Act or any regulation prescribed by the Secretary of Agriculture under any such section shall be guilty of a misdemeanor and shall, on conviction, be punished by a fine not exceeding $5,000 by imprisonment not exceeding one year, or both. Any person who violates any such provision or any such regulation may be assessed a civil penalty by the Secretary of Agriculture not exceeding $1,000. The Secretary may issue an order assessing such civil penalty only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable under chapter 158 of title 28, United States Code. The validity of such order may not be reviewed in an action to collect such civil penalty.

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**Sec. 10. Inspection of Animals.**

~~Sec. 10. That the Secretary of Agriculture shall~~--(a) In General.--Except as provided in subsection (b), the Secretary of Agriculture shall cause careful inspection to be made by a suitable officer of all imported animals described in this act, to ascertain whether such animals are infected with contagious diseases or have been exposed to infection so as to be dangerous to other animals, which shall then either be placed in quarantine or dealt with according to the

regulations of the Secretary of Agriculture; and all food, litter, manure, clothing, utensils, and other appliances that have been so related to such animals on board ship as to be judged liable to convey infection shall be dealt with according to the regulations of the Secretary of Agriculture; and the Secretary of Agriculture may cause inspection to be made of all animals described in this act intended for exportation, and provide for the disinfection of all vessels engaged in the transportation thereof, and of all barges or other vessels used in the conveyance of such animals intended for export to the ocean steamer or other vessels, and of all attendants and their clothing, and of all head-ropes and other appliances used in such exportation, by such orders and regulations as he may prescribe; and if, upon such inspection, any such animals shall be adjudged, under the regulations of the Secretary of Agriculture, to be infected or to have been exposed to infection so as to be dangerous to other animals, they shall not be allowed to be placed upon any vessel for exportation; the expense of all the inspection and disinfection provided for in this section to be borne by the owners of the vessels on which such animals are exported.
(b) Exception.--The Secretary of Agriculture, in accordance with such regulations as the Secretary may issue, may waive any provision of subsection (a) in the case of shipments between the United States and Canada or Mexico.

**Section 1 of the Act of August 31, 1922**

(Commonly referred to as the Honeybee Act)

CHAPTER. 301.--An Act To regulate foreign commerce in the importation into the United States of the adult honeybee (Apis mellifica).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
(a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germ plasma of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States--
(1) by the United States Department of Agriculture for experimental or scientific purposes ~~, or~~;
(2) from countries determined by the Secretary of Agriculture--
(A) to be free of disease or parasites harmful to honeybees, and

undesirable species or subspecies of honeybees; and
(B) to have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful disease or parasites, or undesirable species or subspecies, of honeybees exist~~.~~ ; or
(3) from Canada or Mexico, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees.
(b) Honeybee semen may be imported into the United States only from (1) countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honeybees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen, or (2) Canada or Mexico, if the Secretary of Agriculture determines that the region of Canada or Mexico from which the imports originate is, and is likely to remain, free of undesirable species or subspecies of honeybees:

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**Section 17 of the Poultry Products Inspection Act**

IMPORTS

Sec. 17. (a) * * *

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(d)(1) Notwithstanding any other provision of law, except as provided in paragraph (2), all poultry, or parts or products thereof, capable of use as human food offered for importation into the United States shall--
(A) be subject to the same inspection, sanitary, quality, species verification, and residue standards applied to products produced in the United States; and
(B) have been processed in facilities and under conditions that are the same as those under which similar products are processed in the United States.
(2)(A) Notwithstanding any other provision of law, all poultry, or parts

or products of poultry, capable of use as human food offered for importation into the United States from Canada and Mexico shall--
(i) comply with paragraph (1); or
(ii)(I) be subject to inspection, sanitary, quality, species verification, and residue standards that are equivalent to United States standards; and
(II) have been processed in facilities and under conditions that meet standards that are equivalent to United States standards.
(B) The Secretary may treat as equivalent to a United States standard a standard of Canada or Mexico described in subparagraph (A)(ii) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the standard of the exporting country achieves the level of protection that the Secretary considers appropriate.
(C) The Secretary may--
(i) determine, on a scientific basis, that the standard of the exporting country does not achieve the level of protection that the Secretary considers appropriate; and
(ii) provide the basis for the determination in writing to the exporting country on request.
~~(2)~~ (3) Any such imported poultry article that does not meet such standards shall not be permitted entry into the United States.
~~(3)~~ (4) The Secretary shall enforce this subsection through--
(A) random inspections for such species verification and for residues; and
(B) random sampling and testing of internal organs and fat of carcasses for residues at the point of slaughter by the exporting country, in accordance with methods approved by the Secretary.

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**Section 20 of the Federal Meat Inspection Act**

Sec. 20. (a) * * *

* * * * *

(e) Not later than March 1 of each year the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate a comprehensive and detailed written report with respect to the administration of this section during the immediately preceding calendar year. Such report

shall include, but shall ~~not be limited to :~~ not be limited to the following:

(1)(A) Subject to subparagraphs (B) and (C), a certification by the Secretary that foreign plants in Canada and Mexico that export carcasses or meat or meat products referred to in subsection (a) have complied with paragraph (2) or with requirements that are equivalent to United States requirements with regard to all inspection and building construction standards, and all other provisions of this Act and regulations issued under this Act.

(B) Subject to subparagraph (C), the Secretary may treat as equivalent to a United States requirement a requirement described in subparagraph

(A) if the exporting country provides the Secretary with scientific evidence or other information, in accordance with risk assessment methodologies agreed to by the Secretary and the exporting country, to demonstrate that the requirement or standard of the exporting country achieves the level of protection that the Secretary considers appropriate.

(C) The Secretary may--

(i) determine, on a scientific basis, that a requirement of an exporting country does not achieve the level of protection that the Secretary considers appropriate; and

(ii) provide the basis for the determination to the exporting country in writing on request.

(2) A certification by the Secretary that, except as provided in paragraph (1), foreign plants that export carcasses or meat or meat products referred to in subsection (a) have complied with requirements that are at least equal to all inspection and building construction standards and all other provisions of this Act and regulations issued under this Act.

~~(1) a certification by the Secretary that foreign plants exporting carcasses or meat or meat products referred to in subsection (a) of this section have complied with requirements at least equal to all the inspection, building construction standards, and all other provisions of this Act and regulations issued thereunder;~~

~~(2) the~~ (3) The names and locations of plants authorized or permitted to have imported into the United States therefrom carcasses or meat or meat products referred to in subsection (a) of this section~~;~~.

~~(3) the~~ (4) The number of inspectors employed by the Department of Agriculture in the calendar year concerned who were assigned to inspect plants referred to in paragraph (e)(2) hereof and the frequency with which each such plant was inspected by such inspectors~~;~~.

~~(4) the~~ (5) The number of inspectors licensed by each country from which any imports subject to the provisions of this section were

imported who were assigned, during the calendar year concerned, to inspect such imports and the facilities in which such imports were handled and the frequency and effectiveness of such inspections~~;~~.
~~(5) the~~ (6) The total volume of carcasses or meat or meat products referred to in subsection (a) of this section which was imported into the United States during the calendar year concerned from each country, including a separate itemization of the volume of each major category of such imports from each country during such year, and a detailed report of rejections of plants and products because of failure to meet appropriate standards prescribed by this Act~~; and~~.
~~(6) the~~ (7) The name of each foreign country that applies standards for the importation of meat articles from the United States that are described in subsection (h)(2).

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**Section 503 of the Motor Vehicle Information and Cost Savings Act**

DETERMINATION OF AVERAGE FUEL ECONOMY

Sec. 503. (a) * * *
(b)(1) * * *
(2) For purposes of this subsection:
(A) * * *

* * * * *

(E) ~~An~~ Except as provided in subparagraph (G), an automobile shall be considered domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year. The EPA Administrator may prescribe rules for purposes of carrying out ~~this subparagraph~~ this subparagraph and subparagraph (G).

* * * * *

(G)(i) In accordance with the schedule set out in clause (ii), an automobile shall be considered domestically manufactured in a model

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

(ii) Clause (i) shall apply to all automobiles manufactured by a manufacturer and sold in the United States, wherever assembled, in accordance with the following schedule:

(I) With respect to a manufacturer that initiated the assembly of automobiles in Mexico before model year 1992, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election.

(II) With respect to a manufacturer initiating the assembly of automobiles in Mexico after model year 1991, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994, or the model year commencing after the date that the manufacturer initiates the assembly of automobiles in Mexico, whichever is later.

(III) With respect to a manufacturer not described by subclause (I) or (II) assembling automobiles in the United States or Canada but not in Mexico, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have clause (i) apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election, except that if such manufacturer initiates the assembly of automobiles in Mexico before making such election, this subclause shall not apply and the manufacturer shall be subject to clause (II).

(IV) With respect to a manufacturer not assembling automobiles in the United States, Canada, or Mexico, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994.

(V) With respect to a manufacturer authorized to make an election under subclause (I) or (III) which has not made that election within the specified period, clause (i) shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 2004.

(iii) The Secretary shall prescribe reasonable procedures for elections under this subparagraph, and the EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.

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## Section 401 of the Rural Electrification Act of 1938

Sec. 401. The Act entitled "An Act to provide for rural electrification, and for other purposes", approved May 20, 1936 (49 Stat. 1363), is hereby amended as follows: (a) By inserting in subsection (a) of section 3 thereof immediately following the date "June 30, 1937" the phrase "and $100,000,000 for the fiscal year ending June 30, 1939" and (b) by striking out the date "June 30, 1937" appearing at the end of subsection (e) of such section 3 and inserting in lieu thereof the date "June 30, 1939".

In making loans pursuant to this title and pursuant to the Rural Electrification Act of 1936, the Administrator of the Rural Electrification Administration shall require that, to the extent practicable and the cost of which is not unreasonable, the borrower agree to use in connection with the expenditure of such funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, Mexico, or Canada substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, Mexico, or Canada.

## TITLE 28, UNITED STATES CODE

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PART IV--JURISDICTION AND VENUE

* * * * *

## CHAPTER 95--COURT OF INTERNATIONAL TRADE

* * * * *

Sec. 1581. Civil actions against the United States and agencies and officers thereof. 1582. Civil actions commenced by the United States. 1583. Counterclaims, cross-claims, and third-party actions. ~~1584. Civil actions under the United States-Canada Free-Trade Agreement.~~ 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.

**Sec. 1581. Civil actions against the United States and agencies and officers thereof**

(a) * * *

* * * * *

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review--
(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act; ~~and~~
(2) any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930~~.~~; and
(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

* * * * *

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for--
(1) revenue from imports or tonnage;
(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;
(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
(4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-
(h) of this section. This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the

North American Free Trade Agreement or the United States-Canada Free-Trade Agreement, and section 516A(g) of the Tariff Act of 1930.

* * * * *

**Sec. 1582. Civil actions commenced by the United States**

The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States--
(1) to recover a civil penalty under section 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

* * * * *

~~**Sec. 1584. Civil actions under the United States-Canada Free-Trade Agreement**~~

**Sec. 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement**

The United States Court of International Trade shall have exclusive jurisdiction of any civil action which arises under section ~~777(d)~~ 777(f) Sec. 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking.

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PART VI--PARTICULAR PROCEEDINGS

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**CHAPTER 151--DECLARATORY JUDGMENTS**

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**Sec. 2201. Creation of remedy**

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under action 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of ~~Canadian merchandise~~ merchandise of a free trade area country (as defined in section 516(f)(1) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as much.

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**CHAPTER 169--COURT OF INTERNATIONAL TRADE PROCEDURE**

* * * * *

**Sec. 2631. Persons entitled to commence a civil action**

(a) * * *

* * * * *

(g)(1)* * *

* * * * *

(3) A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.

* * * * *

**Sec. 2635. Filing of official documents**

~~(a)(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515~~

~~of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record--~~
~~(A) the consumption or other entry and the entry summary;~~
~~(B) the commercial invoice;~~
~~(C) the special customs invoice;~~
~~(D) a copy of the protest or petition;~~
~~(E) a copy of the denial, in whole or in part, of the protest or petition;~~
~~(F) the importer's exhibits;~~
~~(G) the official and other representative samples;~~
~~(H) any official laboratory reports; and~~
~~(I) a copy of any board relating to the entry.~~
~~(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.~~
(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any document, paper, information or data relating to the entry of merchandise and the administrative determination that is the subject of the protest or petition.

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**Sec. 2636. Time for commencement of action**

(a) * * *

* * * * *

(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.
(h)(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsection (a)-(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

* * * * *

**Sec. 2640. Scope and standard of review**

(a) * * *

* * * * *

(d) In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.
~~(d)~~ (e) In any civil action not specified in the section, the Court of International Trade shall review the matter as provided in section 706 of title 5.

* * * * *

**Sec. 2642. Analysis of imported merchandise**

The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States or laboratories accredited by the Customs Services under section 499(b) of the Tariff Act of 1930.

* * * * *

CHAPTER 169--COURT OF INTERNATIONAL TRADE PROCEDURE

* * * * *

**Sec. 2643. Relief**

(a) * * *

* * * * *

(c)(1) * * *

* * * * *

(5) In any civil action involving an antidumping or countervailing duty

proceeding regarding a class or kind of ~~Canadian merchandise,~~ merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, the Court of International Trade may not order declaratory relief.

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**INTERNAL REVENUE CODE**

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Subtitle C--Employment Taxes

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**CHAPTER 23--FEDERAL UNEMPLOYMENT TAX ACT**

* * * * *

**SEC. 3304. APPROVAL OF STATE LAWS.**

(a) Requirements.--The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that--
(1) * * *

* * * * *

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that--
(A) * * *

* * * * *

(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act; ~~and~~
(E) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; and
(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t));

* * * * *

**SEC. 3306. DEFINITIONS.**

(a) * * *

* * * * *

(f) Unemployment Fund.--For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that--
(1) * * *

* * * * *

(3) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act; ~~and~~
(4) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor~~.~~; and

(5) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).

* * * * *

(t) Self-Employment Assistance Program.--For the purposes of this chapter, the term "self-employment assistance program" means a program under which--

(1) individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(2) the allowance payable to individuals pursuant to paragraph (1) is a payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that--

(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

(C) such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to unemployment compensation, as long as such individuals meet the requirements applicable under this subsection;

(3) individuals may receive the allowance described in paragraph (1) if such individuals--

(A) are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation and

(C) are participating in self-employment assistance activities which--

(i) include entrepreneurial training, business counseling, and technical assistance; and

(ii) are approved by the State agency; and

(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the

State law at such time;
(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and
(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.

* * * * *

Subtitle F--Procedure and Administration

* * * * *

**CHAPTER 61--INFORMATION AND RETURNS**

* * * * *

Subchapter B--Miscellaneous Provisions

* * * * *

**SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.**

(a) * * *

* * * * *

(l) Disclosure of Returns and Return Information for Purposes Other Than Tax Administration.--
(1) * * *

* * * * *

(14) Disclosure of return information to united states customs service.--The Secretary may, upon written request from the Commissioner of the United States Customs Service, disclose to officers and employees of the Department of the Treasury such return information with respect to taxes imposed by chapters 1 and 6 as the Secretary may prescribe by regulations, solely for the purpose of, and only to the extent necessary in--
(A) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930 (19 U.S.C. 1509), or

(B) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits.

* * * * *

(p) Procedure and Recordkeeping.--
(1) * * *

* * * * *

(3) Records of inspection and disclosure.--
(A) System of recordkeeping.--Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1),
(3)(A), or (4), (i)(4), (7)(A)(ii), or (8), (k)(1), (2), or (6),
(l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), ~~or (13)~~
(13), or (14), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

* * * * *

(4) Safeguards.--Any Federal agency described in subsection (h)(2), (h)(6), (i)(1), (2), (3), (5), or (8), (j)(1) or (2), (l)(1), (2), (3), (5), (10), (11), ~~or (13)~~ (13), or (14), or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (8) or (l)(6), (7), (8), (9), or (12) shall, as a condition for receiving returns or return information--
(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason or such request, and the date of such request

made by or of it and any disclosure of return or return information made by or to it;
(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;
(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;
(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;
(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission or the General Accounting Office for ensuring the confidentiality of returns and return information required by this paragraph; and
(F) upon completion of use of such returns or return information--
(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), (9), return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,
(ii) in the case of an agency described in subsections (h)(2), (h)(6), (i)(1), (2), (3), (5), or (8), (j)(1) or (2), (l)(1), (2), (3), (5), (10), (11), (12), ~~or (13)~~ (13), or (14), or (o)(1), or the General Accounting Office, either--
(I) return to the Secretary such returns or return information (along with any copies made therefrom),
(II) otherwise make such returns or return information undisclosable, or
(III) to the extent not so returned or make undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information, and
(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing the notification for which the information was obtained, so as to make such information undisclosable; except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or

return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency body, or commission or the General Accounting Office until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under paragraph (2), (4), (6), or (7) of subsection (m) and which discloses any such mailing address to any agent or which receives any information under subsection (l)(12)(B) and which discloses any such information to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).

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**CHAPTER 64--COLLECTION**

* * * * *

Subchapter A--General Provisions

* * * * *

**SEC. 6302. MODE OR TIME OF COLLECTION.**

(a) * * *

* * * * *

(h) Use of Electronic Fund Transfer System for Collection of Certain Taxes.--
(1) Establishment of system.--

(A) In general.--The Secretary shall prescribe such regulations as may be necessary for the development and implementation of an electronic fund transfer system which is required to be used for the collection of depository taxes. Such system shall be designed in such manner as may be necessary to ensure that such taxes are credited to the general account of the Treasury on the date on which such taxes would otherwise have been required to be deposited under the Federal tax deposit system.
(B) Exemptions.--The regulations prescribed under subparagraph (A) may contain such exemptions as the Secretary may deem appropriate.
(2) Phase-in requirements.--
(A) In general.--Except as provided in subparagraph (B), the regulations referred to in paragraph (1)--
(i) shall contain appropriate procedures to assure that an orderly conversion from the Federal tax deposit system to the electronic fund transfer system is accomplished, and
(ii) may provide for a phase-in of such electronic fund transfer system by classes of taxpayers based on the aggregate undeposited taxes of such taxpayers at the close of specified periods and any other factors the Secretary may deem appropriate.
(B) Phase-in requirements.--The phase-in of the electronic fund transfer system shall be designed in such manner as may be necessary to ensure that--
(i) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total depository taxes imposed by chapters 21, 22, and 24 shall be collected by means of electronic fund transfer, and
(ii) during each fiscal year beginning after September 30, 1993, at least the applicable required percentage of the total other depository taxes shall be collected by means of electronic fund transfer.
(C) Applicable required percentage.--
(i) In the case of the depository taxes imposed by chapters 21, 22, and 24, the applicable required percentage is--
(I) 3 percent for fiscal year 1994,
(II) 16.9 percent for fiscal year 1995,
(III) 20.1 percent for fiscal year 1996,
(IV) 58.3 percent for fiscal years 1997 and 1998, and
(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.
(ii) In the case of other depository taxes, the applicable required percentage is--
(I) 3 percent for fiscal year 1994,
(II) 20 percent for fiscal year 1995,
(III) 30 percent for fiscal year 1996,
(IV) 60 percent for fiscal years 1997 and 1998, and

(V) 94 percent for fiscal year 1999 and all fiscal years thereafter.
(3) Definitions.--For purposes of this subsection--
(A) Depository tax.--The term "depository tax" means any tax if the Secretary is authorized to require deposits of such tax.
(B) Electronic fund transfer.--The term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution or other financial intermediary to debit or credit an account.
(4) Coordination with other electronic fund transfer requirements.--
(A) Coordination with certain excise taxes.--In determining whether the requirements of subparagraph (B) of paragraph (2) are met, taxes required to be paid by electronic fund transfer under sections 5061(e) and 5703(b) shall be disregarded.
(B) Additional requirement.--Under regulations, any tax required to be paid by electronic fund transfer under section 5061(e) or 5703(b) shall be paid in such a manner as to ensure that the requirements of the second sentence of paragraph (1)(A) of this subsection are satisfied.
~~(h)~~ (i) Cross References.--
For treatment of earned income advance amounts as payment of withholding and FICA taxes, see section 3507(d).

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Subtitle I--Trust Fund Code

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**CHAPTER 98--TRUST FUND CODE**

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Subchapter A--Establishment of Trust Funds

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**<u>SEC. 9505. HARBOR MAINTENANCE TRUST FUND.</u>**

(a) * * *

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(c) Expenditures From Harbor Maintenance Trust Fund.--Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriation Acts, for making expenditures--
(1) * * *

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~~(3) for the payment of all expenses of administration incurred--~~
~~(A) by the Department of The Treasury in administering subchapter~~
A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year, and
~~(B) for periods during which no fee applies under paragraph (9)~~
or (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985.
(3) for the payment of all expenses of administration incurred by the Department of the Treasury, the Army Corps of Engineers, and the Department of Commerce related to the administration of subchapter A of chapter 36 (relating to harbor maintenance tax), but not in excess of $5,000,000 for any fiscal year.

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**Section 303 of the Social Security Act**

PROVISIONS OF STATE LAWS
Sec. 303. (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for--
(1) * * *

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(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act: Provided, That an mount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: Provided further, That the amounts specified by section 903(c)(2) may, subject to the conditions

prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: Provided further, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: Provided further, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g): Provided further, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor ~~; and~~ : Provided further, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and

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**Caribbean Basin Economic Recovery Act**

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**TITLE II--CARIBBEAN BASIN INITIATIVE**

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Caribbean Basin Economic Recovery Act".

Subtitle A--Duty-Free Treatment

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**SEC. 219. CENTER FOR THE STUDY 0F WESTERN HEMISPHERIC TRADE.**

(a) Establishment.--The Commissioner of Customs, after consultation

with appropriate officials in the State of Texas, is authorized and directed to make grants to an institution (or a consortium of such institutions) to assist such institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (hereafter in this section referred to as the "Center". The Commissioner of Customs shall make the first grant not later than December 1, 1994, and the Center shall be established not later than February 1, 1995.

(b) Scope of the Center.--The Center shall be a year-round program operated by an institution located in the State of Texas (or a consortium of such institutions), the purpose of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine--

(1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere,

(2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and

(3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

(c) Consultation; Selection Criteria.--The Commissioner of Customs shall consult with appropriate officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. In selecting the appropriate institution, the Commissioner of Customs shall give consideration to--

(1) the institution's ability to carry out the programs and activities described in this section; and

(2) any resources the institution can provide the Center in addition to Federal funds provided under this program.

(d) Programs and Activities.--The Center shall conduct the following activities:

(1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere, including the impact of the NAFTA on individual economies and the desirability and feasibility of possible accessions to the NAFTA by such countries.

(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population.

(3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries.
(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries.
(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the center.
(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center at the University of Miami at Coral Gables.
(e) Definitions.--For purposes of this section--
(a) Nafta.--The term "NAFTA" means the North American Free Trade Agreement.
(2) Western hemisphere countries.--The terms "Western Hemisphere countries", "countries in the Western Hemisphere", and "Western Hemisphere" means Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by section 212), the Commonwealth of Puerto Rico, and the United States Virgin Islands.
(f) Fees for Seminars and Publications.--Notwithstanding any other provision of law, a grant made under this section may provide that the Center may charge a reasonable fee for attendance at seminars and conferences and for copies of publications, studies, reports, and other documents the Center publishes. The Center may waive such fees in any case in which it determines imposing a fee would impose a financial hardship and the purposes of the Center would be served by granting such a waiver.
(g) Duration of Grant.--The Commissioner of Customs is directed to make grants to any institution or institutions selected as the Center for fiscal years 1994, 1995, 1996, and 1997.
(h) Report.--The Commissioner of Customs shall, no later than July 1, 1994, and annually thereafter for years for which grants are made, submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The first report shall include--
(1) a statement identifying the institution or institutions selected as the Center,
(2) the reasons for selecting the institution or institutions as the Center, and
(3) the plan of such institution or institutions for operating the Center. Each subsequent report shall include information with respect to the

operations of the Center, the collaboration of the Center with, and dissemination of information to, Government policymakers and the business community with respect to the study of Western Hemispheric trade by the Center, and the plan and efforts of the Center to continue operations after grants under this section have expired.

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**Revised Statutes of the United States**

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**TITLE XXXIV--COLLECTION OF DUTIES UPON IMPORTS**

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CHAPTER FOUR--ENTRY OF MERCHANDISE

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**~~Sec. 2792. Vessels used exclusively as ferry-boats carrying passengers, baggage, and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests, but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law.~~**

~~Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from entrance and clearance fees and tonnage taxes while such service triweekly or oftener is maintained.~~

**Sec. 2793.~~ Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States,~~ Documented vessels with a coastwise, Great Lakes endorsement, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry**

**and clearance fees or tonnage tax, as if from or to foreign ports~~; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of Commerce may prescribe, notwithstanding any other provisions of law: Provided, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel.~~**

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CHAPTER ELEVEN--PROVISIONS APPLYING TO COMMERCE WITH CONTIGUOUS COUNTRIES

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**~~Sec. 3111. If any vessel enrolled or licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States shall touch at any port in the adjacent British provinces, and the master of such vessel shall purchase any merchandise for the use of the vessel, the master of the vessel shall report the same, with cost and quantity thereof, to an officer of the customs at the first port in the United States at which he shall next arrive, designating them as "sea- stores"; and in the oath to be taken by such master of such vessel, on making such report, he shall declare that the articles so specified or designated "sea-stores" are truly intended for the use exclusively of the vessel, and are not intended for sale, transfer, or private use. If any greater quantity of dutiable articles shall be found on board such vessel than are specified in such report or entry of such articles, or any part thereof shall be landed without a permit from an officer of the customs, such articles, together with the vessel, her apparel, tackle, and furniture, shall be forfeited.~~**

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~~Sec. 3118. The master of any vessel so enrolled or licensed shall, before departing from a port in one collection-district to a place in another collection-district, where there is no custom-house, file his manifest, and obtain a clearance in the same manner, and make oath to the manifest, which manifest and clearance shall be delivered to the proper officer of customs at the port at which the vessel next arrives after leaving the place of destination specified in the clearance.~~

~~Sec. 3119. Nothing contained in the three preceding sections shall exempt masters of vessels from reporting, as now required by law, any merchandise destined for any foreign port. No permit shall be required for the unloading of cargo brought from an American port.~~

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~~Sec. 3122. The master of any vessel so enrolled or licensed, destined with a cargo from a place in the United States, at which there may be no custom-house, to a port where there may be a custom-house, shall, within twenty-four hours after arrival at the port of destination, deliver to the proper officer of the customs a manifest, subscribed by him, setting forth the cargo laden at the place of departure, or laden or unladen at any intermediate port, or place, to the truth or which manifest he shall make oath before such officer. If the vessel, however, have no cargo, the master shall not be required to deliver such manifest.~~

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~~Sec. 3124. The manifests, certificates of clearance, and oaths, provided for by the eight preceding sections, shall be in such form, and prepared, filled up, and executed in such manner as the Secretary of the Treasury may from time to time prescribe.~~

~~Sec. 3125. If the master of any enrolled or licensed vessel shall neglect or fail to comply with any of the provisions or requirements of the nine preceding sections, such master shall forfeit and pay to the United States the sum of twenty dollars for each and every failure or neglect, and for which sum the~~

~~vessel shall be liable, and may be summarily proceeded against, by way of libel, in any district court of the United States.~~

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**Sec. 3126.** ~~Any vessel, on being duly registered in pursuance of the laws of the United States,~~ **Any United States documented vessel with a registry or coastwise endorsement, or both may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers and their baggage, and letters, and mails. All such vessels shall be furnished by the appropriate customs officers of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages; by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed.**

**Sec. 3127. Any foreign merchandise taken in at one port of the United States to be conveyed** ~~in registered vessels~~ **a United States documented vessel with a registry or coastwise endorsement, or both, to any other port within the same, either under the provisions relating to warehouses, or under the laws regulating the transportation coastwise of merchandise entitled to drawback, as well as any merchandise not entitled to drawback, but on which the import duties chargeable by law shall have been duly paid, shall not become subject to any import duty by reason of the vessel in which they may arrive having touched at a foreign port during the voyage.**

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## TITLE XLVIII--REGULATION OF COMMERCE AND NAVIGATION

Chapter One--Registry and Recording

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**Sec. 4136. ~~The Secretary of Commerce may issue a register or enrollment~~ The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for any vessel wrecked on the coasts of the United States or her possessions or adjacent waters, when purchased by a citizen or citizens of the United States and thereupon repaired in a shipyard in the United States or her possessions, if it shall be proved to the satisfaction of the ~~Secretary of Commerce~~ Secretary of Transportation, if he deems it necessary , through a board of three appraisers appointed by him, that the said repairs put upon such vessels are equal to three times the appraised salved value of the vessel: Provided, That the expense of the appraisal herein provided for shall be borne by the owner of the vessel: Provided further, That if any of the material matters of fact sworn to or represented by the owner, or at his instance, to obtain the register of any vessel are not true, there shall be a forfeiture to the United States of the vessel in respect to which the oath shall have been made, together with tackel, apparel, and furniture thereof.**

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Chapter Two--Clearance and Entry

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**~~Sec. 4197. The master or person having the charge or command of any vessel bound to a foreign port shall deliver to the collector of the district from which such vessel is about to depart a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo, but without specifying the particulars thereof in the clearance, unless required by the master or other person having the charge or command of such vessel so to do. In any vessel bound to a foreign port (other~~**

~~than a licensed yacht or an undocumented American pleasure vessel not engaged in any trade nor in any way violating the customs or navigation laws of the United States) departs from any port or place in the United States without a clearance, or if the master delivers a false manifest, or does not answer truly the questions demanded of him, or, having received a clearance adds to the cargo of such vessel without having mentioned in the report outwards the intention to do so, or if the departure of the vessel is delayed beyond the second day after obtaining clearance without reporting the delay to the collector, the master or other person having the charge or command of such vessel shall be liable to a penalty of not more than $1,000 nor less the $500, or if the cargo consists in any part of narcotic drugs, or any spirits, wines, or other alcoholic liquors (sea stores excepted), a penalty of not more than $5,000 nor less than $1,000 for each offense, and the vessel shall be detained in any port of the United States until the said penalty is paid or secured: Provided, That in order that the commerce of the United States may move with expedition and without undue delay, the Secretary of Commerce is hereby authorized to make regulations permitting the master of any vessel taking on cargo for a foreign port or for a port in noncontiguous territory belonging to the United States to file a manifest as hereinbefore provided, and if the manifest be not a complete manifest and it so appears upon such manifest, the collector of customs may grant clearance to the vessel in case of an incomplete manifest, taking from the owner of the vessel, who may act in the premises by a duly authorized attorney in fact, a bond with security approved by the collector of customs in the penal sum of $1,000, conditioned that the master or someone for him will file a completed outward manifest not later than the fourth business day after the clearance of the vessel. In the event that the said complete outward manifest be not filed as required by the provisions of this section and the regulations made by the Secretary of Commerce in pursuance hereof, then a penalty of $50 for each day's delinquency beyond the allowed period of four days for filing the completed manifest shall be exacted, and if the completed manifest be not filed within the three days following the four-day period, then for each succeeding day of delinquency a penalty of $100 shall be exacted. Suit may be instituted in the name of the United States against the principal and surety on the bond for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.~~

**SEC. 4197. CLEARANCE; VESSELS.**

(a) When Required; Vessels of the United States.--Except as otherwise provided by law, any vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States--
(1) for a foreign port or place;
(2) for another port or place in the United States if the vessel has on board bonded merchandise or foreign merchandise for which entry has not been made; or
(3) outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.
(b) When Required; Other Vessels.--Except as otherwise provided by law, any vessel that is not a vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States--
(1) for a foreign port or place;
(2) for another port or place in the United States; or
(3) outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.
(c) Regulations.--The Secretary of the Treasury may by regulation--
(1) prescribe the manner in which clearance under this section is to obtained, including the documents, data or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;
(2) permit the Customs Service to grant clearance for vessel under this section before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary of the Treasury conditioned upon the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary of the Treasury; and
(3) authorize the Customs Service to permit clearance of any vessel to be obtained at a place other than a designated port of entry, under such conditions as he may prescribe.

~~**Sec. 4198. The oath to be taken by the master or commander of the vessel shall be as follows:**~~

District of

~~I, (insert the name), master or commander of the (insert the~~

~~denomination and name of the vessel), bound from the port of (insert the name of the port or place sailing from) to ((insert the name of the port or place bound to), do solemnly, sincerely, and truly swear (or affirm, as the case may be) that the manifest of the cargo on board the said (insert denomination and name of the vessel), now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said (insert denomination and name of vessel) previous to her sailing from this port, I will immediately report the same to the said collector. I do also swear (or affirm) that I verily believe that duties on all the foreign merchandise therein specified have been paid or secured, according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such distress or accident may happen. So help me God.~~

**~~Sec. 4199. (a) Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest required under this chapter shall be attached to such manifest and delivered to the appropriate officer of the United States Customs Service at the time such manifest is delivered.~~**

~~(b) The following information shall be included on such manifest, or on attached copies of bills of lading or equivalent commercial documents:~~
~~(1) Name and address of shipper.~~
~~(2) Description of the cargo.~~
~~(3) Number of packages and gross weight.~~
~~(4) Name of vessel or carrier.~~
~~(5) Port of exit.~~
~~(6) Port of destination.~~
~~(c) Except as provided in subsection (d), the following information contained on such manifest, or on attached copies of bills of lading or equivalent commercial documents, shall be available for public disclosure:~~
~~(1) Name and address of shipper, unless the shipper has made a biennial certification claiming confidential treatment pursuant to procedures adopted by the Secretary of the Treasury.~~
~~(2) General character of the cargo.~~
~~(3) Number of packages and gross weight.~~
~~(4) Name of vessel or carrier.~~

~~(5) Port of exit.~~
~~(6) Port of destination.~~
~~(7) Country of destination.~~
~~(d) The information listed in subsection (c) shall not be available for public disclosure if--~~
~~(1) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or~~
~~(2) the information is exempt under the provisions of section 552(b)(1) of title 5 of the United States Code.~~
~~(e) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in subsection (c) above, is authorized to establish procedures to provide access to manifests, or attached bills of lading or equivalent commercial documents which shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests or attached bills of lading, or equivalent commercial documents.~~

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**~~Sec. 4201. The form of a clearance, to be granted to a ship or vessel on her departure to a foreign port or place, shall be as follows: District of ------, ss, ------~~**

~~Port of ------:------~~
~~These are to certify all whom it doth concern, that --------, master or commander of the --------, burden -------- tons, or thereabouts, mounted with -------- guns, navigated with -------- men, -------- built, and bound for --------, having on board --------, hath here entered and cleared his said vessel according to law. Given under our hands and seals, at the custom-house of --------, this -------- day of --------, one thousand --------, and in the -------- year of the Independence of the United States of America.~~

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**~~Sec. 4207. Whenever any clearance is granted to any vessel of the United States, duly registered as such, and bound on any foreign voyage, the collector of the district shall annex thereto, in every case, a copy of the rates or tariffs of fees which diplomatic and consular officers are entitled, by the regulations prescribed by the President, to receive for their services.~~**

~~Sec. 4208. The master or person having charge or command of any steamboat on Lake Champlain, when going from the United States into the province of Quebec, may deliver a manifest of the cargo on board, and take a clearance from the collector of the district through which any such boat shall last pass, when leaving the United States, without regard to the place from which any such boat shall have commenced her voyage, or where her cargo shall have been taken on board.~~

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~~Sec. 4213. It shall be the duty of all masters of vessels for whom any official services shall be performed by any consular officer, without the payment of a fee, to require a written statement of such services from such consular officer, and, after certifying as to whether such statement is correct, to furnish it to the collector of the district in which such vessels shall first arrive on their return to the United States; and if any such master of a vessel shall fail to furnish such statement, he shall be liable to a fine of not exceeding fifty dollars, unless such master shall state under oath that no such statement was furnished him by said consular officer. And it shall be the duty of every collector to forward to the Secretary of the Treasury all such statements as shall have been furnished to him, and also a statement of all certified invoices which shall have come to his office, giving the dates of the certificates, and the names of the persons for whom and of the consular officer by whom the same were certified.~~

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Chapter Three--Tonnage Duties

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~~Sec. 4221. In cases of vessels making regular daily trips between any port of the United States and any port in the Dominion of Canada, wholly upon interior waters not navigable to the ocean, no tonnage or clearance fees shall be charged against such vessel by the officers of the United States, except upon the first clearing of such vessel in each year.~~

~~Sec. 4222. No consul or consular agent of the United States~~

~~shall exact tonnage fees from any vessel of the United States, touching at or near ports in Canada, on her regular voyage from one port to another within the United States, unless such consul or consular agent shall perform some official services, required by law for such vessel, when she shall thus touch at a Canadian port.~~

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## TITLE XLIX--REGULATION OF VESSELS IN FOREIGN COMMERCE

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TITLE XLIX

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~~Sec. 4306. Every vessel of the United States, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector for the district where such vessel may be, with a passport, the form for which shall be prescribed by the Secretary of State. In order to be entitled to such passport, the master of every such vessel shall be bound, with sufficient sureties, to the Treasury of the United States, in the penalty of two thousand dollars, conditioned that the passport shall not be applied to the use or protection of any other vessel than the one described in it; and that, in case of the loss or sale of any vessel having such passport, the same shall, within three months, be delivered up to the collector from whom it was received, if the loss or sale take place within the United States; or within six months, if the same shall happen at any place nearer than the Cape of Good Hope; and within eighteen months, if at a more distant place.~~

~~Sec. 4307. If any vessel of the United States shall depart therefrom, and shall be found to any foreign country, other than to some port in America, without such passport, the master of such vessel shall be liable to a penalty of two hundred dollars for every such offense.~~

~~Sec. 4308. Every unregistered vessel owned by a citizen of the~~

~~United States, and sailing with a sea-letter, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector of the district where such vessel may be with a passport, for which the master shall be subject to the rules and conditions prescribed for vessels of the United States.~~

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**TITLE L--REGULATION OF VESSELS IN DOMESTIC COMMERCE**

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~~Sec. 4332. Every surveyor who certifies a manifest, or grants any permit, or who receives any certified manifest, or any permit, as is provided for in this Title, shall make return thereof monthly, or sooner, if it can conveniently be made, to the collector of the district where such surveyor resides.~~

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Sec. 4336. Any officer concerned in the collection of the revenue may at all times inspect the ~~register or enrollment or license of any vessel~~ certificate of documentation of any documented vessel or any document in lieu thereof; and if the master or other person in charge or command of any such vessel shall not exhibit the same, when required by such officer, unless the vessel is one which by regulation of the ~~Secretary of the Treasury is not required to have its register or enrollment or license~~ Secretary of Transportation is not required to have its certificate of documentation or document in lieu thereof on board, such master or person in charge or command shall be liable to a penalty of $100, unless the failure to do so is willful, in which case he shall be liable to a penalty of $1,000 and to a fine of not more than $1,000 or imprisonment for not more than one year, or both.

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~~Sec. 4348. The seacoasts and navigable rivers of the United States and Porto Rico shall be divided into five great districts:~~

~~The first to include all the collection districts on the seacoasts and navigable rivers between the northern boundary of the State of Maine and the southern boundary of the State of Texas; the second to consist of the island of Porto Rico; the third to include the collection districts on the seacoasts and navigable rivers between the southern boundary of the State of California and the northern boundary of the State of Washington; the fourth to consist of the Territory of Alaska; the fifth to consist of the Territory of Hawaii.~~

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~~Sec. 4358. The coasting trade between the territory ceded to the United States by the Emperor of Russia and any other portion of the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts.~~

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~~Sec. 4361. Whenever any vessel of the United States, registered according to law, is employed in going from any one district in the United States to any other district, such vessel, and the master thereof, with the goods she may have on board previous to her departure from the district where she may be, and also upon her arrival in any other district, shall be subject, except as to the payment of fees, to the same regulations, provisions, penalties, and forfeitures, and the like duties are imposed on like officers, as are provided for vessels licensed for carrying on the coasting-trade. Nothing herein contained shall be construed to extend to registered vessels of the United States having on board merchandise of foreign growth or manufacture, brought into the United States, in such vessel, from a foreign port, and on which the duties have not been paid according to law.~~

~~Sec. 4362. The collector of the district of Philadelphia may grant permits for the transportation of merchandise of foreign growth or manufacture across the State of New Jersey to the district of New York, or across the State of Delaware to any district in the State of Maryland or Virginia; and the collector of the district of New York may grant like permits for~~

~~transportation across the State of New Jersey; and the collector of any district of Maryland or Virginia may grant like permits for transportation across the State of Delaware to the district of Philadelphia. Every such permit shall express the name of the owner, or person sending the merchandise, and of the person to whom the merchandise is consigned, with the marks, numbers, and description of the packages, whether bale, box chest, or otherwise, and the kind of goods contained therein, and the date when granted; and the owner, or person sending such goods, shall swear that they were legally imported, and the duties paid. Where the merchandise, to be so transported, shall be of less value than eight hundred dollars, the permit shall not be deemed necessary.~~

~~Sec. 4363. The owner or consignee of all merchandise transported under the provisions of the preceding section and for the transportation whereof a permit is necessary, shall, within twenty-four hours after the arrival thereof at the place to which such merchandise was permitted to be transported, report the same to the collector of the district where it has arrived, and shall deliver up the permit accompanying the same; and if the owner or consignee shall neglect or refuse to make due entry of such merchandise within the time and in the manner directed, all such merchandise shall be subject to forfeiture; and if the permit granted shall not be given up within the time limited for making the report, the person to whom it was granted, neglecting or refusing to deliver it up, shall be liable to a penalty of fifty dollars for every twenty-four hours it shall be withheld afterward.~~

~~Sec. 4364. Whenever any vessel, licensed for carrying on the fishery, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port.~~

~~Sec. 4365. Whenever a vessel, licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the~~

~~value of five hundred dollars, without having such permission as is directed by the preceding section, such vessel, together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture.~~

~~Sec. 4366. The master of every vessel employed in the transportation of merchandise from district to district, that shall put into a port other than the one to which she was bound, shall, within twenty-four hours of his arrival, if there be an officer residing at such port, and she continue there so long, make report of his arrival to such officer, with the name of the place he came from, and to which he is bound, with an account of his lading; and every master who neglects or refuses so to do shall be liable to a penalty of twenty dollars.~~

~~Sec. 4367. The master of every foreign vessel bound from a district in the United States to any other district within the same, shall, in all cases previous to her departure from such district, deliver to the collector of such district duplicate manifests of the lading on board such vessel, if there be any, or, if there be none, he shall declare that such is the case; and to the truth of such manifest or declaration he shall swear, and also obtain a permit from the collector, authorizing him to proceed to the place of his destination.~~

~~Sec. 4368. The master of every foreign vessel, on his arrival within any district from any other district, shall, in all cases, within forty-eight hours after his arrival, and previous to the unlading of any goods from on board such vessel, deliver to the collector of the district where he may have arrived, a manifest of the goods laden on board such vessel, if any there be; or if in ballast only, he shall so declare; he shall swear to the truth of such manifest or declaration, and shall also swear that such manifest contains an account of all the merchandise which was on board such vessel at the time, or has been since her departure for the place from whence she shall be reported last to have sailed; and he shall also deliver to such collector the permit which was given him from the collector of the district from whence he sailed.~~

~~Sec. 4369. Every master of any foreign vessel who neglects or refuses to comply with any of the requirements of the two preceding sections, shall be liable to a penalty of one hundred dollars. Nothing therein contained shall, however, be construed~~

~~as affecting the payment of tonnage, or any other requirements to which such vessels are subject by law.~~

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## TITLE LIII--MERCHANT SEAMEN

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### Chapter Five--Protection and Relief

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~~Sec. 4573. Before a clearance is granted to any vessel bound on a foreign voyage or engaged in the whale-fishery, the master thereof shall deliver to the collector of the customs a list containing the names, places of birth and residence, and description of the persons who compose his ship's company; to which list the oath of the captain shall be annexed, that the list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents.~~

~~Sec. 4574. In all cases of private vessels of the United States sailing from a port in the United States to a foreign port, the list of the crew shall be examined by the collector for the district from which the vessel shall clear, and, if approved of by him, shall be certified accordingly. No person shall be admitted or employed on board of any such vessel unless his name shall have been entered in the list of the crew, approved and certified by the collector for the district from which the vessel shall clear. The collector, before he delivers the list of the crew, approved and certified, to the master or proper officer of the vessel to which the same belongs, shall cause the same to be recorded in a book by him for that purpose to be provided, and the record shall be open for the inspection of all persons, and a certified copy thereof shall be admitted in evidence in any court in which any question may arise under any of the provisions of the Title.~~

**~~Sec. 4575. The following rules shall be observed with reference to vessels bound on any foreign voyage:~~**

~~First. The duplicate list of the ship's company, required to be made out by the master and delivered to the collector of the customs, under section forty-five hundred and seventy-three, shall be a fair copy in one uniform handwriting, without erasure or interlineation.~~
~~Second. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made, a true and certified copy of the shipping-articles, containing the names of the crew, which shall be written in a uniform hand, without erasures of interlineations.~~
~~Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.~~
~~Fourth. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of law which guard the rights of mariners.~~
~~Fifth. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this section, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of one hundred dollars for each offense.~~
~~Sixth. It shall be the duty of the boarding-officer to report all violations of this section to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury and to the United States attorney in his district.~~
**~~Sec. 4576. The master of every vessel bound on a foreign voyage or engaged in the whale fishery shall exhibit the certified copy of the list of the crew to the first boarding-officer at the first port in the United States at which he shall arrive on his return, and also produce the persons named therein to the boarding-officer, whose duty it shall be to examine the men with such list and to report the same to the collector; and it shall be the duty of the collector at the port of arrival, where~~**

~~the same is different from the port from which the vessel originally sailed, to transmit a copy of the list so reported to him to the collector of the port from which such vessel originally sailed. For each failure to produce any person on the certified copy of the list of the crew the master and owner shall be severally liable to a penalty of four hundred dollars, to be sued for, prosecuted, and disposed of in such manner as penalties and forfeitures which may be incurred for offenses against the laws relating to the collection of duties; but such penalties shall not be incurred on account of the master not producing to the first boarding officer any of the persons contained in the list who may have been discharged in a foreign country with the consent of the consul, vice-consul, commercial agent, or vice-commercial agent there residing, certified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew, nor on account of any such person dying or absconding or being forcibly impressed into other service of which satisfactory proof shall also be exhibited to the collector.~~

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## II.--NATIONAL BANKS

### Chapter One--Organization and Powers

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**Sec. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power--**

First. To adopt and use a corporate seal.
Second. To have succession from the date of the approval of this Act, or from the date of its organization if organized after such date of approval until such time as it be dissolved by the act of its shareholders owning two- thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

Third. To make contracts.
Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.
Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.
Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.
Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: Provided, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and

purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act, or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary" pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110 (h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such

obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge or both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: Provided, That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the North American Development Bank, the Asian Development Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: Provided, That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this

purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: Provided, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: Provided further, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees, but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the associations capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered

and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph--
(1) * * *

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**Harmonized Tariff Schedule of the United States**

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**General notes**

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4. Exemptions. For the purposes of general note 1--
(a) * * *

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(c) records, diagrams and other data with regard to any business, engineering or exploration operation whether on paper, cards, photographs, blueprints, tapes or other media, ~~and~~
(d) articles returned from space within the purview of section 484a of the Tariff Act of 1930, and
(e) articles exported from the United States which are returned within 45 days after such exportation from the United States as undeliverable and which have not left the custody of the carrier or foreign customs service, are not goods subject to the provisions of the tariff schedule. No exportation referred to in subdivision (e) may be treated as satisfying any requirement for exportation in order to receive a benefit

from, or meet an obligation to, the United States as a result of such exportation.

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## SECTION XVII--VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT

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### Chapter 86--Railway or Tramway Locomotives, Rolling Stock and Parts Thereof; Railway or Tramway Track Fixtures and Fittings and Parts Thereof; Mechanical (Including Electro-Mechanical) Traffic Signaling Equipment of all Kinds

Notes

1. * * *

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4. Railway locomotives (provided for in headings 8601 and 8602) and railway freight cars (provided for in heading 8606) on which no duty is owed are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.

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## SECTION XXII--SPECIAL CLASSIFICATION PROVISIONS; TEMPORARY LEGISLATION; TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO TRADE LEGISLATION; ADDITIONAL IMPORT RESTRICTIONS ESTABLISHED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

### Chapter 98--Special Classification Provisions

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SUBCHAPTER III--SUBSTANTIAL CONTAINERS OR HOLDERS

U.S. Notes

1. * * *

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4. Instruments of international traffic, such as containers, lift vans, rail cars and locomotives, truck cabs and trailers, etc, are exempt from formal entry procedures but are required to be accounted for when imported and exported into and out of the United States, respectively, through the manifesting procedures required for all international carriers by the United States Customs Service. Fees associated with the importation of such instruments of international traffic shall be reported and paid on a periodic basis as required by regulations issued by the Secretary of the Treasury and in accordance with 1956 Customs Convention on Containers (20 UST 30; TIAS 6634).

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**Chapter 99--Temporary Legislation; Temporary Modifications Established Pursuant to Trade Legislation; Additional Import Restrictions Established Pursuant to Section 22 of the Agricultural Adjustment Act, as Amended**

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SUBCHAPTER V--TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO THE UNITED STATES-CANADA FREE TRADE AGREEMENT

U.S. Notes

1. * * *

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9. Railway freight cars provided for in subheadings 9905.86.05 and 9905.86.10 are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.

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## SECTION 9703 OF TITLE 31, UNITED STATES CODE

Sec. 9703. Department of the Treasury Forfeiture Fund

(a) In General.--There is established in the Treasury of the United States a fund to be known as the "Department of the Treasury Forfeiture Fund" (referred to in this section as the "Fund"). The Fund shall be available to the Secretary, without fiscal year limitation, with respect to seizures and forfeitures made pursuant to any law (other than section 7301 or 7302 of the Internal Revenue Code of 1986) enforced or administered by the Department of the Treasury or the United States Coast Guard for the following law enforcement purposes:

(1) * * *

(2) At the discretion of the Secretary--

(A) * * *

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(E) the payment of claims against employees of the Customs Service settled by the Secretary under section 630 of the Tariff Act of 1930;

~~(E)~~ (F) payment for equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the vessel, vehicle, or aircraft will be used in joint law enforcement operations with a Department of the Treasury law enforcement organization;

~~(F)~~ (G) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State or local law enforcement officers that are incurred in joint law enforcement operations with a Department of the Treasury law enforcement organization;

~~(G)~~ (H) reimbursement of private persons for expenses incurred by such persons in cooperating with a Department of the Treasury law enforcement organization in investigations and undercover law enforcement operations;

~~(H)~~ (I) payment for training foreign law enforcement personnel with respect to seizure or forfeiture activities of the Department of the Treasury; and

~~(I)~~ (J) payment made pursuant to guidelines promulgated by the Secretary, if such payment is necessary and directly related to seizure and forfeiture program expenses for--

(i) the purchase or lease of automatic data processing systems (not less than a majority of which use will be related to such program);

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(e) Investments.--Amounts in the Fund, and in any holding accounts associated with the Fund, which are not currently needed for the purposes of this section ~~shall~~ may be kept on deposit or invested in obligations of, or guaranteed by, the United States and all earnings on such investments ~~shall~~ may be deposited in the Fund.

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**Act of June 16, 1937**

AN ACT To expedite the dispatch of vessels from certain ports of call.

~~Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to expedite the dispatch of vessels carrying passengers operating on regular schedules and arriving at night or on a Sunday or a holiday at a port in the United States at which such vessel is required by law to report arrival and make entry and from which it is required to obtain a clearance, the appropriate customs officer, if the vessel departs during the same night, Sunday, or holiday on which it arrives may, under such regulations as may be prescribed the Secretary of the Treasury, receive the report of arrival and entry of such vessel from and give clearance for such vessel to the master or other proper officer thereof on board such vessel: Provided, That bond, as prescribed in section 451 of the Tariff Act of 1930, is given to secure reimbursement to the Government for the compensation of, and expenses incurred by, such customs officers in performing such services, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to lading or unlading at night or on Sunday or a holiday.~~

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**Section 965 of Title 18, United States Code**

Sec. 965. Verified statements as prerequisite to vessel's departure

(a) During a war in which the United States is a neutral nation, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance or not, before departure of such vessel from port shall, in addition to the facts required by ~~sections 91, 92, and 94 of Title 46~~ section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, deliver to the ~~collector of customs for the district wherein such vessel is then located~~ Customs Service a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel shall in the same manner and under the same conditions deliver to the ~~collector~~ Customs Service like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively.

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**Section 9 of the Act To Prevent Pollution From Ships**

Sec. 9. (a) * * *

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(e) If any ship subject to the MARPOL Protocol or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, ~~shall refuse or revoke--~~
~~(1) the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91); or~~

~~(2) a permit to proceed under section 4367 of the revised Statutes of the United States (46 U.S.C. 313) or section 443 of the Tariff Act 1930, as amended (19 U.S.C. 1443). Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.~~ shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.

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**Act of October 3, 1913**

**CHAPTER 16.--An Act To reduce tariff duties and to provide revenue for the Government, and for other purposes.**

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Section IV.
A. * * *

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**J. SUBSECTION 1.**

A discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States, or which being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at the time of such importation by treaty or convention or Act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to goods, wares, and merchandise imported in a vessel owned by citizens of the United States, but not a vessel of the United States, if such vessel,

after entering an American port, shall before leaving the same be ~~registered as a vessel of the United States,~~ documented under chapter 121 of title 46, United States Code, nor to such foreign products or manufactures as shall be imported from such contiguous countries in the usual course of strictly retail trade.

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**J. SUBSECTION 3.**

Section 130 of this title shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against ~~vessels of the United States~~ United States documented vessels nor to any vessel owned by citizens of the United States but not a vessel of the United States if such vessel after entering an American port shall, before leaving the same, be ~~registered as a vessel of the United States.~~ documented under chapter 121 of title 46, United States Code.

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**Act of August 5, 1935**

AN ACT To protect the revenue of the United States and provide measures for the more effective enforcement of the laws respecting the revenue, to prevent smuggling, to authorize customs-enforcement areas, and for other purposes.

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

**TITLE I**

Section 1. (a) * * *

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**Sec. 4. Subject to appeal to the Secretary of Commerce and under such regulations as he may prescribe, ~~whenever the~~**

**~~collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, licensed, or numbered~~ when the Secretary of Transportation is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever, from the design or fitting of any vessel or the nature of any repairs made thereon, it is apparent to ~~such collector~~ the Secretary of Transportation that such vessel has been built or adapted for the purpose of smuggling merchandise, the ~~said collector shall revoke the registry, enrollment, license, or number of said vessel~~ the Secretary of Transportation shall revoke any endorsement on the vessel's certificate of documentation or number (when the Secretary is the authority issuing the number under chapter 123 of title 46, United States Code) or refuse the same if application be made therefor, as the case may be. ~~Such collector and all persons~~ The Secretary of Transportation and all persons acting by or under his direction shall be indemnified from any penalties or actions for damages for carrying out the provisions of this section.**

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**Act of November 6, 1966**

AN ACT To require evidence of adequate financial responsibility to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages, to establish minimum standards for passenger vessels and to require disclosure of construction details on passenger vessels, and for other purposes.

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**Sec. 2. (a) * * ***

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(e) ~~The collector of customs at~~ At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

**Sec. 3. (a) * * ***

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(e) ~~The collector of customs at~~ At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statues (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commissioner that the provisions of this section have been complied with.

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## Section 1 of the Act of February 10, 1900

## CHAPTER 15.--An Act Relating to Cuban vessels.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. ~~That vessels owned by citizens of Cuba and documented as such by officers of the United States shall hereafter be entitled in ports of the United States to the rights and privileges of vessels of the most favored nation, and they and their cargoes shall be subject to no higher charges in ports of the United States than are imposed on the vessels and cargoes of the most favored nation in the same trade.~~

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## Section 2 of the Act of April 29, 1908

**CHAPTER 152.--An Act To repeal an Act approved April thirtieth, nineteen hundred and six, entitled "An Act to regulate shipping in trade between ports of the United States and ports or places in the Philippine Archipelago, between ports or places in the Philippine Archipelago, and for other purposes," and for other purposes.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago. ~~**Sec. 2. That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United States from the Philippine Islands which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries.**~~

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## Section 1 of the Act of July 1, 1916

**CHAPTER 209.--An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not

otherwise appropriated, for the fiscal year ending June thirtieth, nineteen hundred and seventeen, namely:

* * * * *

~~That the internal-revenue taxes imposed by the Philippine Legislature under the law enacted by that body on December twenty-first, nineteen hundred and fifteen, as amended by the law enacted by that body on February fourth, nineteen hundred and sixteen, and the tonnage tax on vessels engaged in foreign trade enacted by that body on February fourth, nineteen hundred and sixteen, are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is hereby legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed.~~

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## The Act of July 3, 1926

### CHAPTER 757.--An Act To create a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That there is hereby created, in addition to the five great districts provided by section 4348 of the Revised Statutes as amended by the Act of May 12, 1906, a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York.~~

**~~Sec. 2. Enrolled and licensed vessels operating in the great district herein created shall be subject to all of the requirements of licensed and enrolled and licensed vessels imposed by sections 4349, 4350, 4351, and 4352 of the Revised Statutes and amendments and laws supplementary thereto: Provided, That nothing herein shall affect the rights or privileges reserved to seamen under existing law.~~**

**Sec. 3. Sections 3116 and 3117 of the Revised Statutes are hereby repealed.**

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**Act of May 4, 1934**

Authorizing pursers or licensed deck officers of vessels to perform the duties of the masters of such vessels in relation to entrance and clearance of same.

~~Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, under any provision or provisions of any statute of the United States, it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or purser of such vessel, such acts shall have the same force and effect as if performed by masters of such vessels: Provided, That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels.~~

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**Section 1403 of the Water Resources Development Act of 1986**

SEC. 1403. CREATION OF HARBOR MAINTENANCE TRUST FUND.

(a) * * *
~~(b) Authorization of Appropriations.--There are authorized to be appropriated to the Department of the Treasury (from the fees collected under paragraphs (9) and (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985) such sums as may be necessary to pay all expenses of administration incurred by such Department in administering subchapter A of chapter 36 of the Internal Revenue Code of 1954 for periods to which such fees apply.~~

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**Section 9501 of the Omnibus Budget Reconciliation Act of 1987**

SEC. 9501. CUSTOMS USER FEES.

(a) * * *

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(c) Analysis Regarding the CES Program; Effect on Implementation of Program.--
(1) * * *

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(3) The Commissioner of Customs is authorized to obtain from the operators of centralized cargo examination stations information regarding the fees paid to them for the provision of services at these stations.

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**Section 123 of the Customs and Trade Act of 1990**

SEC. 123. ANNUAL NATIONAL TRADE AND CUSTOMS LAW VIOLATION ESTIMATES AND ENFORCEMENT STRATEGY.

(a) * * *

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(d) Compliance Program.--The Commissioner of Customs shall--
(1) devise and implement a methodology for estimating the level of compliance with the laws administered by the Customs Service; and
(2) include as an additional part of the report required to be submitted under subsection (a) for each of fiscal years 1994, 1995, and 1996, an evaluation of the extent to which such compliance was obtained during the 12-month period preceding the 60th day before each such fiscal year.
~~(d)~~ (e) Confidentiality.--The contents of any report submitted to the

Committees under subsection (a) or (c)(2) are confidential and disclosure of all or part of the contents is restricted to--
(1) officers and employees of the United States designated by the Commissioner of Customs;
(2) the chairman of each of the Committees; and
(3) those members of each of the Committees and staff persons of each of the Committees who are authorized by the Chairman thereof to have access to the contents.

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**Section 402 of the Agricultural Trade Development and Assistance Act of 1954**

SEC. 402. DEFINITIONS.

As used in this Act:
(1) * * *
~~(2) Agricultural commodity.--The term "agricultural commodity", unless otherwise provided for in this Act, includes any agricultural commodity or the products thereof produced in the United States, including wood and processed wood products, fish, and livestock as well as value-added, fortified, or high-value agricultural products. Effective beginning on October 1, 1991, for purposes of title II, a product of an agricultural commodity shall not be considered to be produced in the United States if it contains any ingredient that is not produced in the United States, if that ingredient is produced and is commercially available in the United States at fair and reasonable prices.~~
(2) Agricultural commodity.--
(A) In general.--The term "agricultural commodity" means--
(i) with respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and
(ii) with respect to a product of an agricultural commodity--
(I) a product all of the agricultural components of which are entirely produced in the United States; or
(II) any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if--
(aa) the component is an added, de minimis component,
(bb) the component is not commercially produced in the United States, and

(cc) there is no acceptable substitute for the component that is commercially produced in the United States.

(B) Specific commodities.--For purposes of this paragraph--

(i) fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country; and

(ii) the term "agricultural commodity" includes wood and processed wood products, fish, and livestock, and value-added, fortified, or high-value agricultural products, that meet the requirements of this paragraph.