NAFTA Public Law 103-182

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SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

(a) Short Title.--This Act may be cited as the "North American Free Trade Agreement Implementation Act"
(b) Table of Contents.—

House Ways & Means Committee Report

Section 1 of H.R. 3450 contains the short title of the Act, which may be cited as the "North American Free Trade Agreement Implementation Act", and sets forth the table of contents of the bill.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SECTION 2. DEFINITIONS

For purposes of this Act:(1) Agreement.--The term "Agreement" means the North American Free Trade Agreement approved by the Congress under section 101(a).(2) HTS.--The term "HTS" means the Harmonized Tariff Schedule of the United States.(3) Mexico.--Any reference to Mexico shall be considered to be a reference to the United Mexican States.(4) NAFTA country.--Except as provided in section 202, the term "NAFTA country" means--(A) Canada for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and(B) Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico.(5) International trade commission.--The term "International Trade Commission" means the United States International Trade Commission.(6) Trade representative.--The term "Trade Representative" means the United States Trade Representative.

House Ways & Means Committee Report

Section 2 of H.R. 3450 defines various terms used throughout the Act. The term "Agreement" refers to the North American Free Trade Agreement (NAFTA) approved by the Congress under section 101(a). The term "HTS" means the Harmonized Tariff Schedule of the United States. The term "NAFTA country" means, except as provided in section 202 (Rules of Origin),

Canada for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico. The term "International Trade Commission" means the United States International Trade Commission (ITC). The term "Trade Representative" means the United States Trade Representative (USTR).

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 2 defines key terms used throughout the Act.

TITLE I--APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE NORTH AMERICAN FREE TRADE AGREEMENT

House Ways & Means Committee Report

Title I of H.R. 3450 contains various provisions of general application relating to the NAFTA, including approval of the Agreement and conditions for its entry into force for the United States; the relationship of the NAFTA to U.S. and State law and a Federal-State consultation process; procedures for implementing actions under, or future changes in, the NAFTA in U.S. law; authorization of institutional arrangements; the relationship between the NAFTA and the U.S.-Canada Free Trade Agreement (FTA); and Congressional intent with respect to future accession by countries to the NAFTA.

The House Energy & Commerce Committee Report

TITLE I--APPROVAL OF, AND GENERAL PROVISIONS TO, THE NORTH AMERICAN FREE TRADE AGREEMENT

Senate Finance Committee Report

Title I--Approval of, and General Provisions Relating to, the North American Free Trade Agreement (NAFTA)

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE NORTH AMERICAN FREE TRADE AGREEMENT

(a) Approval of Agreement and Statement of Administrative Action.--Pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves--(1) the North American Free Trade Agreement entered into on December 17, 1992, with the Governments of Canada and Mexico and submitted to the Congress on November 4, 1993; and(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on November 4, 1993.

(b) Conditions for Entry Into Force of the Agreement.--The President is authorized to exchange notes with the Government of Canada or Mexico providing for the entry into force, on or after January 1, 1994, of the Agreement for the United States with respect to such country at such time as--(1) the President--(A) determines that such country has implemented the statutory changes necessary to bring that country into compliance with its obligations under the Agreement and has made provision to implement the Uniform Regulations provided for under article 511 of the Agreement regarding the interpretation, application, and administration of the rules of origin, and(B) transmits a report to the House of Representatives and the Senate setting forth the determination under subparagraph (A) and including, in the case of Mexico, a description of the specific measures taken by that country to--(i) bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement, and(ii) otherwise ensure the effective implementation of the binational panel review process under chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations; and(2) the Government of such country exchanges notes with the United States providing for the entry into force of the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation for that country and the United States.

House Ways & Means Committee Report

Present law

Section 101 of the U.S.-Canada Free Trade Agreement Implementation Act of 1988 approved the U.S.-Canada FTA, and the accompanying exchange of letters and Statement of Administrative Action. As described in this report under Legislative Authority, section 1103 of the Omnibus Trade and Competitiveness Act of 1988 provides the authority for entry into force of the NAFTA, subject to Congressional approval of an implementing bill under the "fast track" procedures of section 151 of the Trade Act of 1974.

Explanation of provision

Section 101 of H.R. 3450 approves and sets forth the conditions for entry into force of the NAFTA. Under subsection (a), and pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988, and section 151 of the Trade Act of 1974, the Congress approves the North American Free Trade Agreement entered into on December 17, 1992, and the Statement of Administrative Action proposed to implement the Agreement, that were submitted to the Congress on November 4, 1993.

Subsection (b) authorizes the President to exchange notes with the Government of Canada or Mexico providing for the entry into force, on or after January 1, 1994, of the NAFTA for the United States at such time as two conditions are met:

1. The President must determine that such country (a) has implemented the statutory changes necessary to comply with its obligations under the NAFTA and has made provision to implement the Uniform Regulations provided for under Article 511 of the Agreement regarding the rules of origin; and (b) transmits a report to the Congress setting forth that determination and describing the specific measures taken by Mexico to bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement, and otherwise ensure the effective implementation of the binational panel review process under Chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations.
2. The Government of Canada or Mexico exchanges notes with the United States providing for the entry into force of the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation for that country and the United States.

Reasons for change

Article 2203 of the NAFTA provides for the entry into force of the Agreement on January 1, 1994, on an exchange of written notifications certifying the completion of necessary legal procedures.

The Committee believes that approval of the North American Free Trade Agreement as submitted to the Congress is in the U.S. national interest for the reasons cited in the President's transmittal message and described under the Background and Purpose section of this report.

The conditions for entry into force of the NAFTA for the United States, and provisions throughout the Act which make the implementation of changes in U.S. law effective only upon entry into force of the Agreement obligations, are intended to ensure that the United States does not extend the benefits under the NAFTA to Canada or Mexico unless and until that country also implements the reciprocal benefits for the United States. In particular, it is essential that Mexico implement the specific commitments undertaken to introduce greater transparency and procedural fairness in its trade laws necessary for effective operation of the binational review process under Chapter 19 of the NAFTA, and that uniform regulations be in place to ensure proper implementation of reciprocal benefits for NAFTA parties through common interpretation and application of the rules of origin. It is also essential that the obligations undertaken in the supplemental agreements on

labor and environmental cooperation, signed by the three governments on September 14, 1993, enter into force as components of the NAFTA package.

The House Energy & Commerce Committee Report

Section 101 provides that the Congress approves the North American Free Trade Agreement (NAFTA) signed by former President Bush, the Prime Minister of Canada and the President of Mexico on December 17, 1992, and the accompanying statement of administrative action proposed to implement the Agreement.

In addition, Section 101 establishes conditions that must be met before the President may enter NAFTA into force. This section authorizes the President to enter NAFTA into force with respect to the Government of Canada or Mexico, on or after January 1, 1994, by an exchange of notes with such Government, at such time as the President:

Determines that such country has implemented the statutory changes necessary to bring that country into compliance with its obligations under the Agreement;

Transmits a report to the Congress regarding the determination as to whether Mexico or Canada have implemented statutory changes necessary to fulfill their obligations under NAFTA, including a description of specific measures taken by Mexico to bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement and to otherwise ensure the effective implementation of the binational panel review process under chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations; and

The Government of such country exchanges notes with the United States providing for the entry into force of the North American Agreement Environmental Cooperation and the North American Agreement on Labor Cooperation for that country and the United States.

In addition, the Statement of Administrative Action states that although the NAFTA and each of the supplemental agreements allows any participating government to withdraw from the NAFTA and/or any of the supplemental agreements, six months notice must be given the other parties of any such withdrawal.

If a party were to give notice of withdrawal from a supplemental agreement, the Statement of Administrative Action states:

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.

Senate Finance Committee Report

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

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

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

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

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

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

(a) Relationship of Agreement to United States Law.--(1) United states law to prevail in conflict.--No provision of the Agreement, nor the application of any

such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.(2) Construction.--Nothing in this Act shall be construed--(A) to amend or modify any law of the United States, including any law regarding--(i) the protection of human, animal, or plant life or health,(ii) the protection of the environment, or(iii) motor carrier or worker safety; or(B) to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974;

(b) Relationship of Agreement to State Law.--(1) Federal-state consultation.--(A) In general.--Upon the enactment of this Act, the President shall, through the intergovernmental policy advisory committees on trade established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984, consult with the States for the purpose of achieving conformity of State laws and practices with the Agreement.(B) Federal-state consultation process.--The Trade Representative shall establish within the Office of the United States Trade Representative a Federal-State consultation process for addressing issues relating to the Agreement that directly relate to, or will potentially have a direct impact on, the States. The Federal-State consultation process shall include procedures under which--(i) the Trade Representative will assist the States in identifying those State laws that may not conform with the Agreement but may be maintained under the Agreement by reason of being in effect before the Agreement entered into force;(ii) the States will be informed on a continuing basis of matters under the Agreement that directly relate to, or will potentially have a direct impact on, the States;(iii) the States will be provided opportunity to submit, on a continuing basis, to the Trade Representative information and advice with respect to matters referred to in clause (ii);(iv) the Trade Representative will take into account the information and advice received from the States under clause (iv);

(iii) when formulating United States positions regarding matters referred to in clause (ii); and(v) the States will be involved (including involvement through the inclusion of appropriate representatives of the States) to the greatest extent practicable at each stage of the development of United States positions regarding matters referred to in clause (ii) that will be addressed by committees, subcommittees, or working groups established under the Agreement or through dispute settlement processes provided for under the Agreement. The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Federal-State consultation process established by this paragraph.(2) Legal challenge.--No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.(3) Definition of state law.--For purposes of this subsection, the term "State law" includes--(A) any law of a political subdivision of a State; and(B) any State law regulating or taxing the business of insurance.(c) Effect of Agreement With Respect to Private Remedies.--No person other than the United States--(1) shall have any cause of action or defense under--(A) the Agreement or by virtue of

Congressional approval thereof, or(B) the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation; or(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement, the North American Agreement on Environmental Cooperation, or the North American Agreement on Labor Cooperation.

House Ways & Means Committee Report

Present law

Section 102 of the U.S.-Canada FTA Implementation Act contains similar provisions as section 102 of H.R. 3450 described below concerning the relationship of the U.S.-Canada FTA to U.S. and State laws and private right of action.

Explanation of provision

Section 102 of H.R. 3450 establishes the relationship between provisions of the NAFTA and U.S. and State domestic laws.

Relationship to Federal law. Subsection (a) provides that no provision of the NAFTA, nor the application of any such provision to any person or circumstance, which is inconsistent with any U.S. law shall have effect, i.e., U.S. laws shall prevail if inconsistent with any provision of the NAFTA. Further, nothing in the NAFTA Implementation Act, unless specifically provided for in the Act, shall be construed to amend or modify any U.S. law, including any law regarding the protection of human, animal, or plant life or health, the protection of the environment, or motor carrier or worker safety; or to limit any authority conferred under any U.S. law, including section 301 of the Trade Act of 1974. The USTR will maintain the authority under section 301 to respond if a NAFTA country engages in any unfair trade practices actionable under that provision.

Relationship to State law. Subsection (b) sets forth the relationship of the NAFTA to State laws and establishes a Federal-State consultation process to facilitate implementation of obligations under the NAFTA as they pertain to State laws. Upon enactment of the Act, the President shall consult with the States, through the intergovernmental trade policy advisory committees established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984, to achieve conformity of State laws and practices with the NAFTA.

In addition, the Trade Representative shall establish within the Office of the USTR a Federal-State consultation process for addressing issues relating to the NAFTA that directly relate to or will potentially have a direct impact on, the States. This process shall include procedures under which (1) the USTR will assist the States in identifying those State laws that may not conform with the NAFTA but may be maintained by reason of being in effect before the NAFTA entered into force (i.e., laws that are "grandfathered"); (2) the States will be informed on a continuing basis of matters under the NAFTA

that directly relate to, or will potentially have a direct impact on, the States; (3) the States will be provided opportunity to submit information and advice to the USTR on a continuing basis concerning those matters; (4) the USTR will take into account the information and advice received from the States when formulating U.S. positions regarding those matters; and (5) the States will be involved (including through inclusion of appropriate State representatives) to the greatest extent practicable at each stage of the development of U.S. positions regarding those matters directly relating to or potentially impacting the States that will be addressed by committees, subcommittees, or working groups or dispute settlement processes under the NAFTA. The Federal Advisory Committee Act shall not apply to this Federal-State consultation process. The Statement of Administrative Action spells out further details on how the expanded consultation process with individual States is intended to operate.

Paragraph (2) of subsection (b) provides that no State law (which includes any law of a political subdivision of a State, and any State law regulating or taxing the business of insurance), or any application of State law, may be declared invalid as to any person or circumstance on the ground that it is inconsistent with the NAFTA, except as a result of an action brought by the United States for the purpose of declaring the law or application invalid. Private remedies. Subsection (c) provides that no person other than the United States (1) shall have any cause of action or defense under the NAFTA or by virtue of Congressional approval of that Agreement, or the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation (supplemental agreements); or (2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the NAFTA or the supplemental agreements.

Reasons for change

The NAFTA Implementation Act incorporates all amendments to existing Federal statutes or provision of new authorities, including authority for Federal agencies to issue regulations, known to be necessary or appropriate to enable full implementation of, and compliance with, U.S. obligations under the NAFTA. Those provisions of U.S. law that are not addressed by the implementing bill are left unchanged, such as section 301 of the Trade Act of 1974. In the unlikely event that any future changes in Federal statutes should be necessary to remedy an unforeseen conflict between requirements of a Federal law and the Agreement, such changes can be enacted in subsequent legislation. This treatment is consistent with the Trade Agreements Act of 1979 implementing the Tokyo Round of multilateral trade negotiations, the U.S.-Israel Free Trade Area Implementation Act of 1985, and the U.S.-Canada FTA Implementation Act of 1988, which provide that U.S. laws prevail over any conflicting provision of the international agreements. This treatment is also consistent with the Congressional view that necessary changes in Federal statutes should be specifically enacted, not preempted by international agreements.

NAFTA obligations generally apply to State and local, as well as Federal, laws and regulations, with significant exceptions, particularly with respect to standards, government procurement, investment, and trade in services. The Federal-State consultation requirements in section 102(b) are greatly expanded relative to previous trade agreements in order to address concerns expressed by State representatives about the potential impact of NAFTA obligations on State laws and the need for their involvement in any disputes concerning those laws.

The Committee expects the USTR, as lead agency, to fully carry out the consultative provisions in order to ensure cooperation of the States in complying with NAFTA obligations. At the same time, the Committee seeks to minimize the administrative burden imposed on the USTR and expects the States to establish contact points and otherwise fully cooperate with the USTR as anticipated in the Statement of Administrative Action. While section 102 makes clear that the Federal Government retains the right to challenge, including through court action, any State law or its application on the grounds that it is inconsistent with the NAFTA, this authority is intended to be used only as a last resort in the unlikely event that consistency is not achieved through the consultative process.

A private party does not have the right to sue a Federal, State, or local government or a private party (or raise a defense against such a party in a suit) on grounds of consistency or inconsistency with the NAFTA or the supplemental agreements. Also, there is no private right of action to challenge, under any other law, any action or inaction by the United States or a State or local government on the ground that it is inconsistent with the NAFTA. For example, a private party cannot bring an action to require, preclude, or modify government exercise of discretionary or general "public interest" authorities under other provisions of law. These prohibitions are based on the premise that it is the responsibility of the Federal Government, and not private citizens, to ensure that State laws are consistent with U.S. obligations under international agreements such as the NAFTA.

This general prohibition on private right of action arising from the NAFTA, the supplemental agreements, or approval of the NAFTA by Congress under section 101(a) of the bill, does not preclude the right to challenge on constitutional grounds certain provisions under section 516A(g)(4) of the Tariff Act of 1930, or preclude a private party from seeking to enforce an arbitral award against the United States pursuant to provisions of Chapter 11 of the NAFTA.

The House Energy & Commerce Committee Report

Section 102 states that NAFTA does not preempt any law of the United States with which it is inconsistent. Furthermore, this section states that, unless specifically provided for in the implementing bill, nothing in the implementing bill shall be construed:

To amend or modify any law of the United States, including any law regarding the protection of human, animal, or plant life or health, the protection of the environment, or motor carrier or worker safety; or

To limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974.

The State of Administrative Action states:

The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the NAFTA and, in certain instances, by creating entirely new provisions of law. As section 102(a)(2) of the bill makes clear, those provisions of U.S. law that are not addressed by the bill are left unchanged.

The following list of environmental and health safety laws that are left unaffected by the bill is set out in an Appendix to this statement:

Among the federal environmental and health-related statutes that are not amended or modified by the bill are,

(1) The Federal Water Pollution Control Act (33 U.S.C. 251 et seq.);

(2) Title XIV of the Public Health Service Act (popularly known as the Safe Drinking Water Act) (42 U.S.C. 251 et seq.);

(3) The Clean Air Act (42 U.S.C. et seq.);

(4) The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.);

(5) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(6) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

(7) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.);

(8) The Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) /2/

Note /2/ This law is amended in Title V solely for the purpose of implementing essentially technical, but important, changes regarding fuel economy.

(9) The Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.);

(10) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(11) The Noise Control Act of 1972 (42 U.S.C. 4901 et seq.);

(12) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(13) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(14) The Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499; 100 Stat. 1613);

(15) Title I of the Marine Protection Research and Sanctuary Act of 1972 (popularly known as the "Ocean Dumping Act") (33 U.S.C. 1411 et seq.);

(16) The Environmental Research, Development, and Demonstration Authorization Act (Public Law 96-569; 94 Stat. 3335);

(17) The Pollution Prosecution Act of 1990 (42 U.S.C. 4321 note); and

(18) The Federal Facilities Compliance Ace of 1992 (Public Law 102-386; 106 Stat. 1505);

(19) Sections 9 to 20 of the Act of March 3, 1899 (popularly known as the "Refuse Act") (33 U.S.C. 2701 et seq.);

(20) The Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.); and

(21) The Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.).

With respect to state law, section 102 requires that the President, through the intergovernmental policy advisory committees on trade established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984, enter into consultations with the states in order to bring state laws and practices into conformity with provisions of the Agreement.

State law is defined to include any law of a political subdivision of a State and any State law regulating or taxing the business of insurance, a matter within the Committee's jurisdiction. The Statement explains:

The reference in section 102(b)(3) to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statue shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute' specifically relates to the business of insurance * * *

Under this section, no state law may be declared invalid on the ground that it is inconsistent with NAFTA, except in an action brought by the United States for the purpose of declaring such law invalid.

Furthermore, the Statement of Administrative Action states:

If an action is instituted under section 102(b)(2), the United States will not seek to introduce into evidence in federal court any panel report issued under Chapter Twenty of the NAFTA with regard to the state measure at issue. The United States would base any such processing on the provisions of the NAFTA itself--not a panel report--and the court would thus consider the matter de novo, reaching its own interpretation of the relevant NAFTA provisions in the light of the Agreement's negotiating and legislative history, including this statement. Although a court could take judicial notice of the panal report and consider the views of the panel, panel reports are not binding on federal or state courts.

Section 102(c) bars private causes of action or defenses based on the Agreement or the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation. Furthermore, this section precludes a private right of action challenging any action or inaction by any department, agency or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement, the North American Agreement on Environmental Cooperation, or the North American Agreement on Labor Cooperation.

Senate Finance Committee Report

Relationship to U.S. law in general.--Section 102(a)(1) provides that no provision of the NAFTA, nor its application, which is inconsistent with any U.S. law shall have effect. Section 102(a)(2) provides that, unless specifically

provided for in this implementing bill, nothing in this bill shall be construed to amend or modify any U.S. law, including any law concerning the protection of human, animal, or plant life or health, the environment, or motor carrier or worker safety.

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

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

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

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

The President shall consult with the States through the Intergovernmental Policy Advisory Committee on Trade (IGPAC) established under section 306(c)(2)(A) of the Trade and Tariff Act of 1984. In addition, the USTR shall establish an expanded consultative process to address particular issues that arise under the NAFTA. This process shall include (1) assisting the States in identifying measures that may not conform with the NAFTA but may be maintained because they were in effect prior to the NAFTA's entry into force (i.e., those that are "grandfathered"); (2) informing the States concerning any matter arising under the NAFTA that directly relates to, or may have a direct impact on, them; (3) providing the States with the opportunity to submit information and advice with regard to such matters; (4) taking into

account such information and advice in formulating U.S. positions; and (5) involving the States, to the greatest extent practicable, at each stage of the development of U.S. positions with respect to such matters (whether they are before a committee, subcommittee, or working group established by the NAFTA or are to be decided by a dispute settlement panel).

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

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

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

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

SEC. 103. CONSULTATION AND LAYOVER REQUIREMENTS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS

a) Consultation and Layover Requirements.--If a provision of this Act provides that the implementation of an action by the President by

proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if--(1) the President has obtained advice regarding the proposed action from--(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974, and(B) the International Trade Commission;(2) the President has submitted a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that sets forth--(A) the action proposed to be proclaimed and the reasons therefore, and(B) the advice obtained under paragraph (1);(3) a period of 60 calendar days, beginning with the first day on which the President has met the requirements of paragraphs (1) and (2) with respect to such action, has expired; and(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).(b) Effective Date of Certain Proclaimed Actions.--Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover requirements under subsection (a) may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

House Ways & Means Committee Report

Present law

Section 103 of the U.S.-Canada FTA Implementation Act established consultation and layover requirements identical to the provisions carried forward in section 103 of H.R. 3450.

Explanation of provision

Certain provisions of H.R. 3450 specifically authorize the President to implement actions by proclamation, subject to the consultation and layover requirements of section 103(a). Those actions may be proclaimed only if (1) the President has obtained advice regarding the proposed action from the appropriate private sector advisory committees established under section 135 of the Trade Act of 1974 and from the International Trade Commission (ITC); (2) the President has submitted a report to the House Committee on Ways and Means and the Senate Committee on Finance setting forth the proposed action and reasons therefor, and the advice obtained; and (3) at least 60 calendar days have expired beginning with the first day on which the first two requirements are met, during which period the President has consulted with the Committees regarding the proposed action.

These requirements would apply to proclamation under section 201(b) of agreed modifications (1) to the staging of duty elimination under Annex 302.2, or of other tariff modifications necessary or appropriate to maintain the general level of concessions; (2) in specific rules of origin under Annexes 401, 403.1, 403.2, and 403.3, and Appendix 6.A of Annex 300-B (except that only technical corrections during the first year after enactment of the Act

may be made under this authority in specific rules applying to textile and apparel articles), or to rules of origin pursuant to section 7.2 of Annex 300-B with respect to textile and apparel articles in short supply; and (3) during the first year after enactment of the Act, to section 202(p) enacting origin definitions under Article 415 of the NAFTA. Any other changes in U.S. law necessary or appropriate to implement modifications to the NAFTA will be subject to Congressional approval under standard legislative procedures.

Subsection (b) provides that any action authorized to be proclaimed by the President that is not subject to the consultation and layover requirements may not take effect before the 15th day after the date the text of the proclamation is published in the Federal Register.

Reasons for change

The consultation and layover requirements ensure that U.S. domestic interests most directly affected and the Congress are consulted and have adequate opportunity to provide their input and views before substantive changes in the application of the NAFTA are implemented.

The 15-day notice requirement will inform the trading community of forthcoming changes in customs treatment.

The House Energy & Commerce Committee Report

Section 103 sets out conditions, including layover requirements, under which the President may utilize authority in this Act to implement actions by proclamation.

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

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

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

(2) the President has submitted a report to the Committees on Finance and Ways and Means setting forth the proposed action and reasons therefor and the advice obtained; and
(3) at least 60 calendar days have expired since submission of the report, and the President has consulted the Committees during that period.

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

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

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

SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS

a) Implementing Actions.--After the date of the enactment of this Act--(1) the President may proclaim such actions; and(2) other appropriate officers of the United States Government may issue such regulations; as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force. The 15-day restriction in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.(b) Initial Regulations.--Initial regulations necessary or appropriate to carry out the actions proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent

feasible, be issued within 1 year after the date of entry into force of the Agreement; except that interim or initial regulations to implement those Uniform Regulations regarding rules of origin provided for under article 511 of the Agreement shall be issued no later than the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

House Ways & Means Committee Report

Present law

Section 105 of the U.S.-Canada FTA Implementation Act provided similar authority as provided in section 104 of H.R. 3450 for implementing actions in anticipation of entry into force of the U.S.-Canada FTA.

Explanation of provision

Section 104 of H.R. 3450 authorizes actions between the date of enactment of H.R. 3450 and entry into force of the NAFTA necessary to implement the Agreement on that date. Subsection (a) authorizes the President to proclaim such actions and for other appropriate U.S. Government officers to issue such regulations, as may be necessary to ensure that any provision of the NAFTA Implementation Act, or any amendment made by the Act, that takes effect on the date the NAFTA enters into force is appropriately implemented on that date. No such proclamation or regulation may have an effective date earlier than the date of entry into force.

This 15-day restriction is waived to the extent that its application would prevent the taking effect of any action proclaimed under subsection (a) on the date the NAFTA enters into force (i.e., only if the implementing bill were enacted less than 15 days before the NAFTA enters into force).

Subsection (b) requires that initial implementing regulations necessary or appropriate to carry out actions proposed in the Statement of Administrative Action be issued, to the maximum extent feasible, within one year after the NAFTA enters into force, except that interim or initial regulations to implement the Uniform Regulations regarding rules of origin provided for under Article 511 of the NAFTA shall be issued no later than the date of entry into force of the Agreement. In the case of any implementing action that takes effect after the entry into force of the NAFTA, initial regulations shall, to the maximum extent feasible, be issued within one year after that effective date.

Reasons for change

These provisions are intended to ensure full implementation of obligations under the NAFTA upon its entry into force and the issuance of all Federal regulations as early as the administrative process permits. The Committee

expects at least interim regulations will be issued no later than the date the NAFTA enters into force implementing a uniform interpretation of the rules of origin.

The House Energy & Commerce Committee Report

Section 104 allows the President to proclaim and agencies of the Government to issue necessary regulations to ensure implementation of the agreement on the date of enactment, provided that no such action or regulations would be effective earlier than the date on which the Agreement enters into force.

Senate Finance Committee Report

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

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

SEC. 105. UNITED STATES SECTION OF THE NAFTA SECRETARIAT.(a) Establishment of the United States Section

The President is authorized to establish within any department or agency of the United States Government a United States Section of the Secretariat established under chapter 20 of the Agreement. The United States Section, subject to the oversight of the interagency group established under section 402, shall carry out its functions within the Secretariat to facilitate the operation of the Agreement, including the operation of chapters 19 and 20 of the Agreement and the work of the panels, extraordinary challenge committees, special committees, and scientific review boards convened

under those chapters. The United States Section may not be considered to be an agency for purposes of section 552 of title 5, United States Code.(b) Authorization of Appropriations.--There are authorized to be appropriated for each fiscal year after fiscal year 1993 to the department or agency within which the United States Section is established the lesser of--(1) such sums as may be necessary; or(2) $2,000,000; for the establishment and operations of the United States Section and for the payment of the United States share of the expenses of binational panels and extraordinary challenge committees convened under chapter 19, and of the expenses incurred in dispute settlement proceedings under chapter 20, of the Agreement.(c) Reimbursement of Certain Expenses.--If, in accordance with Annex 2002.2 of the Agreement, the Canadian Section or the Mexican Section of the Secretariat provides funds to the United States Section during any fiscal year, as reimbursement for expenses by the Canadian Section or the Mexican Section in connection with settlement proceedings under chapter 19 or 20 of the Agreement, the United States Section may retain and use such funds to carry out the functions described in subsection (a).

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Present law

Section 405(e) of the U.S.-Canada FTA Implementation Act authorized the President to establish within any Federal department or agency a United States Secretariat which, subject to interagency oversight, facilitates the operation of Chapters 18 and 19 of the U.S.-Canada FTA, and the work of the binational panels and extraordinary challenge committees convened under those chapters.

Section 406 of the U.S.-Canada FTA Implementation Act authorizes funding for the U.S. Secretariat and the U.S. share of the expenses of the binational dispute settlement and review panels under the U.S.-Canada FTA. Subsection (a) authorizes appropriations to the department or agency within which the U.S. Secretariat is established (Department of Commerce) of such sums as may be necessary or $5 million for each fiscal year after 1988, whichever is less, for the establishment and operation of the U.S. Secretariat and for the payment of the U.S. share of the expenses of dispute settlement proceedings under Chapter 18 of the FTA.

Subsection (b) authorizes an appropriation to the Office of the USTR (FY 1990 is the most recent year) to pay the U.S. share of the expenses of Chapter 19 binational panels and extraordinary challenge committees. The USTR is authorized to transfer from appropriated funds pursuant to this authorization or the normal USTR budget authorization under section 141(g)(1) of the Trade Act of 1974, to any U.S. department or agency such funds as may be necessary to facilitate the payment of these expenses. Funds appropriated for the payment of such expenses during any fiscal year may be expended only to the extent they do not exceed the amount authorized to be appropriated for that year, unless a subsequent law specifically provides that limitation shall not apply. If the Canadian

Secretariat provides funds during any fiscal year to pay the Canadian share of expenses for binational panels under Chapter 19, the United States Secretariat may retain and use such funds for such purposes.

Explanation of provision

Section 105 of H.R. 3450 establishes and authorizes funds for the United States Section of the NAFTA Secretariat. Subsection (a) authorizes the President to establish within any department or agency of the U.S. Government a United States Section of the Secretariat established under Chapter 20 of the NAFTA. The Section, subject to the interagency group established under section 402 of the bill, shall carry out its functions within the Secretariat to facilitate the operation of Chapters 19 and 20 and the work of the panels, extraordinary challenge committees, special committees, and scientific review boards convened under those chapters.

Subsection (b) authorizes appropriations for each fiscal year after 1993 to the department or agency within which the Section is established of such sums as may be necessary or $2 million, whichever is less, for the establishment and operations of the Section and for payment of the U.S. share of expenses of binational panels and extraordinary challenge committees convened under Chapter 19 and of the expenses incurred in dispute settlement proceedings under Chapter 20 of the NAFTA.

Subsection (c) provides that if the Canadian or Mexican Section of the Secretariat provides funds to the U.S. Section during any fiscal year as reimbursement for their expenses in connection with dispute settlement proceedings under Chapter 19 or 20, the United States Section may retain and use such funds to carry out the functions described in subsection (a).

Reasons for change

Section 105 implements the obligation under Article 2002 of the NAFTA for each country to establish and fund a permanent office as a national "Section" of the NAFTA Secretariat. The provisions simplify the funding process under present law by creating a single authorization to one department or agency to administer all U.S. Secretariat functions under the NAFTA.

The House Energy & Commerce Committee Report

Section 105 provides authority for the President to establish within any department or agency of the United States Government a United States Section of the Secretariat established under chapter 20 of the Agreement. The United States Section, subject to the oversight of the interagency group established under section 402, shall carry out its functions within the Secretariat to facilitate the operation of the Agreement, including dispute settlement panels, extraordinary challenge committees, special committees, and scientific review boards. This section contains an authorization of such sums as may be necessary or $2 million, whichever is less, for each fiscal year after fiscal year 1993 to pay for expenses of the United States Section.

Senate Finance Committee Report

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

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

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

SEC. 106. APPOINTMENTS TO CHAPTER 20 PANEL PROCEEDINGS

(a) Consultation.--The Trade Representative shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the selection and appointment of candidates for the rosters described in article 2009 of the Agreement.

(b) Selection of Individuals With Environmental Expertise.--The United States shall, to the maximum extent practicable, encourage the selection of individuals who have expertise and experience in environmental issues for service in panel proceedings under chapter 20 of the Agreement to hear any challenge to a United States or State environmental law.

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 106 of H.R. 3450 pertains to the selection of individuals for rosters and panels under Chapter 20 of the NAFTA. Subsection (a) requires the USTR to consult with the House Committee on Ways and Means and Senate Committee on Finance regarding the selection and appointment of candidates for the rosters in Article 2009 of the NAFTA. Subsection (b) requires the United States, to the maximum extent practicable, to encourage the selection of individuals with expertise and experience in environmental issues for service in panel proceedings under Chapter 20 to hear any challenge to a U.S. or State environmental law.

Reasons for change

Article 2009 of the NAFTA requires the three governments jointly to establish and maintain a roster of 30 individuals to serve as panelists in dispute settlement proceedings under Chapter 20, and sets forth various qualifications for their selection. A government may also appoint panelists from outside the roster if the other government in the dispute does not object to the selection. Section 106 is intended to provide further assurance that the United States will choose the most qualified individuals for the roster and will encourage the selection of panelists with expertise and experience in the subject matter of the dispute, specifically the selection of environmental experts in any proceedings involving challenges to U.S. or State environmental laws.

The House Energy & Commerce Committee Report

Section 106 provides that the Trade Representative shall consult with certain committees of the Congress regarding the selection and appointment of candidates to fill positions on panels. In the case of panels convened to hear challenges to a United States or State environmental law, this section requires the United States, to the maximum extent practicable, to encourage the selection of individuals who have expertise and experience in environmental issues.

Senate Finance Committee Report

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

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

SEC. 107. TERMINATION OR SUSPENSION OF UNITED STATES-CANADA FREE-TRADE AGREEMENT

Section 501(c) of the United States-Canada Free-Trade Implementation Act of 1988 (19 U.S.C. 2112 note) is amended to read as follows:"(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)."

House Ways & Means Committee Report

Present law

Section 501(c) of the U.S.-Canada FTA Implementation Act provides that provisions of, and amendments made by, that Act shall cease to have effect on the date the U.S.-Canada FTA ceases to be in force.

Explanation of provision

Section 107 of H.R. 3450 amends section 501(c) of the U.S.-Canada FTA Implementation Act to deal with overlapping provisions of H.R. 3450 and the U.S.-Canada FTA Implementation Act. As amended, section 501(c) retains present law, and adds two additional provisions: (1) an agreement by the United States and Canada to suspend the operation of the U.S.-Canada FTA shall not be deemed to cause the FTA to cease to be in force; and (2) on the date the United States and Canada agree to suspend the operation of the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA, sections 204(a) and (b), 205, 302, 304(f), 404, 409, and 410(b) of the U.S.- Canada FTA Implementation Act are suspended and shall remain suspended until such time as the suspension of the U.S.-Canada FTA may be terminated.

Reasons for change

The NAFTA incorporates or otherwise carries forward many of the provisions of the U.S.-Canada FTA, including the tariff phaseout schedules for goods traded between the United States and Canada. In some cases, NAFTA provisions supersede provisions of the U.S.-Canada FTA (for example, NAFTA

rather than U.S.-Canada FTA rules of origin will apply to U.S.-Canada trade), or have been added on subject matter not covered by the U.S.-Canada FTA.

The United States and Canada will suspend the operation of the bilateral FTA upon the entry into force of the NAFTA between the two countries, to stay in effect for such period as the two governments remain parties to the NAFTA. Accordingly, section 107 suspends certain provision of the U.S.-Canada FTA Implementation Act which are superseded by the NAFTA Implementation Act. Other provisions of the U.S.-Canada FTA Implementation Act which implement continuing U.S. obligations under the FTA will remain in effect or are amended by the NAFTA Implementation Act.

The House Energy & Commerce Committee Report

Section 107 amends section 501(c) of the United States-Canada Free Trade Implementation Act of 1988 to provide authority for the termination or suspension of the U.S.-Canada Agreement upon the U.S. and Canada's entry into force of the NAFTA.

Senate Finance Committee Report

Section 107 amends Section 501(c) of the CFTA Act to address the relationship of the CFTA to the NAFTA. It is structured to implement the understanding reached through an exchange of letters between the Governments of the United States and Canada on January 19, 1993, stating that the United States and Canada will arrange for the suspension of the CFTA upon the NAFTA's entry into force for the two countries, and that the suspension will remain in effect for such time as the two countries remain parties to the NAFTA.

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

Section 107 provides further that an agreement by the United States and Canada to suspend the CFTA shall not be deemed to cause the CFTA to cease to be in force. If, however, the CFTA does cease to be in force, all of the

CFTA Act's provisions, with the exception of sections 410(b) and 501(c), shall cease to have effect.

SEC. 108. CONGRESSIONAL INTENT REGARDING FUTURE ACCESSIONS

(a) In General.--Section 101(a) may not be construed as conferring Congressional approval of the entry into force of the Agreement for the United States with respect to countries other than Canada and Mexico.(b) Future Free Trade Area Negotiations.--(1) Findings.--The Congress makes the following findings:(A) Efforts by the United States to obtain greater market opening through multilateral negotiations have not produced agreements that fully satisfy the trade negotiating objectives of the United States.(B) United States trade policy should provide for additional mechanisms with which to pursue greater market access for United States exports of goods and services and opportunities for export- related investment by United States persons.(C) Among the additional mechanisms should be a system of bilateral and multilateral trade agreements that provide greater market access for United States exports and opportunities for export- related investment by United States persons.(D) The system of trade agreements can and should be structured to be consistent with, and complementary to, existing international obligations of the United States and ongoing multilateral efforts to open markets.(2) Report on significant market opening.--No later than May 1, 1994, and May 1, 1997, the Trade Representative shall submit to the President, and to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the "appropriate Congressional committees"), a report which lists those foreign countries--(A) that--(i) currently provide fair and equitable market access for United States exports of goods and services and opportunities for export-related investment by United States persons, beyond what is required by existing multilateral trade agreements or obligations; or(ii) have made significant progress in opening their markets to United States exports of goods and services and export-related investment by United States persons; and(B) the further opening of whose markets has the greatest potential to increase United States exports of goods and services and export-related investment by United States persons, either directly or through the establishment of a beneficial precedent.(3) Presidential determination.--The President, on the basis of the report submitted by the Trade Representative under paragraph (2), shall determine with which

foreign country or countries, if any, the United States should seek to negotiate a free trade area agreement or agreements.(4) Recommendations on future free trade area negotiations.--No later than July 1, 1994, and July 1, 1997, the President shall submit to the appropriate Congressional committees a written report that contains--(A) recommendations for free trade area negotiations with each foreign country selected under paragraph (3);(B) with respect to each country selected, the specific negotiating objectives that are necessary to meet the objectives of the United States under this section; and(C) legislative proposals to ensure adequate consultation with the Congress and the private sector during the negotiations, advance Congressional approval of the negotiations recommended by the President, and Congressional approval of any trade agreement entered into by the President as a result of the negotiations.(5) General negotiating objectives.--The general negotiating objectives of the United States under this section are to obtain--(A) preferential treatment for United States goods;(B) national treatment and, where appropriate, equivalent competitive opportunity for United States services and foreign direct investment by United States persons;(C) the elimination of barriers to trade in goods and services by United States persons through standards, testing, labeling, and certification requirements;(D) nondiscriminatory government procurement policies and practices with respect to United States goods and services;(E) the elimination of other barriers to market access for United States goods and services, and the elimination of barriers to foreign direct investment by United States persons;(F) the elimination of acts, policies, and practices which deny fair and equitable market opportunities, including foreign government toleration of anticompetitive business practices by private firms or among private firms that have the effect of restricting, on a basis that is inconsistent with commercial considerations, purchasing by such firms of United States goods and services;(G) adequate and effective protection of intellectual property rights of United States persons, and fair and equitable market access for United States persons that rely upon intellectual property protection;(H) the elimination of foreign export and domestic subsidies that distort international trade in United States goods and services or cause material injury to United States industries;(I) the elimination of all export taxes;(J) the elimination of acts, policies, and practices which constitute export targeting; and(K) monitoring and effective dispute settlement mechanisms to facilitate compliance with the matters described in subparagraphs (A) through (J).

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 108 of H.R. 3450 sets forth considerations and preliminary procedures with respect to possible future free trade area agreements and accession by foreign countries to the NAFTA.

Subsection (a) stipulates that approval by the Congress under section 101(a) of the implementing bill may not be construed as conferring Congressional approval of the entry into force of the NAFTA for the United States with respect to countries other than Canada and Mexico.

Subsection (b) relates to future free trade negotiations. Paragraph (1) sets forth findings of the Congress that (a) efforts by the United States to obtain greater market opening through multilateral negotiations have not produced agreements that fully satisfy U.S. negotiating objectives; (b) U.S. trade policy should provide for additional mechanisms to pursue greater market access for U.S. exports of goods and services and opportunities; (c) among the additional mechanisms should be a system of bilateral and multilateral trade agreements that provide such access and opportunities; and (d) the system of trade agreements can and should be structured to be consistent with, and complementary to, existing U.S. international obligations and ongoing multilateral efforts to open markets.

Paragraph (2) requires the Trade Representative to submit to the President and to the House Committee on Ways and Means and Senate Committee on Finance (the appropriate committees) by May 1, 1994, and by May 1, 1997, a report which lists those foreign countries (a) that currently provide fair and equitable market access for U.S. exports of goods and services and opportunities for U.S. export-related investments beyond what is required by existing multilateral trade agreements or obligations, or have made significant progress in opening their markets to such U.S. exports and investment; and (b) the further opening of whose markets has the greatest potential to increase such U.S. exports and investment either directly or through establishment of a beneficial precedent.

Paragraph (3) requires the President, on the basis of the report, to determine with which foreign country or countries, if any, the United States should seek to negotiate a free trade area agreement or agreements.

Paragraph (4) requires the President to submit a written report to the appropriate Congressional committees by July 1, 1994, and by July 1, 1997, that contains (a) recommendations for free trade area negotiations with each foreign country selected under paragraph (3); (b) specific negotiating objectives to meet general negotiating objectives with respect to each country selected; and (c) legislative proposals to ensure adequate consultation with the Congress and the private sector during the negotiations, advance Congressional approval of the negotiations recommended by the President, and Congressional approval of any trade agreement entered into by the President as a result of the negotiations.

Paragraph (5) sets forth U.S. general negotiating objectives, which are to obtain (a) preferential treatment for U.S. goods; (b) national treatment and,

where appropriate, equivalent competitive opportunity for U.S. services and foreign direct investment; (c) elimination of barriers to trade in U.S. goods and services through standards, testing, labeling, and certification requirements; (d) nondiscriminatory government procurement policies and practices with respect to U.S. goods and services; (e) elimination of other barriers to market access for U.S. goods and services and elimination of barriers to U.S. foreign direct investment; (f) elimination of acts, policies, and practices which deny fair and equitable market opportunities, including foreign government toleration of anticompetitive business practices by or among private firms that have the effect of restricting, on a basis inconsistent with commercial considerations, purchasing by such firms of U.S. goods and services; (g) adequate and effective U.S. intellectual property rights protection, and fair and equitable market access for U.S. persons that rely upon intellectual property protection; (h) elimination of foreign export and domestic subsidies that distort international trade in U.S. goods and services or cause material injury to U.S. industries; (i) elimination of all export taxes; (j) elimination of export targeting; and (k) monitoring and effective dispute settlement mechanisms.

Reasons for change

Article 2204 of the NAFTA provides for the accession to the NAFTA of any country or group of countries, subject to the terms and conditions as may be agreed by each NAFTA country, and following approval in accordance with the legal procedures of each country. In the United States, accession would require Congressional approval and implementing legislation. As section 108 makes clear, Congressional approval of the NAFTA with respect to Canada or Mexico does not constitute approval of its extension to other countries. The Congress would exercise its constitutional prerogatives to consider and approve or disapprove accession by any country on its merits. Section 108 expresses general Congressional support for further free trade agreement negotiations to achieve U.S. objectives. It establishes a preliminary basis for proceeding to develop an Executive-Congressional process for possible negotiations and Congressional consideration of free trade agreements, including accession to the NAFTA.

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Section 108 establishes a procedure by which the President shall determine whether the U.S. should seek to negotiate free trade agreements with additional countries. The President has until July 1, 1994, and July 1, 1997, to submit recommendations to the Congress regarding free trade negotiations with other countries.

Senate Finance Committee Report

Section 108(a) provides that Congressional approval of the NAFTA may not be construed as conferring approval of its entry into force with respect to

countries other than Canada and Mexico. This states the Committee's understanding that the Congress would review, and either approve or reject, proposals for accession by any other country to the NAFTA. Such a procedure is consistent with the language of Article 2204 of the NAFTA that any future accession shall be subject to approval in accordance with the applicable legal procedures of each NAFTA country.

Section 108(b) establishes a process for consideration of future free trade negotiations, based on findings by the Congress concerning the importance of trade agreements that provide greater market access for U.S. exports of goods and services and opportunities for export-related investment by U.S. persons.

By May 1, 1994 and again by May 1, 1997, USTR shall submit to the President and the Committees on Finance and Ways and Means a report listing those countries that either (1) currently provide fair and equitable market access to U.S. exports, or (2) have made significant progress in opening their markets to U.S. exports, and the further opening of whose markets has the greatest potential to increase U.S. exports. On the basis of these reports, the President, by July 1, 1994 and July 1, 1997, is required to report to the Committees on Finance and Ways and Means regarding the countries with which the United States should seek to negotiate free trade agreements, and the objectives for such negotiations.

Section 108(b) also sets out several general U.S. objectives with respect to any such negotiations, including obtaining preferential treatment for U.S. goods, national treatment (and, where appropriate, equivalent competitive opportunity) for U.S. services and foreign direct investment by U.S. persons, the elimination of various foreign trade barriers to U.S. goods and services, adequate and effective protection of intellectual property rights for U.S. persons, the elimination of all export taxes (in particular, differential export taxes that disadvantage U.S. producers), and effective dispute settlement mechanisms to facilitate compliance with all of the listed objectives.

SEC. 109. EFFECTIVE DATES; EFFECT OF TERMINATION OF NAFTA STATUS.(a) Effective Dates

(1) In general.--This title (other than the amendment made by section 107) takes effect on the date of the enactment of this Act.(2) Section 107 amendment.--The amendment made by section 107 takes effect on the date the Agreement enters into force between the United States and Canada.(b) Termination of NAFTA Status.--During any period in which a country ceases to be a NAFTA country, sections 101 through 106 shall cease to have effect with respect to such country.

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Section 109 of H.R. 3450 provides that Title I, other than the amendment made by section 107, of the NAFTA Implementation Act takes effect on the date of enactment of the Act. The amendment made by section 107 takes effect on the date the NAFTA enters into force between the United States and Canada. Sections 101 through 106 shall cease to have effect with respect to a country during any period in which that country ceases to be a NAFTA country.

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Section 109 states that the effective date for this title (other than the amendment made by section 107) takes effect on the date of the enactment of this Act. The amendment made by section 107 takes effect on the Agreement enters into force between the United States and Canada.

Furthermore, this section states that section 101 and 106 shall not apply to any country that ceases to be a NAFTA country.

Senate Finance Committee Report

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

TITLE II--CUSTOMS PROVISIONS

House Ways & Means Committee Report

Title II--Customs Provisions

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Title II--Customs Provisions

SEC. 201. TARIFF MODIFICATIONS

a) Tariff Modifications Provided for in the Agreement.--(1) Proclamation authority.--The President may proclaim--(A) such modifications or continuation of any duty,(B) such continuation of duty-free or excise treatment, or(C) such additional duties,

(2) Effect on mexican gsp status.--Notwithstanding section 502(a)(2) of the Trade Act of 1974 (19 U.S.C. 2462(a)(2)), the President shall terminate the designation of Mexico as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement between the United States and Mexico.(b) Other Tariff Modifications.--(1) In general.--Subject to paragraph (2) and the consultation and layover requirements of section 103(a), the President may proclaim--(A) such modifications or continuation of any duty,(B) such modifications as the United States may agree to with Mexico or Canada regarding the staging of any duty treatment set forth in Annex 302.2 of the Agreement,(C) such continuation of duty-free or excise treatment, or(D) such additional duties, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada or Mexico provided for by the Agreement.(2) Special rule for articles with tariff phaseout periods of more than 10 years.--The President may not consider a request to accelerate the staging of duty reductions for an article for which the United States tariff phaseout period is more than 10 years if a request for acceleration with

respect to such article has been denied in the preceding 3 calendar years.(c) Conversion to Ad Valorem Rates for Certain Textiles.--For purposes of subsections (a) and (b), with respect to an article covered by Annex 300-B of the Agreement imported from Mexico for which the base rate in the Schedule of the United States in Annex 300-B is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

House Ways & Means Committee Report

Present law

Section 201 of the U.S.-Canada FTA Implementation Act authorizes the President to proclaim the modification or continuation of existing U.S. rates of duty or duty-free treatment, or such additional duties as the President determines necessary or appropriate to implement Article 401 of the U.S.-Canada FTA and the schedules set forth in Annexes 401.2 and 401.7 of the FTA for elimination of U.S. duties on imports of articles originating in Canada.

Section 201 of that Act also authorizes the President to proclaim, subject to consultation and Congressional layover requirements, subsequent tariff modifications as the President determines necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Canada under the FTA, including accelerated staging of scheduled tariff elimination as agreed with Canada.

Explanation of provision

Section 201 of H.R. 3450 contains the authority for the President to modify, continue, or impose additional U.S. duties as necessary or appropriate to implement various Articles of the NAFTA.

Subsection (a) authorizes the President to proclaim such modifications or continuation of any U.S. duty, continuation of existing duty-free or excise treatment, or such additional duties as the President determines to be necessary or appropriate to carry out or apply Articles 302, 305, 307, 308, and 703, and Annexes 302.2, 307.1, 308.1, 308.2, 300-B, 703.2, and 703.3 of the NAFTA, as submitted to and approved by the Congress under section 101(a) of the NAFTA Implementation Act. Subsection (a) also requires the President, notwithstanding the Congressional advance notice requirements of section 502(a)(2) of the Trade Act of 1974, to terminate the designation of Mexico as a beneficiary developing country for purposes of the Generalized System of Preferences (GSP) program under Title V of the 1974 Act on the date of entry into force of the NAFTA between the United States and Mexico.

Subsection (b) authorizes the President to proclaim, subject to the consultation and layover requirements of section 103(a), such modifications or continuation of any duty, such modifications as are agreed to with Mexico and Canada regarding the scheduled staging of any duty treatment set forth in Annex 302.2 of the NAFTA, continuation of duty-free or excise treatment, or such additional duties as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually

advantageous concessions with Canada or Mexico provided by the NAFTA. As an exception to this authority, the President may not consider a request to accelerate the staging of duty reductions for an article for which the U.S. tariff phaseout period is more than 10 years if a request for acceleration on that article has been denied in the preceding three calendar years.

Subsection (c) authorizes the President, for purposes of implementing subsections (a) and (b), to substitute an equivalent ad valorem rate for a specific or compound rate of duty that is the base rate in the U.S. Schedule in Annex 300-B of the NAFTA for a textile or apparel article imported from Mexico.

Reasons for change

At the present time, U.S. imports from Mexico are subject to most-favored- nation (MFN) rates of duty, except for articles designated eligible for duty- free treatment from Mexico as a beneficiary developing country under the GSP program. Under the U.S.-Canada FTA, tariffs on originating goods (goods meeting the FTA rules of origin) traded between Canada and the United States will be eliminated by January 1, 1999.

Section 201 grants the President the authority to implement by proclamation the various U.S. rights and obligations under Chapters 3 and 7 of the NAFTA with respect to the application or elimination of tariffs and tariff-rate quotas:

Article 302, phased elimination of tariffs on originating goods according to the staging schedule set forth in Annex 302.2;

Article 305, temporary duty-free admission of goods from a NAFTA country;

Article 307, duty-free entry of articles reentered after repair or alteration in Canada or Mexico, or entry under bond of articles to be repaired in the United States, and the application of drawback;

Article 308, and Annexes 308.1 and 308.2, agreed MFN tariff modifications for imported automatic data processing goods and parts, color television tubes, and local area network apparatus;

Annex 300-B, phased tariff elimination, tariff safeguard actions, and tariff preference levels for textile and apparel articles; and

Article 703 and Annexes 703.2 and 703.3, tariff modifications and tariff-rate quotas on agricultural products.

The President is required to remove the eligibility of articles imported from Mexico for duty-free treatment under the GSP program upon the entry into force of the NAFTA in order to avoid potential circumvention of the rules-of- origin requirements under the NAFTA, which are generally stricter than the rules under the GSP program. All articles currently eligible for duty-free GSP treatment will become immediately duty-free under the terms of the NAFTA upon its entry into force.

The purpose of the limitation on the authority to accelerate tariff elimination is to obviate the need for import-sensitive domestic industries to bear the time and expense of repeatedly making the case for maintaining the staging period in the Agreement, if an acceleration request has been denied in the preceding three years. The Administration intent as expressed in the Statement of Administrative Action to deny requests on such articles if the

domestic industry opposes acceleration will also ensure that the adjustment period is maintained for these industries. In accordance with the Statement of Administrative Action, the Committee intends for the Administration to give special priority to negotiating the acceleration of tariff reductions for products where the Canadian or Mexican duty is substantially higher than the U.S. tariff, such as dry beans, bedding components, cream cheese, flat glass, major household appliances, potatoes, and wine.

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No Legislative History.

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

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

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

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

(b)(2) provides, however, that for articles with a tariff phaseout period of more than 10 years, the President may not consider a new request to accelerate the staging of duty reductions if a request for acceleration has been denied with respect to that article in the preceding three years. The Committee believes that this restriction is necessary for the import- sensitive products subject to these gradual phaseout periods in order to prevent petitioners from filing annual requests for acceleration, even in the absence of changed circumstances, that would require the domestic industry to devote often-limited resources to oppose the acceleration request. The Committee believes that this three-year rule will still afford parties interested in seeking acceleration an ample opportunity to do so, without unduly burdening the domestic industry.

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

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

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

SEC. 202. RULES OF ORIGIN

(a) Originating Goods.--

(1) In general.--For purposes of implementing the tariff treatment and quantitative restrictions provided for under the Agreement, except as otherwise provided in this section, a good originates in the territory of a NAFTA country if--

(A) the good is wholly obtained or produced entirely in the territory of one or more of the NAFTA countries;

(B)(i) each nonoriginating material used in the production of the good--(I) undergoes an applicable change in tariff classification set out in Annex 401 of the Agreement as a result of production occurring entirely in the territory of one or more of the NAFTA countries; or(II) where no change in tariff classification is required, the good otherwise satisfies the applicable requirements of such Annex; and(ii) the good satisfies all other applicable requirements of this section;(C) the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials; or(D) except for a good provided for in chapters 61 through 63 of the HTS, the good is produced entirely in the territory of one or more of the NAFTA countries, but one or more of the nonoriginating materials, that are provided for as parts under the HTS and are used in the production of the good, does not undergo a change in tariff classification because--(i) the good was imported into the territory of a NAFTA country in an unassembled or a disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the HTS; or(ii)(I) the heading for the good provides for and specifically describes both the good itself and its parts and is not further subdivided into subheadings; or(II) the subheading for the good provides for and specifically describes both the good itself and its parts.(2) Special rules.--(A) Foreign-trade zones.--Subparagraph (B) of paragraph (1) shall not apply to a good produced in a foreign-trade zone or subzone (established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act) that is entered for consumption in the customs territory of the United States.(B) Regional value-content requirement.--For purposes of subparagraph (D) of paragraph (1), a good shall be treated as originating in a NAFTA country if the regional value-content of the good, determined in accordance with subsection (b), is not less than 60 percent where the transaction value method is used, or not less than 50 percent where the net cost method is used, and the good satisfies all other applicable requirements of this section.(b) Regional Value-Content.--(1) In general.--Except as provided in paragraph (5), the regional value-content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of--(A) the transaction value method

described in paragraph (2); or(B) the net cost method described in paragraph (3).(2) Transaction value method.--(A) In general.--An exporter or producer may calculate the regional value-content of a good on the basis of the following transaction value method:

$$rvc = \frac{tv-vnm}{tv} \times 100$$

(B) Definitions.--For purposes of subparagraph (A):
(i) The term "RVC" means the regional value-content, expressed as a percentage.(ii) The term "TV" means the transaction value of the good adjusted to a F.O.B. basis.(iii) The term "VNM" means the value of nonoriginating materials used by the producer in the production of the good.(3) Net cost method.--(A) In general.--An exporter or producer may calculate the regional value-content of a good on the basis of the following net cost method:

$$rvc = \frac{nc-vnm}{nc} \times 100$$

(B) Definitions.--For purposes of subparagraph (A):(i) The term "RVC" means the regional value-content, expressed as a percentage.(ii) The term "NC" means the net cost of the good.(iii) The term "VNM" means the value of nonoriginating materials used by the producer in the production of the good.(4) Value of nonoriginating materials used in originating materials.--Except as provided in subsection (c)(1), and for a motor vehicle identified in subsection (c)(2) or a component identified in Annex 403.2 of the Agreement, the value of nonoriginating materials used by the producer in the production of a good shall not, for purposes of calculating the regional value-content of the good under paragraph (2) or

(3), include the value of nonoriginating materials used to produce originating materials that are subsequently used in the production of the good.(5) Net cost method must be used in certain cases.--An exporter or producer shall calculate the regional value-content of a good solely on the basis of the net cost method described in paragraph (3), if--(A) there is no transaction value for the good;(B) the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code;(C) the good is sold by the producer to a related person and the volume, by units of quantity, of sales of identical or similar goods to related persons during the six-month period immediately preceding the month in which the good is sold exceeds 85 percent of the producer's total sales of such goods during that period;(D) the good is--(i) a

motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;(ii) identified in Annex 403.1 or 403.2 of the Agreement and is for use in a motor vehicle provided for in heading 8701 or 8702, subheadings 8703.21 through 8703.90, or heading 8704, 8705, or 8706;(iii) provided for in subheadings 6401.10 through 6406.10; or(iv) a word processing machine provided for in subheading 8469.10.00;(E) the exporter or producer chooses to accumulate the regional value-content of the good in accordance with subsection (d); or(F) the good is designated as an intermediate material under paragraph (10) and is subject to a regional value-content requirement.(6) Net cost method allowed for adjustments.--If an exporter or producer of a good calculates the regional value-content of the good on the basis of the transaction value method and a NAFTA country subsequently notifies the exporter or producer, during the course of a verification conducted in accordance with chapter 5 of the Agreement, that the transaction value of the good or the value of any material used in the production of the good must be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, the exporter or producer may calculate the regional value-content of the good on the basis of the net cost method.(7) Review of adjustment.--Nothing in paragraph (6) shall be construed to prevent any review or appeal available in accordance with article 510 of the Agreement with respect to an adjustment to or a rejection of--(A) the transaction value of a good; or(B) the value of any material used in the production of a good.(8) Calculating net cost.--The producer may, consistent with regulations implementing this section, calculate the net cost of a good under paragraph (3), by--(A) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and reasonably allocating the resulting net cost of those goods to the good;(B) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the good, and subtracting any sales promotion, marketing and after- sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the good; or(C) reasonably allocating each cost that is part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.(9) Value of material used in production.--Except as provided in paragraph (11), the value of a material used in the production of a good--(A) shall--(i) be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code; or(ii) in the event that there is no transaction value or the transaction value of the material is unacceptable under Article 1 of the Customs Valuation Code, be determined in accordance with Articles 2 through 7 of the Customs Valuation Code; and(B) if not included under clause (i) or (ii) of subparagraph (A), shall include--(i) freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;(ii) duties, taxes,

and customs brokerage fees paid on the material in the territory of one or more of the NAFTA countries; and(iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product.(10) Intermediate material.--Except for goods described in subsection

(c)(1), any self-produced material, other than a component identified in Annex 403.2 of the Agreement, that is used in the production of a good may be designated by the producer of the good as an intermediate material for the purpose of calculating the regional value-content of the good under paragraph (2) or (3); provided that if the intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is used in the production of the intermediate material may be designated by the producer as an intermediate material.(11) Value of intermediate material.--The value of an intermediate material shall be--(A) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to the intermediate material; or(B) the aggregate of each cost that is part of the total cost incurred with respect to the intermediate material that can be reasonably allocated to that intermediate material.(12) Indirect material.--The value of an indirect material shall be based on the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.(c) Automotive Goods.--(1) Passenger vehicles and light trucks, and their automotive parts.--For purposes of calculating the regional value-content under the net cost method for--(A) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, or(B) a good provided for in the tariff provisions listed in Annex 403.1 of the Agreement, that is subject to a regional value-content requirement and is for use as original equipment in the production of a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31,

(2) Other vehicles and their automotive parts.--For purposes of calculating the regional value-content under the net cost method for a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00, or a component identified in Annex 403.2 of the Agreement for use as original equipment in the production of the motor vehicle, the value of nonoriginating materials used by the producer in the production of the good shall be the sum of--(A) for each material used by the producer listed in Annex 403.2 of the Agreement, whether or not produced by the producer, at the choice of the producer and determined in accordance with subsection

(b), either--(i) the value of such material that is nonoriginating, or(ii) the value of nonoriginating materials used in the production of such material; and(B) the value of any other nonoriginating material used by the producer that is not listed in Annex 403.2 of the Agreement determined in accordance with subsection (b).(3) Averaging permitted.--(A) In general.--For purposes of calculating the regional value- content of a motor vehicle described in paragraph (1) or (2), the producer may average its calculation over its fiscal year, using any of the categories described in subparagraph (B), on the basis of either all motor vehicles in the category or on the basis of only the motor vehicles in the category that are exported to the territory of one or more of the other NAFTA countries.(B) Category described.--A category is described in this subparagraph if it is--(i) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a NAFTA country;(ii) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;(iii) the same model line of motor vehicles produced in the territory of a NAFTA country; or(iv) if applicable, the basis set out in Annex 403.3 of the Agreement.(4) Annex 403.1 and annex 403.2.--For purposes of calculating the regional value-content for any or all goods provided for in a tariff provision listed in Annex 403.1 of the Agreement, or a component or material identified in Annex 403.2 of the Agreement, produced in the same plant, the producer of the good may--(A) average its calculation--(i) over the fiscal year of the motor vehicle producer to whom the good is sold;(ii) over any quarter or month; or(iii) over its fiscal year, if the good is sold as an aftermarket part;(B) calculate the average referred to in subparagraph (A) separately for any or all goods sold to one or more motor vehicle producers; or(C) with respect to any calculation under this paragraph, make a separate calculation for goods that are exported to the territory of one or more NAFTA countries.(5) Phase-in of regional value-content requirement.--Notwithstanding Annex 401 of the Agreement, and except as provided in paragraph (6), the regional value-content requirement shall be--(A) for a producer's fiscal year beginning on the day closest to January 1, 1998, and thereafter, 56 percent calculated under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002, and thereafter, 62.5 percent calculated under the net cost method, for--(i) a good that is a motor vehicle for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or a motor vehicle provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31; and(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40, that is for use in a motor vehicle identified in clause (i); and(B) for a producer's fiscal year beginning on the day closest to January 1, 1998, and thereafter, 55 percent calculated under the net cost method, and for a producer's fiscal year beginning on the day closest to January 1, 2002, and thereafter, 60 percent calculated under the net cost method, for--(i) a good that is a motor vehicle provided for in heading 8701, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or a motor vehicle for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00;(ii) a good provided for in heading 8407 or 8408, or subheading 8708.40 that is for use in a

motor vehicle identified in clause (i); and(iii) except for a good identified in subparagraph (A)(ii) or a good provided for in subheadings 8482.10 through 8482.80, or subheading 8483.20 or 8483.30, a good identified in Annex 403.1 of the Agreement that is subject to a regional value-content requirement and is for use in a motor vehicle identified in subparagraph (A)(i) or (B)(i).(6) New and refitted plants.--The regional value-content requirement for a motor vehicle identified in paragraph (1) or (2) shall be--(A) 50 percent for 5 years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if--(i) it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries;(ii) the plant consists of a new building in which the motor vehicle is assembled; and(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or(B) 50 percent for 2 years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in paragraph (2), size category and underbody, different from that assembled by the motor vehicle assembler in the plant before the refit.(7) Election for certain vehicles from canada.--In the case of goods provided for in subheadings 8703.21 through 8703.90, or subheading 8704.21 or 8704.31, exported from Canada directly to the United States, and entered on or after January 1, 1989, and before the date of entry into force of the Agreement between the United States and Canada, an importer may elect to use the rules of origin set out in this section in lieu of the rules of origin contained in section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) and may elect to use the method for calculating the value of nonoriginating materials established in article 403(2) of the Agreement in lieu of the method established in article 403(1) of the Agreement for purposes of determining eligibility for preferential duty treatment under the United States-Canada Free-Trade Agreement. Any election under this paragraph shall be made in writing to the Customs Service not later than the date that is 180 days after the date of entry into force of the Agreement between the United States and Canada. Any such election may be made only if the liquidation of such entry has not become final. For purposes of averaging the calculation of regional value-content for the goods covered by such entry, where the producer's 1989-1990 fiscal year began after January 1, 1989, the producer may include the period between January 1, 1989, and the beginning of its first fiscal year after January 1, 1989, as part of fiscal year 1989-1990.(d) Accumulation.--(1) Determination of originating good.--For purposes of determining whether a good is an originating good, the production of the good in the territory of one or more of the NAFTA countries by one or more producers shall, at the choice of the exporter or producer of the good, be considered to have been performed in the territory of any of the NAFTA countries by that exporter or producer, if--(A) all nonoriginating materials used in the production of the good undergo an applicable tariff classification change set out in Annex 401 of the Agreement;(B) the good satisfies any applicable regional value-content

requirement; and(C) the good satisfies all other applicable requirements of this section.

(2) Treatment as single producer.--For purposes of subsection

(b)(10), the production of a producer that chooses to accumulate its production with that of other producers under paragraph (1) shall be treated as the production of a single producer.(e) De Minimis Amounts of Nonoriginating Materials.--(1) In general.--Except as provided in paragraphs (3), (4), (5), and

(6), a good shall be considered to be an originating good if--(A) the value of all nonoriginating materials used in the production of the good that do not undergo an applicable change in tariff classification (set out in Annex 401 of the Agreement) is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis, or(B) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all such nonoriginating materials is not more than 7 percent of the total cost of the good,

(2) Goods not subject to regional value-content requirement.--A good that is otherwise subject to a regional value-content requirement shall not be required to satisfy such requirement if--(A)(i) the value of all nonoriginating materials used in the production of the good is not more than 7 percent of the transaction value of the good, adjusted to a F.O.B. basis; or(ii) where the transaction value of the good is unacceptable under Article 1 of the Customs Valuation Code, the value of all nonoriginating materials is not more than 7 percent of the total cost of the good; and(B) the good satisfies all other applicable requirements of this section.(3) Dairy products, etc.--Paragraph (1) does not apply to--(A) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of a good provided for in chapter 4 of the HTS;(B) a nonoriginating material provided for in chapter 4 of the HTS or a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80 that is used in the production of--(i) preparations for infants containing over 10 percent by weight of milk solids provided for in subheading 1901.10.00;(ii) mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20.00;(iii) a dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90.30, 1901.90.40, or 1901.90.80;(iv) a good provided for in heading 2105 or subheading 2106.90.05, or preparations containing over 10 percent by weight of milk solids provided for in subheading 2106.90.15, 2106.90.40, 2106.90.50, or 2106.90.65;(v) a good provided for in subheading 2202.90.10 or 2202.90.20; or(vi) animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90.30;(C) a nonoriginating material provided for in heading 0805 or

subheadings 2009.11 through 2009.30 that is used in the production of--(i) a good provided for in subheadings 2009.11 through 2009.30, or subheading 2106.90.16, or concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or(ii) a good provided for in subheading 2202.90.30 or 2202.90.35, or fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, provided for in subheading 2202.90.36;(D) a nonoriginating material provided for in chapter 9 of the HTS that is used in the production of instant coffee, not flavored, provided for in subheading 2101.10.20;(E) a nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in headings 1501 through 1508, or heading 1512, 1514, or 1515;(F) a nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in headings 1701 through 1703;(G) a nonoriginating material provided for in chapter 17 of the HTS or heading 1805 that is used in the production of a good provided for in subheading 1806.10;(H) a nonoriginating material provided for in headings 2203 through 2208 that is used in the production of a good provided for in headings 2207 through 2208;(I) a nonoriginating material used in the production of--(i) a good provided for in subheading 7321.11.30;(ii) a good provided for in subheading 8415.10, subheadings 8415.81 through 8415.83, subheadings 8418.10 through 8418.21, subheadings 8418.29 through 8418.40, subheading 8421.12 or 8422.11, subheadings 8450.11 through 8450.20, or subheadings 8451.21 through 8451.29;(iii) trash compactors provided for in subheading 8479.89.60; or(iv) a good provided for in subheading 8516.60.40; and(J) a printed circuit assembly that is a nonoriginating material used in the production of a good where the applicable change in tariff classification for the good, as set out in Annex 401 of the Agreement, places restrictions on the use of such nonoriginating material.(4) Certain fruit juices.--Paragraph (1) does not apply to a nonoriginating single juice ingredient provided for in heading 2009 that is used in the production of--(A) a good provided for in subheading 2009.90, or concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins, provided for in subheading 2106.90.19; or(B) mixtures of fruit or vegetable juices, fortified with minerals or vitamins, provided for in subheading 2202.90.39.(5) Goods provided for in chapters 1 through 27 of the hts.-- Paragraph (1) does not apply to a nonoriginating material used in the production of a good provided for in chapters 1 through 27 of the HTS unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.(6) Goods provided for in chapters 50 through 63 of the hts.--A good provided for in chapters 50 through 63 of the HTS, that does not originate because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 401 of the Agreement, shall be considered to be a good that originates if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.(f) Fungible Goods and Materials.--For purposes of determining whether a good is an

originating good--(1) if originating and nonoriginating fungible materials are used in the production of the good, the determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in regulations implementing this section; and(2) if originating and nonoriginating fungible goods are commingled and exported in the same form, the determination may be made on the basis of any of the inventory management methods set out in regulations implementing this section.(g) Accessories, Spare Parts, or Tools.--(1) In general.--Except as provided in paragraph (2), accessories, spare parts, or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools shall--(A) be considered as originating goods if the good is an originating good, and(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement.(2) Conditions.--Paragraph (1) shall apply only if--(A) the accessories, spare parts, or tools are not invoiced separately from the good;(B) the quantities and value of the accessories, spare parts, or tools are customary for the good; and(C) in any case in which the good is subject to a regional value- content requirement, the value of the accessories, spare parts, or tools are taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value- content of the good.(h) Indirect Materials.--An indirect material shall be considered to be an originating material without regard to where it is produced.(i) Packaging Materials and Containers for Retail Sale.--Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement. If the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.(j) Packing Materials and Containers for Shipment.--Packing materials and containers in which a good is packed for shipment shall be disregarded--(1) in determining whether the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement; and(2) in determining whether the good satisfies a regional value- content requirement.(k) Transshipment.--A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of subsection (a) if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a NAFTA country.(l) Nonqualifying Operations.--A good shall not be considered to be an originating good merely by reason of--(1) mere dilution with water or another substance that does not materially alter the characteristics of the

good; or(2) any production or pricing practice with respect to which it may be demonstrated, by a preponderance of evidence, that the object was to circumvent this section.(m) Interpretation and Application.--For purposes of this section:(1) The basis for any tariff classification is the HTS.(2) Except as otherwise expressly provided, whenever in this section there is a reference to a heading or subheading such reference shall be a reference to a heading or subheading of the HTS.(3) In applying subsection (a)(4), the determination of whether a heading or subheading under the HTS provides for and specifically describes both a good and its parts shall be made on the basis of the nomenclature of the heading or subheading, the rules of interpretation, or notes of the HTS.(4) In applying the Customs Valuation Code--(A) the principles of the Customs Valuation Code shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions;(B) the provisions of this section shall take precedence over the Customs Valuation Code to the extent of any difference; and(C) the definitions in subsection (o) shall take precedence over the definitions in the Customs Valuation Code to the extent of any difference.(5) All costs referred to in this section shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the NAFTA country in which the good is produced.(n) Origin of Automatic Data Processing Goods.--Notwithstanding any other provision of this section, when the NAFTA countries apply the most-favored- nation rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.(o) Special Rule for Certain Agricultural Products.--Notwithstanding any other provision of this section, for purposes of applying a rate of duty to a good provided for in--(1) heading 1202 that is exported from the territory of Mexico, if the good is not wholly obtained in the territory of Mexico,(2) subheading 2008.11 that is exported from the territory of Mexico, if any material provided for in heading 1202 used in the production of that good is not wholly obtained in the territory of Mexico, or(3) subheading 1806.10.42 or 2106.90.12 that is exported from the territory of Mexico, if any material provided for in subheading 1701.99 used in the production of that good is not a qualifying good,

(p) Definitions.--For purposes of this section--(1) Class of motor vehicles.--The term "class of motor vehicles" means any one of the following categories of motor vehicles:(A) Motor vehicles provided for in subheading 8701.20, subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles designed for the transport of 16 or more persons provided for in subheading 8702.10.00 or 8702.90.00.(B) Motor vehicles provided for in subheading 8701.10, or subheadings 8701.30 through 8701.90.(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10.00 or 8702.90.00, or motor vehicles provided for in subheading 8704.21 or 8704.31.(D) Motor vehicles provided

for in subheadings 8703.21 through 8703.90.(2) Customs valuation code.--The term "Customs Valuation Code" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, including its interpretative notes.(3) F.O.B.--The term "F.O.B." means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.(4) Fungible goods and fungible materials.--The terms "fungible goods" and "fungible materials" mean goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.(5) Generally accepted accounting principles.--The term "Generally Accepted Accounting Principles" means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information, and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices, or procedures.(6) Goods wholly obtained or produced entirely in the territory of one or more of the nafta countries.--The term "goods wholly obtained or produced entirely in the territory of one or more of the NAFTA countries" means--(A) mineral goods extracted in the territory of one or more of the NAFTA countries;(B) vegetable goods harvested in the territory of one or more of the NAFTA countries;(C) live animals born and raised in the territory of one or more of the NAFTA countries;(D) goods obtained from hunting, trapping, or fishing in the territory of one or more of the NAFTA countries;(E) goods (such as fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a NAFTA country and flying its flag;(F) goods produced on board factory ships from the goods referred to in subparagraph (E), if such factory ships are registered or recorded with that NAFTA country and fly its flag;(G) goods taken by a NAFTA country or a person of a NAFTA country from the seabed or beneath the seabed outside territorial waters, provided that a NAFTA country has rights to exploit such seabed;(H) goods taken from outer space, if the goods are obtained by a NAFTA country or a person of a NAFTA country and not processed in a country other than a NAFTA country;(I) waste and scrap derived from--(i) production in the territory of one or more of the NAFTA countries; or(ii) used goods collected in the territory of one or more of the NAFTA countries, if such goods are fit only for the recovery of raw materials; and(J) goods produced in the territory of one or more of the NAFTA countries exclusively from goods referred to in subparagraphs (A) through (I), or from their derivatives, at any stage of production.(7) Identical or similar goods.--The term "identical or similar goods" means "identical goods" and "similar goods", respectively, as defined in the Customs Valuation Code.(8) Indirect material.--(A) The term "indirect material" means a good--(i) used in the production, testing, or inspection of a good but not physically incorporated into the good, or(ii) used in the maintenance of buildings or the operation of equipment associated with the production of a good,

(B) When used for a purpose described in subparagraph (A), the following materials are among those considered to be indirect materials:(i) Fuel and

energy.(ii) Tools, dies, and molds.(iii) Spare parts and materials used in the maintenance of equipment and buildings.(iv) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings.(v) Gloves, glasses, footwear, clothing, safety equipment, and supplies.(vi) Equipment, devices, and supplies used for testing or inspecting the goods.(vii) Catalysts and solvents.(viii) Any other goods that are not incorporated into the good, if the use of such goods in the production of the good can reasonably be demonstrated to be a part of that production.(9) Intermediate material.--The term "intermediate material" means a material that is self-produced, used in the production of a good, and designated pursuant to subsection (b)(10).(10) Marque.--The term "marque" means the trade name used by a separate marketing division of a motor vehicle assembler.(11) Material.--The term "material" means a good that is used in the production of another good and includes a part or an ingredient.(12) Model line.--The term "model line" means a group of motor vehicles having the same platform or model name.(13) Motor vehicle assembler.--The term "motor vehicle assembler" means a producer of motor vehicles and any related persons or joint ventures in which the producer participates.(14) NAFTA country.--The term "NAFTA country" means the United States, Canada or Mexico for such time as the Agreement is in force with respect to Canada or Mexico, and the United States applies the Agreement to Canada or Mexico.(15) New building.--The term "new building" means a new construction, including at least the pouring or construction of new foundation and floor, the erection of a new structure and roof, and installation of new plumbing, electrical, and other utilities to house a complete vehicle assembly process.(16) Net cost.--The term "net cost" means total cost less sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost.(17) Net cost of a good.--The term "net cost of a good" means the net cost that can be reasonably allocated to a good using one of the methods set out in subsection (b)(8).(18) Nonallowable interest costs.--The term "nonallowable interest costs" means interest costs incurred by a producer as a result of an interest rate that exceeds the applicable federal government interest rate for comparable maturities by more than 700 basis points, determined pursuant to regulations implementing this section.(19) Nonoriginating good; nonoriginating material.--The term "nonoriginating good" or "nonoriginating material" means a good or material that does not qualify as an originating good or material under the rules of origin set out in this section.(20) Originating.--The term "originating" means qualifying under the rules of origin set out in this section.(21) Producer.--The term "producer" means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles a good.(22) Production.--The term "production" means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, or assembling a good.(23) Reasonably allocate.--The term "reasonably allocate" means to apportion in a manner appropriate to the circumstances.(24) Refit.--The term "refit" means a plant closure, for purposes of plant conversion or retooling, that lasts at least 3 months.(25)

Related persons.--The term "related persons" means persons specified in any of the following subparagraphs:(A) Persons who are officers or directors of one another's businesses.(B) Persons who are legally recognized partners in business.(C) Persons who are employer and employee.(D) Persons one of whom owns, controls, or holds 25 percent or more of the outstanding voting stock or shares of the other.(E) Persons if 25 percent or more of the outstanding voting stock or shares of each of them is directly or indirectly owned, controlled, or held by a third person.(F) Persons one of whom is directly or indirectly controlled by the other.(G) Persons who are directly or indirectly controlled by a third person.(H) Persons who are members of the same family.

(26) Royalties.--The term "royalties" means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula, or process. It does not include payments under technical assistance or similar agreements that can be related to specific services such as--(A) personnel training, without regard to where performed; and(B) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services.(27) Sales promotion, marketing, and after-sales service costs.--The term "sales promotion, marketing, and after-sales service costs" means the costs related to sales promotion, marketing, and after-sales service for the following:(A) Sales and marketing promotion, media advertising, advertising and market research, promotional and demonstration materials, exhibits, sales conferences, trade shows, conventions, banners, marketing displays, free samples, sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information), establishment and protection of logos and trademarks, sponsorships, wholesale and retail restocking charges, and entertainment.(B) Sales and marketing incentives, consumer, retailer, or wholesaler rebates, and merchandise incentives.(C) Salaries and wages, sales commissions, bonuses, benefits (such as medical, insurance, and pension), traveling and living expenses, and membership and professional fees for sales promotion, marketing, and after-sales service personnel.(D) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.(E) Product liability insurance.(F) Office supplies for sales promotion, marketing, and after- sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.(G) Telephone, mail, and other communications, where such costs are identified separately for sales promotion, marketing, and after- sales service of goods on the financial statements or cost accounts of the producer.(H) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution

centers.(I) Property insurance, taxes, utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer.(J) Payments by the producer to other persons for warranty repairs.(28) Self-produced material.--The term "self-produced material" means a material that is produced by the producer of a good and used in the production of that good.(29) Shipping and packing costs.--The term "shipping and packing costs" means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, but does not include the costs of preparing and packaging the good for retail sale.(30) Size category.--The term "size category" means with respect to a motor vehicle identified in subsection (c)(1)(A)--(A) 85 cubic feet or less of passenger and luggage interior volume;(B) more than 85 cubic feet, but less than 100 cubic feet, of passenger and luggage interior volume;(C) at least 100 cubic feet, but not more than 110 cubic feet, of passenger and luggage interior volume;(D) more than 110 cubic feet, but less than 120 cubic feet, of passenger and luggage interior volume; and(E) 120 cubic feet or more of passenger and luggage interior volume.(31) Territory.--The term "territory" means a territory described in Annex 201.1 of the Agreement.(32) Total cost.--The term "total cost" means all product costs, period costs, and other costs incurred in the territory of one or more of the NAFTA countries.(33) Transaction value.--Except as provided in subsection (c)(1) or

(c)(2)(A), the term "transaction value" means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3, and 4 of Article 8 of the Customs Valuation Code and determined without regard to whether the good or material is sold for export.(34) Underbody.--The term "underbody" means the floor pan of a motor vehicle.(35) Used.--The term "used" means used or consumed in the production of goods.(q) Presidential Proclamation Authority.--(1) In general.--The President is authorized to proclaim, as a part of the HTS--(A) the provisions set out in Appendix 6.A of Annex 300-B, Annex 401, Annex 403.1, Annex 403.2, and Annex 403.3, of the Agreement, and(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.(2) Modifications.--Subject to the consultation and layover requirements of section 103, the President may proclaim--(A) modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than the provisions of paragraph A of Appendix 6 of Annex 300-B and section XI of part B of Annex 401 of the Agreement; and(B) a modified version of the definition of any term set out in subsection (p) (and such modified version of the definition shall supersede the version in subsection (p)), but only if the modified version reflects solely those modifications to the same term in article 415 of the Agreement that are agreed to by the NAFTA countries before the 1st anniversary of the date of the enactment of this Act.(3) Special rules for textiles.--Notwithstanding the provisions of paragraph

(2)(A), and subject to the consultation and layover requirements of section 103, the President may proclaim--(A) modifications to the provisions proclaimed under the authority of paragraph (1)(A) as are necessary to implement an agreement with one or more of the NAFTA countries pursuant to paragraph 2 of section 7 of Annex 300-B of the Agreement, and(B) before the 1st anniversary of the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of Appendix 6.A of Annex 300-B and section XI of part B of Annex 401 of the Agreement.

House Ways & Means Committee Report

Section 202(a). Originating goods

Present law

In general, goods are considered to be a product of a particular country if they are either wholly the growth, product, or manufacture of such country or if they have been "substantially transformed" in such country. The term "substantially transformed" is not statutorily defined, but rather has been the subject of interpretation by the courts.

Section 202 of the U.S.-Canada Implementation Act and General Note 3(c)(vii) of the HTS provides that goods are considered to be originating goods under the U.S.-Canada FTA if they are wholly obtained or produced in the territory of either or both parties or if they have been transformed in the territory of either party so as to be subject to a change in tariff classification or such other requirements, including regional value content requirements, as described in U.S.-Canada FTA Annex 301.2. Certain goods processed or assembled in either or both countries are considered originating goods if their regional value content is at least 50 percent of the value of the goods.

Explanation of provision

Section 202(a) of H.R. 3450 implements NAFTA Article 401, entitled "Originating Goods." The basic principles for determining whether imported goods are eligible for preferential treatment under the NAFTA are set forth in this Article. Under subsection (a), goods are considered to originate in a NAFTA Party if:

(1) they are wholly obtained or produced in the territory of one or more NAFTA Parties;

(2) each of the non-originating materials used in the production of a good undergoes a change in tariff classification as a result of production that occurs entirely within one or more of the Parties or the good otherwise satisfies the origin requirements;

(3) the good is produced entirely in one or more of the Parties exclusively from NAFTA-origin materials; or

(4) except for a good provided for in HTS chapters 62 through 63, the good is produced entirely in one or more of the NAFTA Parties but one or more of the nonoriginating materials that are provided for as parts under the HTS and used in the production of the good does not undergo a change in tariff classification (because the good was imported in an unassembled or

disassembled form but was classified as an assembled good or the heading or subheading for the good provides for and specifically describes both the good itself and its parts), but only if the regional value content of the goods (labor performed and parts produced within NAFTA countries) meets certain thresholds (at least 60 percent of the value of the goods or 50 percent of their net cost).

Subsection (a)(2) provides that the requirement that each nonoriginating material undergo an applicable change in tariff classification or other applicable rules does not apply to goods produced in a foreign trade zone or subzone that are entered for consumption in the territory of the United States.

Reasons for change

Section 202 in its entirety enacts Articles 401 through 415 of NAFTA Chapter 4: Rules of Origin. This section sets forth the strong rules of origin established under NAFTA Chapter 4 to ensure that NAFTA preferential tariff treatment is granted only to the products of the United States, Mexico, and Canada. The purpose of the rules is to make certain that the special lower NAFTA tariff treatment benefits firms and individuals that produce or manufacture goods in North America.

As noted in the Statement of Administrative Action, submitted by the Administration, these rules are specifically designed to prevent the creation of an export platform in Mexico for goods not containing the requisite U.S., Mexican, or Canadian content. The Committee intends that the U.S. Customs Service carefully administer the NAFTA rules of origin set out in this section.

Section 202(b). Regional value-content

Present law

Section 202 of the U.S.-Canada FTA Implementation Act and General Note 3(c)(vii) of the HTS provides that regional value-content under the U.S.-Canada FTA is determined by adding the value of materials originating in the territory of either or both Parties to the direct cost of processing performed in the territory of Canada or the United States.

Explanation of provision

Section 202(b) of H.R. 3450 sets forth the methodologies for calculating regional value-content on the basis of transaction value or on the basis of net cost of the good, and defines the terms used in the formulas. Subsection (b)(2) provides that the regional value-content of a good, when calculated using the transaction value method, shall be the difference between the transaction value of the good (adjusted to an f.o.b. basis) and the value of nonoriginating materials used in the production of the good divided by the transaction value of the good. Subsection (b)(3) sets forth the formula for calculating the regional value-content using the net cost method. Under that method, the regional value-content is calculated by dividing the difference

between the net cost of the good and the value of nonoriginating materials used in the production of the good by the net cost of the good.

Subsection (b)(4) provides that, except for certain motor vehicles and parts, the value of any nonoriginating materials used to produce originating materials subsequently used in the production of a good is excluded from the calculation of the regional value-content.

Under subsection (b)(5), the net cost method must be used to calculate regional value-content if: (1) there is no transaction value for the good; (2) the transaction value is unacceptable under Article 1 of the Customs Valuation Code (Agreement on Implementation of Article VII of the GATT, hereafter cited as the Customs Valuation Code); (3) the good is sold by a producer to a related person and volume of sales of identical or similar goods to related persons during the preceding six months is more than 85 percent of the producer's total sales of such goods; (4) the good is a motor vehicle provided for in certain specified HTS categories, an automotive component identified in Annexes 403.1 or 403.2, or certain footwear; (5) the exporter or producer chooses to accumulate the regional value-content of the good; or (6) the good is designated as an intermediate material and is subject to a regional value-content requirement.

Subsection (b)(6) allows an exporter or producer who has calculated regional value-content based on transaction value and who is subsequently notified during the course of a verification that the transaction value or the value of any material used in the production of the good must be adjusted or is unacceptable under Article 1 of the Customs Valuation Code, to calculate regional value-content using the net cost method.

Subsection (b)(7) clarifies that nothing in section 202(b)(6) is to be construed to prevent any review or appeal available under NAFTA Article 510 with respect to an adjustment to or a rejection of the transaction value of the good or the value of any material used in the production of a good.

As required in NAFTA Article 402(8), subsection (b)(8) provides that a producer of a good may use one of three ways to allocate applicable costs when calculating the regional value-content of a good using the net cost method: (1) calculate total costs, subtract nonallowable costs, and reasonably allocate the resulting net cost to the goods; (2) calculate total costs, reasonably allocate the total cost to the good and then subtract nonallowable costs; or (3) reasonably allocate each allowable cost that forms part of the total cost so that the aggregate of the costs does not include any nonallowable costs.

Subsection (b)(9) provides that the value of a material used in the production of a good shall generally be the transaction value of the material determined in accordance with Article 1 of the Customs Valuation Code, or if the transaction value is unacceptable under Article 1 of the Customs Valuation Code, the value determined in accordance with Article 2 through 7 of the Customs Valuation Code. If not included under either Customs Valuation Code provision, the value shall include freight, insurance, packing, all other costs incurred in transporting the material to the producer, duties, taxes, customs brokerage fees, and the cost of waste and spoilage less the value of renewable scrap or by-product.

Under subsection (b)(10), with certain exceptions related to automotive goods, any self-produced material used in the production of a good may be designated by the producer of the good as an intermediate material for purposes of calculating regional value-content, provided that, where the intermediate material is itself subject to a regional value-content requirement, no other self-produced material subject to a regional value-content requirement used in the production of that intermediate material may itself be designated as an intermediate material. Subsections (b)(11) and (b)(12) provide rules for calculating the value of an intermediate material and an indirect material.

Reasons for change

Section 202(b) enacts NAFTA Article 402 as a statutory provision. The Committee recognizes that this subsection provides importers with some degree of flexibility in choosing the method of calculating and allocating of regional value-content. However, this flexibility could also make enforcement of the rules by the Customs Service more difficult. Therefore, the Committee intends that Customs consult regularly with the Committee on the implementation of Section 202 generally, and subsection (b), in particular.

Section 202(c). Automotive goods

Present law

Section 202 of the U.S.-Canada FTA Implementation Act and General Note 3(c)(vii) of the HTS provide that, in order to qualify as goods originating in Canada under the U.S.-Canada FTA, automobiles and light trucks must meet the applicable change in tariff classification requirement provided that the regional value-content is not less than 50 percent of the value of the goods when exported to the United States.

Explanation of provision

Section 202(c)(1) of H.R. 3450 provides that, for passenger vehicles and light trucks and their automotive parts, for purposes of calculating the regional value-content, the value of nonoriginating materials must be traced back through the production process, i.e., the value of nonoriginating materials used in the production of the good shall be the sum of the values of all nonoriginating materials at the time such materials are received by the first person in the territory of a NAFTA country who takes title to them, that are imported from outside the NAFTA countries under the HTS provisions listed in Annex 403.1, and that are used in the production of the good or in any materials used in the production of the good. Subsection (c)(2) provides that, for other vehicles and their automotive parts, the value of nonoriginating materials used by the producer shall be the sum of: (1) for each material listed in Annex 403.2, either the value of the material that is nonoriginating or the value of nonoriginating materials used in the production of such material and (2) the value of any other nonoriginating materials used by the producer.

Under subsection (c)(3), an auto producer may average its calculation of the regional value-content of a motor vehicle over its fiscal year using any of the following categories, on the basis of either all motor vehicles in the category or only those vehicles exported to one or more of the NAFTA countries; (1) over the same model line of motor vehicles in a single class produced in the same plant in a NAFTA country; (2) over the same class of motor vehicles produced in the same plant in a NAFTA country; or (3) over the same model line produced in the territory of a NAFTA country. In addition, if certain conditions are met, vehicles produced by CAMI Automotive, Inc., in Canada may be averaged with vehicles produced by General Motors of Canada. For purposes of calculating the regional value-content of the components listed in Annexes 403.1 or 403.2 of the NAFTA, the producer may: (1) average its calculation over the fiscal year of the motor vehicle producer to whom the good is sold; over any quarter or month; or, if the good is sold as an aftermarket part, over its fiscal year; (2) calculate the average separately for good sold to one or more motor vehicle producers; or (3) calculate separately for goods that are exported to a NAFTA country.

Subsection (c)(5) sets forth the regional value-content requirement for motor vehicles. For passenger motor vehicles, light trucks, and their engines and transmissions, the regional value-content is increased in stages from 50 percent for the first four years of NAFTA to 56 percent for the second four years and to 62.5 percent thereafter. Other motor vehicles and other automotive parts are subject to a 50 percent regional content requirement for the first four years, 55 percent for the second four years, and 60 percent thereafter. Under section 202(c)(6), the required regional value-content is temporarily reduced to 50 percent for a five-year period for investors establishing new plants to produce vehicles not previously made by that producer in the region and for a two-year period following refit of an existing plant to produce a new vehicle.

Subsection (c)(7) provides that, for certain motor vehicles exported from Canada on or after January 1, 1989, and before date of entry into force of the NAFTA, the importer may elect to use the NAFTA rules of origin in lieu of the U.S.-Canada FTA rules of origin and may elect to use either of the methods provided in the NAFTA for tracing the value of non-originating materials in automotive products for purposes of determining eligibility for preferential treatment under the U.S.-Canada FTA. Election must be made within 180 days after NAFTA entry into force. Any such election may be made only if the liquidation of such entry has not become final.

Reasons for change

Section 202(c) enacts Article 403 of the NAFTA as a statutory provision. The Committee is aware of the problems encountered with Customs' enforcement of the rules of origin for automobiles under the U.S.-Canada FTA. (Joint hearing before the Subcommittee on Trade and Subcommittee on Oversight, October 16, 1991, Serial No. 102-67.) The Committee expects that the new NAFTA provisions, incorporated in this subsection, will avoid

similar problems by providing a much greater level of specificity to guide the Customs Service.

In this regard, the Committee expects that the new tracing provisions should eliminate disputes over so-called "roll-up" of non-NAFTA content. Moreover, the provisions on nonallowable interest costs (as defined in subsection (p)) should eliminate disputes over interest calculations.

The Committee further expects that the Customs Service will keep the Committee fully apprised should any problems with the new rules of origin regime develop.

Subsection (c)(7) implements an agreement between the United States and Canada signed in December 1992, which provides transitional arrangements for calculating regional value-content for unliquidated entries under the U.S.- Canada FTA.

Section 202(d). Accumulation

Present law

No provision.

Explanation of provision

Section 202(d) of H.R. 3450 implements NAFTA Article 404, which clarifies that where more than one producer is involved in the production of a good, either in one NAFTA country or more than one NAFTA country, they may accumulate their regional processing in determining whether a good meets a required tariff classification change or regional value-content requirement.

Reasons for change

Section 202(d) enacts Article 404 of the NAFTA as a statutory provision. This provision is needed to ensure that all North American content is counted toward meeting the rules of origin requirements.

Section 202(e). De minimis amounts of nonoriginating materials

Present law

No provision.

Explanation of provision

Section 202(e) of H.R. 3450 provides that, with certain exceptions, goods may qualify as originating goods even if a small portion of the material (generally less than seven percent of the value or total cost of the good) fails to undergo an otherwise required change in tariff classification. For goods subject to a regional value-content requirement, the calculation of that content is waived if the value of all nonoriginating materials is less than seven percent of the value or total cost of the good. The de minimis rule

does not apply to certain agricultural products, home appliances, printed circuit assemblies, and other articles.

Reasons for change
Section 202(e) enacts Article 405 of the NAFTA as a statutory provision.

Section 202(f). Fungible goods and materials

Present law
Under the U.S.-Canada FTA, Customs permits the origin determination to be made on the basis of recognized inventory management methods where originating and nonoriginating materials are used in the production of a good or are commingled.

Explanation of provision
Section 202(f) of H.R. 3450 provides that, if originating and nonoriginating fungible materials are used in the production of a good or are commingled and exported in the same form, the determination of whether the materials are originating may be determined on the basis of any of the inventory management methods set out in the regulations implementing the NAFTA rules of origin.

Reasons for change
Section 202(f) codifies current Customs' practice and enacts NAFTA Article 406 as a statutory provision.

Section 202(g). Accessories, spare parts, or tools

Present law
Section 202 of the U.S.-Canada FTA Implementation Act and General Note 3(c)(vii) of the HTS provides that, under the U.S.-Canada FTA, accessories, spare parts, or tools delivered with an article as part of its standard equipment are deemed to have the same origin as that article.

Explanation of provision
Section 202(g) of H.R. 3450 provides that accessories, spare parts or tools shall be considered as originating goods if the good is an originating good and shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification. These provisions apply only if the accessories, spare parts or tools are not invoiced separately from the good and the quantities and values are customary for the good. For goods subject to a regional value-content requirement, the value of any accessories, spare parts or tools must be taken into account in calculating the regional value-content.

Reasons for change

Section 202(g) enacts Article 407 of the NAFTA as a statutory provision.

Section 202(h). Indirect materials

Present law

Under the U.S.-Canada FTA, Customs considers an indirect material to be an originating material without regard to where it is produced.

Explanation of provision

Section 202(h) of H.R. 3450 clarifies that indirect materials (generally, goods used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance or operation of buildings or equipment) are originating materials without regard to where they are produced.

Reasons for change

Section 202(h) enacts Article 408 of the NAFTA as a statutory provision.

Section 202(i). Packaging materials and containers for retail sale

Present law

Customs' practice under the U.S.-Canada FTA is to disregard packaging materials and containers in which a good is packaged for retail sale in determining whether all nonoriginating materials used in the production of a good undergo the applicable change in tariff classification. Such materials and containers are taken into account in calculating the regional value-content.

Explanation of provision

Section 202(i) of H.R. 3450 provides that, in determining whether all the nonoriginating materials used in the production of a good undergo the applicable change in tariff classification, packaging materials and containers associated with the retail sale shall be disregarded if they are classified with the good. If the good is subject to a regional value-content rule, the value of the retail packaging materials shall be taken into account in calculating the regional value-content.

Reasons for change

Section 202(i) enacts Article 409 of the NAFTA as a statutory provision.

Section 202(j). Packing materials and containers for shipment

Present law

Under the U.S.-Canada FTA, export packing costs are not included as part of the direct cost of processing, but packing is included in the value of materials.

Explanation of provision

Section 202(j) of H.R. 3450 provides that packing materials and containers in which a good is packed for shipment are to be disregarded in determining whether the materials used in production meet the applicable change in tariff classification requirement or the regional value-content requirement.

Reasons for change

Section 202(j) enacts Article 410 of the NAFTA as a statutory provision.

Section 202(k). Transshipment

Present law

Section 202 of the U.S.-Canada FTA Implementation Act and General Note 3(c)(vii) of the HTS provides that goods exported from Canada are deemed to originate in Canada only if they are not further processed in a third country before being shipped to the United States.

Explanation of provision

Section 202(k) of H.R. 3450 provides that goods shipped outside the territories of the NAFTA countries for further processing or any other operation shall lose their status as originating goods. The subsection expressly exempts unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a NAFTA country.

Reasons for change

Section 202(k) enacts Article 411 of the NAFTA as a statutory provision.

Section 202(l). Non-qualifying operations

Present law

Section 202 of the U.S.-Canada FTA Implementation Act and General Note 3(c)(vii) of the HTS provides that goods are not considered to have originated in a U.S.-Canada FTA country as a result of simple packaging or combining operations, mere dilution, or any process undertaken for the sole purpose of circumventing the rules of origin.

Explanation of provision

Section 202(l) of H.R. 3450 provides that goods shall not be considered to be originating goods merely because they have been diluted with water or another substance or by reason of a production or pricing practice the object of which was to circumvent the rules of origin.

Reasons for change

Section 202(l) implements NAFTA Article 412 as a statutory provision. Under Article 412, each Party must deny benefits to goods that have been processed or priced merely to circumvent the purpose of the rules of origin. Subsection (l) makes this a part of domestic law. The Committee notes that the Statement of Administrative Action makes clear that Article 412 will be applied in the same manner as the anti-circumvention provisions of other U.S. tariff preferences programs.

Section 202(m). Interpretation and application

Present law

No provision.

Explanation of provision

Section 202(m) of H.R. 3450 sets forth interpretative provisions for purposes of construing section 202. For example, subsection (m) specifies that the provisions and definitions of this section shall take precedence over the Customs Valuation Code, to the extent of any difference.

Reasons for change

Section 202(m) enacts Article 413 of the NAFTA as a statutory provision to provide a uniform interpretation and application of the rules of origin in this section.

Section 202(n). Origin of automatic data processing goods

Present law

The current tariff treatment of automatic data processing goods and their parts is generally found within headings 8471, 8473, and 8541 of the HTS.

Explanation of provision

Subsection 202(n) of H.R. 3450 phases in, over ten years, a common external tariff for certain automatic data processing goods and their parts. When the MFN rate of duty applicable to these goods reaches the agreed level, these products will be deemed to be originating goods notwithstanding the rule of origin set forth in Chapter 4 of the Agreement.

Reasons for change

Section 202(n) enacts Article 308 and Annex 308.1 of the NAFTA to confer, by operation of law, NAFTA origin on automatic data processing products when the Parties apply the agreed MFN rate to these products.

Section 202(o). Special rule for certain agricultural products

Present law

No provision.

Explanation of provision

Section 202(o) of H.R. 3450 implements special rules concerning eligibility of certain peanuts, peanut products, and sugar-containing products for NAFTA preferential treatment, including tariffication of section 22 quotas and fees. Such benefits apply only to "qualifying" Mexican products.

This section imposes stricter rules than would otherwise be applicable under the NAFTA. Under subsection (o), in order to qualify for NAFTA benefits upon importation into the United States, Mexican peanuts must be harvested in Mexico, Mexican peanut butter and other products under subheading 2008.11 of the HTS must be made from peanuts harvested in Mexico, and the sugar used in the Mexican sugar-containing products under HTS subheadings 1806.10.42 and 2106.90.12 must have been harvested in Mexico.

Reasons for change

Section 202(o) implements the special rules of origin for peanuts, peanut products, and sugar-containing products provided for in paragraph 10 of Section A of Annex 703.2 of the NAFTA.

Section 202(p). Definitions

Present law

No provision.

Explanation of provision

Section 202(p) of H.R. 3450 provides a listing of definitions applicable to the implementation of NAFTA rules of origin under this section.

Reasons for change

Section 202(p) enacts the definitions set forth in Article 415 of the NAFTA as a statutory provision.

Section 202(q). Presidential proclamation authority

Present law
No provision.

Explanation of provision
Section 202(q) of H.R. 3450 authorizes the President to proclaim the specific rules of origin in Annex 401 and NAFTA's other product-specific origin rules and definitions. In addition, subsection (q) gives authority to the President to modify specific rules by proclamation, if the three governments agree to such a change, subject to the consultation and layover provisions of section 103 of H.R. 3450 and special rules for textile and apparel articles.

Subsection (q) also provides the President with authority to modify the rule of origin definitions, set out in subsection (p), during the first year in which the NAFTA is in effect to reflect any agreement by the three governments to change the definitions in NAFTA Article 415.

Subsection (q)(3) sets forth special rules for textiles and apparel. Under these provisions, the President may proclaim changes to the specific rules for textile and apparel articles in only two circumstances, both subject to the consultation and layover requirements. First, within one year of enactment of this Act, the President may proclaim nonsubstantive, technical corrections to the specific rules of origin for textile or apparel goods (Appendix 6A of Annex 300-B and section XI of part B of Annex 401 of the NAFTA). Second, the President may proclaim a change to the rules of origin for a textile or apparel good, pursuant to section 7.2 of Annex 300-B, that the President determines to be warranted in light of a change in the availability in North America of a particular fabric, yarn, or fiber, and as agreed to by the NAFTA countries.

Reasons for change
Subsection (q) provides the statutory authority for the President to proclaim the specific rules of origin set out in Annexes 401, 403.1, 403.2, and 403.3, as well as in Appendix 6A of Annex 300-B of the NAFTA. The subsection is intended to ensure the strict implementation of rules of origin as negotiated and set forth in these Annexes. Because the proclamation authority is expressly subject to the consultation and layover requirements specified under section 103(a) of H.R. 3450, the Committee and the Congress will carefully review any changes in the rules which would vary from those previously set out.

The Committee is concerned that the Department of the Treasury may use the regulations implementing the NAFTA rules of origin as an opportunity to apply these rules to all import transactions. However, any general rulemaking should proceed on a separate track from the NAFTA rulemaking. The Committee would expect to be closely consulted by the Treasury Department and affected parties before such general rulemaking, beyond the NAFTA requirements, occurred.

The Committee believes that, given the sensitivity surrounding the negotiation of the rules of origin for textile and apparel products, the President's authority to proclaim any changes in this sector should be limited to only two circumstances: (1) to make purely technical changes; and (2) to

implement such changes as agreed to by the Parties in order to address issues of availability of supply.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 202 enacts into law the general rules of origin set forth in Chapter 4 of the NAFTA, and authorizes the President to proclaim the product- specific rules of origin set forth in Annex 401. These rules are essential to ensure that the benefits of the NAFTA accrue primarily to North American producers, and the Committee intends that the Customs Service vigorously enforce them.

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

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

Subsection (b) enacts into law Article 402 of the NAFTA, which sets forth the

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

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

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

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

As provided in paragraph 8 of Article 402, section 202(b)(8) sets forth three methods for allocating costs when using the net cost method to calculate regional value content. This subsection allows producers to allocate costs by: (1) calculating total costs, subtracting non-allowable costs, and reasonably allocating the resulting net cost to the goods; (2) calculating total costs, reasonably allocating the total cost to the good and then subtracting non-

allowable costs; or (3) reasonably allocating each allowable cost that forms part of the total cost so that the aggregate of the costs does not include any non-allowable costs.

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

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

Section 202(c) implements Article 403, which sets forth special rules of origin for motor vehicles. The Committee understands that these rules were developed by the NAFTA negotiators in response to problems that have arisen in applying the rules of origin under the CFTA to motor vehicles. Subsection (c)(1) provides that, for passenger vehicles and light trucks and their automotive parts, the value of non-originating materials must be traced back through the production process when calculating regional value content. The tracing requirements under this subsection provide that the value of non- originating materials used in the production of the good is the sum of the values of all non-originating materials at the time such materials are received by the first person in the territory of a NAFTA country who takes title to them, that are imported from outside the NAFTA countries under the HTS provisions listed in Annex 403.1 and that are used in the production of the good or in any materials used in the production of the good.

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

Section 202(c)(3) permits an auto producer to average its calculation of the regional value content of a motor vehicle over its fiscal year using any of the following categories: (1) over the same model line of motor vehicles in a

single class produced in the same plant in a NAFTA country; (2) over the same class of motor vehicles produced in the same plant in a NAFTA country; or (3) over the same model line produced in the territory of a NAFTA country. Averaging may be done on the basis of either all motor vehicles in the category or only those vehicles exported to NAFTA countries. In addition, if certain conditions are met, vehicles produced by CAMI Automotive, Inc., in Canada may be averaged with vehicles produced by General Motors of Canada.

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

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

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

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

required tariff classification change or regional value content requirement.

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

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

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

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

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

With respect to packing materials and containers in which a good is packed

for shipment, subsection (j) provides that these are to be disregarded in determining whether the materials used in production meet the applicable change in tariff classification requirement or the regional value content requirement.

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

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

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

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

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

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

Subsection (q) provides the authority for the President to proclaim the specific rules of origin set forth in Annexes 401, 403.1, 403.2, and 403.3, as

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

SEC. 203. DRAWBACK.(a) Definition of a Good Subject to NAFTA Drawback

For purposes of this Act and the amendments made by subsection (b), the term "good subject to NAFTA drawback" means any imported good other than the following:(1) A good entered under bond for transportation and exportation to a NAFTA country.(2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph--(A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good, and(B) except for a good referred to in paragraph 12 of section A of Annex 703.2 of the Agreement that is exported to Mexico, if a good described in the first sentence of this paragraph is commingled with fungible goods and exported in the same condition, the origin of the good may be determined on the basis of the inventory methods provided for in the regulations implementing this title.(3) A good--(A) that is--(i) deemed to be exported from the United States,(ii) used as a material in the production of another good that is deemed to be exported to a NAFTA country, or(iii) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is deemed to be exported to a NAFTA country, and(B) that is delivered--(i) to a duty-free shop,(ii) for ship's stores or supplies for ships or aircraft, or(iii) for use in a project undertaken jointly by the United States and a NAFTA country and destined to become the property of the United States.(4) A good exported to a NAFTA country for which a refund of customs duties is granted by reason of--(A) the failure of the good to conform to sample or specification, or(B) the shipment of the good without the consent of the consignee.(5) A good that qualifies under the rules of origin set out in section 202 that is--(A) exported to a NAFTA country,(B) used as a material in the production of another good that is exported to a NAFTA country, or(C)

substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to a NAFTA country.(6) A good provided for in subheading 1701.11.02 of the HTS that is--(A) used as a material, or(B) substituted for by a good of the same kind and quality that is used as a material,(relating to refined sugar).(7) A citrus product that is exported to Canada.(8) A good used as a material, or substituted for by a good of the same kind and quality that is used as a material, in the production of--(A) apparel, or(B) a good provided for in subheading 6307.90.99 (insofar as it relates to furniture moving pads), 5811.00.20, or 5811.00.30 of the HTS, Where in paragraph (6) a good referred to by an item is described in parentheses following the item, the description is provided for purposes of reference only.(b) Consequential Amendments With Delayed Effect.--(1) Bonded manufacturing warehouses.--The last paragraph of section 311 of the Tariff Act of 1930 (19 U.S.C. 1311) is amended to read as follows:"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 article to the NAFTA country.

(2) Bonded smelting and refining warehouses.--Section 312 of the Tariff Act of 1930 (19 U.S.C. 1312) is amended--(A) in paragraphs (1) and (4) of subsection (b), by striking out the parenthetical matter and the final ", or" and by adding at the end the following:"; 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";(B) by adding at the end of subsection (b) the following new flush sentence.

(C) in subsection (d) by striking out the parenthetical matter and by inserting before the period the following:

"(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.

(3) Drawback.--Subsections (n) and (o) of section 313 of the Tariff Act of 1930 (19 U.S.C. 1313 (n) and (o)) are amended to read as follows:"(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,

"(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.".(4) Manipulation in warehouse.--Section 562 of the Tariff Act of 1930

(19 U.S.C. 1562) is amended--(A) in the second sentence by striking out "without payment of duties--" and inserting a dash;(B) by striking out

paragraphs (1), (2), and (3) and inserting the following:"(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."; and(B) in the third sentence by striking out "paragraph (1) of the preceding sentence" and inserting "paragraph (4) of the preceding sentence".(5) Foreign trade zones.--Section 3(a) of the Act of June 18, 1934

(commonly known as the "Foreign Trade Zones Act"; 19 U.S.C. 81c(a)) is amended--(A) in the last proviso--(i) by inserting after "That" the following: ", if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates,"; and(ii) by striking out "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," and inserting "during the period such Agreement is in operation"; and(B) by inserting before such last proviso the following new proviso: ": 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 customs 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:".(c) Consequential Amendment With Immediate Effect.--Section 313(j) of the Tariff Act of 1930 (19 U.S.C. 1313(j)) is amended--(1) by striking out "If" in paragraph (2) and inserting "Subject to paragraph (4), if"; and(2) by adding at the end the following new paragraph:"(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).".(d) Elimination of Drawback for Section 22 Fees.--Notwithstanding any other provision of law, the Secretary of the Treasury may not, on condition of export, refund or reduce a fee applied pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624) with respect to goods included under subsection (a) that are exported to--(1) Canada after December 31, 1995, for so long as it is a NAFTA country; or(2) Mexico after December 31, 2000, for so long as it is a NAFTA country.(e) Inapplicability to Countervailing and Antidumping Duties.--Nothing in this section or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

House Ways & Means Committee Report

Present law

Section 313 of the Tariff Act of 1930 is the principal authority for U.S. duty drawback programs. The section provides for the refund of up to 99 percent of duties paid on imported goods when such goods, or substituted domestic goods, are exported or incorporated in articles that are subsequently exported. The completed article must be exported within 5 years from the date of importation of the duty-paid foreign merchandise. Generally, duties subject to drawback are ordinary customs duties. Drawback

of antidumping and countervailing duties is not permitted. The procedural and other requirements governing drawbacks are set forth in 19 CFR Part 191.

Under the U.S.-Canada FTA, the United States and Canada are required to end duty drawback on goods exported to either country, effective January 1, 1994, subject to limited exceptions.

Explanation of provision

Section 203 of H.R. 3450 makes significant changes to U.S. drawback law in order to implement NAFTA Article 303 obligations restricting drawback and duty deferral programs between the Parties. These amendments go into effect, pursuant to section 213(c) of H.R. 3450, for exports to Canada on January 1, 1996, and for exports to Mexico on January 1, 2001.

Subsection (a) defines goods subject to NAFTA drawback restrictions as all goods imported into the United States except for those categories of goods specifically enumerated. These exceptions track those set forth in NAFTA Article 303, paragraph (6)a-f.

Under section 203, NAFTA drawback refers to the formula to be applied to compute the amount of a refund, waiver, or remission that will be allowed for duties owed or paid. The formula provides that, for dutiable goods traded between the Parties, drawback will be limited to an amount that is the lesser of (1) the total amount of customs duties paid or owed on the non-NAFTA components initially imported; and (2) the total amount of customs duties paid to another Party on the goods subsequently exported (hereafter called "NAFTA drawback").

Subsection (b) amends the applicable provisions of the Tariff Act of 1930 and the Foreign Trade Zones Act to authorize the Customs Service to apply NAFTA drawback to goods subject to NAFTA drawback that are covered in those provisions. Specifically, with regard to "manufacturing," subsection (b) amends section 311 of the Tariff Act of 1930 (19 U.S.C. 1311) relating to bonded manufacturing warehouses and section 312 (19 U.S.C. 1312) relating to bonded smelting and refining warehouses. With regard to "manufacturing" drawback, subsection (b) amends section 313 of the Tariff Act (19 U.S.C. 1313) relating to drawback and refunds to apply NAFTA drawback restrictions to goods subject to NAFTA drawback. Subsection (b) also amends section 562 of the Tariff Act (19 U.S.C. 1562) relating to manipulation in bonded warehouses to apply NAFTA drawback to goods subject to NAFTA drawback. With regard to duty deferrals allowed under the Foreign Trade Zones Act, subsection (b) amends the Foreign Trade Zones Act (19 U.S.C. 81c(a)) to apply the NAFTA drawback restriction to goods exported from a foreign trade zone (FTZ).

In accordance with paragraphs (1) and (6) of NAFTA Article 303, the implementing bill imposes no limitations on same condition duty drawback; consequently, there are no amendments to 19 U.S.C. 1313(j)(1).

Subsection (c) eliminates, effective upon entry into force of the Agreement, "same condition substitution drawback" by amending section 313(j)(2) of the Tariff Act of 1930 (19 U.S.C. 1313(j)(2)), thereby eliminating the right to a refund on the duties paid on a dutiable good upon

shipment to Canada or Mexico of a substitute good, except for goods described in paragraphs one through eight of section 203(a).

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

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

Reasons for change

Section 203 implements the limitations on drawback established under NAFTA Article 303, entitled "Restriction on Drawback and Duty Deferral Programs," by amending the applicable provisions of the Tariff Act of 1930 and the Foreign Trade Zones Act. Article 303 of the NAFTA strictly limits drawback and duty deferral programs on trade between the NAFTA Parties.

Section 203, when fully implemented, serves to remove the trade distorting provisions of the drawback laws by placing restrictions on duty drawback on trade between NAFTA countries. This is critical to ensure that none of the NAFTA countries can become an "export platform" for materials produced in other regions of the world.

Subsection (a) also implements NAFTA Article 303, paragraph 6, by specifically exempting those categories of goods listed therein from NAFTA drawback treatment. Sections 203(d) and 203(e) directly implement U.S. obligations under NAFTA Article 303(2) (c) and (a), respectively.

The Committee understands that the NAFTA drawback formula implemented in section 203 has the practical effect of essentially eliminating drawback for NAFTA origin goods as the tariff reductions under section 201 become effective. The NAFTA drawback formula will also have the benefit, in practice, of limiting the amount of drawback for components imported from non-NAFTA countries, thus further ensuring that the benefits of NAFTA preferential duty treatment only accrue to NAFTA parties.

With respect to the implementation of this section, the Committee directs the Department of the Treasury, when formulating regulations pursuant to Article 303.6(b) of the NAFTA (relating to commingled fungible goods exported in the same condition to a NAFTA country) to provide sufficient flexibility in the inventory accounting methods for such goods to make them administratively workable for industry. Methods that would permit inventory records to be kept on a monthly basis, rather than on a daily or transaction-by-transaction basis, would be one such example.

Finally, the Committee takes note that the new penalties for false drawback claims established by section 622 of H.R. 3450 also apply to claims made under NAFTA drawback. The Committee expects that the Customs Service will use this new authority to demonstrate improved compliance with the drawback laws.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

Section 203(a) defines the goods that are subject to the NAFTA drawback rules. In sum, all goods traded among the NAFTA countries are subject to the NAFTA drawback restrictions except for the goods identified in this subsection. The exceptions track those found in paragraph 6 of Article 303.

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

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

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

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

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

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

Subsection (e) clarifies that nothing in section 203 or the amendments made by section 203 authorizes the refund, waiver or reduction of countervailing or antidumping duties imposed on goods imported into the United States. This subsection implements paragraph 2(a) of Article 303. Current U.S. law does not, in any event, permit drawback of antidumping or countervailing duties.

The limitations on duty drawback are designed to promote the NAFTA's goal of creating an integrated market for North American products. The changes to the duty drawback regimes of the NAFTA countries will ensure that MFN tariffs will be assessed by all NAFTA countries on non-NAFTA components for final goods manufactured in their territories, whether those goods are ultimately sold in a NAFTA country's domestic market or sold in the markets of the other NAFTA countries. The requirement that duties must be paid on non-NAFTA components will create an incentive to use North American inputs and will help guard against the establishment of export platforms in Mexico by companies seeking to take advantage of NAFTA tariff preferences. At the same time, the NAFTA duty drawback formula eliminates double taxation on non-NAFTA inputs; tariffs will be collected only once for non-NAFTA inputs

used in goods traded among the NAFTA Parties. This will help ensure that North American producers whose goods are not eligible for NAFTA tariff preferences (because they do not meet the NAFTA rules of origin) will not be disadvantaged when they compete with non-North American producers in the U.S. market.

SEC. 204. CUSTOMS USER FEES

Paragraph (10) of section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(10)) is amended to read as follows:"(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.

House Ways & Means Committee Report

Present law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), as amended, authorizes Customs to collect user fees, including a merchandise processing fee, through September 30, 1998. The merchandise processing fee is 0.19 percent ad valorem on formally entered imported merchandise (generally entries valued over $1,250), subject to a minimum fee of $21 per entry and a maximum fee of $400 per entry. On informal entries, the United States imposes a merchandise processing fee of $2, $5, or $8 depending on the type of entry.

Under section 203 of the U.S-Canada FTA Implementation Act, the merchandise processing fee on goods originating in Canada is eliminated by January 1, 1994.

Explanation of provision

Section 204 of H.R. 3450 amends section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to implement the U.S. obligation under NAFTA Article 310 to provide for the immediate elimination of the merchandise processing fee for Canadian goods, consistent with U.S. commitments under the U.S.-Canada FTA. The section also provides for the elimination by June 30, 1999, of the merchandise processing fee on imports

of Mexican goods. Section 204 further provides that the fee may not be increased with respect to Mexican goods after December 31, 1993.

Reasons for change

The amendments set forth in section 204 make the necessary changes to the customs user fee statute required by U.S. obligations under the NAFTA. The NAFTA calls for the complete elimination of U.S. and Mexican merchandise processing fees on originating goods by June 30, 1999. The Committee notes that under Article 403 of the U.S.-Canada FTA the staged phaseout of the merchandise fee for Canadian goods will be completed on January 1, 1994.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 205. ENFORCEMENT

(a) Recordkeeping Requirements.--Section 508 of the Tariff Act of 1930 (19 U.S.C. 1508) is amended as follows:(1) Subsection (b) is amended to read as follows:"(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.

"(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);

"(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;

"(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."(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.".(2) Subsection (c) is amended to read as follows:"(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.".(3) Subsection (e) is amended to read as follows:"(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;

"(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.".(b) Conforming Amendment.--Section 509(a)(2)(A)(ii) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(2)(A)(ii)) is amended to read as follows:"(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,".(c) Disclosure of Incorrect Information.--Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended--(1) in subsection (c)--(A) by redesignating paragraph (5) as paragraph (6); and(B) by inserting after paragraph (4) the following new paragraph:"(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."; and(2) by adding at the end the following new subsection:"(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.".

House Ways & Means Committee Report

Present law

The United States requires certificates of origin for imports entering under preferential duty programs, including the U.S.-Canada FTA, U.S.-Israel Free Trade Agreement, Generalized System of Preferences, Caribbean Basin Initiative (CBI), and Andean Trade Preferences.

Under section 205 of the U.S.-Canada FTA Implementation Act, importers claiming CFTA preferences must make written declarations that goods meet the applicable rules of origin, must provide proof of origin upon request, and are subject to penalties for failure to comply or for making a false certification.

Section 508(a) of the Tariff Act of 1930 requires importers, owners, consignees, and their agents to make, keep and render for examination and inspection records pertaining to imports for a maximum of five years.

Under section 508(b) of the Tariff Act of 1930 exporters to Canada must comply with recordkeeping requirements and are subject to civil penalties not to exceed $10,000 for noncompliance.

Under section 508(c) of the Tariff Act of 1930, exporters to Canada must keep records (including certifications of origin) pertaining to such exportations for a maximum of five years from date of entry.

Customs has broad authority, under section 509 of the Tariff Act of 1930, to examine records and witnesses to ascertain the correctness of any entry, determine liability for duty and taxes due, and ensure compliance with the laws.

Section 592 of the Tariff Act of 1930 provides civil penalties for fraud, gross negligence, or negligence for violations of the Customs laws. Fraud is punishable by a civil penalty in an amount not to exceed the value of the merchandise. Gross negligence is punishable by a civil penalty in an amount not to exceed the lesser of the value of the merchandise or four times the lawful duties owed the United States. If the grossly negligent violation does not affect the assessment of duties, the penalty may not exceed 40 percent of the dutiable value of the merchandise. Negligence is punishable by a civil penalty in an amount not to exceed the lesser of the domestic value of the merchandise or two times the lawful duties owed the United States. If the negligent violation does not affect the assessment of duties, the penalty may not exceed 20 percent of the dutiable value of the merchandise.

Criminal penalties for entry of goods by means of false statements provide for fines of $5,000 or a maximum of two years imprisonment, or both.

Explanation of provision

Section 205(a) of H.R. 3450 sets forth the basic enforcement and recordkeeping requirements relating to customs administration of the NAFTA. The section amends section 508 of the Tariff Act of 1930 to require a NAFTA Certificate of Origin for goods for which preferential tariff treatment is claimed. The section defines the term NAFTA Certificate of Origin to mean the certification, established under NAFTA Article 502, that a good qualifies as an originating good.

The section further requires that any person who completes and signs a NAFTA Certificate of Origin (the "Certificate") for a good must make, keep, and render for examination and inspection all records relating to the origin of a good, including the Certificate. These records must be kept for a maximum of 5 years from the date a Certificate was signed.

Section 205(a) further provides that a claimant for a waiver, reduction of duty, credit against a bond or a refund, or drawback must, within 30 days of making a claim, disclose to the Customs Service whether that person has prepared a Certificate for the good. After the 30-day period, if a claimant either prepares a Certificate or learns of the existence of such a Certificate, that person must disclose this fact to Customs within 30 days after the occurrence. The section authorizes Customs to make adjustments to previous customs treatment if a Certificate has been prepared with respect to an article for which a claim is made.

Subsection (a) also amends section 508 of the Tariff Act of 1930 to provide that a person who fails to comply with the recordkeeping requirements shall be liable for a civil penalty of up to $10,000, or the general recordkeeping penalty under existing customs law, whichever is higher.

Section 205(b) of H.R. 3450 amends section 509 of the Tariff Act of 1930 to grant the Customs Service summons authority to persons who export merchandise, or knowingly cause merchandise to be exported, to a NAFTA country.

Section 205(c) of H.R. 3450 amends section 592 of the Tariff Act of 1930 to allow for prior disclosure by U.S. importers of false NAFTA claims by prohibiting the assessment of penalties if the importer voluntarily and promptly makes a corrected declaration and pays any duties owing.

Subsection (c) further amends section 592 of the Tariff Act of 1930 to apply identical penalty provisions for fraud, gross negligence, and negligence to importers making false declarations of NAFTA origin to the Customs Service, and to persons who make false statements in NAFTA Certificates of Origin.

Reasons for change

The amendments made by section 205 of H.R. 3450 enact changes to U.S. customs laws to implement and facilitate the enforcement and administration of the NAFTA. Generally, the section implements U.S. commitments under NAFTA Chapter 5, Customs Procedures. This chapter sets forth procedures and obligations for each government's customs administration to carry out with respect to North American trade.

The Committee notes that Article 501 obligates the NAFTA Parties to establish a uniform Certificate of Origin by January 1, 1994, to certify that goods imported into their territories qualify for preferential tariff treatment accorded by the NAFTA. The establishment of a common Certificate of Origin will greatly facilitate the flow of goods between the NAFTA Parties. Other Articles in Chapter 5 of the NAFTA set forth obligations regarding importations, recordkeeping, origin verifications, and customs penalties.

The disclosure requirements regarding the filing of certain claims in subsection (a) is specifically needed in order to prevent a person from claiming drawback upon exportation from a NAFTA country to the United States as well as claiming preferential duty treatment under NAFTA. This provisions would grant the Customs Service with the necessary enforcement authority.

The Committee notes that Title VI (Customs Modernization) of H.R. 3450 also makes extensive revisions to the U.S. customs laws, including enforcement- related provisions. Specifically, the new recordkeeping penalties included in section 615 of H.R. 3450, which provides for penalties of up to $100,000 for willful failure to keep required records, will apply to NAFTA Certificates of Origin and related records. The Committee intends that the new penalties in section 615 provide a strong incentive for compliance.

The Committee will continue its close oversight over the operations and administration of the Customs Service both with respect to its added responsibilities under the NAFTA and with respect to the implementation of customs modernization and automation.

The House Energy & Commerce Committee Report

No Legislative History.

This section is intended to provide the Customs Service with the tools necessary to enforce the rules of origin and deter fraudulent claims. It implements Articles 501 and 502, which require Certificates of Origin for goods for which preferential tariff treatment under the NAFTA is claimed, Article 504, which requires penalties for false certifications, Article 505, which imposes recordkeeping requirements, and Article 508, which requires each Party to provide for penalties for violations of the laws and regulations relating to NAFTA Chapter 5.

Articles 501 and 505 of the NAFTA require the completion and maintenance of certain records, including Certificates of Origin, relating to claims for preferential tariff treatment under the NAFTA. Section 205(a) amends section 508 of the Tariff Act of 1930 to require U.S. exporters and producers who execute NAFTA Certificates of Origin to maintain records relating to those certifications for at least five years from the date a Certificate of Origin is

signed. Under this subsection, a person who fails to comply with these recordkeeping requirements is subject to a penalty of $10,000 or the general recordkeeping penalty under the customs laws, whichever is higher.

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

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

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

Subsection (c) also implements Article 504 by subjecting persons who make false certifications in NAFTA Certificates of Origin to the penalties for fraud, gross negligence, and negligence, as appropriate, as established under section 592 of the Tariff Act of 1930. This subsection also provides, as required in paragraph 3 of Article 504, that a person may not be subject to penalties under these provisions if the information was correct at the time it

was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to changed circumstances and the person voluntarily and promptly provides written notice of the change to all persons to whom the certificate was provided.

SEC. 206. RELIQUIDATION OF ENTRIES FOR NAFTA-ORIGIN GOODS

Section 520 of the Tariff Act of 1930 (19 U.S.C. 1520) is amended by adding at the end the following new subsection:"(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.".

House Ways & Means Committee Report

Present law

Section 520(c) of the Tariff Act of 1930 and implementing regulations provide that a liquidated entry may be reliquidated, even if a protest was not filed within the required 90-day period, due to a clerical error, mistake of fact, or other inadvertence. The mistake must be brought to the attention of the Customs Service within one year after liquidation.

Explanation of provision

Section 206 of H.R. 3450 amends section 520 of the Tariff Act to authorize the Customs Service to reliquidate an entry to refund any excess duties paid and provide NAFTA tariff treatment to the entry. In order to qualify for such reliquidation, the importer must, within one year after the date of importation, file a NAFTA claim in accordance with the implementing regulations, which includes the following documentation: (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; and (3) such other documentation that Customs may require.

Reasons for change

Section 206 implements sections of NAFTA Article 502 imposing U.S. obligations regarding preferential tariff treatment and the refund of excess duties paid as a result of incorrect declarations.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 207. COUNTRY OF ORIGIN MARKING OF NAFTA GOODS

a) Amendments to Tariff Act of 1930.--Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) is amended--(1) in subsection (c)(1), by striking "or engraving" and inserting "engraving, or continuous paint stenciling";(2) in subsection (c)(2)--(A) by striking "four" and inserting "five"; and(B) by striking "such as paint stenciling";(3) in subsection (e), by striking "or engraving" and inserting "engraving, or an equally permanent method of marking";(4) by redesignating subsection (h) as subsection (i); and(5) by inserting after subsection (g) the following new subsection:"(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.".(b) Coordination With 1988 Act Regarding Certain Articles.--Articles that qualify as goods of a NAFTA country under regulations issued by the Secretary in accordance with Annex 311 of the Agreement are exempt from the marking requirements promulgated by the Secretary of the Treasury under section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100- 418), but are subject to the requirements of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304).

House Ways & Means Committee Report

Present law

Section 304 of the Tariff Act of 1930 requires that each imported article produced abroad be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article permits, with English name of the country of origin. The Secretary of the Treasury may authorize certain exemptions from the marking requirements if: (1) an article is incapable of being marked; (2) the article cannot be marked prior to shipment to the United States without injury; (3) an article cannot be marked prior to shipment to the United States except at an expense economically prohibitive of its importation; (4) the marking of a container of an article will reasonably indicate the origin of the article; (5) the article is a crude substance; (6) an

article is imported for use by the importer and not intended for sale in its imported or any other form; (7) an article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the article and in such manner that any mark would be obliterated or concealed; (8) an ultimate purchaser, by reason of the character of an article or the circumstances of its importation, must necessarily know the country of origin of such article; (9) an article was produced more than 20 years before its importation; (10) an article is among the class of articles with respect to which the Secretary of the Treasury has given notice within two years after July 1, 1937; and (11) an article cannot be marked after importation except at an expense which is economically prohibitive and the failure to mark the article prior to importation was not done to avoid compliance with the marking requirements.

Section 304 also provides that the exemptions shall not apply with respect to the marking of certain pipes and fittings, compressed gas cylinders, and certain manhole rings or frames. Special provisions apply to the marking of containers of goods exempted from the marking requirements.

Section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988 requires that, to the greatest extent possible, all Native-American style jewelry, arts, and crafts imported into the United States have the English name of the country of origin indelibly marked in a conspicuous place by a permanent method of marking.

Explanation of provision

Section 207(a) of H.R. 3450 amends section 304 of the Tariff Act of 1930, as amended, to provide certain limited exemptions for the country of origin marking requirements for goods of NAFTA origin. The section exempts goods of NAFTA origin where the buyer reasonably knows (instead of "necessarily knows" as under current law), by reason of the character of the goods or the circumstances of their importation, that they are NAFTA-origin goods. Section 207(a) authorizes the Secretary of Treasury to exempt original works of art, ceramic bricks, semiconductor devices, and integrated circuits. It also provides that the special provisions regarding the marking of containers shall not apply with respect to these goods.

Subsection (a) also provides special marking requirements for certain goods. This provision permits certain pipes and fittings to be marked by means of continuous paint stencilling in addition to the methods provided for in section 304(c)(1) of the Tariff Act of 1930. Section 207(a) specifies that certain manhole rings or frames may be marked with "an equally permanent method of marking" in addition to the methods provided for in section 304(e) of the Tariff Act. The section also makes conforming changes to section 304(c)(2) of that Act.

Section 207(a) amends section 304 of the Tariff Act to provide NAFTA (i.e., Mexican and Canadian) exporters and producers with rights to challenge an adverse NAFTA marking decision by the Customs Service. The section expressly defines an adverse marking decision as a decision by the Customs Service which the exporter or producer believes to be contrary to

Annex 311 of the NAFTA. The section permits an exporter or producer to intervene in any protest proceeding initiated by the importer of the merchandise or, if the importer does not file a protest, the exporter or producer may file a petition with Customs. Customs is also required to notify the petitioner whether or not the adverse marking decision is correct. Under the section, the decision on review, if contrary to the initial decision by the Customs Service, will become effective 30 days after the date the notice of the determination is published in the Federal Register. If Customs determines that the adverse marking decision is correct, the petitioner may seek judicial review of the decision.

Section 207(b) exempts NAFTA-origin goods from Treasury Department marking regulations promulgated under section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988.

Section 207 implements U.S. obligations under NAFTA Article 311 and Annex 311 by enacting changes to the basic country of origin marking statute (19 U.S.C. 1307) with respect to Mexican and Canadian products imported into the United States.

The original purpose of the marking statute was to permit the ultimate purchaser in the United States to identify where a good was made. With the creation of a North American Free Trade Area, this section provides a limited exemption from the marking requirements for NAFTA origin products if the ultimate purchaser "reasonably knows" that the goods are of North American origin. This directly enacts as a statutory provision the provisions of Annex 311(5)(ix) of the NAFTA. Section 207(a) also implements NAFTA Article 510, which gives NAFTA exporters and producers substantially the same rights of appeal under U.S. law as those available to importers for marking determinations. As with section 208, protests of origin determinations, this provision grants significant new appeal rights to exporters and producers. When fully implemented by the other NAFTA Parties, these sections will greatly benefit U.S. exporters and producers. The Committee understands that the Customs regulations will further detail the review and appeal rights conferred by section 207(a) of H.R. 3450 on NAFTA exporters and producers.

The Committee believes that the provision for special marking requirements for certain goods, including pipe and fittings, as well as manhole rings or frames, is fully consistent with U.S. obligations under NAFTA Annex 311.

Finally, the Committee strongly endorses the Administration's Statement of Administrative Action with respect to Native American jewelry. The Statement notes that the Customs Service will "strictly enforce" country of origin marking requirements and "assess penalties" for violations of the products.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

In accordance with Annex 311, section 207(a) also amends section 304 of the Tariff Act of 1930 to provide that certain pipes and fittings may be marked by means of continuous paint stenciling in addition to the methods provided in section 304(c)(1) and that certain manhole rings or frames may be marked with "an equally permanent method of marking" in addition to the methods currently provided in section 304(e). Conforming changes are also made to section 304(c)(2) of that Act. The Committee believes that, with respect to iron or steel pipes and tubes, continuous paint stenciling will best accomplish the requirements of section 304 of the Tariff Act of 1930 that goods be marked as legibly, indelibly and permanently as the article permits. The Committee believes that this requirement is fully consistent with NAFTA Annex 311. The Committee notes that continuous paint stenciling of technical information on the outside of the pipe is generally required by the ASTM and the API specifications that govern the production of the majority of these products. It is the Committee's belief that the additional continuous paint stenciling of the country of origin will not burden foreign producers and will contribute to the ability of the ultimate purchaser to know the origin of the product purchased.

Section 207(a) also implements Article 510, which gives Mexican and Canadian exporters and producers substantially the same rights of appeal under U.S. law as those available to importers for marking determinations. This subsection amends section 304 of the Tariff Act of 1930 to provide that, upon request, Customs will provide to an exporter or producer the basis for an adverse marking determination. If the importer of the merchandise protests the determination, the exporter or producer may intervene in the

protest. In such cases, the rights of the exporter or producer are subordinate to the rights of the importer. If, however, the importer does not protest the determination, the exporter or producer may petition the Customs Service for review. If the determination upon review is contrary to the initial determination, the determination will become effective 30 days after notice is published in the Federal Register.

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

SEC. 208. PROTESTS AGAINST ADVERSE ORIGIN DETERMINATIONS

Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) is amended--(1) in subsection (c)(1) by inserting ", or with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act," after "with respect to any one category of merchandise" in the fourth sentence;(2) in subsection (c)(2)--(A) by striking out "or" at the end of subparagraph (D);(B) by redesignating subparagraph (E) as subparagraph (F);(C) by inserting after subparagraph (D) the following new subparagraph:"(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"; and(D) by striking "clauses (A) through (D)" in subparagraph (F) (as redesignated by subparagraph (B)), and inserting "clauses (A) through

(E)"; and(3) by adding at the end the following new subsections:"(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.".

House Ways & Means Committee Report

Present law

Section 514 of the Tariff Act of 1930 permits importers and persons paying charges, seeking delivery or entry, or filing drawback claims to seek review (through the filing of a protest) of certain decisions of Customs officers.

Explanation of change

Section 208 of H.R. 3450 amends section 514 of the Tariff Act of 1930 to provide Canadian and Mexican exporters and producers who have executed NAFTA certificates of origin with the right to protest adverse determinations of NAFTA origin.

The section permits the consolidation of such protests with respect to one category of merchandise. Section 208 also provides that the exporter or producer shall be provided notice in advance of an adverse determination of origin within a time period to be prescribed by implementing regulations.

Section 208 further provides that the Customs Service may deny preferential tariff treatment to the goods in question if a pattern of false or unsupported representations regarding NAFTA origin by an exporter or producer is found. In such a case, the advance notice requirement noted above does not apply until the Customs Service is satisfied that there has been compliance.

Reasons for change

Section 208 enacts into law the obligations under NAFTA Article 510 relating to Review and Appeal of customs decisions. This Article commits each party to "grant substantially the same rights of review and appeal of . . . country of origin determinations and advance rulings by its customs administration as it provides to importers in its territory" to producers or exporters who have completed a Certificate of Origin that has been the subject of a determination of origin. This will provide significant new appeal rights, particularly to U.S. producers and exporters as this provision is implemented by the other NAFTA Parties. Section 208 also implements paragraph 10 of NAFTA Article 506. This Article authorizes a Party to deny or withhold preferential tariff treatment to identical goods if it finds a pattern of conduct by an exporter or producer of false or unsupported representations that an importing good qualifies as an originating good. The Committee is

aware that Customs will issue regulations further implementing section 208 which will set forth customs procedures for protests and appeals. The Committee will closely monitor the drafting of these regulations.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 209. EXCHANGE OF INFORMATION

Section 628 of the Tariff Act of 1930 (19 U.S.C. 1628) is amended by adding at the end the following new subsection:"(c) The Secretary may authorize the Customs Service 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.".

House Ways & Means Committee Report

Present law

Section 628 of the Tariff Act of 1930 authorizes the Secretary of Treasury to issue regulations permitting Customs to exchange information or

documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange is necessary to (1) insure compliance with any law or regulation enforced by the Customs Service; (2) enforce multilateral or bilateral agreements to which the United States is a party; (3) assist in investigative or judicial proceedings in the United States; and (4) a similar action undertaken by a foreign customs or law enforcement agency relating to a proceeding in a foreign country. Section 628 also provides that information may only be provided to foreign customs and law enforcement agencies if the Secretary obtains assurances from such agencies that such information will be held in confidence and used only for specified law enforcement purposes.

Explanation of provision

Section 209 of H.R. 3450 authorizes the Secretary to issue regulations permitting the Customs Service to exchange information with any government agency of a NAFTA country. The section expressly conditions this authority on the Secretary's reasonable belief that such an exchange is necessary to implement Chapter 3 (National Treatment and Market Access for Goods), Chapter 4 (Rules of Origin), and Chapter 5 (Customs Procedures) of the NAFTA. The Secretary is further required to obtain assurances from such country that the information will be held in confidence and used only for governmental purposes.

Reasons for change

Section 209 is necessary to provide the Customs Service with the specific authority to share enforcement information with the Governments of Canada and Mexico in order to effectively enforce and administer the customs provisions of the NAFTA. The Committee notes that the prompt and accurate exchange of customs data will facilitate implementation of the NAFTA. Confidentiality and governmental use requirements are maintained to ensure that business proprietary information will not become public.

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No Legislative History.

Senate Finance Committee Report

Article 512 requires the NAFTA Parties to cooperate in the enforcement of their respective customs laws and regulations implementing the NAFTA, in the enforcement of prohibitions or quantitative restrictions to detect and prevent unlawful transshipments of textiles and apparel, and in the exchange of statistics and storage and transmission of customs-related documentation.

Section 209 amends section 628 of the Tariff Act of 1930 (which permits the Secretary of the Treasury to authorize Customs Service officials to exchange certain information or documents with foreign customs or law enforcement officials) to authorize exchanges of information with other NAFTA countries if

the Secretary believes such exchanges are necessary to implement Chapters 3, 4, and 5 of the NAFTA. The NAFTA country must, however, provide assurances that it will maintain the confidentiality of the information.

SEC. 210. PROHIBITION ON DRAWBACK FOR TELEVISION PICTURE TUBES

Not withstanding any other provision of law, no customs duties may be refunded, waived, or reduced on color cathode-ray television picture tubes, including video monitor cathode-ray tubes (provided for in subheading 8540.11.00 of the HTS), that are nonoriginating goods under section 202(p)(19) and are--(A) exported to a NAFTA country;(B) used as a material in the production of other goods that are exported to a NAFTA country; or(C) substituted for by goods of the same kind and quality used as a material in the production of other goods that are exported to a NAFTA country.

House Ways & Means Committee Report

Present law
No provision.

Explanation of provision
Section 210 of H.R. 3450 prohibits the refund, waiver or reduction of any customs duties for color cathode-ray television picture tubes, including video monitor cathode ray tubes (provided for in subheading 8540.11.00 of the HTS) that are nonoriginating goods under section 202(p)(19) of H.R. 3450 and are (1) exported to a NAFTA country, (2) used as material in the production of other goods that are exported to a NAFTA country, or (3) substituted for by goods of the same kind and quality used as a material in the production of other goods that are exported to a NAFTA country.

Reasons for change
This provision is necessary to implement Article 303.8 and Annex 303.8 of the NAFTA, which establish specific provisions concerning the prohibition and elimination of duty drawback, waiver and reduction for such merchandise.

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No Legislative History.

Senate Finance Committee Report

Paragraph 8 of Article 303 prohibits duty drawback on 14-inch or larger color picture tubes manufactured in a NAFTA country for use in standard or high

definition televisions exported to another NAFTA country. Section 210 implements this prohibition, which is effective upon entry into force of the NAFTA.

SEC. 211. MONITORING OF TELEVISION AND PICTURE TUBE IMPORTS

(a) Monitoring.--Beginning on the date the Agreement enters into force with respect to the United States, the United States Customs Service shall, for a period of 5 years, monitor imports into the United States of articles described in subheading 8528.10 of the HTS from NAFTA countries and shall take action to exercise all rights of the United States under chapter 5 of the Agreement with respect to such imports. The United States Customs Service shall take appropriate action under chapter 5 of the Agreement with respect to such imports, including verifications to ensure that the rules of origin under the Agreement are fully complied with and that the duty drawback obligations contained in article 303 and Annex 303.8 of the Agreement are fully implemented and duties are correctly assessed.(b) Report to Trade Representative.--The United States Customs Service shall make the results of the monitoring and verification required by subsection (a) available to the President and the Trade Representative. If, based on such information, the President has reason to believe that articles described in subheading 8540.11 of the HTS, intended for ultimate consumption in the United States, are entering the territory of a NAFTA country inconsistent with the provisions of the Agreement, or have been undervalued in a manner that may raise concerns under United States trade laws, the President shall promptly take such action as may be appropriate under all relevant provisions of the Agreement, including article 317 and chapter 20, and under applicable United States trade statutes.

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 211 of H.R. 3450 requires that, for five years from the date of enactment, Customs will monitor the volume of imports into the United States from other NAFTA Parties under subheading 8528.10 to verify compliance of such imports with the rules of origin in Annex 401 and to ensure full implementation of duty drawback commitments in Article 303 and Annex 303.8 by all NAFTA Parties. If necessary to verify compliance and ensure full implementation, the United States will promptly invoke all U.S. rights under the Agreement, including Articles 512 and 513.

In addition, under section 211, Customs will monitor for five years the value for duty assessment purposes of material imported into other NAFTA

Parties under subheading 8540.11 for incorporation into products imported to the United States under subheading 8528.10. If, based on such monitoring and upon additional information supplied by the domestic industry, Customs has reason to believe that such material has been improperly valued at the time of importation into the territory of another NAFTA Party, the United States will promptly invoke all U.S. rights under the Agreement, including Article 512, to achieve proper duty assessment.

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

The three preceding paragraphs were transmitted to the Administration as the joint recommendation of this Committee and the Senate Committee on Finance for inclusion in the Statement of Administrative Action to accompany the NAFTA implementing bill as a full and accurate explanation of section 211 of that bill. It is the understanding of this Committee that the Administration concurs in the description and explanation of section 211 of H.R. 3450 set out above and considers that the language in the Statement of Administrative Action was intended to comprise this description and explanation.

Reasons for change

Article 303.8 and Annex 303.8 of the NAFTA provide a specific rule with respect to elimination of drawback, waiver or reduction of duties on importation of items in subheading 8540.11 (color cathode-ray television picture tubes, including video monitor cathode-ray tubes, with a diagonal exceeding 14 inches, and color cathode-ray television picture tubes for high definition television, with a diagonal exceeding 14 inches) that are imported into Mexico and subsequently exported from the territory of Mexico to the territory of the United States, or are used as a material in the production of another good that is subsequently exported from the territory of Mexico to the territory of the United States, or is substituted by an identical or similar good used as a material in the production of another good that are subsequently exported to the territory of the United States. Further, Articles 401, 512, and 513 establish clear rules with respect to these and other items relating to determinations of origin and cooperation in customs procedures.

Section 211 is intended to ensure that Customs has the authority to monitor, verify compliance and ensure the full implementation of the rule of origin, duty drawback and tariff assessment provisions of the NAFTA as they relate to items classified at subheadings 8528.10 and 8540.11 of the HTS, in accordance with the provisions of the NAFTA referenced in the section.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

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

In addition, the Customs Service will monitor, for five years, the value for duty assessment purposes of materials imported into other NAFTA countries under subheading 8540.11 (14" or larger color picture tubes) for incorporation into products imported into the United States under subheading 8528.10. If, based on such monitoring and on additional information supplied

by the domestic industry, the Customs Service has reason to believe that such materials have been improperly valued at the time of importation into the territory of another NAFTA country, the United States will promptly invoke all U.S. rights under the NAFTA, including Articles 512 and 513, to achieve proper duty assessment.

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

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

SEC. 212. TITLE VI AMENDMENTS

Any amendment in this title to a law that is also amended under title VI shall be made after the title VI amendment is executed.

House Ways & Means Committee Report

Present law

No provision.

Explanation of Provision

Section 212 of H.R. 3450 provides that any amendment made by Title II of the bill to laws that are also amended by Title VI of the bill shall take effect after Title VI is executed.

Reasons for change

Section 212 sets forth the relationship between the customs amendments of Title II necessary to implement U.S. NAFTA obligations, and the customs modernization amendments of Title VI which are rules of general application. Section 212 ensures that Title VI amendments are in place first so that Title

II would, in turn, amend the U.S. customs laws as modified by the customs modernization provisions under Title VI.

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No Legislative History.

Senate Finance Committee Report

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

SEC. 213. EFFECTIVE DATES

(a) Provisions Effective on Date of Enactment.--Section 212 and this section take effect on the date of the enactment of this Act.(b) Provisions Effective When Agreement Enters Into Force.--Section 201, section 202, section 203 (a), (d), and (e), section 210 and section 211, the amendment made by section 203(c), and the amendments made by sections 204 through 209 take effect on the date the Agreement enters into force with respect to the United States.(c) Provisions With Delayed Effective Dates.--The amendments made by section 203(b) apply--(1) with respect to exports from the United States to Canada--(A) on January 1, 1996, if Canada is a NAFTA country on that date, and(B) after such date for so long as Canada continues to be a NAFTA country; and(2) with respect to exports from the United States to Mexico--(A) on January 1, 2001, if Mexico is a NAFTA country on that date; and(B) after such date for so long as Mexico continues to be a NAFTA country.

House Ways & Means Committee Report

Present law
No provision.

Explanation of provision
Section 213 of H.R. 3450 sets forth the effective dates of the customs provisions in Title II. The section provides that section 212 and 213 are effective on date of enactment of the bill.

Subsection (b) provides that the following sections of Title II shall take effect on the date the NAFTA enters into force for the United States: 201, 202, 203 (a), (d), and (e), 210, 211, the amendment made by section 203(c), and the amendments made by section 201 through 209.

Subsection (c) provides special delayed effective dates for amendments implementing NAFTA's drawback provisions relating to manufacturing drawback, bonded warehouses, bonded smelting and refining warehouses and foreign trade zones. For exports to Canada, the effective date is January 1, 1996. For exports to Mexico, the effective date is January 1, 2001. This provision remains in effect as long as Canada and Mexico remain parties to the NAFTA.

Reasons for change
The effective dates set forth in section 213 are necessary to implement U.S. obligations under the NAFTA. The dates provided for in section 213(c) are consistent with the schedule set out in Annex 303.7. Finally, section 213(c) ensures that drawback provisions of U.S. laws to implement the NAFTA cease to have effect with respect to either Canada or Mexico if either country is no longer a party to the NAFTA.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

TITLE III--APPLICATION OF AGREEMENT TO SECTORS AND SERVICES

House Ways & Means Committee Report

Title III of H.R. 3450 contains provisions applicable to particular sectors and services, including procedures and remedies available to domestic industries as safeguard actions in the case of injurious increased imports under the NAFTA (Subtitle A); provisions regarding agricultural trade (Subtitle B); and provisions regarding government procurement (Subtitle G). Other provisions of Title III relating to intellectual property (Subtitle C), temporary entry of business persons (Subtitle D), standards (Subtitle E), and corporate average fuel economy (Subtitle F), are within the jurisdiction of committees other than the Committee on Ways and Means and are not covered by this report.

The House Energy & Commerce Committee Report

Title III--APPLICATION OF THE AGREEMENT TO SECTORS AND SERVICES

Senate Finance Committee Report

Title III--Application of Agreement to Sectors and Services

Subtitle A—Safeguards

House Ways & Means Committee Report

Subtitle A implements in U.S. domestic law the two-track mechanism provided under Chapter Eight of the NAFTA for imposing emergency import relief measures either on a bilateral basis only (Part 1) or on imports from Canada or Mexico under global relief actions (Part 2). General provisions (Part 3) pertain to procedural rules for either bilateral or global relief actions.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

PART 1--RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

House Ways & Means Committee Report

Part 1--Relief From Imports Benefiting From the Agreement

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Part 1--Relief From Imports Benefiting From the Agreement

SEC. 301. DEFINITIONS

As used in this part:(1) Canadian article.--The term "Canadian article" means an article that--(A) is an originating good under chapter 4 of the Agreement; and(B) qualifies under the Agreement to be marked as a good of Canada.(2) Mexican article.--The term "Mexican article" means an article that--(A) is an originating good under chapter 4 of the Agreement; and(B) qualifies under the Agreement to be marked as a good of Mexico.

House Ways & Means Committee Report

Present law

Section 302(a) of the U.S.-Canada FTA Implementation Act established a new procedural mechanism under U.S. law strictly for the application of import relief measures on a bilateral basis for the first time, as required to implement Article 1101 of the U.S.-Canada FTA. As provided under section 501(c) of that Act, as amended by section 107 of H.R. 3450, section 302(a) will be suspended on the date the United States and Canada suspend the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA, until such time as the suspension may be terminated.

The provisions of section 302(a) are basically incorporated into sections 301 through 307 of the NAFTA Implementation Act as described below with respect to imports of articles originating in Canada.

Explanation of provision

Sections 301 through 307 of H.R. 3450 establish a procedural mechanism under U.S. law for the application of safeguard actions on a bilateral basis on articles that originate (under the terms of Chapter 4 of the NAFTA) and qualify to be marked as a good either of Canada or Mexico. These provisions do not apply to textile or apparel articles.

A petition requesting action to adjust to U.S. obligations under the NAFTA may be filed under section 302(a) with the International Trade Commission by an entity (including a trade association, firm, union, or group of workers)

that is representative of an industry. An entity filing the petition may request that provisional relief be provided for perishable products (see description of present law under section 315) as if the petition had been filed under section 202(a) of the Trade Act of 1974. Expedited relief also may be sought by an entity filing the petition if an allegation that critical circumstances exist is made either in the original petition or within 90 days after the investigation is initiated.

Upon the filing of a petition, the ITC shall promptly initiate an investigation under section 301(b) to determine whether, as a result of the reduction or elimination of a duty provided for under the NAFTA, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or, except in the case of a Canadian article, threat of serious injury, to the domestic industry producing a like or directly competitive article. No investigation may be initiated with respect to any Canadian or Mexican article if bilateral import relief has previously been provided with respect to that article.

Because of the limited scope of the investigation and available relief, only certain specified provisions of section 202 of the Trade Act of 1974 applicable to standard import relief investigations by the ITC also apply to ITC investigations for bilateral relief under section 302. The applicable provisions of section 202 are: Under subsection (b), the definition of "substantial cause" under paragraph (1)(B), the application of critical circumstances under paragraph (3) except subparagraph (A), and the public hearing requirement under paragraph (4); under subsection (c), the consideration of all economic factors under paragraphs (1), (2), and (3), the factors for determining the domestic industry, including regional industry, under paragraph (4), notification of appropriate agencies under paragraph (5) of possible unfair trade practices discovered during the course of an investigation, and the definitions of "domestic industry" and "significant idling of productive facilities" under paragraph (6); and all provisions on provisional relief under subsection (d).

Section 303 requires the ITC to make its determination on injury, as well as on any allegation of critical circumstances within 120 days after the date on which the investigation is initiated. If the ITC makes an affirmative injury determination, the Commission must find and recommend to the President the amount of import relief necessary to remedy the injury or, except in the case of imports of a Canadian article, prevent the injury. The recommendation shall be limited to the relief the President is authorized to provide under section 304(c). Within 30 days after making the injury determination, the Commission shall submit to the President and make public (except for confidential information) under section 303(c) a report on the basis for the determination, any dissenting or separate views, and any relief finding. The ITC shall publish a summary of the report in the Federal Register.

Within 30 days after receiving the ITC report of an affirmative injury determination, the President shall provide import relief under section 304(a)

to the extent the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the Commission. The President is not required to provide import relief if the President determines that the provision of the relief will not provide greater economic and social benefits than costs.

The relief the President is authorized to provide is limited under section 304(c), in the case of a Canadian article, to (1) the suspension of any further duty reduction under Annex 401.2 of the U.S.-Canada Free Trade Agreement on the article; (2) an increase in the rate of duty on the article to a level that does not exceed the lesser of the column 1 MFN rate of duty imposed on like articles at the time the relief is provided or on December 1, 1988 (i.e., a tariff "snapback"); or (3) if a seasonal duty applies to the article, an increase in that duty not to exceed the column 1 MFN rate of duty imposed on the article for the corresponding season immediately before January 1, 1989.

In the case of a Mexican article, the President may (1) suspend any further duty reduction provided for under the U.S. Schedule to Annex 302.2 of the NAFTA on the article; (2) increase the duty on the article to not more than the lesser of the column 1 MFN rate of duty on like articles at the time relief is provided or on the day before the NAFTA enters into force; and (3) in the case of a seasonal duty, increase the rate to a level that does not exceed the column 1 MFN rate or the article for the corresponding season immediately before the NAFTA enters into force.

Section 304(d) limits the period of relief the President is authorized to provide to not more than 3 years. As an exception to this limit, the President, after obtaining the advice of the ITC, may extend the relief for not more than one year on an article for which the transition period for tariff elimination is greater than 10 years and the President determines that the affected industry has undertaken adjustment and requires an extension of import relief, if the duty applied during the initial period is substantially reduced at the beginning of the extension period.

Section 304(e) sets forth the rules for determining the rate of duty that will apply upon termination of import relief on a Mexican article. The rate of duty for the remainder of the year will be the rate that would have been in effect one year after the initiation of the action; for the rest of the tariff phaseout period, the President may set the duty either at the rate in the U.S. Schedule, or the rate resulting from eliminating the tariff in equal annual stages ending on the date set in the Schedule.

Section 305 prohibits the provision of bilateral import relief on a Canadian article after December 31, 1998, or on a Mexican article after 10 years after the date the NAFTA enters into force, except that relief granted on an article for which the transition period for tariff elimination exceeds 10 years shall be the period for staged tariff elimination on that article. The period of import relief may also be extended on a Canadian or Mexican article with the consent of the Government of Canada or Mexico, as the case may be.

Section 306 treats any import relief provided under section 304 as an action taken under the standard import relief provisions of Chapter 1 of Title II of the Trade Act of 1974 for purposes of the compensation authority provided under section 123 of the Trade Act of 1974.

Section 307 provides that a petition may be filed for bilateral or global import relief or for both at the same time in which case the ITC shall consider the petitions jointly.

Reasons for change

Section 301 through 307 of H.R. 3450 implement the provisions of Article 801 of the NAFTA, which permits bilateral safeguard actions during the transition period solely with respect to goods traded with Mexico, and Annex 801.1 of the NAFTA, which incorporates the provisions of the U.S.-Canada FTA that will continue to apply during the transition period ending December 31, 1998 for the phaseout of duties between the United States and Canada. The standards and procedures set forth in sections 301 through 307 are otherwise similar to the provisions of section 302(a) of the U.S.-Canada FTA Implementation Act. Article 801 permits safeguard actions based on a threat of serious injury, as well as actual injury, due to increased imports from Mexico; allows an additional fourth year of relief with respect to import-sensitive goods from Mexico with a tariff phaseout period exceeding 10 years; and provides greater flexibility in the phaseout of duties during the remaining transition period following a bilateral action.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 302. COMMENCING OF ACTION FOR RELIEF

(a) Filing of Petition.--(1) In general.--A petition requesting action under this part for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the International Trade Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The International Trade Commission shall transmit a copy of any petition filed under this subsection to the Trade Representative.(2) Provisional relief.--An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974.(3) Critical circumstances.--An allegation that critical circumstances exist must be included in the petition or made on or before the 90th day after the date on which the investigation is initiated under subsection (b).(b) Investigation and Determination.--Upon the filing of a

petition under subsection (a), the International Trade Commission, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of--(1) serious injury; or(2) except in the case of a Canadian article, a threat of serious injury;

(c) Applicable Provisions.--The provisions of--(1) paragraphs (1)(B), (3) (except subparagraph (A)), and (4) of subsection (b);(2) subsection (c); and(3) subsection (d),

(d) Articles Exempt From Investigation.--No investigation may be initiated under this section with respect to--(1) any Canadian article or Mexican article if import relief has been provided under this part with respect to that article; or(2) any textile or apparel article set out in Appendix 1.1 of Annex 300-B of the Agreement.

House Ways & Means Committee Report

Present law

Section 302(a) of the U.S.-Canada FTA Implementation Act established a new procedural mechanism under U.S. law strictly for the application of import relief measures on a bilateral basis for the first time, as required to implement Article 1101 of the U.S.-Canada FTA. As provided under section 501(c) of that Act, as amended by section 107 of H.R. 3450, section 302(a) will be suspended on the date the United States and Canada suspend the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA, until such time as the suspension may be terminated.

The provisions of section 302(a) are basically incorporated into sections 301 through 307 of the NAFTA Implementation Act as described below with respect to imports of articles originating in Canada.

Explanation of provision

Sections 301 through 307 of H.R. 3450 establish a procedural mechanism under U.S. law for the application of safeguard actions on a bilateral basis on articles that originate (under the terms of Chapter 4 of the NAFTA) and qualify to be marked as a good either of Canada or Mexico. These provisions do not apply to textile or apparel articles.

A petition requesting action to adjust to U.S. obligations under the NAFTA may be filed under section 302(a) with the International Trade Commission by an entity (including a trade association, firm, union, or group of workers) that is representative of an industry. An entity filing the petition may request that provisional relief be provided for perishable products (see description of present law under section 315) as if the petition had been filed under section 202(a) of the Trade Act of 1974. Expedited relief also may be sought by an entity filing the petition if an allegation that critical circumstances exist is

made either in the original petition or within 90 days after the investigation is initiated.

Upon the filing of a petition, the ITC shall promptly initiate an investigation under section 301(b) to determine whether, as a result of the reduction or elimination of a duty provided for under the NAFTA, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or, except in the case of a Canadian article, threat of serious injury, to the domestic industry producing a like or directly competitive article. No investigation may be initiated with respect to any Canadian or Mexican article if bilateral import relief has previously been provided with respect to that article.

Because of the limited scope of the investigation and available relief, only certain specified provisions of section 202 of the Trade Act of 1974 applicable to standard import relief investigations by the ITC also apply to ITC investigations for bilateral relief under section 302. The applicable provisions of section 202 are: Under subsection (b), the definition of "substantial cause" under paragraph (1)(B), the application of critical circumstances under paragraph (3) except subparagraph (A), and the public hearing requirement under paragraph (4); under subsection (c), the consideration of all economic factors under paragraphs (1), (2), and (3), the factors for determining the domestic industry, including regional industry, under paragraph (4), notification of appropriate agencies under paragraph (5) of possible unfair trade practices discovered during the course of an investigation, and the definitions of "domestic industry" and "significant idling of productive facilities" under paragraph (6); and all provisions on provisional relief under subsection (d).

Section 303 requires the ITC to make its determination on injury, as well as on any allegation of critical circumstances within 120 days after the date on which the investigation is initiated. If the ITC makes an affirmative injury determination, the Commission must find and recommend to the President the amount of import relief necessary to remedy the injury or, except in the case of imports of a Canadian article, prevent the injury. The recommendation shall be limited to the relief the President is authorized to provide under section 304(c). Within 30 days after making the injury determination, the Commission shall submit to the President and make public (except for confidential information) under section 303(c) a report on the basis for the determination, any dissenting or separate views, and any relief finding. The ITC shall publish a summary of the report in the Federal Register.

Within 30 days after receiving the ITC report of an affirmative injury determination, the President shall provide import relief under section 304(a) to the extent the President determines necessary to remedy or, except in the

case of imports of a Canadian article, prevent the injury found by the Commission. The President is not required to provide import relief if the President determines that the provision of the relief will not provide greater economic and social benefits than costs.

The relief the President is authorized to provide is limited under section 304(c), in the case of a Canadian article, to (1) the suspension of any further duty reduction under Annex 401.2 of the U.S.-Canada Free Trade Agreement on the article; (2) an increase in the rate of duty on the article to a level that does not exceed the lesser of the column 1 MFN rate of duty imposed on like articles at the time the relief is provided or on December 1, 1988 (i.e., a tariff "snapback"); or (3) if a seasonal duty applies to the article, an increase in that duty not to exceed the column 1 MFN rate of duty imposed on the article for the corresponding season immediately before January 1, 1989.

In the case of a Mexican article, the President may (1) suspend any further duty reduction provided for under the U.S. Schedule to Annex 302.2 of the NAFTA on the article; (2) increase the duty on the article to not more than the lesser of the column 1 MFN rate of duty on like articles at the time relief is provided or on the day before the NAFTA enters into force; and (3) in the case of a seasonal duty, increase the rate to a level that does not exceed the column 1 MFN rate or the article for the corresponding season immediately before the NAFTA enters into force.

Section 304(d) limits the period of relief the President is authorized to provide to not more than 3 years. As an exception to this limit, the President, after obtaining the advice of the ITC, may extend the relief for not more than one year on an article for which the transition period for tariff elimination is greater than 10 years and the President determines that the affected industry has undertaken adjustment and requires an extension of import relief, if the duty applied during the initial period is substantially reduced at the beginning of the extension period.

Section 304(e) sets forth the rules for determining the rate of duty that will apply upon termination of import relief on a Mexican article. The rate of duty for the remainder of the year will be the rate that would have been in effect one year after the initiation of the action; for the rest of the tariff phaseout period, the President may set the duty either at the rate in the U.S. Schedule, or the rate resulting from eliminating the tariff in equal annual stages ending on the date set in the Schedule.

Section 305 prohibits the provision of bilateral import relief on a Canadian article after December 31, 1998, or on a Mexican article after 10 years after the date the NAFTA enters into force, except that relief granted on an article for which the transition period for tariff elimination exceeds 10 years shall be the period for staged tariff elimination on that article. The period of import relief may also be extended on a Canadian or Mexican article with the consent of the Government of Canada or Mexico, as the case may be.

Section 306 treats any import relief provided under section 304 as an action taken under the standard import relief provisions of Chapter 1 of Title II of the Trade Act of 1974 for purposes of the compensation authority provided under section 123 of the Trade Act of 1974.

Section 307 provides that a petition may be filed for bilateral or global import relief or for both at the same time in which case the ITC shall consider the petitions jointly.

Reasons for change

Section 301 through 307 of H.R. 3450 implement the provisions of Article 801 of the NAFTA, which permits bilateral safeguard actions during the transition period solely with respect to goods traded with Mexico, and Annex 801.1 of the NAFTA, which incorporates the provisions of the U.S.-Canada FTA that will continue to apply during the transition period ending December 31, 1998 for the phaseout of duties between the United States and Canada. The standards and procedures set forth in sections 301 through 307 are otherwise similar to the provisions of section 302(a) of the U.S.-Canada FTA Implementation Act. Article 801 permits safeguard actions based on a threat of serious injury, as well as actual injury, due to increased imports from Mexico; allows an additional fourth year of relief with respect to import-sensitive goods from Mexico with a tariff phaseout period exceeding 10 years; and provides greater flexibility in the phaseout of duties during the remaining transition period following a bilateral action.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Under subsection (b), upon the filing of a petition, the ITC shall investigate whether, as a result of a tariff reduction or elimination provided for under the

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

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

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

SEC. 303. INTERNATIONAL TRADE COMMISSION ACTION ON PETITION

a) Determination.--By no later than 120 days after the date on which an investigation is initiated under section 302(b) with respect to a petition, the International Trade Commission shall--(1) make the determination required under that section; and(2) if the determination referred to in paragraph (1) is affirmative and an allegation regarding critical circumstances was made under section 302(a), make a determination regarding that allegation.(b) Additional Finding and Recommendation if Determination Affirmative.-- If the determination made by the International Trade Commission under subsection (a) with respect to imports of an article is affirmative, the International Trade Commission shall find, and recommend to the President in the report required under subsection (c), the amount of import relief that is necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission in the determination. The import relief recommended by the International Trade Commission under this subsection shall be

limited to that described in section 304(c).(c) Report to President.--No later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the International Trade Commission shall submit to the President a report that shall include--(1) a statement of the basis for the determination;(2) dissenting and separate views; and(3) any finding made under subsection (b) regarding import relief.(d) Public Notice.--Upon submitting a report to the President under subsection (c), the International Trade Commission shall promptly make public such report (with the exception of information which the International Trade Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.(e) Applicable Provisions.--For purposes of this part, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

House Ways & Means Committee Report

Present law

Section 302(a) of the U.S.-Canada FTA Implementation Act established a new procedural mechanism under U.S. law strictly for the application of import relief measures on a bilateral basis for the first time, as required to implement Article 1101 of the U.S.-Canada FTA. As provided under section 501(c) of that Act, as amended by section 107 of H.R. 3450, section 302(a) will be suspended on the date the United States and Canada suspend the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA, until such time as the suspension may be terminated.

The provisions of section 302(a) are basically incorporated into sections 301 through 307 of the NAFTA Implementation Act as described below with respect to imports of articles originating in Canada.

Explanation of provision

Sections 301 through 307 of H.R. 3450 establish a procedural mechanism under U.S. law for the application of safeguard actions on a bilateral basis on articles that originate (under the terms of Chapter 4 of the NAFTA) and qualify to be marked as a good either of Canada or Mexico. These provisions do not apply to textile or apparel articles.

A petition requesting action to adjust to U.S. obligations under the NAFTA may be filed under section 302(a) with the International Trade Commission by an entity (including a trade association, firm, union, or group of workers) that is representative of an industry. An entity filing the petition may request that provisional relief be provided for perishable products (see description of present law under section 315) as if the petition had been filed under section 202(a) of the Trade Act of 1974. Expedited relief also may be sought by an entity filing the petition if an allegation that critical circumstances exist is

made either in the original petition or within 90 days after the investigation is initiated.

Upon the filing of a petition, the ITC shall promptly initiate an investigation under section 301(b) to determine whether, as a result of the reduction or elimination of a duty provided for under the NAFTA, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or, except in the case of a Canadian article, threat of serious injury, to the domestic industry producing a like or directly competitive article. No investigation may be initiated with respect to any Canadian or Mexican article if bilateral import relief has previously been provided with respect to that article.

Because of the limited scope of the investigation and available relief, only certain specified provisions of section 202 of the Trade Act of 1974 applicable to standard import relief investigations by the ITC also apply to ITC investigations for bilateral relief under section 302. The applicable provisions of section 202 are: Under subsection (b), the definition of "substantial cause" under paragraph (1)(B), the application of critical circumstances under paragraph (3) except subparagraph (A), and the public hearing requirement under paragraph (4); under subsection (c), the consideration of all economic factors under paragraphs (1), (2), and (3), the factors for determining the domestic industry, including regional industry, under paragraph (4), notification of appropriate agencies under paragraph (5) of possible unfair trade practices discovered during the course of an investigation, and the definitions of "domestic industry" and "significant idling of productive facilities" under paragraph (6); and all provisions on provisional relief under subsection (d).

Section 303 requires the ITC to make its determination on injury, as well as on any allegation of critical circumstances within 120 days after the date on which the investigation is initiated. If the ITC makes an affirmative injury determination, the Commission must find and recommend to the President the amount of import relief necessary to remedy the injury or, except in the case of imports of a Canadian article, prevent the injury. The recommendation shall be limited to the relief the President is authorized to provide under section 304(c). Within 30 days after making the injury determination, the Commission shall submit to the President and make public (except for confidential information) under section 303(c) a report on the basis for the determination, any dissenting or separate views, and any relief finding. The ITC shall publish a summary of the report in the Federal Register.

Within 30 days after receiving the ITC report of an affirmative injury determination, the President shall provide import relief under section 304(a) to the extent the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the

Commission. The President is not required to provide import relief if the President determines that the provision of the relief will not provide greater economic and social benefits than costs.

The relief the President is authorized to provide is limited under section 304(c), in the case of a Canadian article, to (1) the suspension of any further duty reduction under Annex 401.2 of the U.S.-Canada Free Trade Agreement on the article; (2) an increase in the rate of duty on the article to a level that does not exceed the lesser of the column 1 MFN rate of duty imposed on like articles at the time the relief is provided or on December 1, 1988 (i.e., a tariff "snapback"); or (3) if a seasonal duty applies to the article, an increase in that duty not to exceed the column 1 MFN rate of duty imposed on the article for the corresponding season immediately before January 1, 1989.

In the case of a Mexican article, the President may (1) suspend any further duty reduction provided for under the U.S. Schedule to Annex 302.2 of the NAFTA on the article; (2) increase the duty on the article to not more than the lesser of the column 1 MFN rate of duty on like articles at the time relief is provided or on the day before the NAFTA enters into force; and (3) in the case of a seasonal duty, increase the rate to a level that does not exceed the column 1 MFN rate or the article for the corresponding season immediately before the NAFTA enters into force.

Section 304(d) limits the period of relief the President is authorized to provide to not more than 3 years. As an exception to this limit, the President, after obtaining the advice of the ITC, may extend the relief for not more than one year on an article for which the transition period for tariff elimination is greater than 10 years and the President determines that the affected industry has undertaken adjustment and requires an extension of import relief, if the duty applied during the initial period is substantially reduced at the beginning of the extension period.

Section 304(e) sets forth the rules for determining the rate of duty that will apply upon termination of import relief on a Mexican article. The rate of duty for the remainder of the year will be the rate that would have been in effect one year after the initiation of the action; for the rest of the tariff phaseout period, the President may set the duty either at the rate in the U.S. Schedule, or the rate resulting from eliminating the tariff in equal annual stages ending on the date set in the Schedule.

Section 305 prohibits the provision of bilateral import relief on a Canadian article after December 31, 1998, or on a Mexican article after 10 years after the date the NAFTA enters into force, except that relief granted on an article for which the transition period for tariff elimination exceeds 10 years shall be the period for staged tariff elimination on that article. The period of import relief may also be extended on a Canadian or Mexican article with the consent of the Government of Canada or Mexico, as the case may be.

Section 306 treats any import relief provided under section 304 as an action taken under the standard import relief provisions of Chapter 1 of Title II of the Trade Act of 1974 for purposes of the compensation authority provided under section 123 of the Trade Act of 1974.

Section 307 provides that a petition may be filed for bilateral or global import relief or for both at the same time in which case the ITC shall consider the petitions jointly.

Reasons for change

Section 301 through 307 of H.R. 3450 implement the provisions of Article 801 of the NAFTA, which permits bilateral safeguard actions during the transition period solely with respect to goods traded with Mexico, and Annex 801.1 of the NAFTA, which incorporates the provisions of the U.S.-Canada FTA that will continue to apply during the transition period ending December 31, 1998 for the phaseout of duties between the United States and Canada. The standards and procedures set forth in sections 301 through 307 are otherwise similar to the provisions of section 302(a) of the U.S.-Canada FTA Implementation Act. Article 801 permits safeguard actions based on a threat of serious injury, as well as actual injury, due to increased imports from Mexico; allows an additional fourth year of relief with respect to import-sensitive goods from Mexico with a tariff phaseout period exceeding 10 years; and provides greater flexibility in the phaseout of duties during the remaining transition period following a bilateral action.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

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

It is the Committee's intent that, for purposes of determining whether a reduction in duty has occurred (as required to trigger the bilateral safeguard under Article 801), the ITC shall consider the expansion of a quota under a tariff-rate quota as a reduction in a duty. The Committee endorses the Statement of Administrative Action's position with respect to this issue. The Committee also welcomes the Statement of Administrative Action's statement with respect to ITC review of import trends. The Committee believes that, in determining whether increased imports are a substantial cause of serious injury, or threaten serious injury, the ITC should examine trends in imports and changes in the marketplace over the most recent years. Particularly in the case of agricultural imports, where import volumes may have been affected by natural disasters, the fact that imports in a given year may be lower than in a prior year does not necessarily lead to the conclusion that imports have not been increasing. The Committee believes that bilateral safeguard action should not necessarily be precluded in such circumstances.

SEC. 304. PROVISION OF RELIEF

(a) In General.--No later than the date that is 30 days after the date on which the President receives the report of the International Trade Commission containing an affirmative determination of the International Trade Commission under section 303(a), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the International Trade Commission.(b) Exception.--The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.(c) Nature of Relief.--The import relief (including provisional relief) that the President is authorized to provide under this part is as follows:(1) In the case of imports of a Canadian article--(A) the suspension of any further reduction provided for under Annex 401.2 of the United States-Canada Free-Trade Agreement in the duty imposed on such article;(B) an increase in the rate of duty imposed on such article to a level that does not exceed the lesser of--(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or(ii) the column 1 general rate of duty imposed on like articles on December 31, 1988; or(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed on the article for the corresponding season occurring immediately before January 1, 1989.(2) In the case of imports of a Mexican article--(A) the suspension of any further reduction provided for under the United States Schedule to Annex 302.2 of the Agreement in the duty imposed on such article;(B) an increase in the rate of duty imposed on such article to a level

that does not exceed the lesser of--(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided, or(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force; or(C) in the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the column 1 general rate of duty imposed under the HTS on the article for the corresponding season immediately occurring before the date on which the Agreement enters into force.(d) Period of Relief.--The import relief that the President is authorized to provide under this section may not exceed 3 years, except that, if a Canadian article or Mexican article which is the subject of the action--(1) is provided for in an item for which the transition period of tariff elimination set out in the United States Schedule to Annex 302.2 of the Agreement is greater than 10 years; and(2) the President determines that the affected industry has undertaken adjustment and requires an extension of the period of the import relief;

(e) Rate on Mexican Articles After Termination of Import Relief.--When import relief under this part is terminated with respect to a Mexican article--(1) the rate of duty on that article after such termination and on or before December 31 of the year in which termination occurs shall be the rate that, according to the United States Schedule to Annex 302.2 of the Agreement for the staged elimination of the tariff, would have been in effect 1 year after the initiation of the import relief action under section 302; and(2) the tariff treatment for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either--(A) the rate of duty conforming to the applicable rate set out in the United States Schedule to Annex 302.2; or(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule to Annex 302.2 for the elimination of the tariff.

House Ways & Means Committee Report

Present law

Section 302(a) of the U.S.-Canada FTA Implementation Act established a new procedural mechanism under U.S. law strictly for the application of import relief measures on a bilateral basis for the first time, as required to implement Article 1101 of the U.S.-Canada FTA. As provided under section 501(c) of that Act, as amended by section 107 of H.R. 3450, section 302(a) will be suspended on the date the United States and Canada suspend the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA, until such time as the suspension may be terminated.

The provisions of section 302(a) are basically incorporated into sections 301 through 307 of the NAFTA Implementation Act as described below with respect to imports of articles originating in Canada.

Explanation of provision

Sections 301 through 307 of H.R. 3450 establish a procedural mechanism under U.S. law for the application of safeguard actions on a bilateral basis on articles that originate (under the terms of Chapter 4 of the NAFTA) and qualify to be marked as a good either of Canada or Mexico. These provisions do not apply to textile or apparel articles.

A petition requesting action to adjust to U.S. obligations under the NAFTA may be filed under section 302(a) with the International Trade Commission by an entity (including a trade association, firm, union, or group of workers) that is representative of an industry. An entity filing the petition may request that provisional relief be provided for perishable products (see description of present law under section 315) as if the petition had been filed under section 202(a) of the Trade Act of 1974. Expedited relief also may be sought by an entity filing the petition if an allegation that critical circumstances exist is made either in the original petition or within 90 days after the investigation is initiated.

Upon the filing of a petition, the ITC shall promptly initiate an investigation under section 301(b) to determine whether, as a result of the reduction or elimination of a duty provided for under the NAFTA, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or, except in the case of a Canadian article, threat of serious injury, to the domestic industry producing a like or directly competitive article. No investigation may be initiated with respect to any Canadian or Mexican article if bilateral import relief has previously been provided with respect to that article.

Because of the limited scope of the investigation and available relief, only certain specified provisions of section 202 of the Trade Act of 1974 applicable to standard import relief investigations by the ITC also apply to ITC investigations for bilateral relief under section 302. The applicable provisions of section 202 are: Under subsection (b), the definition of "substantial cause" under paragraph (1)(B), the application of critical circumstances under paragraph (3) except subparagraph (A), and the public hearing requirement under paragraph (4); under subsection (c), the consideration of all economic factors under paragraphs (1), (2), and (3), the factors for determining the domestic industry, including regional industry, under paragraph (4), notification of appropriate agencies under paragraph (5) of possible unfair trade practices discovered during the course of an investigation, and the definitions of "domestic industry" and "significant idling of productive facilities" under paragraph (6); and all provisions on provisional relief under subsection (d).

Section 303 requires the ITC to make its determination on injury, as well as on any allegation of critical circumstances within 120 days after the date on which the investigation is initiated. If the ITC makes an affirmative injury determination, the Commission must find and recommend to the President the amount of import relief necessary to remedy the injury or, except in the

case of imports of a Canadian article, prevent the injury. The recommendation shall be limited to the relief the President is authorized to provide under section 304(c). Within 30 days after making the injury determination, the Commission shall submit to the President and make public (except for confidential information) under section 303(c) a report on the basis for the determination, any dissenting or separate views, and any relief finding. The ITC shall publish a summary of the report in the Federal Register.

Within 30 days after receiving the ITC report of an affirmative injury determination, the President shall provide import relief under section 304(a) to the extent the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the Commission. The President is not required to provide import relief if the President determines that the provision of the relief will not provide greater economic and social benefits than costs.

The relief the President is authorized to provide is limited under section 304(c), in the case of a Canadian article, to (1) the suspension of any further duty reduction under Annex 401.2 of the U.S.-Canada Free Trade Agreement on the article; (2) an increase in the rate of duty on the article to a level that does not exceed the lesser of the column 1 MFN rate of duty imposed on like articles at the time the relief is provided or on December 1, 1988 (i.e., a tariff "snapback"); or (3) if a seasonal duty applies to the article, an increase in that duty not to exceed the column 1 MFN rate of duty imposed on the article for the corresponding season immediately before January 1, 1989.

In the case of a Mexican article, the President may (1) suspend any further duty reduction provided for under the U.S. Schedule to Annex 302.2 of the NAFTA on the article; (2) increase the duty on the article to not more than the lesser of the column 1 MFN rate of duty on like articles at the time relief is provided or on the day before the NAFTA enters into force; and (3) in the case of a seasonal duty, increase the rate to a level that does not exceed the column 1 MFN rate or the article for the corresponding season immediately before the NAFTA enters into force.

Section 304(d) limits the period of relief the President is authorized to provide to not more than 3 years. As an exception to this limit, the President, after obtaining the advice of the ITC, may extend the relief for not more than one year on an article for which the transition period for tariff elimination is greater than 10 years and the President determines that the affected industry has undertaken adjustment and requires an extension of import relief, if the duty applied during the initial period is substantially reduced at the beginning of the extension period.

Section 304(e) sets forth the rules for determining the rate of duty that will apply upon termination of import relief on a Mexican article. The rate of duty for the remainder of the year will be the rate that would have been in

effect one year after the initiation of the action; for the rest of the tariff phaseout period, the President may set the duty either at the rate in the U.S. Schedule, or the rate resulting from eliminating the tariff in equal annual stages ending on the date set in the Schedule.

Section 305 prohibits the provision of bilateral import relief on a Canadian article after December 31, 1998, or on a Mexican article after 10 years after the date the NAFTA enters into force, except that relief granted on an article for which the transition period for tariff elimination exceeds 10 years shall be the period for staged tariff elimination on that article. The period of import relief may also be extended on a Canadian or Mexican article with the consent of the Government of Canada or Mexico, as the case may be.

Section 306 treats any import relief provided under section 304 as an action taken under the standard import relief provisions of Chapter 1 of Title II of the Trade Act of 1974 for purposes of the compensation authority provided under section 123 of the Trade Act of 1974.

Section 307 provides that a petition may be filed for bilateral or global import relief or for both at the same time in which case the ITC shall consider the petitions jointly.

Reasons for change

Section 301 through 307 of H.R. 3450 implement the provisions of Article 801 of the NAFTA, which permits bilateral safeguard actions during the transition period solely with respect to goods traded with Mexico, and Annex 801.1 of the NAFTA, which incorporates the provisions of the U.S.-Canada FTA that will continue to apply during the transition period ending December 31, 1998 for the phaseout of duties between the United States and Canada. The standards and procedures set forth in sections 301 through 307 are otherwise similar to the provisions of section 302(a) of the U.S.-Canada FTA Implementation Act. Article 801 permits safeguard actions based on a threat of serious injury, as well as actual injury, due to increased imports from Mexico; allows an additional fourth year of relief with respect to import-sensitive goods from Mexico with a tariff phaseout period exceeding 10 years; and provides greater flexibility in the phaseout of duties during the remaining transition period following a bilateral action.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

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

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

SEC. 305. TERMINATION OF RELIEF AUTHORITY

a) General Rule.--Except as provided in subsection (b), no import relief may be provided under this part--(1) in the case of a Canadian article, after December 31, 1998; or(2) in the case of a Mexican article, after the date that is 10 years after the date on which the Agreement enters into force;

(b) Exception.--Import relief may be provided under this part in the case of a Canadian article or Mexican article after the date on which such relief would, but for this subsection, terminate under subsection (a), but only if the

Government of Canada or Mexico, as the case may be, consents to such provision.

House Ways & Means Committee Report

Present law

Section 302(a) of the U.S.-Canada FTA Implementation Act established a new procedural mechanism under U.S. law strictly for the application of import relief measures on a bilateral basis for the first time, as required to implement Article 1101 of the U.S.-Canada FTA. As provided under section 501(c) of that Act, as amended by section 107 of H.R. 3450, section 302(a) will be suspended on the date the United States and Canada suspend the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA, until such time as the suspension may be terminated.

The provisions of section 302(a) are basically incorporated into sections 301 through 307 of the NAFTA Implementation Act as described below with respect to imports of articles originating in Canada.

Explanation of provision

Sections 301 through 307 of H.R. 3450 establish a procedural mechanism under U.S. law for the application of safeguard actions on a bilateral basis on articles that originate (under the terms of Chapter 4 of the NAFTA) and qualify to be marked as a good either of Canada or Mexico. These provisions do not apply to textile or apparel articles.

A petition requesting action to adjust to U.S. obligations under the NAFTA may be filed under section 302(a) with the International Trade Commission by an entity (including a trade association, firm, union, or group of workers) that is representative of an industry. An entity filing the petition may request that provisional relief be provided for perishable products (see description of present law under section 315) as if the petition had been filed under section 202(a) of the Trade Act of 1974. Expedited relief also may be sought by an entity filing the petition if an allegation that critical circumstances exist is made either in the original petition or within 90 days after the investigation is initiated.

Upon the filing of a petition, the ITC shall promptly initiate an investigation under section 301(b) to determine whether, as a result of the reduction or elimination of a duty provided for under the NAFTA, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or, except in the case of a Canadian article, threat of serious injury, to the domestic industry producing a like or directly competitive article. No investigation may be initiated with respect to any Canadian or Mexican article if bilateral import relief has previously been provided with respect to that article.

Because of the limited scope of the investigation and available relief, only certain specified provisions of section 202 of the Trade Act of 1974 applicable to standard import relief investigations by the ITC also apply to ITC

investigations for bilateral relief under section 302. The applicable provisions of section 202 are: Under subsection (b), the definition of "substantial cause" under paragraph (1)(B), the application of critical circumstances under paragraph (3) except subparagraph (A), and the public hearing requirement under paragraph (4); under subsection (c), the consideration of all economic factors under paragraphs (1), (2), and (3), the factors for determining the domestic industry, including regional industry, under paragraph (4), notification of appropriate agencies under paragraph (5) of possible unfair trade practices discovered during the course of an investigation, and the definitions of "domestic industry" and "significant idling of productive facilities" under paragraph (6); and all provisions on provisional relief under subsection (d).

Section 303 requires the ITC to make its determination on injury, as well as on any allegation of critical circumstances within 120 days after the date on which the investigation is initiated. If the ITC makes an affirmative injury determination, the Commission must find and recommend to the President the amount of import relief necessary to remedy the injury or, except in the case of imports of a Canadian article, prevent the injury. The recommendation shall be limited to the relief the President is authorized to provide under section 304(c). Within 30 days after making the injury determination, the Commission shall submit to the President and make public (except for confidential information) under section 303(c) a report on the basis for the determination, any dissenting or separate views, and any relief finding. The ITC shall publish a summary of the report in the Federal Register.

Within 30 days after receiving the ITC report of an affirmative injury determination, the President shall provide import relief under section 304(a) to the extent the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the Commission. The President is not required to provide import relief if the President determines that the provision of the relief will not provide greater economic and social benefits than costs.

The relief the President is authorized to provide is limited under section 304(c), in the case of a Canadian article, to (1) the suspension of any further duty reduction under Annex 401.2 of the U.S.-Canada Free Trade Agreement on the article; (2) an increase in the rate of duty on the article to a level that does not exceed the lesser of the column 1 MFN rate of duty imposed on like articles at the time the relief is provided or on December 1, 1988 (i.e., a tariff "snapback"); or (3) if a seasonal duty applies to the article, an increase in that duty not to exceed the column 1 MFN rate of duty imposed on the article for the corresponding season immediately before January 1, 1989.

In the case of a Mexican article, the President may (1) suspend any further duty reduction provided for under the U.S. Schedule to Annex 302.2 of the NAFTA on the article; (2) increase the duty on the article to not more than the lesser of the column 1 MFN rate of duty on like articles at the time relief is provided or on the day before the NAFTA enters into force; and (3) in the case of a seasonal duty, increase the rate to a level that does not exceed

the column 1 MFN rate or the article for the corresponding season immediately before the NAFTA enters into force.

Section 304(d) limits the period of relief the President is authorized to provide to not more than 3 years. As an exception to this limit, the President, after obtaining the advice of the ITC, may extend the relief for not more than one year on an article for which the transition period for tariff elimination is greater than 10 years and the President determines that the affected industry has undertaken adjustment and requires an extension of import relief, if the duty applied during the initial period is substantially reduced at the beginning of the extension period.

Section 304(e) sets forth the rules for determining the rate of duty that will apply upon termination of import relief on a Mexican article. The rate of duty for the remainder of the year will be the rate that would have been in effect one year after the initiation of the action; for the rest of the tariff phaseout period, the President may set the duty either at the rate in the U.S. Schedule, or the rate resulting from eliminating the tariff in equal annual stages ending on the date set in the Schedule.

Section 305 prohibits the provision of bilateral import relief on a Canadian article after December 31, 1998, or on a Mexican article after 10 years after the date the NAFTA enters into force, except that relief granted on an article for which the transition period for tariff elimination exceeds 10 years shall be the period for staged tariff elimination on that article. The period of import relief may also be extended on a Canadian or Mexican article with the consent of the Government of Canada or Mexico, as the case may be.

Section 306 treats any import relief provided under section 304 as an action taken under the standard import relief provisions of Chapter 1 of Title II of the Trade Act of 1974 for purposes of the compensation authority provided under section 123 of the Trade Act of 1974.

Section 307 provides that a petition may be filed for bilateral or global import relief or for both at the same time in which case the ITC shall consider the petitions jointly.

Reasons for change

Section 301 through 307 of H.R. 3450 implement the provisions of Article 801 of the NAFTA, which permits bilateral safeguard actions during the transition period solely with respect to goods traded with Mexico, and Annex 801.1 of the NAFTA, which incorporates the provisions of the U.S.-Canada FTA that will continue to apply during the transition period ending December 31, 1998 for the phaseout of duties between the United States and Canada. The standards and procedures set forth in sections 301 through 307 are otherwise similar to the provisions of section 302(a) of the U.S.-Canada FTA Implementation Act. Article 801 permits safeguard actions based on a threat of serious injury, as well as actual injury, due to increased imports from Mexico; allows an additional fourth year of relief with respect to import-sensitive goods from Mexico with a tariff phaseout period exceeding 10 years; and provides greater flexibility in the phaseout of duties during the remaining transition period following a bilateral action.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 306. COMPENSATION AUTHORITY

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 304 shall be treated as action taken under chapter 1 of title II of such Act.

House Ways & Means Committee Report

Present law

Section 302(a) of the U.S.-Canada FTA Implementation Act established a new procedural mechanism under U.S. law strictly for the application of import relief measures on a bilateral basis for the first time, as required to implement Article 1101 of the U.S.-Canada FTA. As provided under section 501(c) of that Act, as amended by section 107 of H.R. 3450, section 302(a) will be suspended on the date the United States and Canada suspend the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA, until such time as the suspension may be terminated.

The provisions of section 302(a) are basically incorporated into sections 301 through 307 of the NAFTA Implementation Act as described below with respect to imports of articles originating in Canada.

Explanation of provision

Sections 301 through 307 of H.R. 3450 establish a procedural mechanism under U.S. law for the application of safeguard actions on a bilateral basis on articles that originate (under the terms of Chapter 4 of the NAFTA) and qualify to be marked as a good either of Canada or Mexico. These provisions do not apply to textile or apparel articles.

A petition requesting action to adjust to U.S. obligations under the NAFTA may be filed under section 302(a) with the International Trade Commission by an entity (including a trade association, firm, union, or group of workers) that is representative of an industry. An entity filing the petition may request

that provisional relief be provided for perishable products (see description of present law under section 315) as if the petition had been filed under section 202(a) of the Trade Act of 1974. Expedited relief also may be sought by an entity filing the petition if an allegation that critical circumstances exist is made either in the original petition or within 90 days after the investigation is initiated.

Upon the filing of a petition, the ITC shall promptly initiate an investigation under section 301(b) to determine whether, as a result of the reduction or elimination of a duty provided for under the NAFTA, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or, except in the case of a Canadian article, threat of serious injury, to the domestic industry producing a like or directly competitive article. No investigation may be initiated with respect to any Canadian or Mexican article if bilateral import relief has previously been provided with respect to that article.

Because of the limited scope of the investigation and available relief, only certain specified provisions of section 202 of the Trade Act of 1974 applicable to standard import relief investigations by the ITC also apply to ITC investigations for bilateral relief under section 302. The applicable provisions of section 202 are: Under subsection (b), the definition of "substantial cause" under paragraph (1)(B), the application of critical circumstances under paragraph (3) except subparagraph (A), and the public hearing requirement under paragraph (4); under subsection (c), the consideration of all economic factors under paragraphs (1), (2), and (3), the factors for determining the domestic industry, including regional industry, under paragraph (4), notification of appropriate agencies under paragraph (5) of possible unfair trade practices discovered during the course of an investigation, and the definitions of "domestic industry" and "significant idling of productive facilities" under paragraph (6); and all provisions on provisional relief under subsection (d).

Section 303 requires the ITC to make its determination on injury, as well as on any allegation of critical circumstances within 120 days after the date on which the investigation is initiated. If the ITC makes an affirmative injury determination, the Commission must find and recommend to the President the amount of import relief necessary to remedy the injury or, except in the case of imports of a Canadian article, prevent the injury. The recommendation shall be limited to the relief the President is authorized to provide under section 304(c). Within 30 days after making the injury determination, the Commission shall submit to the President and make public (except for confidential information) under section 303(c) a report on the basis for the determination, any dissenting or separate views, and any relief finding. The ITC shall publish a summary of the report in the Federal Register.

Within 30 days after receiving the ITC report of an affirmative injury determination, the President shall provide import relief under section 304(a) to the extent the President determines necessary to remedy or, except in the

case of imports of a Canadian article, prevent the injury found by the Commission. The President is not required to provide import relief if the President determines that the provision of the relief will not provide greater economic and social benefits than costs.

The relief the President is authorized to provide is limited under section 304(c), in the case of a Canadian article, to (1) the suspension of any further duty reduction under Annex 401.2 of the U.S.-Canada Free Trade Agreement on the article; (2) an increase in the rate of duty on the article to a level that does not exceed the lesser of the column 1 MFN rate of duty imposed on like articles at the time the relief is provided or on December 1, 1988 (i.e., a tariff "snapback"); or (3) if a seasonal duty applies to the article, an increase in that duty not to exceed the column 1 MFN rate of duty imposed on the article for the corresponding season immediately before January 1, 1989.

In the case of a Mexican article, the President may (1) suspend any further duty reduction provided for under the U.S. Schedule to Annex 302.2 of the NAFTA on the article; (2) increase the duty on the article to not more than the lesser of the column 1 MFN rate of duty on like articles at the time relief is provided or on the day before the NAFTA enters into force; and (3) in the case of a seasonal duty, increase the rate to a level that does not exceed the column 1 MFN rate or the article for the corresponding season immediately before the NAFTA enters into force.

Section 304(d) limits the period of relief the President is authorized to provide to not more than 3 years. As an exception to this limit, the President, after obtaining the advice of the ITC, may extend the relief for not more than one year on an article for which the transition period for tariff elimination is greater than 10 years and the President determines that the affected industry has undertaken adjustment and requires an extension of import relief, if the duty applied during the initial period is substantially reduced at the beginning of the extension period.

Section 304(e) sets forth the rules for determining the rate of duty that will apply upon termination of import relief on a Mexican article. The rate of duty for the remainder of the year will be the rate that would have been in effect one year after the initiation of the action; for the rest of the tariff phaseout period, the President may set the duty either at the rate in the U.S. Schedule, or the rate resulting from eliminating the tariff in equal annual stages ending on the date set in the Schedule.

Section 305 prohibits the provision of bilateral import relief on a Canadian article after December 31, 1998, or on a Mexican article after 10 years after the date the NAFTA enters into force, except that relief granted on an article for which the transition period for tariff elimination exceeds 10 years shall be the period for staged tariff elimination on that article. The period of import relief may also be extended on a Canadian or Mexican article with the consent of the Government of Canada or Mexico, as the case may be.

Section 306 treats any import relief provided under section 304 as an action taken under the standard import relief provisions of Chapter 1 of Title II of the Trade Act of 1974 for purposes of the compensation authority provided under section 123 of the Trade Act of 1974.

Section 307 provides that a petition may be filed for bilateral or global import relief or for both at the same time in which case the ITC shall consider the petitions jointly.

Reasons for change

Section 301 through 307 of H.R. 3450 implement the provisions of Article 801 of the NAFTA, which permits bilateral safeguard actions during the transition period solely with respect to goods traded with Mexico, and Annex 801.1 of the NAFTA, which incorporates the provisions of the U.S.-Canada FTA that will continue to apply during the transition period ending December 31, 1998 for the phase-out of duties between the United States and Canada. The standards and procedures set forth in sections 301 through 307 are otherwise similar to the provisions of section 302(a) of the U.S.-Canada FTA Implementation Act. Article 801 permits safeguard actions based on a threat of serious injury, as well as actual injury, due to increased imports from Mexico; allows an additional fourth year of relief with respect to import-sensitive goods from Mexico with a tariff phase-out period exceeding 10 years; and provides greater flexibility in the phase-out of duties during the remaining transition period following a bilateral action.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 307. SUBMISSION OF PETITIONS

A petition for import relief may be submitted to the International Trade Commission under--(1) this part;(2) chapter 1 of title II of the Trade Act of 1974; or(3) under both this part and such chapter 1 at the same time, in which case the International Trade Commission shall consider such petitions jointly.

House Ways & Means Committee Report

Present law

Section 302(a) of the U.S.-Canada FTA Implementation Act established a new procedural mechanism under U.S. law strictly for the application of

import relief measures on a bilateral basis for the first time, as required to implement Article 1101 of the U.S.-Canada FTA. As provided under section 501(c) of that Act, as amended by section 107 of H.R. 3450, section 302(a) will be suspended on the date the United States and Canada suspend the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA, until such time as the suspension may be terminated.

The provisions of section 302(a) are basically incorporated into sections 301 through 307 of the NAFTA Implementation Act as described below with respect to imports of articles originating in Canada.

Explanation of provision

Sections 301 through 307 of H.R. 3450 establish a procedural mechanism under U.S. law for the application of safeguard actions on a bilateral basis on articles that originate (under the terms of Chapter 4 of the NAFTA) and qualify to be marked as a good either of Canada or Mexico. These provisions do not apply to textile or apparel articles.

A petition requesting action to adjust to U.S. obligations under the NAFTA may be filed under section 302(a) with the International Trade Commission by an entity (including a trade association, firm, union, or group of workers) that is representative of an industry. An entity filing the petition may request that provisional relief be provided for perishable products (see description of present law under section 315) as if the petition had been filed under section 202(a) of the Trade Act of 1974. Expedited relief also may be sought by an entity filing the petition if an allegation that critical circumstances exist is made either in the original petition or within 90 days after the investigation is initiated.

Upon the filing of a petition, the ITC shall promptly initiate an investigation under section 301(b) to determine whether, as a result of the reduction or elimination of a duty provided for under the NAFTA, a Canadian article or a Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or, except in the case of a Canadian article, threat of serious injury, to the domestic industry producing a like or directly competitive article. No investigation may be initiated with respect to any Canadian or Mexican article if bilateral import relief has previously been provided with respect to that article.

Because of the limited scope of the investigation and available relief, only certain specified provisions of section 202 of the Trade Act of 1974 applicable to standard import relief investigations by the ITC also apply to ITC investigations for bilateral relief under section 302. The applicable provisions of section 202 are: Under subsection (b), the definition of "substantial cause" under paragraph (1)(B), the application of critical circumstances under paragraph (3) except subparagraph (A), and the public hearing requirement under paragraph (4); under subsection (c), the consideration of all economic factors under paragraphs (1), (2), and (3), the factors for determining the domestic industry, including regional industry, under paragraph (4), notification of appropriate agencies under paragraph (5) of possible unfair

trade practices discovered during the course of an investigation, and the definitions of "domestic industry" and "significant idling of productive facilities" under paragraph (6); and all provisions on provisional relief under subsection (d).

Section 303 requires the ITC to make its determination on injury, as well as on any allegation of critical circumstances within 120 days after the date on which the investigation is initiated. If the ITC makes an affirmative injury determination, the Commission must find and recommend to the President the amount of import relief necessary to remedy the injury or, except in the case of imports of a Canadian article, prevent the injury. The recommendation shall be limited to the relief the President is authorized to provide under section 304(c). Within 30 days after making the injury determination, the Commission shall submit to the President and make public (except for confidential information) under section 303(c) a report on the basis for the determination, any dissenting or separate views, and any relief finding. The ITC shall publish a summary of the report in the Federal Register.

Within 30 days after receiving the ITC report of an affirmative injury determination, the President shall provide import relief under section 304(a) to the extent the President determines necessary to remedy or, except in the case of imports of a Canadian article, prevent the injury found by the Commission. The President is not required to provide import relief if the President determines that the provision of the relief will not provide greater economic and social benefits than costs.

The relief the President is authorized to provide is limited under section 304(c), in the case of a Canadian article, to (1) the suspension of any further duty reduction under Annex 401.2 of the U.S.-Canada Free Trade Agreement on the article; (2) an increase in the rate of duty on the article to a level that does not exceed the lesser of the column 1 MFN rate of duty imposed on like articles at the time the relief is provided or on December 1, 1988 (i.e., a tariff "snapback"); or (3) if a seasonal duty applies to the article, an increase in that duty not to exceed the column 1 MFN rate of duty imposed on the article for the corresponding season immediately before January 1, 1989.

In the case of a Mexican article, the President may (1) suspend any further duty reduction provided for under the U.S. Schedule to Annex 302.2 of the NAFTA on the article; (2) increase the duty on the article to not more than the lesser of the column 1 MFN rate of duty on like articles at the time relief is provided or on the day before the NAFTA enters into force; and (3) in the case of a seasonal duty, increase the rate to a level that does not exceed the column 1 MFN rate or the article for the corresponding season immediately before the NAFTA enters into force.

Section 304(d) limits the period of relief the President is authorized to provide to not more than 3 years. As an exception to this limit, the President, after obtaining the advice of the ITC, may extend the relief for not more than one year on an article for which the transition period for tariff elimination is greater than 10 years and the President determines that the affected industry has undertaken adjustment and requires an extension of import

relief, if the duty applied during the initial period is substantially reduced at the beginning of the extension period.

Section 304(e) sets forth the rules for determining the rate of duty that will apply upon termination of import relief on a Mexican article. The rate of duty for the remainder of the year will be the rate that would have been in effect one year after the initiation of the action; for the rest of the tariff phaseout period, the President may set the duty either at the rate in the U.S. Schedule, or the rate resulting from eliminating the tariff in equal annual stages ending on the date set in the Schedule.

Section 305 prohibits the provision of bilateral import relief on a Canadian article after December 31, 1998, or on a Mexican article after 10 years after the date the NAFTA enters into force, except that relief granted on an article for which the transition period for tariff elimination exceeds 10 years shall be the period for staged tariff elimination on that article. The period of import relief may also be extended on a Canadian or Mexican article with the consent of the Government of Canada or Mexico, as the case may be.

Section 306 treats any import relief provided under section 304 as an action taken under the standard import relief provisions of Chapter 1 of Title II of the Trade Act of 1974 for purposes of the compensation authority provided under section 123 of the Trade Act of 1974.

Section 307 provides that a petition may be filed for bilateral or global import relief or for both at the same time in which case the ITC shall consider the petitions jointly.

Reasons for change

Section 301 through 307 of H.R. 3450 implement the provisions of Article 801 of the NAFTA, which permits bilateral safeguard actions during the transition period solely with respect to goods traded with Mexico, and Annex 801.1 of the NAFTA, which incorporates the provisions of the U.S.-Canada FTA that will continue to apply during the transition period ending December 31, 1998 for the phase-out of duties between the United States and Canada. The standards and procedures set forth in sections 301 through 307 are otherwise similar to the provisions of section 302(a) of the U.S.-Canada FTA Implementation Act. Article 801 permits safeguard actions based on a threat of serious injury, as well as actual injury, due to increased imports from Mexico; allows an additional fourth year of relief with respect to import-sensitive goods from Mexico with a tariff phase-out period exceeding 10 years; and provides greater flexibility in the phase-out of duties during the remaining transition period following a bilateral action.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 308. SPECIAL TARIFF PROVISIONS FOR CANADIAN FRESH FRUITS AND VEGETABLES

(a) In general.--Section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended--(1) in paragraph (1), by striking "promptly" in the flush sentence at the end thereof and inserting "immediately",(2) by redesignating paragraphs (2) through (9) as paragraphs (3) through (10), respectively,(3) by inserting after paragraph (1) the following new paragraph:"(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.",(4) in paragraph (5), as redesignated by paragraph (2), by striking "paragraph (3)" and inserting "paragraph (4)", and(5) by amending paragraph (9), as redesignated by paragraph (2), to read as follows:"(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.".(b) Effective Date.--The amendments made by subsection (a) take effect on the date of the enactment of this Act.

House Ways & Means Committee Report

Present law

Section 301(a) of the U.S.-Canada FTA Implementation Act incorporates into U.S. law the provisions of Article 702 of the U.S.-Canada FTA establishing the right under certain conditions for either Party to the FTA, during the twenty-year period after the date on which this agreement entered into force, to impose a temporary duty on imports of certain Canadian fresh fruits and vegetables.

Subsection (a) authorizes the Secretary of Agriculture to recommend to the President the imposition of a temporary duty on imports of any Canadian fresh fruit or vegetable (defined in paragraph (6) of this subsection) if the Secretary determines that (1) for each of five consecutive working days, the import price of such Canadian fresh fruit or vegetable is below 90 percent of the corresponding five-year average monthly import price; and (2) 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 five years, excluding the years with the highest and lowest acreage. Whenever the Secretary makes a determination that these two conditions exist, he shall promptly submit for publication in the Federal Register a notice of such determination. In determining whether to recommend to the President the imposition of a temporary duty, the Secretary shall consider whether these two conditions have led to a distortion in U.S.-Canada trade in such fruit or vegetable, and if so, whether the imposition of the duty is appropriate for reasons including whether it would significantly correct this distortion.

Within seven days of receiving the Secretary's recommendation, and after taking into account the national economic interests of the United States, the President shall determine whether to impose a temporary duty, and if so, he shall proclaim the temporary duty on the Canadian fresh fruit or vegetable concerned. Any temporary duty, together with any other duty in effect, shall not exceed the lesser of the following: (1) the column one (most-favored-nation, or MFN) rate of duty in effect prior to January 1, 1989, for the applicable season; or (2) the column one rate of duty in effect at the time the temporary duty is applied. No temporary duty shall apply to shipments in transit on the first day that the duty is effective.

Any temporary duty shall cease to apply to the articles entered on or after the earlier of (1) the day following five consecutive working days in which the Secretary determines that the Canadian point-of-shipment price exceeds 90 percent of the corresponding five-year average monthly import price; or (2) 180 days after the temporary duty first took effect. No temporary duty may be applied while import relief under the Trade Act of 1974 is in effect with respect to the fruit or vegetable concerned.

The Secretary of Agriculture may issue regulations to implement these provisions. The Commissioner of Customs and the Director of the Bureau of the Census shall cooperate in providing the Secretary with timely information and import data to administer this provision. The authority to impose temporary duties under this section expires twenty years after the date on which the U.S.-Canada FTA entered into force.

Explanation of provision

Section 308 of H.R. 3450 amends section 301(a) of the U.S.-Canada FTA Implementation Act to provide that the President may impose a temporary duty on imports of any Canadian fresh fruit or vegetable (defined in paragraph (6) of section 301(a)) if the following criteria are met and procedures followed:

(1) the Secretary of Agriculture determines that both of the conditions in the statute (relating to (1) the import price of the fresh fruit or vegetable; and (2) the planted U.S. acreage for the like product) exist, and submits immediately for publication in the Federal Register a notice of such determination;

(2) the Secretary, not later than six days after such publication, decides to recommend to the President the imposition of a temporary duty, and forwards this recommendation to the President immediately; and

(3) not later than seven days after receiving this recommendation, the President makes a determination to impose the temporary duty.

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

Reasons for change

The Committee believes that these changes to section 301(a) of the U.S.-Canada FTA Implementation Act are necessary in order to further expedite the procedures under which the President may impose a duty "snapback" on certain Canadian fresh fruits and vegetables in order to ensure that timely relief to domestic producers of like fruits and vegetables would be available under this section.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

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

requires.

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

SEC. 309. PRICE-BASED SNAPBACK FOR FROZEN CONCENTRATED ORANGE JUICE

a) Trigger Price Determination.--(1) In general.--The Secretary shall determine--(A) each period of 5 consecutive business days in which the daily price for frozen concentrated orange juice is less than the trigger price; and(B) for each period determined under subparagraph (A), the first period occurring thereafter of 5 consecutive business days in which the daily price for frozen concentrated orange juice is greater than the trigger price.(2) Notice of determinations.--The Secretary shall immediately notify the Commissioner of Customs and publish notice in the Federal Register of any determination under paragraph (1), and the date of such publication shall be the determination date for that determination.(b) Imports of Mexican Articles.--Whenever after any determination date for a determination under subsection (a)(1)(A), the quantity of Mexican articles of frozen concentrated orange juice that is entered exceeds--(1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002; or(2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007;

(c) Rate of Duty.--The rate of duty specified for purposes of subsection (b) for articles entered on any day is the rate in the HTS that is the lower of--(1) the column 1-General rate of duty in effect for such articles on July 1, 1991; or(2) the column 1-General rate of duty in effect on that day.(d) Definitions.--For purposes of this section--(1) The term "daily price" means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange.(2) The term "business day" means a day in which contracts for frozen concentrated orange juice are being traded on the New York Cotton Exchange, or any successor as determined by the Secretary.(3) The term "entered" means entered or withdrawn from warehouse for consumption, in the customs territory of the United States.(4) The term "frozen concentrated orange juice" means all products classifiable under subheading 2009.11.00 of the HTS.(5) The term "Secretary" means the Secretary of Agriculture.(6) The term "trigger price" means the average daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary, for the corresponding month during the previous 5-year period, excluding the year

with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 309 of H.R. 3450 establishes a price-based duty "snapback" for frozen concentrated orange juice imported from Mexico into the United States. Specifically, if the futures price for frozen concentrated orange juice in the United States falls below an historical average price for five consecutive days, the duty on frozen concentrated orange juice imported from Mexico into the United States in excess of a certain "threshold quantity" will "snap back," or revert, to the lesser of (1) the prevailing most- favored-nation (MFN) rate of duty; or (2) the rate of duty in effect as of July 1, 1991.

For the years 1994 through 2002, the "threshold quantity" for frozen concentrated orange juice imported from Mexico into the United States, that is, the quantity of imports from Mexico above which the "snapback" duty would apply, is 264,978,000 liters, or 70 million gallons, single strength equivalent. For the years 2003 through 2007, the "threshold quantity" is 340,560,000 liters, or 90 million gallons, single strength equivalent.

The temporary "snapback" duty ceases to apply if the futures price of frozen concentrated orange juice in the United States rises above the historical average price for five consecutive days. The tariff snapback is automatically triggered and removed on the determination by the Secretary of Agriculture that the relevant price conditions exist. The Secretary's determinations shall be published in the Federal Register.

This provision creates a potential third tier to the two-tiered tariff rate quota created under the NAFTA for frozen concentrated orange juice imported from Mexico into the United States. The first tier consists of the "in-quota" tariff rate for the first 40 million gallons imported from Mexico into the United States. The second tier consists of the NAFTA "over-quota" tariff rate applicable to quantities entering above 40 million gallons. The potential third tier would consist of the snapback duty, which would apply to the quantity entering the United States above the 70-million-gallon threshold (for the years 1994 through 2002) or the 90-million-gallon threshold (for the years 2003 through 2007), if the relevant price conditions exist.

Reasons for change

Section 309 implements an understanding reached between the United States and Mexico providing for a potential third tier to the two-tiered tariff rate quota created under the NAFTA for frozen concentrated orange juice imported from Mexico into the United States.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

PART 2--RELIEF FROM IMPORTS FROM ALL COUNTRIES

House Ways & Means Committee Report

Part 2--Relief From Imports From All Countries

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Part 2--Relief From Imports From All Countries

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

SEC. 311. NAFTA ARTICLE IMPACT IN IMPORT RELIEF CASES UNDER THE TRADE ACT OF 1974

(a) In General.--If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the International Trade Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section

330(d) of the Tariff Act of 1930), the International Trade Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether--(1) imports of the article from a NAFTA country, considered individually, account for a substantial share of total imports; and(2) imports of the article from a NAFTA country, considered individually or, in exceptional circumstances, imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.(b) Factors.--(1) Substantial import share.--In determining whether imports from a NAFTA country, considered individually, account for a substantial share of total imports, such imports normally shall not be considered to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article subject to the investigation, measured in terms of import share during the most recent 3-year period.(2) Application of "contribute importantly" standard.--In determining whether imports from a NAFTA country or countries contribute importantly to the serious injury, or threat thereof, the International Trade Commission shall consider such factors as the change in the import share of the NAFTA country or countries, and the level and change in the level of imports of such country or countries. In applying the preceding sentence, imports from a NAFTA country or countries normally shall not be considered to contribute importantly to serious injury, or the threat thereof, if the growth rate of imports from such country or countries during the period in which an injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.(c) Definition.--For purposes of this section and section 312(a), the term "contribute importantly" refers to an important cause, but not necessarily the most important cause.

House Ways & Means Committee Report

Present law

Sections 201-204 of the Trade Act of 1974 authorize the President to provide import relief after receiving a report from the ITC that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry producing a like or directly competitive article. The ITC investigation is with respect to imports from all sources.

The ITC must make its injury determination within 120 days (150 days in extraordinarily complicated cases); its remedy recommendation and report must be submitted to the President within 180 days. Any Presidential action must be taken within 60 days of receiving an affirmative determination.

The President may provide provisional import relief for perishable agricultural products within 28 days after the petition is filed if the ITC has monitored imports for at least 90 days and makes an affirmative preliminary injury determination. On other products, the President may provide provisional import relief generally within 127 days after a petition is filed if

the ITC makes an affirmative injury determination and also determines critical circumstances exist.

Import relief may take the form of a tariff, tariff-rate quota, quantitative restriction, orderly marketing agreement, adjustment or other measures, or any combination thereof. Any tariff increase may not exceed 50 percent above the existing rate; any quantitative restriction must permit the importation of a quantity or value of the article not less than the level imported during the most recent representative period. Import relief, aside from orderly marketing agreements, is generally provided under present law on a global, MFN basis, although the President may take action without regard to nondiscriminatory application after considering the international obligations of the United States.

Import relief actions may not exceed eight years. A subsequent investigation of an article which has been the subject of import relief cannot be initiated for a period of time equivalent to the period of relief.

Section 123 of the Trade Act of 1974 authorizes the President to enter into trade agreements to provide new concessions as compensation for import relief actions.

Section 302(b) of the U.S.-Canada FTA Implementation Act establishes the criteria and procedures for implementing the obligations under Article 1102 of the U.S.-Canada FTA with respect to the application of global import relief measures to imports from Canada. Section 107 of H.R. 3450 suspends section 302(b) on the date the United States and Canada agree to suspend the operation of the U.S.-Canada FTA by reason of the entry into force between them of the NAFTA. Sections 311 and 312 of H.R. 3450 incorporate standards and procedures for applying global relief actions to imports of articles originating in Canada or Mexico which are similar to section 302(b), but reflect the fact that the NAFTA is trilateral rather than bilateral in nature and provide greater flexibility in the criteria for determining the significance of NAFTA imports.

Explanation of provision

Section 311 of H.R. 3450 provides that if, in a standard import relief investigation initiated under Chapter 1 of Title II of the Trade Act of 1974, the ITC makes an affirmative determination (or a determination that the President may treat as an affirmative determination by reason of section 330(d) of the Tariff Act of 1930) that increased imports are a substantial cause of serious injury, or the threat thereof, to the domestic industry, the Commission must also find (and report to the President at the time the injury determination is submitted) whether imports of the article from a NAFTA country (1) considered individually, account for a substantial share of total imports, and (2) considered individually or, in exceptional circumstances considered collectively, contribute importantly to the serious injury or threat thereof caused by imports.

The Commission shall not normally consider imports from a NAFTA country, considered individually, to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article measured in terms of import share during the most recent 3-year period.

The term "contribute importantly" refers to an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports. In determining whether imports from a NAFTA country or countries contribute importantly to the serious injury, the ITC shall consider such factors as the change in the import share and the level and change in the level of imports of the NAFTA country or countries. Imports from a NAFTA country or countries normally shall not be considered to contribute importantly if the growth rate of imports from such country or countries during the period an injurious import increase occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

In determining under section 312 whether to take relief action with respect to imports from a NAFTA country, the President shall determine whether (1) imports from such country, considered individually, account for a substantial share of total imports; or (2) imports from a NAFTA country, considered individually, or in exceptional circumstances imports from NAFTA countries considered collectively, contribute importantly to the serious injury or threat thereof found by the Commission. The President shall exclude imports from a NAFTA country from the global import relief action if the determination is negative with respect to imports from that country. Any action proclaiming a quantitative restriction shall permit imports from a NAFTA country of not less than the quantity or value of the article imported during the most recent representative period with allowance for reasonable growth.

If the President excludes imports from a NAFTA country or countries and subsequently determines that a "surge" in imports from the country or countries is undermining the effectiveness of the import relief, the President may take appropriate action to include those imports in the action. Any entity that is representative of an industry for which action is being taken may request the ITC to conduct an investigation of the surge in imports. Upon receiving the request, the Commission shall conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the import relief action. The Commission shall submit its findings to the President within 30 days after receipt of the request. The term "surge" means a significant increase in imports over the trend for a recent representative base period.

Reasons for change

Sections 311 and 312 implement the provisions of Article 802 of the NAFTA, which maintains the right to apply safeguard actions against imports from all sources, while excluding imports from NAFTA countries if they are not an important contribution to the injury to the domestic industry. The differences from the import relief provisions in present law under the Trade Act of 1974 or the U.S.-Canada FTA Implementation Act are fully consistent with the obligations of the NAFTA.

In a comprehensive study by the ITC of the effects of NAFTA on particular sectors, it was determined that major household appliances would be among those sectors likely to be adversely affected by NAFTA implementation. Therefore, the Statement of Administrative Action directs the ITC to analyze

and take into account certain factors should the industry petition for safeguard action. One such factor is whether, when determining if petitioners are representative of the industry, firms not included among the petitioners are related to importers or exporters or are themselves importers of the like product. Also, in determining injury, the ITC must consider whether U.S. producers that are related to importers have shielded their production from the adverse affects from imports of the like or directly competitive product. Further, the ITC must view the reduction of MFN rates to zero, the removal of GSP, or the removal of the competitive need limits under that program as a reduction in duty.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 312. PRESIDENTIAL ACTION REGARDING NAFTA IMPORTS

(a) In General.--In determining whether to take action under chapter 1 of title II of the Trade Act of 1974 with respect to imports from a NAFTA country, the President shall determine whether--(1) imports

from such country, considered individually, account for a substantial share of total imports; or(2) imports from a NAFTA country, considered individually, or in exceptional circumstances imports from NAFTA countries considered collectively, contribute importantly to the serious injury, or threat thereof, found by the International Trade Commission.

(b) Exclusion of NAFTA Imports.--In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall exclude from such action imports from a NAFTA country if the President makes a negative determination under subsection (a) (1) or (2) with respect to imports from such country.

(c) Action After Exclusion of NAFTA Country Imports.--(1) In general.--If the President, under subsection (b), excludes imports from a NAFTA country or countries from action under chapter 1 of title II of the Trade Act of 1974 but thereafter determines that a surge in imports from that country or countries is undermining the effectiveness of the action--(A) the President may take appropriate action under such chapter 1 to include those imports in the action; and(B) any entity that is representative of an industry for which such action is being taken may request the International Trade Commission to conduct an investigation of the surge in such imports.(2) Investigation.--Upon receiving a request under paragraph (1)(B), the International Trade Commission shall conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action. The International Trade Commission shall submit the findings of its investigation to the President no later than 30 days after the request is received by the International Trade Commission.(3) Definition.--For purposes of this subsection, the term "surge" means a significant increase in imports over the trend for a recent representative base period.

(d) Condition Applicable to Quantitative Restrictions.--Any action taken under this section proclaiming a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the quantity or value of such article imported into the United States during the most recent period that is representative of imports of such article, with allowance for reasonable growth.

House Ways & Means Committee Report

Present law

Sections 201-204 of the Trade Act of 1974 authorize the President to provide import relief after receiving a report from the ITC that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat thereof to the domestic industry

producing a like or directly competitive article. The ITC investigation is with respect to imports from all sources.

The ITC must make its injury determination within 120 days (150 days in extraordinarily complicated cases); its remedy recommendation and report must be submitted to the President within 180 days. Any Presidential action must be taken within 60 days of receiving an affirmative determination.

The President may provide provisional import relief for perishable agricultural products within 28 days after the petition is filed if the ITC has monitored imports for at least 90 days and makes an affirmative preliminary injury determination. On other products, the President may provide provisional import relief generally within 127 days after a petition is filed if the ITC makes an affirmative injury determination and also determines critical circumstances exist.

Import relief may take the form of a tariff, tariff-rate quota, quantitative restriction, orderly marketing agreement, adjustment or other measures, or any combination thereof. Any tariff increase may not exceed 50 percent above the existing rate; any quantitative restriction must permit the importation of a quantity or value of the article not less than the level imported during the most recent representative period. Import relief, aside from orderly marketing agreements, is generally provided under present law on a global, MFN basis, although the President may take action without regard to nondiscriminatory application after considering the international obligations of the United States.

Import relief actions may not exceed eight years. A subsequent investigation of an article which has been the subject of import relief cannot be initiated for a period of time equivalent to the period of relief.

Section 123 of the Trade Act of 1974 authorizes the President to enter into trade agreements to provide new concessions as compensation for import relief actions.

Section 302(b) of the U.S.-Canada FTA Implementation Act establishes the criteria and procedures for implementing the obligations under Article 1102 of the U.S.-Canada FTA with respect to the application of global import relief measures to imports from Canada. Section 107 of H.R. 3450 suspends section 302(b) on the date the United States and Canada agree to suspend the operation of the U.S.-Canada FTA by reason of the entry into force between them of the NAFTA. Sections 311 and 312 of H.R. 3450 incorporate standards and procedures for applying global relief actions to imports of articles originating in Canada or Mexico which are similar to section 302(b), but reflect the fact that the NAFTA is trilateral rather than bilateral in nature and provide greater flexibility in the criteria for determining the significance of NAFTA imports.

Explanation of provision

Section 311 of H.R. 3450 provides that if, in a standard import relief investigation initiated under Chapter 1 of Title II of the Trade Act of 1974, the ITC makes an affirmative determination (or a determination that the President may treat as an affirmative determination by reason of section 330(d) of the Tariff Act of 1930) that increased imports are a substantial

cause of serious injury, or the threat thereof, to the domestic industry, the Commission must also find (and report to the President at the time the injury determination is submitted) whether imports of the article from a NAFTA country (1) considered individually, account for a substantial share of total imports, and (2) considered individually or, in exceptional circumstances considered collectively, contribute importantly to the serious injury or threat thereof caused by imports.

The Commission shall not normally consider imports from a NAFTA country, considered individually, to account for a substantial share of total imports if that country is not among the top 5 suppliers of the article measured in terms of import share during the most recent 3-year period.

The term "contribute importantly" refers to an important cause, but not necessarily the most important cause, of the serious injury or threat thereof caused by imports. In determining whether imports from a NAFTA country or countries contribute importantly to the serious injury, the ITC shall consider such factors as the change in the import share and the level and change in the level of imports of the NAFTA country or countries. Imports from a NAFTA country or countries normally shall not be considered to contribute importantly if the growth rate of imports from such country or countries during the period an injurious import increase occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

In determining under section 312 whether to take relief action with respect to imports from a NAFTA country, the President shall determine whether (1) imports from such country, considered individually, account for a substantial share of total imports; or (2) imports from a NAFTA country, considered individually, or in exceptional circumstances imports from NAFTA countries considered collectively, contribute importantly to the serious injury or threat thereof found by the Commission. The President shall exclude imports from a NAFTA country from the global import relief action if the determination is negative with respect to imports from that country. Any action proclaiming a quantitative restriction shall permit imports from a NAFTA country of not less than the quantity or value of the article imported during the most recent representative period with allowance for reasonable growth.

If the President excludes imports from a NAFTA country or countries and subsequently determines that a "surge" in imports from the country or countries is undermining the effectiveness of the import relief, the President may take appropriate action to include those imports in the action. Any entity that is representative of an industry for which action is being taken may request the ITC to conduct an investigation of the surge in imports. Upon receiving the request, the Commission shall conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the import relief action. The Commission shall submit its findings to the President within 30 days after receipt of the request. The term "surge" means a significant increase in imports over the trend for a recent representative base period.

Reasons for change

Sections 311 and 312 implement the provisions of Article 802 of the NAFTA, which maintains the right to apply safeguard actions against imports from all sources, while excluding imports from NAFTA countries if they are not an important contribution to the injury to the domestic industry. The differences from the import relief provisions in present law under the Trade Act of 1974 or the U.S.-Canada FTA Implementation Act are fully consistent with the obligations of the NAFTA.

In a comprehensive study by the ITC of the effects of NAFTA on particular sectors, it was determined that major household appliances would be among those sectors likely to be adversely affected by NAFTA implementation. Therefore, the Statement of Administrative Action directs the ITC to analyze and take into account certain factors should the industry petition for safeguard action. One such factor is whether, when determining if petitioners are representative of the industry, firms not included among the petitioners are related to importers or exporters or are themselves importers of the like product. Also, in determining injury, the ITC must consider whether U.S. producers that are related to importers have shielded their production from the adverse affects from imports of the like or directly competitive product. Further, the ITC must view the reduction of MFN rates to zero, the removal of GSP, or the removal of the competitive need limits under that program as a reduction in duty.

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No Legislative History.

Senate Finance Committee Report

Section 312(a) requires the President to make essentially the same determination as the ITC as to whether imports from NAFTA countries represent a substantial share of total imports and whether they contribute importantly to the injury or threat of injury. The Committee expects that the President will take into account the determination made by the ITC with respect to these issues; however, the President is not bound by the ITC recommendation. If the President finds in the affirmative, he is required, under subsection (b), to exclude imports from NAFTA countries from any global relief imposed. However, if they are excluded and the President thereafter determines that a surge in imports from a NAFTA country is undermining the effectiveness of the relief, the President may take appropriate action to include such imports in the action.

The domestic industry on whose behalf the global action is taken may petition the ITC to investigate such an import surge. In such cases, the ITC must submit the findings of its investigation to the President within 30 days after the petition is filed. If a global safeguard action proclaiming a

quantitative restriction is applied to imports of NAFTA countries, such action must, under subsection (d) and pursuant to paragraph 5 of Article 802, permit the importation of a quantity or value of the article from the relevant NAFTA country which is not less than the quantity or value of such article imported into the United States during the most recent representative period, with allowance for reasonable growth.

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

PART 3--GENERAL PROVISIONS

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Part 3--General Provisions

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No Legislative History.

Senate Finance Committee Report

Part 3--General Provisions

SEC. 315. PROVISIONAL RELIEF

Section 202(d) of the Trade Act of 1974 (19 U.S.C. 2252(d)) is amended--(1) in paragraph (1)(A) by inserting "or citrus product" after "agricultural product" each place it appears;(2) in the text of paragraph (1)(C) that appears before subclauses

(I) and (II)--(A) by inserting "or citrus product" after "agricultural product" each place it appears, and(B) by inserting "or citrus product" after "perishable product";(3) by redesignating subparagraphs (A) and (B) of paragraph (5) as subparagraphs (B) and (C); and(4) by inserting a new subparagraph (A) in paragraph (5) to read as follows:"(A) The term 'citrus product' means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.".

House Ways & Means Committee Report

Present law

Section 202(d) of the Trade Act of 1974 establishes a monitoring and provisional relief procedure whereby an entity representing a domestic industry that produces a perishable agricultural product like or directly competitive with an imported perishable agricultural product may file a request with the Trade Representative for import monitoring. Within 21 days of the request, the USTR must determine if the imported product is a perishable agricultural product, and if there is a reasonable indication that the 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 threat thereof to the domestic industry. If the determinations are affirmative, the USTR shall request, under section 332(g) of the Tariff Act of 1930, the ITC to monitor and investigate the imports for a period of up to two years.

If a petition filed seeking import relief alleges injury from imports of a perishable agricultural product that has been subject to monitoring for at least 90 days and requests provisional relief, the Commission shall make a determination within 21 days on the basis of available information whether (1) increased imports of the product are a substantial cause of serious injury or threat thereof to the domestic industry and (2) the serious injury either is likely to be difficult to repair by reason of the perishability of the product, or cannot be timely prevented through standard import relief procedures. If the determination is affirmative, the ITC shall find the amount or extent of provisional relief necessary to prevent or remedy the serious injury. The ITC must report its determination and finding, if any, immediately to the President.

Within seven days after receiving a report of an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the ITC's finding, shall proclaim such provisional relief (in the form of a duty increase or imposition and/or modification or imposition of quantitative restrictions) as the President considers necessary to prevent or remedy the serious injury.

Any provisional relief shall terminate on the day the ITC makes a negative injury determination regarding the petition for import relief; a duty increase or quantitative restriction takes effect as import relief on the article; the President decides not to take import relief action; or the President determines that, because of changed circumstances, relief is no longer warranted.

A perishable agricultural product is any agricultural article, including livestock, regarding which the USTR considers action appropriate after taking into account (1) whether the article has a short shelf life, a short growing season, or a short marketing period; (2) whether the article is treated as a perishable product under any other Federal law or regulation; and (3) any other factor the USTR considers appropriate.

Explanation of provision

Section 315 of H.R. 3450 amends section 202(d) of the Trade Act of 1974 to add "citrus product" to the coverage of provisional relief authority. "Citrus product" means any processed oranges or grapefruit, or any oranges or grapefruit juice, including concentrate.

Reasons for change

Section 315 responds to concerns of the domestic industry about potential increased import competition from Mexico under the NAFTA.

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No Legislative History.

Senate Finance Committee Report

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

SEC. 316. MONITORING

For purposes of expediting an investigation concerning provisional relief under this subtitle or section 202 of the Trade Act of 1974 regarding--(1) fresh or chilled tomatoes provided for in subheading 0702.00.00 of the HTS; and(2) fresh or chilled peppers, other than chili peppers provided for in subheading 0709.60.00 of the HTS;

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Present law

Section 202(d) of the Trade Act of 1974 provides for provisional relief on perishable agricultural products, as described under section 315 above.

Explanation of provision

Section 316 of H.R. 3450 provides that the ITC, until January 1, 2009, shall monitor imports of fresh or chilled tomatoes and fresh or chilled peppers (other than chili peppers) as if proper requests for monitoring had been made under section 202(d) of the Trade Act of 1974. At the request of the ITC, the Secretary of Agriculture and the Commissioner of Customs shall provide information to the ITC relevant to the monitoring.

Reasons for change

The purpose of section 316 is to initiate monitoring in order to expedite an investigation concerning provisional relief on these products. The provision responds to concerns of the domestic industry about potential increased import competition from Mexico under the NAFTA.

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No Legislative History.

Senate Finance Committee Report

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

SEC. 317. PROCEDURES CONCERNING THE CONDUCT OF INTERNATIONAL TRADE COMMISSION INVESTIGATIONS

(a) Procedures and Rules.--The International Trade Commission shall adopt such procedures and rules and regulations as are necessary to bring its procedures into conformity with chapter 8 of the Agreement.(b) Conforming Amendment.--Section 202(a) of the Trade Act of 1974 is amended by adding at the end thereof the following:"(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."

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Present law
No provision.

Explanation of provision
Section 317(a) of H.R. 3450 requires the ITC to adopt procedures, rules, and regulations as are necessary to bring its procedures into conformity with Chapter 8 of the NAFTA.

Section 317(b) amends section 202(a) of the Trade Act of 1974 by adding a new paragraph (8), which provides that the procedures under section

332(g) of the Tariff Act of 1930 concerning the release of confidential business information shall apply with respect to information received by the Commission in the course of standard global import relief investigations under Chapter 1 of Title II of the Trade Act of 1974, and bilateral relief investigations under the NAFTA Implementation Act.

Reasons for change

With certain minor exceptions, current ITC rules and procedures already conform with the requirements of Chapter 8 of the NAFTA. The ITC will need to make certain minor changes to its rules of practice and procedure. For example, the ITC will need to amend its rules to require that a petitioner include in its petition information concerning the extent to which NAFTA country imports are contributing importantly to the serious injury or threat of serious injury.

NAFTA Annex 803.3, paragraph 8, requires that the agency conducting a safeguard investigation adopt or maintain procedures for protecting confidential information. Unlike other U.S. trade law provisions, such as the countervailing duty and antidumping law, the import relief provisions under sections 201 through 204 of the Trade Act of 1974 do not contain a specific provision prohibiting the Commission from disclosing confidential business information. Instead, to protect such information from disclosure, the Commission has relied on exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)). This provision prohibits the Commission from disclosing information which is designated as confidential business information by the person submitting it and which the Commission considers to be confidential business information, unless the party submitting the information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information.

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No Legislative History.

Senate Finance Committee Report

Section 317 requires the ITC to adopt such procedures and rules and regulations as necessary to bring its procedures into conformity with Chapter 8. Subsection (b) further provides that the procedures set forth in section 332(g) of the Tariff Act of 1930 concerning the release of confidential business information will apply to information received by the ITC in the course of investigations conducted under the NAFTA bilateral safeguard provisions and global safeguard provisions.

SEC. 318. EFFECTIVE DATE

Except as provided in section 308(b), the provisions of this subtitle take effect on the date the Agreement enters into force with respect to the United States.

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Section 318 of H.R. 3450 provides that the provisions of Subtitle A, except section 308(a), take effect on the date the NAFTA enters into force for the United States.

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No Legislative History.

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

Subtitle B—Agriculture

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SUBTITLE B--AGRICULTURE

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No Legislative History.

Senate Finance Committee Report

No Legislative History.

SEC. 321. AGRICULTURE

(a) Meat Import Act of 1979.--The Meat Import Act of 1979 (19 U.S.C. 2253 note) is amended--(1) in subsection (b)--(A) by striking the last sentence in paragraph (2),(B) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:"(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."; and(C) by inserting after paragraph (4) (as redesignated by subparagraph (B) of this paragraph) the following new paragraphs:"(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.";(2) in subsection (f)(1), by striking the end period and inserting ", 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)."; and(3) in subsection (i), by inserting "and Mexico" after "Canada" each place it appears.(b) Section 22 of the Agricultural Adjustment Act.--(1) In general.--The President may, pursuant to article 309 and Annex 703.2 of the Agreement, exempt from any quantitative limitation or fee imposed pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, any article which originates in Mexico, if Mexico is a NAFTA country.(2) Qualification of articles.--The determination of whether an article originates in Mexico shall be made in accordance with section 202, except that operations performed in, or materials obtained from, any country other than the United States or Mexico shall be treated as if performed in or obtained from a country other than a NAFTA country.(c) Tariff Rate Quotas.--In implementing the tariff rate quotas set out in the United States Schedule to Annex 302.2 of the Agreement, the President shall take such action as may be necessary to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.(d) Peanuts.--(1) Effect of the agreement.--(A) In general.--Nothing in the Agreement or this Act reduces or eliminates--(i) any penalty required under section 358e(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a(d)); or(ii) any requirement under Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts, on peanuts in the domestic market, pursuant to section 108B(f) of the Agricultural Act of 1949 (7 U.S.C. 1445c-3(f)).(B) Reentry of exported peanuts.--Paragraph (6) of section 358e(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359a(d)(6)) is amended to read as follows:"(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.".(2) Consultations on imports.--It is the sense of Congress that the United States should request consultations in the Working Group on Emergency Action, established in the Understanding Between the Parties to the North American Free Trade Agreement Concerning Chapter Eight-- Emergency Action, if imports of peanuts exceed the in-quota quantity under a tariff rate quota set out in the United States Schedule to Annex 302.2 of the Agreement concerning whether--(A) the increased imports of peanuts constitute a substantial cause of, or contribute importantly to, serious injury, or threat of serious injury, to the domestic peanut industry; and(B) recourse under Chapter Eight of the Agreement or Article XIX of the General Agreement on Tariffs and Trade is appropriate.(e) Fresh Fruits, Vegetables, and Cut Flowers.--(1) In general.--The Secretary of Agriculture shall collect and compile the information specified under paragraph (3), if reasonably available, from appropriate Federal departments and agencies and the relevant counterpart ministries of the Government of Mexico.(2) Designation of an office.--The Secretary of Agriculture shall designate an office within the United States Department of Agriculture to be responsible for maintaining and disseminating, in a timely manner, the data accumulated for verifying citrus, fruit, vegetable, and cut flower trade between the United States and Mexico. The information shall be made available to the public and the NAFTA Agriculture Committee Working Groups.(3) Information collected.--The information to be collected, if reasonably available, includes--(A) monthly fresh fruit, fresh vegetable, fresh citrus, and processed citrus product import and export data;(B) monthly citrus juice production and export data;(C) data on inspections of shipments of citrus, vegetables, and cut flowers entering the United States from Mexico; and(D) in the case of fruits, vegetables, and cut flowers entering the United States from Mexico, data regarding--(i) planted and harvested acreage; and(ii) wholesale prices, quality, and grades.(f) End-Use Certificates.--(1) In general.--The Secretary of Agriculture (referred to in this subsection as the "Secretary") shall implement, in coordination with the Commissioner of Customs, a program requiring that end-use certificates be included in the documentation covering the entry into, or the withdrawal from a warehouse for consumption in, the customs territory of the United States--(A) of any wheat that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of wheat that is a product of the United States (referred to in this subsection as

"United States-produced wheat"); and(B) of any barley that is a product of any foreign country or instrumentality that requires, as of the effective date of this subsection, end-use certificates for imports of barley that is a product of the United States (referred to in this subsection as

"United States-produced barley").(2) Regulations.--The Secretary shall prescribe by regulation such requirements regarding the information to be included in end-use certificates as may be necessary and appropriate to carry out this subsection.(3) Producer protection determination.--At any time after the effective date of the requirements established under paragraph (1), the Secretary may, subject to paragraph (5), suspend the requirements when making a determination, after consultation with domestic producers, that the program implemented under this subsection has directly resulted in--(A) the reduction of income to the United States producers of agricultural commodities; or(B) the reduction of the competitiveness of United States agricultural commodities in the world export markets.(4) Suspension of requirements.--(A) Wheat.--If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced wheat as of the effective date of the requirement under paragraph (1)(A) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(A) beginning 30 calendar days after suspension by the foreign country or instrumentality.(B) Barley.--If a foreign country or instrumentality that requires end-use certificates for imports of United States-produced barley as of the effective date of the requirement under paragraph

(1)(B) eliminates the requirement, the Secretary shall suspend the requirement under paragraph (1)(B) beginning 30 calendar days after suspension by the foreign country or instrumentality.(5) Report to congress.--The Secretary shall not suspend the requirements established under paragraph (1) under circumstances identified in paragraph (3) before the Secretary submits a report to Congress detailing the determination made under paragraph (3) and the reasons for making the determination.(6) Compliance.--It shall be a violation of section 1001 of title 18, United States Code, for a person to engage in fraud or knowingly violate this subsection or a regulation implementing this subsection.(7) Effective date.--This subsection shall become effective on the date that is 120 days after the date of enactment of this Act.(g) Agricultural Fellowship Program.--Section 1542(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 7 U.S.C. 5622 note) is amended by adding at the end the following new paragraph:"(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 by 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.".(h) Assistance for Affected Farmworkers.--(1) In general.--Subject to paragraph (3), if at any time the Secretary of Agriculture determines that the implementation of the Agreement has caused low-income migrant or seasonal farmworkers to lose income, the Secretary may make available grants, not to exceed $20,000,000 for any fiscal year, to public agencies or private organizations with tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, that have experience in providing emergency services to low-income migrant or seasonal farmworkers. Emergency services to be provided with assistance received under this subsection may include such types of assistance as the Secretary determines to be necessary and appropriate.(2) Definition.--As used in this subsection, the term "low-income migrant or seasonal farmworker" shall have the same meaning as provided in section 2281(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (42 U.S.C. 5177a(b)).(3) Authorization of appropriations.--There are authorized to be appropriated $20,000,000 for each fiscal year to carry out this subsection.(i) Biennial Report on Effects of the Agreement on American Agriculture.--(1) In general.--The Secretary of Agriculture shall prepare a biennial report on the effects of the Agreement on United States producers of agricultural commodities and on rural communities located in the United States.(2) Contents of report.--The report required under this subsection shall include--(A) an assessment of the effects of implementing the Agreement on the various agricultural commodities affected by the Agreement, on a commodity-by-commodity basis;(B) an assessment of the effects of implementing the Agreement on investments made in United States agriculture and on rural communities located in the United States;(C) an assessment of the effects of implementing the Agreement on employment in United States agriculture, including any gains or losses of jobs in businesses directly or indirectly related to United States agriculture; and(D) such other information and data as the Secretary determines appropriate.(3) Submission of Report.--The Secretary shall furnish the report required under this subsection to the Committee on Agriculture, Nutrition, and Forestry of the Senate and to the Committee on Agriculture of the House of Representatives. The report shall be due every 2 years and shall be submitted by March 1 of the year in which the report is due. The first report shall be due by March 1, 1997, and the final report shall be due by March 1, 2011.

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Section 321(a). Meat Import Act of 1979

Present law

The Meat Import Act of 1979 requires the President to impose quotas on imports of beef, veal, mutton, and goat meat when the aggregate quantity of such imports on an annual basis is expected to exceed a prescribed trigger level. The trigger level is 110 percent of the base quantity level, which is established by statute and adjusted annually to reflect domestic supply levels. Annual import quotas may not be set below 1.193 billion pounds (assuming that no import limitation on Canadian products is in effect). The quotas are allocated among supplying countries on the basis of their historic shares of the U.S. market. The President may suspend or raise these quotas on the basis of (1) overriding economic or national security interests; (2) inadequate domestic supplies at reasonable prices; or (3) the implementation of trade agreements. In recent years, the United States has negotiated Voluntary Restraint Arrangements (VRAs) with one or more supplier countries if necessary to avoid triggering quotas.

Under Article 704 of the U.S.-Canada FTA, the two countries agreed to exempt each other from import quotas under their respective meat import laws. Section 301(b) of the U.S.-Canada FTA Implementation Act sets forth the changes made to the Meat Import Act of 1979 pursuant to Article 704. To reflect the elimination of Canada's historic share from the overall figure, the base quantity used to calculate the import level that triggers the quotas under the U.S. law was lowered to 1.1476 billion pounds.

Also, section 301(b) of the U.S.-Canada FTA Implementation Act and section 2(l) of the Meat Import Act of 1979 specifically authorize the President to impose, under certain circumstances, import restrictions on Canadian meat articles. These sections authorize the President to limit, by proclamation, Canadian meat articles to the extent and for such period of time as he determines is sufficient to prevent frustration of any import limitations imposed on imports from third countries under the Meat Import Act of 1979 or by agreements negotiated under section 204 of the Agricultural Act of 1956, if he determines that Canada has not taken equivalent action.

Explanation of provision

Section 321(a) of H.R. 3450 amends the Meat Import Act of 1979 to delete Mexican meat articles from the calculation of the quantity of meat articles that may be imported without triggering an import quota under the Meat Import Act of 1979. This section also provides that the rules of origin applicable for determining whether meat originates from Canada or Mexico for purposes of the Meat Import Act of 1979 will be the same as for tariff treatment purposes.

Section 321(a) includes in the universe of Mexican meat articles, and adds to the universe of Canadian meat articles, which are not subject to an

import quota triggered under the Meat Import Act of 1979, the so-called "high quality beef specially processed into fancy cuts," provided for in subheadings 0201.20.20, 0201.30.20, 0202.20.20, and 0202.30.20 of the HTS.

In addition, section 321(a) removes Mexico from the supplying countries to which any allocated meat import quota would apply. Finally, this section does not affect section 2(l) of the Meat Import Act of 1979, which authorizes the imposition under certain circumstances of import restrictions on Canadian meat articles.

Reasons for change

Section 321(a) of H.R. 3450 implements the U.S. commitment under the NAFTA not to subject Mexican "qualifying" meat to the Meat Import Act of 1979.

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

Present law

Section 22 of the Agricultural Adjustment Act of 1933 authorizes the President to impose import fees or quantitative restrictions (quotas) that he determines are necessary to ensure that imports of a product do not undermine a domestic, agricultural commodity-price-support or other agricultural program.

Under section 22, the Secretary of Agriculture advises the President when the Secretary has reason to believe that (1) imports of an article are rendering, or tending to render ineffective, or materially interfering with, any domestic, agricultural commodity-price-support or other agricultural program; or (2) imports of an article are reducing substantially the amount of any product processed in the United States from any agricultural commodity or product covered by such programs. If the President agrees that there is reason for the Secretary's belief, the President must order an ITC investigation and report. Using this report as his basis, the President must determine whether the statutory conditions warranting imposition of a section 22 quota or fee exist.

If the President makes an affirmative determination, he is required to impose, by proclamation, either import fees or import quotas sufficient to prevent imports of the product concerned from harming or interfering with the relevant agricultural program. Import fees may not exceed 50 percent ad valorem; import quotas may not exceed 50 percent of the quantity imported during a representative period.

Since its enactment, section 22 has been used to impose import restrictions on 12 different commodities; several of those restrictions have since been terminated.

Section 22 authority supersedes any inconsistent provisions in international agreements entered into by the United States; to remedy the inconsistency with GATT Articles II and XI, the United States in 1955 received a waiver of its GATT obligations.

Pursuant to Articles 705.5 and 707 of the U.S.-Canada FTA, section 301(c) of the U.S.-Canada FTA Implementation Act amended section 22 to authorize the President to exempt specified Canadian grain and sugar-containing products from any import restrictions imposed under section 22. (This authority has not been used by the President.)

Explanation of provision

Section 321(b) of H.R. 3450 authorizes the President, pursuant to Article 309 and Annex 703.2(A) of the NAFTA, to exempt any "qualifying good" from Mexico from any quantitative limitation or fee imposed under section 22 of the Agricultural Adjustment Act of 1933, for so long as Mexico is a NAFTA country.

A "qualifying good" is an agricultural good that meets, based on its U.S. and Mexican content alone, the NAFTA rules of origin in section 202 of H.R. 3450. Canadian content is treated as if it were non-NAFTA content.

Reasons for change

Section 321(b) implements the NAFTA provisions of Article 309 and Annex 703.2(A), under which the United States waives its rights under the GATT and the NAFTA to adopt or maintain (1) quantitative restrictions on "qualifying" agricultural imports, in general, from Mexico; and (2) fees on "qualifying" agricultural imports from Mexico pursuant to section 22 of the Agricultural Adjustment Act of 1933.

Annex 703.2(A) also contains provisions reflecting the United States' agreement to convert to tariff rate quotas its import quotas and fees under section 22 of the Agricultural Adjustment Act of 1933 on "qualifying" imports from Mexico of dairy products, cotton, sugar-containing products, and peanuts.

NAFTA is the first free trade agreement entered into by the United States that employs the concept of "tariffication" of agricultural quantitative restrictions. Under this concept, a country replaces each of its non-tariff barriers with a "tariff equivalent," which is a tariff rate set at a level that will provide protection for a product equivalent to the non-tariff barrier that the tariff replaces. In the case of several agricultural goods listed in the tariff schedules of each NAFTA country, the NAFTA countries will convert quantitative restrictions to tariffs or tariff rate quotas.

Under the NAFTA, U.S. section 22 quotas and fees will be converted to tariff rate quotas, under which "qualifying" Mexican dairy products, cotton, sugar-containing products, and peanuts will enter the United States duty free up to a certain quantity of imports (the "in-quota" quantity). Imports of such products above the in-quota volume are assessed a tariff. The in-quota quantity will increase over time and the over-quota tariff rate will be eliminated over time.

Section 321(c). Tariff rate quotas

Present law

Section 22 of the Agricultural Adjustment Act of 1933 authorizes the president to impose import fees or quantitative restrictions (quotas) that he determines are necessary to ensure that imports of a product do not undermine a domestic, agricultural commodity-price-support or other agricultural program.

Under section 22, the Secretary of Agriculture advises the President when the Secretary has reason to believe that (1) imports of an article are rendering, or tending to render ineffective, or materially interfering with, any domestic, agricultural commodity-price-support or other agricultural program; or (2) imports of an article are reducing substantially the amount of any product processed in the United States from any agricultural commodity or product covered by such programs. If the President agrees that there is reason for the Secretary's belief, the President must order an ITC investigation and report. Using this report as his basis, the President must determine whether the Statutory conditions warranting imposition of a section 22 quota or fee exist.

If the President makes an affirmative determination, he is required to impose, by proclamation, either import fees or import quotas sufficient to prevent imports of the product concerned from harming or interfering with the relevant agricultural program. Import fees may not exceed 50 percent ad valorem; import quotas may not exceed 50 percent of the quantity imported during a representative period.

Since its enactment, section 22 has been used to impose import restrictions on 12 different commodities, several of those restrictions have since been terminated.

Section 22 authority supersedes any inconsistent provisions in international agreements entered into by the United States; to remedy the inconsistency with GATT Articles II and XI, the United States in 1955 received a waiver of its GATT obligations.

Pursuant to Articles 705.5 and 707 of the U.S.-Canada FTA, section 301(c) of the U.S.-Canada FTA Implementation Act amended section 22 to authorize the President to exempt specified Canadian grain and sugar-containing products from any import restrictions imposed under section 22. (This authority has not been used by the President.)

Explanation of provision

The United States has agreed to convert to tariff rate quotas its import quotas and fees under section 22 of the Agricultural Adjustment Act of 1933 on imports from Mexico of dairy products, cotton, sugar-containing products, and peanuts. Article 302(4) of the NAFTA permits the adoption or maintenance of import measures to allocate the "in-quota" quantity under these tariff rate quotas, provided that such measures do not have trade restrictive effects on imports additional to those caused by the imposition of the tariff rate quota. Section 321(c) of H.R. 3450 directs the President to take such action as may be necessary to ensure that imports of goods subject to tariff rate quotas do not disrupt the orderly marketing of commodities in the United States. This provision will be implemented

consistent with NAFTA Article 302(4). Any agency action pursuant to this provision will be taken in accordance with regulations promulgated after providing notice and opportunity for public comment.

Reasons for change

Section 321(c) provides the President with specific direction on factors to be considered in, and procedures for, implementing the conversion to tariff rate quotas of the quantitative restrictions and fees imposed under section 22 of the Agricultural Adjustment Act of 1933 on imports from Mexico of dairy products, cotton, sugar-containing products, and peanuts.

Section 321(d). Peanuts

Present law

Section 22 of the Agricultural Adjustment Act of 1933 authorizes the President to impose import fees or quantitative restrictions (quotas) that he determines are necessary to ensure that imports of a product do not undermine a domestic, agricultural commodity-price-support or other agricultural program.

Under section 22, the Secretary of Agriculture advises the President when the Secretary has reason to believe that (1) imports of an article are rendering, or tending to render ineffective, or materially interfering with, any domestic, agricultural commodity-price-support or other agricultural program; or (2) imports of an article are reducing substantially the amount of any product processed in the United States from any agricultural commodity or product covered by such programs. If the President agrees that there is reason for the Secretary's belief, the President must order an ITC investigation and report. Using this report as his basis, the President must determine whether the statutory conditions warranting imposition of a section 22 quota or fee exist.

If the President makes an affirmative determination, he is required to impose, by proclamation, either import fees or import quotas sufficient to prevent imports of the product concerned from harming or interfering with the relevant agricultural program. Import fees may not exceed 50 percent ad valorem; import quotas may not exceed 50 percent of the quantity imported during a representative period.

Since its enactment, section 22 has been used to impose import restrictions on 12 different commodities; several of those restrictions have since been terminated, however, the United States does currently limit peanut imports under section 22 quotas.

Section 22 authority supersedes any inconsistent provisions in international agreements entered into by the United States; to remedy the inconsistency with GATT Articles II and XI, the United States in 1955 received a waiver of its GATT obligations.

Section 358e(d) of the Agricultural Adjustment Act of 1938 requires penalties for the marketing of peanuts in excess of the domestic marketing quota for the farm on which such peanuts are produced or for the marketing

of peanuts from any farm for which no acreage allotment was determined. Such penalties are imposed at a rate equal to a percentage of the support price for peanuts for the marketing year.

Marketing Agreement No. 146 regulates the quality of domestically produced peanuts through a number of requirements relating to criteria including moldiness, kernel damage, and time in storage.

Paragraph (6) of section 358e(d) of the Agricultural Adjustment Act of 1938 states that if any "additional" peanuts exported by a handler are reentered into the United States in commercial quantities, the importer of such additionals shall be subject to a penalty at a rate equal to 140 percent of loan level for quota peanuts on the quantity of peanuts reentered. Additional peanuts are peanuts that are produced in excess of a farm-level poundage quota as provided for in the Food, Agriculture, Conservation and Trade Act of 1990.

Explanation of provision

Section 321(d) of H.R. 3450 affirms that nothing in the NAFTA or in H.R. 3450 will reduce or eliminate (1) the penalty required, under section 358e(d) of the Agricultural Adjustment Act of 1938, for violations of domestic marketing quotas; and (2) the quality requirements on domestically produced peanuts under Marketing Agreement No. 146. Section 321(d) also requires peanut importers to maintain such records and documents as the Secretary of Agriculture may require to ensure compliance with paragraph (6) of section 358e(d) of the Agricultural Adjustment Act of 1938, which requires penalties for reentry into the United States of exported additional peanuts in commercial quantities.

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

Reasons for change

Section 321(d) underscores the necessity, in light of the tariffication under the NAFTA of the section 22 quotas on peanut imports from Mexico, to maintain the integrity of the domestic U.S. peanut program. First, section 321(d) notes that nothing in the NAFTA will reduce or eliminate the current statutory penalties for violating domestic marketing quotas or the requirements on quality for domestically produced peanuts. Second, this section adds a new record-keeping requirement on imports of additional peanuts.

The sense of Congress in section 321(d) suggests consultation in the Working Group on Emergency Action in the case of peanut imports that exceed the "in-quota" quantity in order to respond to domestic peanut

producers' concern that they might experience injury with the conversion to tariff rate quotas of section 22 quotas on peanut imports from Mexico.

Section 321(e). Fresh fruits, vegetables, and cut flowers

Present law
No provision.

Explanation of provision
Section 321(e) of H.R. 3450 requires the Secretary of Agriculture to collect and compile certain information, if reasonably available, from United States and Mexican governmental agencies on fresh fruits and vegetables, processed citrus products, and cut flowers. Such information could include trade, production, pricing, and inspection patterns. The Secretary is also to designate an office to maintain and disseminate this information.

Reasons for change
Section 321(e) establishes a formal means for collecting data on certain agricultural products, which are viewed as import sensitive in the domestic U.S. market and which, under the trade liberalizations in the NAFTA, including phase-out of tariffs and tariff rate quotas, are likely to experience trade patterns that differ from the past.

Section 321(f). End-use certificates

Present law
No provision.

Explanation of provision
Section 321(f) of H.R. 3450 is a free-standing provision that establishes an end-use certificate requirement for the following: (1) wheat imported into the United States from any foreign country or instrumentality that requires, as of the effective date of the subsection, end-use certificates on wheat produced in the United States; and (2) barley imported into the United States from any foreign country or instrumentality that requires, as of the effective date of the subsection, end-use certificates on barley produced in the United States. The effective date of this subsection is 120 days after the date of enactment of H.R. 3450.

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.

Under this subsection, the Secretary of Agriculture is directed to issue regulations regarding the information to be provided in end-use certificates. Such information could include the class, quantity, and country of origin of the covered commodity; importer of the commodity; and the end-use of the commodity, if known at the time of importation.

In order to protect U.S. agricultural producers, the Secretary may, after consulting with them and reporting to the Congress, suspend end-use certificate requirements if they have directly resulted in: (1) the reduction of income to U.S. producers of agricultural commodities; or (2) the reduction of competitiveness of U.S. agricultural commodities in world export markets.

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

Section 321(f) establishes penalties for fraud or knowing violation of the provisions of this subsection or regulations that implement it.

Reasons for change

Section 321(f) establishes an end-use certificate requirement on foreign wheat and barley to ensure that foreign agricultural commodities do not benefit from U.S. export programs.

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No Legislative History.

Senate Finance Committee

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

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

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

Committee on Agriculture, Nutrition, and Forestry

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

Section 321(b) of the implementing bill authorizes the President, pursuant to Article 309 and Annex 703.2 of the NAFTA, to exempt any article which originates from Mexico from any quantitative limitation or fee imposed pursuant to section 22 of the Agricultural Adjustment Act (7 U.S.C. 624), for so long as Mexico is a NAFTA country.

Section 321(c) Tariff Rate Quotas

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

Section 321(d) Peanuts

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

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

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

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

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

Section 321(f) End-Use Certificates

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

Section 321(f) of the bill is a free-standing provision that establishes an end-use certificate requirement for the following: (1) wheat imported into the United States from any foreign country or instrumentality that requires, as of the effective date of the subsection, end-use certificates on United States-produced wheat; and (2) barley imported into the United States from any foreign country or instrumentality that requires, as of the effective date of the subsection, end-use certificates on United States-produced barley. The purpose of the U.S. end-use certificate requirement is to ensure that foreign agricultural commodities are not used in U.S. export programs.

The Committee intends that the term "end-use" shall include the following: (1) exporting from the United States without the benefit of the Export Enhancement Program, export credit guarantee (GSM) program, and P.L. 480 according to procedures established in existing United States law; (2) feeding to livestock; (3) first stage processing for human consumption or industrial uses; and (4) other uses as determined by the Secretary of Agriculture.

Commingling with like types of United States grains should not be considered an end use. The Committee intends that the certificate remain current and follow the commingled grain until its end-use. For foreign grain intended for multiple end users, each portion of the grain must be accompanied by an end use certificate until it reaches its end use.

The Committee intends that the Secretary of Agriculture shall prescribe by regulation such requirements regarding the information to be included in end- use certificates as may be necessary and appropriate such as the class, quantity, and country of origin of the covered commodity; importer and initial consignee of the commodity; and the end-use, if known at the time of importation of the commodity. Any transfers from the importer, initial consignee, or any subsequent consignee shall be documented on the end-use

certificate. The Secretary may prescribe procedures, such as periodic reporting, as are necessary to ensure proper oversight of this section. The Secretary is expected to take all appropriate action to protect any business confidential information. The Secretary will ensure that end-use certificate forms will be made freely available to importers.

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

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

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

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

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

Section 321(g) Agricultural Fellowship Program

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

Section 321(h) Assistance for Affected Farm Workers

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

Section 321(i) Biennial Report on Effects of NAFTA

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

Subtitle C--Intellectual Property

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No Legislative History.

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No Legislative History.

Senate Finance Committee

No Legislative History.

SEC. 331. TREATMENT OF INVENTIVE ACTIVITY

Section 104 of title 35, United States Code, is amended to read as follows:"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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No Legislative History.

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No Legislative History.

COMMITTEE ON THE JUDICIARY

A. Treatment of Inventive Activity

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

Concerns were raised that U.S. firms may be unable to probe and challenge adequately such evidence because they cannot obtain other information from Mexico or Canada relevant to the date of invention. The bill guards against such a possibility by including a provision that enables a party in such a proceeding to demonstrate that relevant information exists in Mexico or Canada and has been requested, that the information has not been made available under the laws and procedures of such country, and that the

information would be "discoverable" in the United States. If the party can make this showing, the decision maker must draw appropriate inferences or take any other permissible action in favor of the party that requested the information in the proceeding. In deciding what inferences are appropriate, the decision maker should take into account all relevant facts, including the importance of the information that has not been made available, whether the information is in control of the party seeking to establish a date of invention prior to the filing date, and any other pertinent factor.

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

SEC. 332. RENTAL RIGHTS IN SOUND RECORDINGS

Section 4 of the Record Rental Amendment of 1984 (17 U.S.C. 109 note) is amended by striking out subsection (c).

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No Legislative History.

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No Legislative History.

Committee on the Judiciary

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

SEC. 333. NONREGISTRABILITY OF MISLEADING GEOGRAPHIC INDICATION

(a) Marks Not Registrable on the Principal Register.--Section 2 of the Act entitled "An Act to provide for the registration and protection of

trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, commonly referred to as the Trademark Act of 1946 (15 U.S.C. 1052(e)), is amended--(1) by amending subsection (e) to read as follows:"(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."; and(2) in subsection (f)--(A) by striking out "and (d)" and inserting "(d), and (e)(3)"; and(B) by adding at the end the following new sentence: "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.".(b) Supplemental Register.--Section 23(a) of the Trademark Act of 1946 (15 U.S.C. 1091(a)) is amended--(1) by striking out "and (d)" and inserting "(d), and (e)(3)"; and(2) by adding at the end the following new sentence: "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."

House Ways & Means Committee Report

No Legislative History.

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No Legislative History.

COMMITTEE ON THE JUDICIARY

C. Non-registrability of Misleading Geographic Indications

Under the current version of the Trademark Act of 1946, a mark is not registrable on the principal register if it is "primarily geographically

descriptive" or "deceptively misdescriptive" unless the mark has become distinctive of the applicant's goods. Marks that are considered "primarily geographically descriptive" or "deceptively misdescriptive" are registrable on the supplemental register. Registration on the supplemental register may, in time, facilitate a showing of "distinctiveness" and, thus, qualify for registrability on the principal register.

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

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

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

SEC. 334. MOTION PICTURES IN THE PUBLIC DOMAIN

(a) In General.--Chapter 1 of title 17, United States Code, is amended by inserting after section 104 the following new section:"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,

"(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).".(b) Conforming Amendment.--The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by inserting after the item relating to section 104 the following new item:

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Committee on the Judiciary

D. Motion Pictures in the Public Domain

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

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

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

Because certain related works typically are first published--and protected under copyright--along with the motion picture to which they pertain, Annex 1705.7 arguably requires that protection for related works be restored along with the motion pictures covered by the Annex. Accordingly, proposed subsection 104A provides copyright protection for such works if they fell into the public domain along with the relevant motion pictures. These works include the original music or dramatic text embodied in the sound track as well as the literary work on which the picture was based.

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

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

SEC. 335. EFFECTIVE DATES

a) in General.--Subject to subsections (b) and (c), the amendments made by this subtitle take effect on the date the Agreement enters into force with respect to the United States.(b) Section 331.--The amendments made by section 331 shall apply to all patent applications that are filed on or after the date of the enactment of this Act: Provided, That 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 NAFTA country, except as provided in sections 119 and 365 of title 35, United States Code, that is earlier than the date of the enactment of this Act.(c) Section 333.--The amendments made by section 333 shall apply only to trademark applications filed on or after the date of the enactment of this Act.

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Subtitle D--Temporary Entry of Business Persons

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SEC. 341. TEMPORARY ENTRY

(a) Nonimmigrant Traders and Investors.--Upon a basis of reciprocity secured by the Agreement, 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, may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in Section B of Annex 1603 of the Agreement, but only if any such purpose shall have been specified in such Annex on the date of entry into force of the Agreement. For purposes of this section, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of the Agreement.(b) Nonimmigrant Professionals and Annual Numerical Limit.--Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by redesignating subsection (e) as paragraph (1) of subsection (e) and adding after such paragraph (1), as redesignated, the following new paragraphs:"(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 therefore, 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).".(c) Labor Disputes.--Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following new subsection:"(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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Chapter 16: Temporary Entry for Business Persons

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

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

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

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

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

SEC. 342 EFFECTIVE DATE

The provisions of this subtitle take effect on the date the Agreement enters into force with respect to the United States.

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No Legislative History.

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No Legislative History.

Subtitle E—Standards

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Subtitle E--Standards

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PART 1--STANDARDS AND MEASURES

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No Legislative History.

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No Legislative History.

Senate Finance & other Committee Reports

No Legislative History.

SEC. 351. STANDARDS AND SANITARY AND PHYTOSANITARY MEASURES.(a) In General.--Title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 et seq.) is amended by inserting at the end the following new subtitle:

"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,

"(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,

"(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 labeling for--"(i) a good or its related process or production methods, or"(ii) a service or its related operating methods,

"(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 labeling for--"(i) a good or its related process or production method, or"(ii) a service or its related operating method,

"(8) Telecommunications service.--The term 'telecommunications service' means a service provided by means

"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.".(b) Technical Amendments.--(1) Definition of trade representative.--Section 451(12) of the Trade Agreements Act of 1979 is amended to read as follows:"(12) Trade representative.--The term 'Trade Representative' means the United States Trade Representative.".(2) Conforming amendments.--Title IV of the Trade Agreement Act of 1979 is further amended--(A) by striking out "Special Representative" each place it appears and inserting "Trade Representative"; and(B) in the section heading to section 411, by striking out "special representative" and inserting "trade representative".

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Section 351 amends Title IV of the Trade Agreements Act of 1979 (the Act) by inserting at the end the following new subtitle /3/:

Note /3/ The section references in this part of the Section-by-Section Analysis refer to the section numbers of new title of the Trade Agreements Act of 1979 as it would be enacted by this bill.

Subtitle E--Standards and measures under the North American Free Trade Agreement

Chapter 1--Sanitary and phytosanitary measures

Sec. 461.—General

New section 461 of the Act states that nothing in this chapter may be construed 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 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 which the agency considers appropriate.

Furthermore, the Statement of Administrative Action states that panel reports issued pursuant to dispute settlement under Chapter 20 of the Agreement also have no effect under the law of the United States. "Neither federal agencies nor state governments are bound by any finding or recommendation included in such reports. In particular, panel reports do not provide legal authority for federal agencies to change their regulations or procedures or refuse to enforce particular laws or regulations, such as those related to human, animal or plant health, or the environment."

Sec. 462.--Inquiry point

New section 462 of the Act expands the responsibilities of the Department of Commerce to serve as the national inquiry point the public may use to obtain information pertaining to the development or maintenance of sanitary or phytosanitary measures by Federal or State agencies. Under the Trade Act of 1979, inquiries regarding standards for agricultural products are to be referred to the technical offices established within the Department of agriculture.

Sec. 463.--Chapter definitions.

New section 463 of the Act contains definitions used in the new chapter that would be enacted.

Chapter 2--Standards-related measures

Sec. 471.—General

New section 471 of the Act states that nothing in this chapter shall be construed 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 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.

This section states that this chapter does not apply to technical specifications prepared by a Federal agency for production or consumption requirements of the agency or to sanitary or phytosanitary measures under chapter 1.

Sec. 472.--Inquiry point

New section 472 of the Act requires that standards information centers within the Department of Commerce make available to the public information regarding 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 (such as a testing, inspection, or auditing systems), and in bilateral and multilateral arrangements regarding standards-related measures.

In addition, standards information centers are to provide information regarding the location of notices pertaining to the modification or adoption of technical regulations and conformity assessment procedures, that article 909 of the Agreement requires to be made available to all NAFTA parties.

Finally, standards information centers are to provide information concerning procedures used by Federal agencies to assess risk and to establish the levels of protection that the agency considers appropriate.

Sec. 473.--Chapter definitions

New section 473 of the Act contains definitions used in this chapter.

Chapter 3--Subtitle definitions

Sec. 481.—Definitions

New section 481 of the Act contains definitions used in this subtitle.

Committee on Agriculture, Nutrition, and Forestry

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

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

Section 461 of the new subtitle states that no Federal or State agency engaging in activities relating to sanitary or phytosanitary measures are in any way limited in protecting human, animal, or plant life.

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

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

Committee on Commerce, Science, and Transportation

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

Code.

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

Federal agencies have been subject to the requirements of Title IV since 1980. These requirements continue to apply to standards activities of federal agencies, which include many of the standards-related measures under the NAFTA. However, the definitions and coverage of Chapter Nine differ from the definitions and coverage of the Standards Code, so it is necessary to provide separate legislative provisions in the Trade Agreements Act of 1979 to implement Chapter Nine of the NAFTA.
Section 471 of the new subtitle contains general provisions. Section 472 of the new subtitle assigns to the standards information center established under Section 414 of the Trade Agreements Act of 1979 the additional duties prescribed under Chapter Nine. The National Institute of Standards and Technology (NIST) under the Department of Commerce currently serves as the standards information center.

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

Committee on Standards-Related Measures

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

SEC. 352. TRANSPORTATION

No regulation issued by the Secretary of Transportation implementing a recommendation of the Land Transportation Standards Subcommittee established under article 913(5)(a)(i) of the Agreement may take effect before the date 90 days after the date of issuance.

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No Legislative History.

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No Legislative History.

Committee on Standards-Related Measures

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

PART 2--AGRICULTURAL STANDARDS

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No Legislative History.

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No Legislative History.

Senate Finance & other Committee Reports

No Legislative History.

SEC. 361. AGRICULTURAL TECHNICAL AND CONFORMING AMENDMENTS

(a) Federal Seed Act.--Section 302(e)(1) of the Federal Seed Act (7 U.S.C. 1582(e)(1)) is amended by inserting "or Mexico" after "Canada".(b) Importation of Animals.--The first sentence of section 6 of the Act of August 30, 1890 (26 Stat. 416, chapter 839; 21 U.S.C. 104), is amended by striking ": Provided" and all that follows through the period at the end of the sentence and inserting ", 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.".(c) Inspection of Animals.--Section 10 of the Act of August 30, 1890 (26 Stat.

417, chapter 839; 21 U.S.C. 105), is amended--(1) by inserting above "Sec. 10." the following new section heading:"

SEC. 10. INSPECTION OF ANIMALS.";(2) by striking "Sec. 10. That the Secretary of Agriculture shall" and inserting "(a) In General.--Except as provided in subsection (b), the Secretary of Agriculture shall"; and(3) by adding at the end the following new subsection:"(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.".(d) Disease-Free Countries or Regions.--(1) Tariff act of 1930.--Section 306 of the Tariff Act of 1930 (19 U.S.C. 1306) is amended--(A) in subsection (a), by striking "Rinderpest and Foot-and-Mouth Disease.--If the Secretary of Agriculture" and inserting "In General.--Except as provided in subsection (b), if the Secretary of Agriculture"; and(B) by striking subsection (b) and inserting the following new subsection:"(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.".(2) Honeybee act.--The first section of the Act of August 31, 1922

(commonly known as the "Honeybee Act") (42 Stat. 833, chapter 301; 7 U.S.C. 281), is amended--(A) in subsection (a)--(i) by striking ", or" at the end of paragraph (1) and inserting a semicolon;(ii) by striking the period at the end of paragraph (2) and inserting "; or"; and(iii) by adding at the end the following new paragraph:"(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."; and(B) in subsection (b)--(i) by inserting "(1)" after "imported into the United States only from"; and(ii) by inserting before the period the following: ", 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".(e) Poultry Products Inspection Act.--Section 17(d) of the Poultry Products Inspection Act (21 U.S.C. 466(d)) is amended--(1) in paragraph (1), by inserting after "Notwithstanding any other provision of law," the following: "except as provided in paragraph (2),";(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and

(4), respectively; and(3) by inserting after paragraph (1) the following new paragraph:"(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.".(f) Federal Meat Inspection Act.--Section 20(e) of the Federal Meat Inspection Act (21 U.S.C. 620(e)) is amended--(1) by striking "not be limited to--" and inserting "not be limited to the following:";(2) by striking paragraph (1);(3) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively;(4) by inserting after "not be limited to the following:" (as amended by paragraph (1)) the following new paragraphs:"(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.";(5) in paragraphs (3) through (7) (as redesignated by paragraph (3)), by striking "the" the first place it appears in each paragraph and inserting "The";(6) in paragraphs (3) through (5) (as so redesignated), by striking the semicolon at the end of each paragraph and inserting a period; and(7) in paragraph (6) (as so redesignated), by striking "; and" at the end and inserting a period.(g) Peanut Butter and Peanut Paste.--(1) In general.--Except as provided in

paragraph (2), all peanut butter and peanut paste in the United States domestic market shall be processed from peanuts that meet the quality standards established for peanuts under Marketing Agreement No. 146.(2) Imports.--Peanut butter and peanut paste imported into the United States shall comply with paragraph (1) or with sanitary measures that achieve at least the same level of sanitary protection.(h) Animal Health Biocontainment Facility.--(1) Grant for construction.--The Secretary of Agriculture shall make a grant to a land grant college or university described in paragraph (2) for the construction of a facility at the college or university for the conduct of research in animal health, disease-transmitting insects, and toxic chemicals that requires the use of biocontainment facilities and equipment. The facility to be constructed with the grant shall be known as the "Southwest Regional Animal Health Biocontainment Facility".(2) Grant recipient described.--To be eligible for the grant under paragraph (1), a land grant college or university must be--(A) located in a State adjacent to the international border with Mexico; and(B) determined by the Secretary of Agriculture to have an established program in animal health research and education and to have a collaborative relationship with one or more colleges of veterinary medicine or universities located in Mexico.(3) Activities of the facility.--The facility constructed using the grant made under paragraph (1) shall be used for conducting the following activities:(A) The biocontainment facility shall offer the ability to organize multidisciplinary international teams working on basic and applied research on diagnostic method development and disease control strategies, including development of vaccines.(B) The biocontainment facility shall support research that will improve the scientific basis for regulatory activities, decreasing the need for new regulatory programs and enhancing international trade.(C) The biocontainment facility shall allow academic institutions, governmental agencies, and the private sector to conduct research in basic and applied research biology, epidemiology, pathogenesis, host response, and diagnostic methods, on disease agents that threaten the livestock industries of the United States and Mexico.(D) The biocontainment facility may be used to support research involving food safety, toxicology, environmental pollutants, radioisotopes, recombinant microorganisms, and selected naturally resistant or transgenic animals.(4) Authorization of appropriations.--There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this subsection.(i) Reports on Inspection of Imported Meat, Poultry, Other Foods, Animals, and Plants.--(1) Definitions.--As used in this subsection:(A) Imports.--The term "imports" means any meat, poultry, other food, animal, or plant that is imported into the United States in commercially significant quantities.(B) Secretary.--The term "Secretary" means the Secretary of Agriculture.(2) In general.--In consultation with representatives of other appropriate agencies, the Secretary shall prepare an annual report on the impact of the Agreement on the inspection of imports.(3) Contents of reports.--The report required under this subsection shall, to the maximum extent practicable, include a description of--(A) the quantity or, with respect to the Customs Service, the number of shipments, of imports from a NAFTA country that are inspected at the borders of the United States with Canada and Mexico during the prior

year;(B) any change in the level or types of inspections of imports in each NAFTA country during the prior year;(C) in any case in which the Secretary has determined that the inspection system of another NAFTA country is equivalent to the inspection system of the United States, the reasons supporting the determination of the Secretary;(D) the incidence of violations of inspection requirements by imports from NAFTA countries during the prior year--(i) at the borders of the United States with Mexico or Canada; or(ii) at the last point of inspection in a NAFTA country prior to shipment to the United States if the agency accepts inspection in that country;(E) the incidence of violations of inspection requirements of imports to the United States from Mexico or Canada prior to the implementation of the Agreement;(F) any additional cost associated with maintaining an adequate inspection system of imports as a result of the implementation of the Agreement;(G) any incidence of transshipment of imports--(i) that originate in a country other than a NAFTA country;(ii) that are shipped to the United States through a NAFTA country during the prior year; and(iii) that are incorrectly represented by the importer to qualify for preferential treatment under the Agreement;(H) the quantity and results of any monitoring by the United States of equivalent inspection systems of imports in other NAFTA countries during the prior year;(I) the use by other NAFTA countries of sanitary and phytosanitary measures (as defined in the Agreement) to limit exports of United States meat, poultry, other foods, animals, and plants to the countries during the prior year; and(J) any other information the Secretary determines to be appropriate.(4) Frequency of reports.--The Secretary shall submit--(A) the initial report required under this subsection not later than January 31, 1995; and(B) an annual report required under this subsection not later than 1 year after the date of the submission of the initial report and the end of each 1-year period thereafter through calendar year 2004.(5) Report to congress.--The Secretary shall prepare and submit the report required under this subsection to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

House Ways & Means Committee Report

No Legislative History.

The House Energy & Commerce Committee Report

No Legislative History.

Committee on Agriculture, Nutrition, and Forestry

Section 361(a) Federal Seed Act

Section 361(a) of the bill provides a conforming change to amend the Federal Seed Act to remove the staining requirement for alfalfa and clover seed

imported from Mexico. The CFTA Implementing Act made a similar conforming change to implement the CFTA.

Section 361(b) Importation of Animals

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

Section 361(c) Inspection of Animals

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

Section 361(d) Disease-free Countries or Regions

Section 361(d)(1) of the bill amends section 306 of the Tariff Act of 1930 to implement NAFTA Article 716 regarding adaptation to regional conditions. The bill authorizes the Secretary to permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of ruminants and swine and the fresh, chilled and frozen meat of such animals from regions of countries that are, and are likely to remain, free of foot- and-mouth disease and rinderpest. This provision does not require the Secretary to permit the entry of such goods but merely authorizes the Secretary to determine the appropriate terms and conditions for such entry.

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

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

Sections 361(e) and (f) of the bill amend, respectively, section 17(d) of the Poultry Products Inspection Act and section 20(e) of the Federal Meat

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

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

Section 361(g) Peanut Butter and Peanut Paste

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

Section 361(h) Animal Health Biocontainment Facility

Section 361(h) of the bill authorizes the Secretary of Agriculture, subject to appropriation, to make a grant to a land grant college or university, located in a state adjacent to Mexico, that the Secretary determines has an established program in animal health research and education and a collaborative relationship with a Mexican university or veterinary school. The grant is for the construction of the "Southwest Regional Animal Health Biocontainment Facility," to conduct research in animal health and certain other biocontainment matters. In light of the increased U.S.-Mexico trade expected under the NAFTA, this facility will help to ensure the protection of animal and plant life and health in the border area.

Section 361(i) Inspection Reports

Section 361(i) of the bill mandates an annual report by the Secretary of Agriculture, in addition to the biennial report required pursuant to section

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

Regulatory Impact Evaluation

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

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

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

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

Subtitle F--Corporate Average Fuel Economy

House Ways & Means Committee Report

No Legislative History.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance & other Committee Reports

No Legislative History.

SEC. 371. CORPORATE AVERAGE FUEL ECONOMY

(a) In General.--Section 503(b)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(2)) is amended by adding at the end the following new subparagraph:"(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.".(b) Conforming Amendments.--The first sentence of section 503(b)(2)(E) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(2)(E)) is amended--(1) by striking "An" and inserting "Except as provided in subparagraph (G), an", and(2) in the last sentence, by striking "this subparagraph" and inserting "this subparagraph and subparagraph (G)".

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No Legislative History.

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Section 371 amends Section 503(b)(2) of Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(b)(2)) pertaining to Corporate Average Fuel

Economy. The amendment would treat as a domestically manufactured automobile any vehicle if at least 75% of the cost to the manufacturer is attributable to value added in the United States, Canada, or Mexico. This will apply as long as any such vehicle which is manufactured in Mexico or Canada is imported into the United States within 30 days following the end of the model year.
The requirements of this section pertaining to the designation of domestically manufactured automobiles shall apply to manufacturers between January 1, 1994, and January 1, 2004, based on when, or if, such manufacturers have initiated the assembly of automobiles in Mexico.

Committee on Commerce, Science, and Transportation

Corporate Average Fuel Economy (CAFE)

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

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

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

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

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

Manufacturers that began production of automobiles in Mexico before model

year 1992 may make a one-time election at any time between January 1, 1997, and January 1, 2004, to apply the new definition beginning with the next model year after such election. For those not making such election, the new definition will apply beginning with the next model year after January 1, 2004.

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

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

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

Subtitle G--Government Procurement

House Ways & Means Committee Report

SUBTITLE G--GOVERNMENT PROCUREMENT

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance & other Committee Reports

No Legislative History.

SEC. 381. GOVERNMENT PROCUREMENT

(a) In General.--Section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511) is amended--(1) in subsection (a) by striking "The President" and inserting "Subject to subsection (f) of this section, the President";(2) by inserting "or the North American Free Trade Agreement" after "the Agreement" in paragraph (1) of subsection (b); and(3) by adding at the end the following new subsections:"(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.".(b) Reciprocal Competitive Procurement Practices.--Section 302(a) of such Act (19 U.S.C. 2512(a)) is amended by striking "would otherwise be eligible products" in paragraph (1) and inserting "are products covered under the Agreement for procurement by the United States".(c) Definition of Eligible Product.--Section 308(4)(A) of such Act (19 U.S.C. 2518(4)(A)) is amended to read as follows:"(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.".(d) Conforming Amendments.--Section 401 of the Rural Electrification Act of 1938 (7 U.S.C. 903 note) is amended by inserting ", Mexico, or Canada" after "the United States" each place it appears.(e) Effective Date.--The provisions of this subtitle take effect on the date the Agreement enters into force with respect to the United States.

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Present law

Title III of the Trade Agreements Act of 1979 implements U.S. obligations of the GATT Agreement on Government Procurement in U.S. law with respect to purchases by covered government entities. Section 301 of the Act authorizes the President to waive the application of discriminatory government procurement laws, regulations, procedures, or practices, including the Buy American Act, on eligible products or services of a country if the President determines that the country is a party to the GATT Agreement and will provide reciprocal government procurement opportunities to the United States, is a non-major industrial country which will otherwise assume the obligations of the Agreement and/or will provide reciprocal procurement opportunities to the United States, or is a least developed country.

Explanation of provision

Section 318 of H.R. 3450 amends various sections of Title III of the Trade Agreements Act of 1979 to implement the obligations of Chapter 10 of the NAFTA.

Subsection (a) amends section 301 of that Act to authorize the President to waive the application of any discriminatory purchasing requirement under any law, regulation, procedure, or practice with respect to eligible government procurement from a country which assumes the obligations of

the NAFTA. The amendment specifically exempts the waiver of any small business or minority preference from the President's general waiver authority. The amendments also authorize the President, notwithstanding any other provision of law, to direct any U.S. agency listed in Annex 1001.1a-2 of the NAFTA to comply in their procurement with the procedural provisions of Chapter 10.

Subsection (b) and (c) make conforming and clarifying amendments in section 302(a) and in the definition of "eligible product" under section 308(4)(A) of the 1979 Act.

Subsection (d) amends the Rural Electrification Act of 1938 to waive the application to Canada and Mexico of buy national requirements imposed as conditions of funding by the Rural Electrification Administration.

Reasons for change

Chapter 10 of the NAFTA requires the elimination of "buy national" restrictions on most procurement of both goods and services by Federal government agencies and government-controlled enterprises of the three countries. Canada is a signatory to the GATT Agreement; Mexico is not a signatory.

Section 381 implements U.S. obligations under Chapter 10 to remove discriminatory Federal government purchasing restrictions, including the Buy American Act, as they apply to procurement from Mexico or Canada on eligible goods and services covered by Chapter 10. The authority granted the President by section 381 will also ensure that certain federally controlled utilities and other entities (the Tennessee Valley Authority, the St. Lawrence Seaway Development Corporation, and five power marketing administrations) comply with the procurement procedures set forth in Chapter 10.

The House Energy & Commerce Committee Report

No Legislative History.

Committee on Governmental Affairs

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

Chapter Ten allows the U.S. certain exceptions from coverage of its

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

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

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

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

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

TITLE IV--DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

House Ways & Means Committee Report

Title IV of H.R. 3450 makes the necessary and appropriate changes to U.S. domestic law to implement the major provisions of chapter 19 of the NAFTA. These changes fall into three basic categories.

First, Title IV makes a series of changes to existing procedures under the U.S.-Canada FTA that provide for review by binational panels and extraordinary challenge committees (ECCs) of final antidumping (AD) and countervailing duty (CVD) determinations under U.S. law. Under existing law, such procedures apply with respect to determinations involving goods from Canada. The first set of changes in Title IV consists largely of conforming amendments to apply the procedures as well to determinations involving goods from Mexico.

Under the U.S. AD and CVD laws (Title VII of the Tariff Act of 1930), the administering authority (currently the International Trade Administration of the Department of Commerce) determines whether imports are being sold in the United States at less than fair value or are being subsidized by a foreign government, respectively, and the U.S. International Trade Commission determines whether such imports cause or threaten material injury to a U.S. domestic industry. The amount of dumping or subsidy is offset by the imposition of an antidumping or countervailing duty, respectively, on imports of the particular merchandise.

Prior to the U.S.-Canada FTA, all final agency determinations under the U.S. antidumping and countervailing duty laws were reviewed by the U.S. Court of International Trade in the first instance with a right of appeal to the U.S. Court of Appeals for the Federal Circuit. Under Chapter 19 of the U.S.-Canada FTA, binational panel review of final U.S. AD or CVD determinations regarding Canadian merchandise (and all Canadian AD or CVD determinations involving U.S. merchandise) in general substitutes for judicial review in the national courts. As noted, the first set of changes in Title IV are largely conforming amendments to apply the binational panel review process to final determinations involving merchandise from Mexico. Accordingly, in most cases, this section of the Committee's report describes existing U.S. law (both judicial review and panel review), then indicates where H.R. 3450 makes conforming or other amendments.

Second, Title IV includes another set of changes that are necessary or appropriate to implement provisions of Chapter 19 related to Parties' obligations with respect to amendments to national countervailing duty and antidumping laws, as well as to consultations concerning more effective rules and disciplines on subsidy and cross-border unfair pricing practices.

The third group of changes are those necessary to implement the safeguard mechanism established by Article 1905 of the NAFTA. The safeguard mechanism is new to Chapter 19 of the NAFTA and was not included in Chapter 19 of the U.S.-Canada FTA. Under the safeguard

mechanism, a "special committee" can be convened at the request of any NAFTA Party to determine whether the application of another NAFTA Party's law has impeded the effective functioning of the binational panel review process. If a special committee finds that this has happened, Article 1905 of the NAFTA provides that binational panel and extraordinary challenge committee proceedings pending at the time of the special committee's decision shall be stayed and, if the Parties cannot resolve the matter and Article 1904 is subsequently suspended, transferred to U.S. courts. Accordingly, the sections of the bill implementing this mechanism add new provisions to U.S. law to implement the stay and transfer requirements of Article 1905.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance & other Committee Reports

No Legislative History.

Subtitle A--Organizational, Administrative, and Procedural Provisions Regarding the Implementation of Chapter 19 of the Agreement

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SUBTITLE A--ORGANIZATIONAL, ADMINISTRATIVE, AND PROCEDURAL PROVISIONS REGARDING THE IMPLEMENTATION OF CHAPTER 19 OF THE AGREEMENT

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee

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

SEC. 401. REFERENCES IN SUBTITLE

Any reference in this subtitle to an Annex, chapter, or article shall be considered to be a reference to the respective Annex, chapter, or article of the Agreement.

House Ways & Means Committee Report

Section 401 of H.R. 3450 specifies that any reference in Subtitle A to an Annex, Chapter or Article is to be considered a reference to the respective Annex, Chapter or Article of the NAFTA.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee

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

SEC. 402. ORGANIZATIONAL AND ADMINISTRATIVE PROVISIONS

(a) Criteria for Selection of Individuals To Serve on Panels and Committees.--(1) In general.--The selection of individuals under this section for--(A) placement on lists prepared by the interagency group under subsection (c)(2)(B) (i) and (ii);(B) placement on preliminary candidate lists under subsection

(c)(3)(A);(C) placement on final candidate lists under subsection

(c)(4)(A);(D) placement by the Trade Representative on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; and(E) appointment by the Trade Representative for service on the panels and committees convened under chapter 19;

(2) Additional criteria for roster placements and appointments under paragraph 1 of annex 1901.2.--Rosters described in paragraph 1 of Annex 1901.2 shall include, to the fullest extent practicable, judges and former judges who meet the criteria referred to in paragraph (1). The Trade Representative shall, subject to subsection (b), appoint judges to binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, where such judges offer and are available to serve and such service is authorized by the chief judge of the court on which they sit.(b) Selection of Certain Judges To Serve on Panels and Committees.--(1) Applicability.--This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, who are judges of courts created under article III of the Constitution of the United States.(2) Consultation with chief judges.--The Trade Representative shall consult, from time to time, with the chief judges

of the Federal judicial circuits regarding the interest in, and availability for, participation in binational panels, extraordinary challenge committees, and special committees, of judges within their respective circuits. If the chief judge of a Federal judicial circuit determines that it is appropriate for one or more judges within that circuit to be included on a roster described in subsection (a)(1)(D), the chief judge shall identify all such judges for the Chief Justice of the United States who may, upon his or her approval, submit the names of such judges to the Trade Representative. The Trade Representative shall include the names of such judges on the roster.(3) Submission of lists to congress.--The Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on Finance and the Committee on the Judiciary of the Senate a list of all judges included on a roster under paragraph (2). Such list shall be submitted at the same time as the final candidate lists are submitted under subsection

(c)(4)(A) and the final forms of amendments are submitted under subsection (c)(4)(C)(iv).(4) Appointment of judges to panels or committees.--At such time as the Trade Representative proposes to appoint a judge described in paragraph (1) to a binational panel, an extraordinary challenge committee, or a special committee, the Trade Representative shall consult with that judge in order to ascertain whether the judge is available for such appointment.(c) Selection of Other Candidates.--(1) Applicability.--This subsection applies only with respect to the selection of individuals for binational panels convened under chapter 19, extraordinary challenge committees convened under chapter 19, and special committees established under article 1905, other than those individuals to whom subsection (b) applies.(2) Interagency group.--(A) Establishment.--There is established within the interagency organization established under section 242 of the Trade Expansion Act of 1962 (19 U.S.C. 1872) an interagency group which shall--(i) be chaired by the Trade Representative; and(ii) consist of such officers (or the designees thereof) of the United States Government as the Trade Representative considers appropriate.(B) Functions.--The interagency group established under subparagraph (A) shall, in a manner consistent with chapter 19--(i) prepare by January 3 of each calendar year--(I) a list of individuals who are qualified to serve as members of binational panels convened under chapter 19; and(II) a list of individuals who are qualified to serve on extraordinary challenge committees convened under chapter 19 and special committees established under article 1905;(ii) if the Trade Representative makes a request under paragraph (4)(C)(i) with respect to a final candidate list during any calendar year, prepare by July 1 of such calendar year a list of those individuals who are qualified to be added to that final candidate list;(iii) exercise oversight of the administration of the United States Section that is authorized to be established under section 105; and(iv) make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees and special committees under chapter 19.(3) Preliminary candidate lists.--(A) In general.--The Trade Representative shall select individuals from the respective lists prepared by

the interagency group under paragraph (2)(B)(i) for placement on--(i) a preliminary candidate list of individuals eligible to serve as members of binational panels under Annex 1901.2; and(ii) a preliminary candidate list of individuals eligible for selection as members of extraordinary challenge committees under Annex 1904.13 and special committees under article 1905.(B) Submission of lists to congressional committees.--(i) In general.--No later than January 3 of each calendar year, the Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter in this section referred to as the "appropriate Congressional Committees") the preliminary candidate lists of those individuals selected by the Trade Representative under subparagraph (A) to be candidates eligible to serve on panels or committees convened pursuant to chapter 19 during the 1-year period beginning on April 1 of such calendar year.(ii) Additional information.--At the time the candidate lists are submitted under clause (i), the Trade Representative shall submit for each individual on the list a statement of professional qualifications.(C) Consultation.--Upon submission of the preliminary candidate lists under subparagraph (B) to the appropriate Congressional Committees, the Trade Representative shall consult with such Committees with regard to the individuals included on the preliminary candidate lists.(D) Revision of lists.--The Trade Representative may add and delete individuals from the preliminary candidate lists submitted under subparagraph (B) after consultation with the appropriate Congressional Committees regarding the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the preliminary candidate lists, along with the information described in subparagraph (B)(ii) with respect to any proposed addition.(4) Final candidate lists.--(A) Submission of lists to congressional committees.--No later than March 31 of each calendar year, the Trade Representative shall submit to the appropriate Congressional Committees the final candidate lists of those individuals selected by the Trade Representative to be candidates eligible to serve on panels and committees convened under chapter 19 during the 1-year period beginning on April 1 of such calendar year. An individual may be included on a final candidate list only if such individual was included in the preliminary candidate list or if written notice of the addition of such individual to the preliminary candidate list was submitted to the appropriate Congressional Committees at least 15 days before the date on which that final candidate list is submitted to such Committees under this subparagraph.(B) Finality of lists.--Except as provided in subparagraph (C), no additions may be made to the final candidate lists after the final candidate lists are submitted to the appropriate Congressional Committees under subparagraph (A).(C) Amendment of lists.--(i) In general.--If, after the Trade Representative has submitted the final candidate lists to the appropriate Congressional Committees under subparagraph (A) for a calendar year and before July 1 of such calendar year, the Trade Representative determines that additional individuals need to be added to a final candidate list, the Trade Representative shall--(I) request the interagency group established under paragraph (2)(A) to prepare a list of

individuals who are qualified to be added to such candidate list;(II) select individuals from the list prepared by the interagency group under paragraph (2)(B)(ii) to be included in a proposed amendment to such final candidate list; and(III) by no later than July 1 of such calendar year, submit to the appropriate Congressional Committees the proposed amendments to such final candidate list developed by the Trade Representative under subclause (II), along with the information described in paragraph (3)(B)(ii).(ii) Consultation with congressional committees.--Upon submission of a proposed amendment under clause (i)(III) to the appropriate Congressional Committees, the Trade Representative shall consult with the appropriate Congressional Committees with regard to the individuals included in the proposed amendment.(iii) Adjustment of proposed amendment.--The Trade Representative may add and delete individuals from any proposed amendment submitted under clause (i)(III) after consulting with the appropriate Congressional Committees with regard to the additions and deletions. The Trade Representative shall provide to the appropriate Congressional Committees written notice of any addition or deletion of an individual from the proposed amendment.(iv) Final amendment.--(I) In general.--If the Trade Representative submits under clause (i)(III) in any calendar year a proposed amendment to a final candidate list, the Trade Representative shall, no later than September 30 of such calendar year, submit to the appropriate Congressional Committees the final form of such amendment. On October 1 of such calendar year, such amendment shall take effect and, subject to subclause

(II), the individuals included in the final form of such amendment shall be added to the final candidate list.(II) Inclusion of individuals.--An individual may be included in the final form of an amendment submitted under subclause (I) only if such individual was included in the proposed form of such amendment or if written notice of the addition of such individual to the proposed form of such amendment was submitted to the appropriate Congressional Committees at least 15 days before the date on which the final form of such amendment is submitted to such Committees under subclause (I).(III) Eligibility for service.--Individuals added to a final candidate list under subclause (I) shall be eligible to serve on panels or committees convened under chapter 19 during the 6-month period beginning on October 1 of the calendar year in which such addition occurs.(IV) Finality of amendment.--No additions may be made to the final form of an amendment described in subclause (I) after the final form of such amendment is submitted to the appropriate Congressional Committees under subclause (I).(5) Treatment of responses.--For purposes of applying section 1001 of title 18, United States Code, the written or oral responses of individuals to inquiries of the interagency group established under paragraph (2)(A) or of the Trade Representative regarding their personal and professional qualifications, and financial and other relevant interests, that bear on their suitability for the placements and appointments described in subsection (a)(1), shall be treated as matters within the jurisdiction of an agency of the United States.(d) Selection and Appointment.--(1) Authority of trade

representative.--The Trade Representative is the only officer of the United States Government authorized to act on behalf of the United States Government in making any selection or appointment of an individual to--(A) the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or(B) the panels or committees convened under chapter 19;

(2) Restrictions on selection and appointment.--Except as provided in paragraph (3)--(A) the Trade Representative may--(i) select an individual for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 1-year period beginning on April 1 of any calendar year;(ii) appoint an individual to serve as one of those members of any panel or committee convened under chapter 19 during such 1-year period who, under the terms of the Agreement, are to be appointed solely by the United States Government; or(iii) act to make a joint appointment with the Government of a NAFTA country, under the terms of the Agreement, of any individual who is a citizen or national of the United States to serve as any other member of such a panel or committee;

(B) no individual may--(i) be selected by the United States Government for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13; or(ii) be appointed solely or jointly by the United States Government to serve as a member of a panel or committee convened under chapter 19;

(3) Exceptions.--Notwithstanding subsection (c)(3) (other than subparagraph (B)), (c)(4), or paragraph (2)(A) of this subsection, individuals included on the preliminary candidate lists submitted to the appropriate Congressional Committees under subsection (c)(3)(B) may--(A) be selected by the Trade Representative for placement on the rosters described in paragraph 1 of Annex 1901.2 and paragraph 1 of Annex 1904.13 during the 3-month period beginning on the date on which the Agreement enters into force with respect to the United States; and(B) be appointed solely or jointly by the Trade Representative under the terms of the Agreement to serve as members of panels or committees that are convened under chapter 19 during such 3-month period.(e) Transition.--If the Agreement enters into force between the United States and a NAFTA country after January 3, 1994, the provisions of subsection (c) shall be applied with respect to the calendar year in which such entering into force occurs--(1) by substituting "the date that is 30 days after the date on which the Agreement enters into force with respect to the United States" for "January 3 of each calendar year" in subsections (c)(2)(B)(i) and

(c)(3)(B)(i); and(2) by substituting "the date that is 3 months after the date on which the Agreement enters into force with respect to the United States" for "March 31 of each calendar year" in subsection (c)(4)(A).(f) Immunity.--With the exception of acts described in section 777(f)(3) of the Tariff Act of 1930 (19 U.S.C. 1677f(f)(3)), individuals serving on panels or committees convened pursuant to chapter 19, and individuals designated to assist the

individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members or assistants to such panelists or committee members.(g) Regulations.--The administering authority under title VII of the Tariff Act of 1930, the International Trade Commission, and the Trade Representative may promulgate such regulations as are necessary or appropriate to carry out actions in order to implement their respective responsibilities under chapter 19. Initial regulations to carry out such functions shall be issued before the date on which the Agreement enters into force with respect to the United States.(h) Report to Congress.--At such time as the final candidate lists are submitted under subsection (c)(4)(A) and the final forms of amendments are submitted under subsection (c)(4)(C)(iv), the Trade Representative shall submit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives, and to the Committee on Finance and the Committee on the Judiciary of the Senate, a report regarding the efforts made to secure the participation of judges and former judges on binational panels, extraordinary challenge committees, and special committees established under chapter 19.

House Ways & Means Committee Report

Section 402 of H.R. 3450 contains the organizational, administrative and procedural provisions for implementing the binational panel review, extraordinary challenge committee and special committee processes under Chapter 19 of the NAFTA.

The U.S.-Canada FTA Implementation Act established the process in the United States of preparing the roster of individuals eligible to serve on panels and committees as provided for in Annexes 1901.2 and 1904.13 of the U.S.-Canada FTA, and of selecting panelists and committee members for service in actual disputes.

Section 402 of the H.R. 3450 makes conforming amendments to establish a similar process with respect to binational panel and extraordinary challenge committee procedures under the NAFTA, with one fundamental difference. The NAFTA, unlike the U.S.-Canada FTA, establishes a requirement that the Parties include judges and former judges on the Annex 1901.2 panel roster to the fullest extent practicable. Under the NAFTA, as under the U.S.-Canada FTA, the Annex 1904.13 committee roster is to be comprised solely of judges and former judges.

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

Inclusion of Article III sitting judges as members of panels and committees. Sections 402(a) and 402(b) establish a new procedure for the inclusion of sitting Article III judges on chapter 19 rosters, notification of the

rosters to Congress and appointment of such judges to panels or committees in specific cases. This procedure takes into account the special status of sitting Article III judges as well as other considerations (including their existing caseloads) and makes participation by sitting judges entirely voluntary.

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

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

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

The Committee shares the Trade Representative's hope that, consistent with Annex 1901.2 and the procedures established under section 402 of H.R. 3450, the USTR will be able to name as many sitting Article III and other judges as possible to the roster.

Selection of individuals other than sitting Article III judges to be members of panels and committees. Sections 402(a) and 402(c) set forth procedures for the selection of prospective panelists and committee members other than sitting Article III judges. This selection system will operate substantially as it has under the U.S.-Canada FTA.

USTR will be required to submit preliminary and amended candidate lists to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (the "appropriate committees").

Section 402 includes a new requirement that these lists be accompanied by a statement of professional qualifications (whose content is specified in the Statement of Administrative Action) for each candidate.

The purpose of this additional requirement is to provide basic background information on the prospective candidates to the appropriate Committees in order to improve the consultative process established in the statute and to avoid conflicts and appearances of conflicts of interest. Since binational panels will substitute for review by U.S. judges of the application of national laws and make decisions that are binding, the Committee believes it is essential to require appropriate Congressional review of potential panelists in order to further assure selection of candidates with high professional and personal standards on a nonpolitical basis. However, the informational requirement is not intended to establish a confirmation procedure or to discourage the participation of potential panelists.

Authority of the Trade Representative to select and appoint. Section 402(d) of H.R. 3450 tracks existing law to make clear that the USTR is the only official authorized to act on behalf of the U.S. Government in making any selection or appointment, solely by the United States or jointly with Canada or Mexico under the terms of the Agreement, of an individual to the rosters for panels or committees or to actual panels or committees convened under Chapter 19.

Immunity from suit. As provided under existing law, section 402(f) grants to panelists and committee members, as well as to individuals designated to assist them in their duties, immunity from suits relating to their official acts, except for violations of an administrative protective order issued for purposes of a panel or committee proceeding.

Regulations and rules of procedure for binational panels and extraordinary challenge committees. Section 402(g) of H.R. 3450 tracks existing law to provide that the agencies having responsibilities under Chapter 19 may issue regulations governing the implementation of NAFTA. Any initial regulations that are needed must be issued before NAFTA enters into force.

Report to Congress. Section 402(h) adds a new requirement to the existing procedures under the U.S.-Canada FTA by requiring USTR to submit a report to the appropriate committees explaining the efforts that USTR has made to secure the participation of judges and former judges in the binational panel, extraordinary challenge committee, and special committee processes. USTR must submit this report by March 31 and September 30 of each year at the same time it submits the final candidate list under section 402(c)(4)(A) and the final forms of amendment under section 402(c)(4)(C)(iv). The report will include a description of the steps USTR took to include candidates with judicial experience on the relevant rosters and to select panelists with judicial experience for individual panels. The purpose of this new requirement is to underscore that the Administration and Congress recognize the importance of the new requirement in Annex 1901.2 that the Parties appoint judges and former judges to binational panels to the fullest extent practicable.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee

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

For extraordinary challenge committees and special committees established under Articles 1904 and 1905, respectively, committee members will be selected from a 15-person roster comprised of judges or former judges. Each Party will name five persons to the roster. Committees will be comprised of three persons. Upon a request for the establishment of a special committee or extraordinary challenge committee, each Party will select one member from the roster and the involved Parties will decide by lot which Party will select the third member from the roster.

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

Subsection (a) provides that all candidates must meet the general selection criteria, as set forth in Annex 1901.2 (regarding the establishment of binational panels) and Annex 1904.13 (regarding the establishment of extraordinary challenge committees); these criteria are described above. This subsection also requires that the selection of individuals for placement on candidate lists and rosters and for appointment to binational panels, extraordinary challenge committees, and special committees must be made

without regard to political affiliation.

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

The Committee strongly believes that judges and former judges should be encouraged to serve on binational panels. As discussed in greater detail in a later section of this report, the Committee is concerned that binational panels constituted under the CFTA have, in several cases, failed to apply the appropriate standard of review. The Committee believes that this problem could be ameliorated to some extent through the participation of judges and former judges in the panel process. In addition, the Committee believes that the use of judges and former judges may avoid potential conflict of interest problems that may arise when members of the trade bar, trade consultants, or other experts in international trade are appointed to serve on binational panels and committees. The Committee recognizes that these individuals are sometimes called upon to make decisions regarding issues that may arise in other cases in which they or their firms are participating. It may be difficult to ensure that panelists fully segregate their client interests from their responsibilities on binational panels. Again, the Committee believes that appointing sitting judges to binational panels could help avoid potential conflicts. While the Committee recognizes that it is unlikely that judges will be available for service in sufficient numbers to ensure that only judges are selected for Chapter 19 panels, the Committee believes that the USTR should appoint the maximum number of judges and former judges possible. To this end, the Committee urges the USTR to look not only to sitting Article III judges, but also to Administrative Law Judges and retired judges who meet the qualifications set forth in Annex 1901.2.

Subsection (b) establishes a special process for the appointment of Article III judges to serve on Chapter 19 panels and committees. Under this subsection, the USTR is required to consult with the chief judges of the Federal judicial circuits regarding the interest in, and availability for, the participation in Chapter 19 panels and committees of judges within their circuits. The chief judge will identify interested and available judges for the Chief Justice of the United States, who may submit any names to the USTR. Any judges whose

names are submitted shall be placed on the roster, and the names of such judges shall be forwarded to the Senate Committees on Finance and the Judiciary and House Committees on the Judiciary and Ways and Means. Before making an appointment to a panel, the USTR is required to consult with the judge to determine her or his availability. The Committee recognizes that these special procedures for the appointment of Article III judges have been developed to address potential separation-of-powers issues and take into account the workload of individual judges as well as the workload of the circuit in which they sit. Nonetheless, the Committee hopes that a substantial number of judges will be available for appointment to Chapter 19 panels and committees, particularly given the fact that, but for the binational panel process, appeals of antidumping and countervailing duty determinations would be heard in Federal courts.

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

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

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

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

(3) Information required by Committees.--At the time the USTR submits candidate lists, it shall submit to the Committees on Finance and Ways and Means a statement of professional qualifications for each individual. The Committee intends that the statement include, in addition to a resume or general biographical data, a list of clients represented by the individual or her or his firm, or other information the Committee deems appropriate. The Committee believes that the Committee will be better able to ensure that the

most qualified individuals are selected for placement on Chapter 19 rosters and to screen prospective panelists for potential conflicts of interest if this additional information is provided.

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

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

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

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

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

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

SEC. 403. TESTIMONY AND PRODUCTION OF PAPERS IN EXTRAORDINARY CHALLENGES

(a) Authority of Extraordinary Challenge Committee To Obtain Information.--If an extraordinary challenge committee (hereafter in this section referred to as the "committee") is convened under paragraph 13 of article 1904, and the allegations before the committee include a matter referred to in paragraph 13(a)(i) of article 1904, for the purposes of carrying out its functions and duties under Annex 1904.13, the committee--(1) shall have access to, and the right to copy, any document, paper, or record pertinent to the subject matter under consideration, in the possession of any individual, partnership, corporation, association, organization, or other entity;(2) may summon witnesses, take testimony, and administer oaths;(3) may require any individual, partnership, corporation, association, organization, or other entity to produce documents, books, or records relating to the matter in question; and(4) may require any individual, partnership, corporation, association, organization, or other entity to furnish in writing, in such detail and in such form as the committee may prescribe, information in its possession pertaining to the matter.

(b) Witnesses and Evidence.--The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subsection (a) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena authorized under subsection (a), the committee may request the Attorney General of

the United States to invoke the aid of any district or territorial court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization, or other entity, issue an order requiring such individual or entity to appear before the committee, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.(c) Mandamus.--Any court referred to in subsection (b) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this section or any order of the committee made in pursuance thereof.(d) Depositions.--The committee may order testimony to be taken by deposition at any stage of the committee review. Such deposition may be taken before any person designated by the committee and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization, or other entity may be compelled to appear and be deposed and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the committee, as provided in this section.

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Section 403 of H.R. 3450, relating to the powers of extraordinary challenge committees to secure testimony and document production, parallels the language of the U.S.-Canada FTA Implementation Act. This authority is necessary because Article 1904(13)(a)(i) of the NAFTA, unchanged from the U.S.-Canada FTA, provides in certain circumstances for an ECC if a NAFTA country alleges that a panelist has engaged in gross misconduct, is biased, or has a serious conflict of interest. In such circumstances, an ECC might need to compel production of evidence.

One significant change to Article 1904 in the NAFTA as compared to the predecessor U.S.-Canada FTA provision is the extraordinary challenge committee provision at Article 1904(13) clarifying and emphasizing that failure by a binational panel to apply the appropriate standard of review would qualify as a ground for ECC review under Article 1904(13)(a)(iii). In negotiating the NAFTA, the Parties decided to make explicit in Article 1904.13(a)(iii) of the NAFTA what was clearly implied in Article 1904.13(a)(iii) of the U.S.-Canada FTA, namely that a binational panel that failed to apply the appropriate standard of review would per se be considered to have manifestly exceeded its powers, authority or jurisdiction.

This amendment affirms the central importance to the functioning of the binational panel system of strict adherence by panels to the proper application of the judicial standard of review of the importing country. The Committee strongly shares the Parties' and Administration's view that strict adherence by panels to the proper application of the judicial standard or review is critical to the functioning of the binational panel process.

Strict adherence by binational panels to the requirement in Article 1904(3) that panels apply the judicial standard of review of the importing country is the cornerstone of the binational panel process. Scholars have noted the potential within the system for lack of uniformity of panel decisions with each other and established U.S. law. See A.F. Lowenfeld, "Binational Panel Dispute Settlement Under Chapters 18 and 19 of the Canada-United States Free Trade Agreement: An Interim Appraisal" 81 (December 1990). In order to ensure that such lack of uniformity does not develop through panel decisions under the NAFTA, binational panels must take care to apply properly the importing country's law and standard of judicial review.

In light of the central importance of this requirement, it is the Committee's view that any failure by a binational panel to apply the appropriate standard of review, if such failure materially affected the outcome of the panel process and threatened the integrity of the binational panel review process, would be grounds for an ECC to vacate or remand a panel decision.

The decisions of a few binational panels convened under the U.S.-Canada FTA have underscored the importance of the NAFTA's emphasis on the proper application of the judicial standard of review. In specific, these decisions have raised the question of whether these panels have correctly applied the standard of review. Where, in the view of a Party, panel decisions have failed to apply the appropriate standard of review or they have otherwise manifestly exceeded their powers, authority or jurisdiction, there could be recourse to the extraordinary challenge procedure under Article 1904(13).

The Committee believes that a panel could manifestly exceed its powers where it failed to apply U.S. law in accordance with Article 1904. In two recent decisions, a panel was called upon to address a determination by the Department of Commerce that a subsidy is provided to a specific industry or group of industries, 19 U.S.C. 1677(5). The Administration argued before these panels that U.S. law, including the decisions of U.S. courts, provides that the Department of Commerce may find that a subsidy is specific based on one or more relevant factors, rather than be required to weigh and consider all possible factors.

One case also involved a question of whether the Department of Commerce must measure the price and output effects of a subsidy before countervailing that subsidy. In this regard, the Administration argued that U.S. law, including the decisions of U.S. courts, provides that once the Department of Commerce has found that a subsidy has been provided, it does not have to show that the subsidy affected the price or output of the product.

In these circumstances, the United States could seek recourse to the extraordinary challenge procedure. If that procedure were not successful in

correcting the misapplication of law, Article 1902 describes notification and consultation requirements attendant to each NAFTA party's rights to change or modify its law. It is the Committee's understanding that the Administration would carefully adhere to these procedures in supporting legislation to correct the problem.

Two additional important changes from U.S.-Canada FTA procedures for ECCs are found in Annex 1904.13 of the NAFTA. Under the NAFTA, ECCs, if convened, must examine the legal and factual analysis underlying the findings and conclusions of the panel's decision. Annex 1904.13 of the NAFTA also triples the length of time available to the ECC to undertake its review. The United States sought the changes in Annex 1904.13 based on its experience under the U.S.-Canada FTA. By expanding the period of review and requiring ECCs to look at the panel's underlying legal and factual analysis, the changes to Annex 1904 clarify that an ECC's responsibilities do not end with simply ensuring that the panel articulated the correct standard of review. Rather, ECCs are also to examine whether the panel correctly analyzed the substantive law and underlying facts.

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

The Committee recognizes that the right to invoke extraordinary challenge procedures is, under the NAFTA as under the CFTA, reserved to the Governments of the NAFTA countries. The Committee urges the Administration, however, to provide the private sector with guidance as to how private parties may request the Administration to pursue an extraordinary challenge. The Committee is mindful that the rights of private parties are at stake in the determinations made by the binational panels and the Committee believes, therefore, that interested parties should be heard by

the Administration before it decides whether to request the establishment of an extraordinary challenge committee.

SEC. 404. REQUESTS FOR REVIEW OF DETERMINATIONS BY COMPETENT INVESTIGATING AUTHORITIES OF NAFTA COUNTRIES

(a) Definitions.--As used in this section:(1) Competent investigating authority.--The term "competent investigating authority" means the competent investigating authority, as defined in article 1911, of a NAFTA country.(2) United states secretary.--The term "United States Secretary" means that officer of the United States referred to in article 1908.(b) Requests for Review by the United States.--In the case of a final determination of a competent investigating authority, requests by the United States for binational panel review of such determination under article 1904 shall be made by the United States Secretary.(c) Requests for Review by a Person.--In the case of a final determination of a competent investigating authority, a person, within the meaning of paragraph 5 of article 1904, may request a binational panel review of such determination by filing such a request with the United States Secretary within the time limit provided for in paragraph 4 of article 1904. The receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904. The request for such panel review shall be without prejudice to any challenge before a binational panel of the basis for a particular request for review.(d) Service of Request for Review.--Whenever binational panel review of a final determination made by a competent investigating authority is requested under this section, the United States Secretary shall serve a copy of the request on all persons who would otherwise be entitled under the law of the importing country to commence proceedings for judicial review of the determination.

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Section 404 of H.R. 3450 establishes procedures for requesting binational panel review of a final AD or CVD determination involving merchandise from Canada or Mexico. These procedures will operate as under the U.S.-Canada FTA with respect to Canada.

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No Legislative History.

Senate Finance Committee

Section 404 sets forth the procedures for requesting binational panel review under Chapter 19. Subsection (b) authorizes the U.S. Secretary, as identified in Article 1908, to request binational panel review of final antidumping and

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

SEC. 405. RULES OF PROCEDURE FOR PANELS AND COMMITTEES

(a) Rules of Procedure for Binational Panels.--The administering authority shall prescribe rules, negotiated in accordance with paragraph 14 of article 1904, governing, with respect to binational panel reviews--(1) requests for such reviews, complaints, other pleadings, and other papers;(2) the amendment, filing, and service of such pleadings and papers;(3) the joinder, suspension, and termination of such reviews; and(4) other appropriate procedural matters.(b) Rules of Procedure for Extraordinary Challenge Committees.--The administering authority shall prescribe rules, negotiated in accordance with paragraph 2 of Annex 1904.13, governing the procedures for reviews by extraordinary challenge committees.(c) Rules of Procedure for Safeguarding the Panel Review System.--The administering authority shall prescribe rules, negotiated in accordance with Annex 1905.6, governing the procedures for special committees described in such Annex.(d) Publication of Rules.--The rules prescribed under subsections (a), (b), and (c) shall be published in the Federal Register.(e) Administering Authority.--As used in this section, the term "administering authority" has the meaning given such term in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1)).

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Section 405 of H.R. 3450 requires that the Department of Commerce publish in the Federal Register the rules of procedure for binational panel proceedings under Chapter 19 of the NAFTA. Article 1904(14) requires the United States, Canada and Mexico to develop these rules by January 1, 1994. The rules prescribe requirements for requesting panel review, filing and serving complaints and other pleadings, and other procedural matters. Annex 1904.13(2) requires the three countries to prepare similar rules of procedure for ECCs--also by January 1, 1994.

The Committee expects that the NAFTA binational panel and ECC rules of procedure will closely resemble the rules that the United States and Canada have devised for Chapter 19 of the U.S.-Canada FTA, building on the two countries' five-year experience with binational panels and ECCs. It is

expected that the three countries will negotiate completely new rules, however, to implement Article 1905 of the NAFTA.

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

Sec. 406. SUBSIDY NEGOTIATIONS

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Section 406 of H.R. 3450 sets forth the following objectives for the United States in any future trade negotiations over subsidies, convened under NAFTA Article 1907, with a NAFTA country:

(1) achievement of increased discipline on domestic subsidies provided by a foreign government, including: (A) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations;

(B) the provision of goods or services at preferential rates; (C) the grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and (D) the assumption of any costs or expenses of manufacture, production, or distribution;

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

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

Article 1907 of the U.S.-Canada FTA established a working group to develop, within a five to seven year timeframe, more effective rules and disciplines on government subsidies and a substitute system of rules for dealing with subsidization and unfair pricing. Section 409(a) of the U.S.-Canada FTA Implementation Act granted authority to the President to negotiate such a substitute system of rules and disciplines and outlined negotiating objectives and consultation processes for carrying out the negotiations.

Article 1907(2) of the NAFTA establishes a different mechanism from Article 1907 of the U.S.-Canada FTA for addressing these issues. It provides that the NAFTA Parties will consult on (1) the development of more effective rules and disciplines on the use of government subsidies and (2) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.

The negotiating objectives outlined in section 406 of H.R. 3450 reflect the differences between the NAFTA and U.S.-Canada FTA provisions on these issues. Specifically, it is the Committee's view that the detailed negotiating objectives outlined in section 406 of H.R. 3450 with respect to more effective disciplines on government subsidies reflect the importance to the United States and U.S. industries of stronger international disciplines in this area. In the Committee's view, progress by the United States and Canada under the Working Group provisions of Article 1907 of the U.S.-Canada FTA has been inadequate to address continuing problems of high levels of government subsidization in Canada. With respect to transborder unfair pricing practices, progress in this area will depend in part on progress in improving foreign countries' laws and enforcement practices with respect to domestic unfair trade practices, including in particular anticompetitive restraints and other restrictive business practices. The Committee attaches a high priority to improving foreign countries' enforcement practices in this area in the context of any discussions concerning transborder unfair pricing mechanisms.

The Committee expects that the Administration will consult regularly with the Committee and with advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155) with respect to the specific objectives and strategy of the United States in any consultations or negotiations conducted in accordance with Article 1907 of the NAFTA.

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No Legislative History.

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Article 1907(2) of the NAFTA provides that the NAFTA countries will consult on the potential for (1) development of more effective rules and disciplines

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

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

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

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

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

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

SEC. 407. IDENTIFICATION OF INDUSTRIES FACING SUBSIDIZED IMPORTS

(a) Petitions.--Any entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a United States industry and has reason to believe--(1) that--(A) as a result of implementation of provisions of the Agreement, the industry is likely to face increased competition from subsidized imports, from a NAFTA country, with which it directly competes; or(B) the industry is likely to face increased competition from subsidized imports with which it directly competes from any other country designated by the President, following consultations with the Congress, as benefiting from a reduction of tariffs or other trade barriers under a trade agreement that enters into force with respect to the United States after January 1, 1994; and(2) that the industry is likely to experience a deterioration of its competitive position before more effective rules and disciplines relating to the use of government subsidies have been developed with respect to the country concerned;

(b) Identification of Industry.--Within 90 days after receipt of a petition under subsection (a), the Trade Representative, in consultation with the Secretary of Commerce, shall decide whether to identify the industry on the basis that there is a reasonable likelihood that the industry may face both the subsidization described in subsection (a)(1) and the deterioration described in subsection (a)(2).(c) Action After Identification.--At the request of an entity that is representative of an industry identified under subsection (b), the Trade Representative shall--(1) compile and make available to the industry information under section 308 of the Trade Act of 1974;(2) recommend to the President that an investigation by the International Trade Commission be requested under section 332 of the Tariff Act of 1930; or(3) take actions described in both paragraphs (1) and (2).

(d) Initiation of Action Under Other Law.--(1) In general.--The Trade Representative and the Secretary of Commerce shall review information obtained under subsection (c) and consult with the industry identified under subsection (b) with a view to deciding whether any action is appropriate--(A) under section 301 of the Trade Act of 1974, including the initiation of an investigation under section 302(c) of that Act (in the case of the Trade Representative); or(B) under subtitle A of title VII of the Tariff Act of 1930, including the initiation of an investigation under section 702(a) of that Act (in the case of the Secretary of Commerce).(2) Criteria for initiation.--In determining whether to initiate any investigation under section 301 of the Trade Act of 1974 or any other trade law, other than title VII of the Tariff Act of 1930, the Trade Representative, after consultation with the Secretary of Commerce--(A) shall seek the advice of the advisory committees established under section 135 of the Trade Act of 1974;(B) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives;(C) shall coordinate with the interagency organization established under section 242 of the Trade Expansion Act of 1962; and(D) may ask the President to request advice from the International Trade Commission.(3) Title iii actions.--In the event an investigation is initiated under section 302(c) of the Trade Act of 1974 as a result of a review

under this subsection and the Trade Representative, following such investigation (including any applicable dispute settlement proceedings under the Agreement or any other trade agreement), determines to take action under section 301(a) of such Act, the Trade Representative shall give preference to actions that most directly affect the products that benefit from governmental subsidies and were the subject of the investigation, unless there are no significant imports of such products or the Trade Representative otherwise determines that application of the action to other products would be more effective.(e) Effect of Decisions.--Any decision, whether positive or negative, or any action by the Trade Representative or the Secretary of Commerce under this section shall not in any way--(1) prejudice the right of any industry to file a petition under any trade law;(2) prejudice, affect, or substitute for, any proceeding, investigation, determination, or action by the Secretary of Commerce, the International Trade Commission, or the Trade Representative pursuant to such a petition, or(3) prejudice, affect, substitute for, or obviate any proceeding, investigation, or determination under section 301 of the Trade Act of 1974, title VII of the Tariff Act of 1930, or any other trade law.(f) Standing.--Nothing in this section may be construed to alter in any manner the requirements in effect before the date of the enactment of this Act for standing under any law of the United States or to add any additional requirements for standing under any law of the United States.

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Section 407 of H.R. 3450 makes conforming amendments to section 409(b) of the U.S.-Canada FTA Implementation Act regarding the right of an entity (including a trade association, firm, union, or group of workers) that is representative of a U.S. industry to file a petition if the entity has reason to believe that (A) it is likely to face increased competition from subsidized imports with which it directly competes from any country designated by the President as benefiting from a reduction of tariffs under a trade agreement that enters into force after January 1, 1994, and (B) the industry is likely to experience a deterioration of its competitive position before rules and disciplines relating to the use of government subsidies have been developed with respect to the United States and that country. Under the petition, the industry may request that the USTR compile information or request that the ITC conduct a study of the foreign practices, following the completion of which the USTR may take any appropriate action.

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

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

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

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

The Committee notes that the Statement of Administrative Action, submitted on November 4, 1993, provides that if, after receiving a petition, the USTR finds a reasonable likelihood that the industry may face both subsidization and deterioration of its competitive position but decides not to identify the industry, then it should monitor foreign government actions for potential subsidization (with particular attention to the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations). It is the Committee's expectation that the USTR will undertake such monitoring if it finds such a reasonable likelihood but nevertheless does not identify the industry under the statute, including where they may be evidence of future subsidization but no subsidies actually have been provided at the time of the USTR's determination. This is consistent with the USTR's recent decision on the petition filed under section 409(b) of the CFTA Act by Vista Chemical Company concerning potential imports of linear alkylbenzene (LAB) production from Canada. Monitoring in that case will continue under section 407.

SEC. 408. TREATMENT OF AMENDMENTS TO ANTIDUMPING AND COUNTERVAILING DUTY LAW

Any amendment enacted after the Agreement enters into force with respect to the United States that is made to--(1) section 303 or title VII of the Tariff Act of 1930, or any successor statute, or(2) any other statute which--(A) provides for judicial review of final determinations under such section, title, or successor statute, or(B) indicates the standard of review to be applied.

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Section 408 of H.R. 3450 provides that any amendment enacted after the Agreement enters into force for the United States (1) to the CVD law under section 303, (2) the AD or CVD laws under Title VII of the Tariff Act of 1930, or (3) to any other statute which provides for judicial review of final AD or CVD determinations or indicates the standard of review to be applied, shall apply to goods from a NAFTA country only to the extent specified in the amendment.

This provision implements Article 1902 of the NAFTA, under which the United States, Canada and Mexico each reserves the right to change or modify its AD or CVD laws, but may apply an amendment of these laws to goods from another Party only if such application is specified in the amending statute. A similar provision is contained in the U.S.-Canada FTA, which was implemented into U.S. law through section 404 of the U.S.-Canada FTA Implementation Act.

Article 1904(15), like its U.S.-Canada FTA counterpart, requires each NAFTA country to make certain changes to its AD and CVD laws and regulations. For Mexico, these changes require a major revision of that country's law and regulations to introduce a degree of openness and predictability that Mexico's AD and CVD procedures and judicial review have not previously offered. U.S. exporters that are subject to AD or CVD proceedings in Mexico will be the primary beneficiaries of these changes.

In Annex 1904.15 Mexico committed to changing its AD and CVD laws in 21 specific ways. The Committee considers Mexico's full implementation of its obligations under these provisions to be essential to the successful operation of the chapter 19 processes. The Administration is to report on this implementation before the NAFTA enters into force. The Committee will examine the Administration's report thoroughly. The Committee notes that under section 101(b) of the H.R. 3450, Mexico's compliance with these undertakings is an essential step before the President will put the NAFTA into force for the United States with respect to Mexico.

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NAFTA Article 1902 provides that amendments to the antidumping and countervailing duty laws of a Party shall apply to goods from NAFTA Parties only if the amendment explicitly states that it applies to such goods.

Section 308 implements Article 1902 by requiring that any such amendments will apply to goods from a NAFTA country only to the extent specified in the amendment. This section tracks section 404 of the CFTA Act, which implements a similar provision in the CFTA.

Subtitle B--Conforming Amendments and Provisions

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SUBTITLE B--CONFORMING AMENDMENTS AND PROVISIONS

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SUBTITLE B--CONFORMING AMENDMENTS AND PROVISIONS

SEC. 411. JUDICIAL REVIEW IN ANTIDUMPING DUTY AND COUNTERVAILING DUTY CASES

Section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a) is amended as follows:(1) Subsection (a)(5) (relating to time limits for commencing review) is amended to read as follows:"(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).

"(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.".(2) Subsection (b)(3) (relating to the standards of review) is amended--(A) by inserting "nafta or" after "decisions by" in the heading; and(B) by inserting "of the NAFTA or" after "article 1904".(3) Subsection (f) (relating to definitions) is amended--(A) by amending paragraphs (6) and (7) to read as follows:"(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,

(B) by adding at the end the following new paragraphs:"(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.".(4) Subsection (g) (relating to review of countervailing and antidumping duty determinations) is amended as follows:(A) The subsection heading is amended by striking out "Canadian Merchandise" and inserting "Free Trade Area Country Merchandise".(B) Paragraph (1) is amended by striking out "Canadian merchandise" and inserting "free trade area country merchandise".(C) Paragraph (2) is amended by inserting "of the NAFTA or" after

"article 1904".(D) Paragraph (3)(A) is amended--(i) by striking out "nor Canada" and inserting "nor the relevant FTA country" in each of clauses (i) and (ii);(ii) by inserting "of the NAFTA or" before "of the Agreement" in each of clauses (i) and (iii);(iii) by striking out "or" at the end of clause (iii);(iv) by amending clause (iv)--(I) by striking out "under paragraph (2)(A)"; and(II) by striking out the period and inserting a comma; and(v) by adding at the end of subparagraph (A) the following:"(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.".(E) The first and second sentences of paragraph (3)(B) are amended to read as follows: "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.

(F) Paragraph (4)(A) is amended--(i) in the first sentence--(I) by inserting "the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or" after

"or amendment made by,";(II) by inserting a comma before "violates";(III) by inserting "only" after "may be brought"; and(IV) by inserting ", which shall have jurisdiction of such action" after "Circuit"; and(ii) by striking the last sentence.(G) Paragraph (5) is amended--(i) by inserting "of the NAFTA or" after "article 1904" in each of subparagraphs (A), (B), and (C)(i);(ii) by striking out ", the Canadian Secretary," in subparagraph (C)(ii) and inserting ", the relevant FTA Secretary,"; and(iii) by inserting "of the NAFTA or" after "chapter 19" in subparagraph (C)(iii).(H) Paragraph (6) is amended by inserting "of the NAFTA or" after

"article 1904".(I) Paragraph (7) is amended--(i) by inserting "of the nafta or the agreement" before the period in the paragraph heading;(ii) by striking out "In general.--" in the heading to subparagraph (A) and inserting "Action upon remand.--"; and(iii) by inserting "the NAFTA or" before "the Agreement" in subparagraph (A).(J) Paragraph (8)(A) is amended--(i) by inserting "(i) General Rule.--" before "An interested party";(ii) by inserting "of the NAFTA or" after "article 1904(4)";(iii) by indenting the text so as to align it with new clause

(ii) (as added by clause (iv) of this subparagraph); and(iv) by adding at the end the following new clause:"(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.".(K) Paragraph (8)(B)(ii) is amended by striking out "Canadian Secretary," and inserting "relevant FTA Secretary,".(L) Paragraph (8)(C) is amended by striking out "under article 1904 of the Agreement of a determination" and inserting "of a determination under article 1904 of the NAFTA or the Agreement".(M) Paragraph (9) is amended by inserting "of the NAFTA or" after

"chapter 19".(N) Paragraph (10) is amended by striking out "Government of Canada" and all that follows thereafter and inserting "Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.".(O) The following new paragraphs are added at the end:"(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,

"(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.".

House Ways & Means Committee Report

Section 411 of H.R. 3450 amends section 516A of the Tariff Act of 1930 to make conforming amendments in U.S. law necessary to implement the binational panel and extraordinary challenge committee processes with respect to determinations involving imports from Mexico and makes other changes necessary or appropriate to implement the safeguard mechanism of Article 1905.

Binational panel review. Section 516A(a)(1)-(4) of the Tariff Act of 1930, as amended, provides for judicial review of final determinations under the AD and CVD laws. Review is by the U.S. Court of International Trade (CIT), with

a right of appeal to the U.S. Court of Appeals for the Federal Circuit and by certiorari to the U.S. Supreme Court.

Subsection (g) of section 516A was added by the U.S.-Canada FTA Implementation Act to provide for binational panel review of determinations involving merchandise from Canada. Subsection (g) provides that final AD and CVD determinations made in connection with a proceeding regarding a class or kind of Canadian merchandise shall not be reviewable under the other subsections of section 516A where a binational panel has been convened and no U.S. court has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise. Determinations subject to exclusive binational panel review are deemed in section 516A(g)(1) as: (l) Final determinations by the administering authority or the ITC under section 705 or 735 of the Tariff Act of 1930; (2) administrative review determinations by the administering authority or the ITC under section 751 of the Tariff Act of 1930; and (3) determinations by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing AD finding or AD or CVD order.

Section 411 of H.R. 3450 amends section 516A(g) to provide for binational panel review of final AD and CVD determinations in which the class or kind of merchandise is from Mexico or Canada.

Exceptions to binational panel review. Section 411 of H.R. 3450 retains, with conforming amendments, the three exceptions specified under 516A(g)(3) to the general rule requiring binational panel review of determinations involving merchandise from Mexico or Canada. Final determinations continue to be subject to judicial review under section 516A(a) if:

(l) No NAFTA party requests review of the particular determination by a binational panel;

(2) The particular AD or CVD determination is a revised determination issued as a direct result of judicial review, and no NAFTA party requested binational panel review of the original determination; and

(3) The particular AD or CVD determination is issued as a direct result of judicial review under section 516A(a) commenced prior to entry into force of the Agreement.

Constitutional challenges to binational panel review. Section 411 also retains, with conforming amendments, section 516A(g)(4), which provides a two-track procedure for judicial review of any challenge to the constitutionality of legislation implementing the binational panel review system, or of any constitutional issues arising out of a particular AD or CVD determination.

Subparagraph (A) of section 516A(g)(4) provides for expeditious review of any challenge to the constitutionality of the binational panel system. An action for declaratory judgment and/or injunctive relief regarding a determination on the grounds that the legislation implementing the binational panel system under Chapter 19 of the NAFTA violates the Constitution may be brought in the U.S. Court of Appeals for the District of Columbia Circuit, to be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code. As provided in subparagraph (H), any final judgment of the Court of Appeals shall be reviewable by appeal filed within 10 days directly to the U.S. Supreme Court.

Subparagraph (B) provides for judicial review under section 516A(a) by a three-judge panel of the CIT limited solely to resolving an issue of the constitutionality of a U.S. law as enacted or applied arising out of the underlying AD or CVD proceeding (other than an issue to which subparagraph (A) applies).

The Committee notes that only one challenge to the constitutionality of the binational panel review process under the U.S.-Canada FTA has occurred. In that case, decided on May 25, 1993, the United States District Court for the District of Columbia dismissed a constitutional challenge to the binational panel review system established by Chapter 19 of the U.S.-Canada FTA and its implementing legislation. National Council for Industrial Defense, Inc. v. United States, 827 F. Supp. 794 (D.D.C. 1993). The court concluded that it lacked subject matter jurisdiction because, pursuant to the U.S.-Canada FTA Implementation Act, challenges to the binational panel process may be brought only in the Court of Appeals for the District of Columbia Circuit. Section 411(f)(i)(III) of H.R. 3450 clarifies the provision to confirm the district court's conclusion.

A number of procedural safeguards were included in the U.S.-Canada FTA Implementation Act to prevent frivolous or unwarranted challenges to the binational review system. In particular, existing law provides procedures regulating the bringing of such challenges and includes specific provisions for awarding to a party prevailing against a constitutional challenge fees and expenses, as well as any costs, unless the court finds that the position of the party bringing the challenge was substantially justified or special circumstances make an award unjust. These provisions are retained by section 411.

Liquidation of entries. Under existing law (section 516A(g)(5) for merchandise from Canada, and section 516A(c) for merchandise from all other countries), duties are assessed and entries of merchandise are liquidated in accordance with the agency's AD or CVD determination until there is a final court decision overturning that determination. However, the court may enjoin the liquidation of some or all entries covered by certain types of challenged determinations upon request by an interested party and a proper showing that the relief should be granted under the circumstances.

Present law also requires that, absent injunction, entries must be liquidated within certain time limits.

Paragraph (5) of section 516A(g) of present law implements the obligation under Article 1904(15)(d) of the U.S.-Canada FTA to ensure that procedures under domestic law concerning the refund, with interest, of duties operate to give effect to final binational panel decisions. In the absence of this provision, the administering authority might be compelled to order liquidation of entries before completion of binational panel review. Subparagraph (B) establishes the general rule, comparable to section 516A(c)(1) of present law, that entries of Canadian merchandise covered by an AD or CVD determination for which binational panel review is requested shall be liquidated in accordance with the agency determination if they are entered, or withdrawn from warehouse, for consumption on or before notice is published in the Federal Register of a final decision of a binational panel or extraordinary challenge committee which is not in harmony with the challenged determination.

An exception under subparagraph (C) to this general rule, however, provides that, upon request of an interested party that was a party to the underlying proceeding and is a participant in the binational panel review, the administering authority shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending final disposition of the review. This exception applies only if the binational panel is reviewing a determination by the administering authority made during the assessment stage of an AD or CVD proceeding. If the interested party making the request is a foreign manufacturer, producer, or exporter, or a U.S. importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that party making the request. If the request is by a U.S. domestic interested party, the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel. In other words, an interested party cannot obtain relief through continued suspension of liquidation on entries of another party or with respect to which it is not challenging the determination. Any action by the administering authority or the U.S. Customs Service concerning continued suspension of liquidation shall not be subject to judicial review.

Section 411 of H.R. 3450 amends paragraph (5) of section 516A(g) to apply as well to merchandise from Mexico.

As under current law with respect to merchandise from Canada, section 516A(g)(6) provides that injunctive relief under section 516A(c)(2) would not apply to determinations involving merchandise from Mexico or Canada for which binational panel review is requested, except for cases involving constitutional issues raised under section 516A(g)(4)(B). In these cases, the CIT will continue to have the power to issue injunctions as necessary.

Implementation of panel and committee decisions. Paragraph (7) of section 516A(g) of existing law is carried forward with conforming amendments to apply as well to binational panel decisions involving merchandise from Mexico. This section provides for the implementation under U.S. domestic procedures of decisions by a binational panel or extraordinary challenge committee remanding a determination by the administering authority or the ITC.

Under subparagraph (A) of section 516A(g)(7), if a determination is referred to a binational panel or extraordinary challenge committee under the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the ITC, the administering authority or the ITC shall, within the period specified by the panel or committee, take action not inconsistent with the decision. Any action by the administering authority or the ITC will not be subject to judicial review.

As in the case of the U.S.-Canada FTA Implementation Act, the binational panel and extraordinary challenge committee system in the NAFTA and provision for direct implementation of their decisions under subparagraph (A) are approved by the Congress in the implementing bill to be signed into law by the President. In the unlikely event, however, that subparagraph (A) is declared unconstitutional by the Supreme Court under paragraph (4)(A) and (H) of section 516A(g), paragraph (7)(B) provides a fall-back procedure to ensure implementation of Agreement obligations.

Subparagraph (B) of section 516A(g)(7) authorizes the President on behalf of the United States, to accept as a whole the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the ITC within the period specified by the panel or committee. Upon acceptance by the President of a decision, the administering authority or the ITC shall, as under subparagraph (A), within the period specified by the panel or committee, take action not inconsistent with the decision.

As in the case of the U.S.-Canada FTA, this provision is intended to specify the procedures by which the United States will honor the international obligations created by Article 1904 and Annex 1904.13 of the NAFTA that make panel and committee decisions binding on the Parties. Direct implementation by the ITC and the administering authority of panel and committee decisions will mirror the existing remand procedures of the CIT. The Committee is concerned that authority for the President to direct the ITC could be prejudicial to the independence of the agency and create an unfortunate precedent for future legislation affecting the Commission. The Committee also does not want to expose the AD and CVD process to potential political pressure. AD and CVD laws and the international trade obligations of the United States must be implemented with objectivity and consistency in order to preserve the international credibility of the United States and to ensure that U.S. consumer and domestic business interests

receive fair and even application of U.S. law. The provision of direct implementation is also intended to immunize the remand process from political influence and to preserve the independent status of the ITC. Requests for binational panel review. Section 516A(g)(5) of current law provides that in the case of AD or CVD determinations involving Canadian merchandise on which binational panel review may be requested under section 516A(g), judicial review under section 516A(a) may not be commenced until the 31st day after notice of the determination or AD or CVD order is published in the Federal Register or, in the case of class or kind rulings, is received by the Government of Canada. Section 411(1) of H.R. 3450 makes a conforming amendment to section 516A(g)(5) of current law to implement this requirement as to determinations involving imports from Mexico. Paragraph (8) of section 516A(g) as added by the U.S.-Canada FTA Implementation Act established procedures for requesting binational panel reviews. Section 404 of H.R. 3450 makes conforming amendments to this section to provide for requests for binational panel review of determinations involving merchandise from Mexico.

Representation in binational panel proceedings. Section 411 makes a conforming amendment to paragraph (9) of section 516A(g). That section will continue to provide that the administering authority and the ITC shall be represented in binational panel proceedings by attorneys who are employees of those respective agencies, i.e., in-house counsel. Interested parties who were parties to the proceeding shall have the right to appear and be represented by counsel before the binational panel. As in the case of the U.S.-Canada FTA Implementation Act, no provision in this implementing bill is needed to grant the ITC authority to be represented at its option by its own attorneys in the binational panel process, because such authority already exists under section 333(g) of the Tariff Act of 1930.

Relationship of panel decisions to court decisions and other panel decisions. Section 411(2) of H.R. 3450 makes consequential amendments to paragraph (3) of section 516A(b) of current law. This section clarifies the relationship between decisions of binational panels or extraordinary challenge committees and judicial review by U.S. courts of AD or CVD determinations involving merchandise from countries other than Mexico or Canada or determinations involving Canadian or Mexican merchandise on which there is no request for binational panel review. In particular, section 516A(b) specifies that in making a decision in any action brought under section 516A(a), a U.S. court shall not be bound by, but may take into consideration, a final decision by a binational panel or extraordinary challenge committee. The intent of this provision is to make clear that a panel or committee decision is binding only with respect to the particular matter before that panel and does not constitute binding precedent on U.S. courts or other binational panels. A U.S. court's consideration of panel decisions will be limited to the intrinsic persuasiveness of the statements in those decisions.

The binational panel process is not to effect any change in the substantive law of the United States or to provide any benefit to importers of goods from NAFTA countries. Thus, panel decisions will not be binding on the CIT, even if the same or related issues are raised in court actions reviewing determinations of the administering authority or the ITC. Likewise, a panel decision involving a determination relating to merchandise from one NAFTA country will not be binding on other panels, including a panel reviewing the same or related issues.

For example, in a case where the ITC has made an affirmative injury determination on the basis of cumulating Canadian or Mexican imports with imports from other countries, the CIT is to decide the case before it (concerning imports from other countries) on the record as it was before the ITC at the time the ITC made its original determination. The outcome of a binational panel proceeding in a companion case concerning the Canadian or Mexican imports that were cumulated shall have no bearing on the Commission's record or on the validity of the Commission determination as it affects imports from other countries. Moreover, the CIT, in deciding the companion case before it, shall disregard any action taken by the ITC to implement a final decision of a binational panel or extraordinary challenge committee. All other options for the treatment of panel and court decisions involving affirmative Commission determinations in which it cumulatively assesses the effect of Canadian or Mexican imports and imports from other countries are administratively unworkable and would accord the Agreement a substantive impact on the AD and CVD laws that the Agreement is not intended to have.

Definitions. Section 411(3) of H.R.3450 amends section 516A(f) of the Tariff Act of 1930 to make consequential amendments to definitions of various terms used in section 516A(g).

Safeguard mechanism. Article 1905 of the NAFTA, which establishes a safeguard mechanism to protect the integrity of the binational panel and extraordinary challenge committee review processes, has no predecessor provision in Chapter 19 of the U.S.-Canada FTA. The safeguard mechanism is available to a NAFTA country alleging that another NAFTA country, through the application of its domestic law, has frustrated effective implementation of the binational panel and extraordinary challenge committee processes. This could occur, for example, if the application of a NAFTA country's domestic law prevented a panel from forming, prevented a panel from rendering a final decision, interfered with the implementation of, or denied binding effect to, a panel decision, or did not provide opportunity for effective and meaningful review of a final determination by a panel or a national court.

The first step under the safeguard mechanism is for the NAFTA countries to consult on the matter. If the two governments involved cannot resolve the matter through consultations, the complaining NAFTA country has recourse to a special committee, established in the same manner as an ECC, to

consider the allegation. An affirmative finding by a special committee prompts further consultations. Such a finding also allows for the stay of binational panel or ECC review, with certain conditions, and tolls the time for requesting a binational panel or ECC.

If the consultations do not produce a resolution, the complaining country may suspend the operation of the binational panel review system under Article 1904 or, as appropriate, suspend other benefits under the NAFTA. The other NAFTA country may reciprocally suspend the operation of Article 1904 and also may reconvene the special committee to decide whether any suspension of other benefits was excessive or the problem complained of has been corrected.

Suspension of the operation of Article 1904 has two important effects. Any binational panel or ECC proceeding stayed when the special committee reaches its affirmative finding is terminated. The proceeding then may be transferred to the court that otherwise would have had jurisdiction over the challenge to the final determination.

The safeguard system offers a number of advantages over the U.S.-Canada FTA regime. Under the U.S.-Canada FTA, the only recourse available to one country concerned with the other country's effective implementation of Chapter 19 is abrogation of the entire U.S.-Canada FTA. Article 1905 of the NAFTA permits the government concerned to suspend the operation of Article 1904 with respect to the government that has failed to meet its Chapter 19 obligations. Article 1905 thus provides an effective and balanced method for ensuring that Chapter 19 continues to operate as the NAFTA countries intend, without jeopardizing the entire NAFTA.

Section 411 makes two sets of amendments to U.S. law necessary to implement the safeguard procedure. First, section 411 amends section 516A(g)(8)(A) to provide for binational panel and extraordinary challenge committee proceedings to be stayed under U.S. law if such panel and committee review is stayed in accordance with Article 1905(11) of the NAFTA following the issuance of an affirmative special committee decision. In addition, section 411 adds new subparagraphs (11) and (12) to section 516A(g) to provide for such panel and extraordinary challenge committee review to be transferred to U.S. courts should a Party suspend the operation of Article 1904.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee

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

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

At the outset, the Committee emphasizes that the NAFTA, just as the CFTA, requires binational panels to apply the same standard of review and general legal principles that domestic courts would apply. This requirement is the foundation of the binational panel system. The Committee believes, however, that CFTA binational panels have, in several instances, failed to apply the appropriate standard of review, potentially undermining the integrity of the binational panel process.

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

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

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

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

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

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

From a policy perspective, the Committee believes that an "effects" analysis should not be required. First, "effects" analyses by nature are highly speculative. For purposes of administering the law, it is burdensome and unproductive for the Department of Commerce to attempt to trace the use and effect of a subsidy demonstrated to have been provided to producers of the subject merchandise. Second, a strict rule that the benefit received by foreign producers as a result of government action will be offset (or countervailed) acts as a deterrent to further subsidization.

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

Several recent binational panels (e.g, Certain Softwood Lumber from Canada,

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

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

It is the Committee's expectation that, in the future, binational panels will properly apply U.S. law and the appropriate standard of review, giving broad deference to the decisions of both the Department of Commerce and the ITC. If they do not, the Committee expects the Administration to avail itself of the extraordinary challenge procedures set forth in Annex 1904.13. Paragraph 13 of Article 1904 specifically provides that extraordinary challenge procedures may be invoked where a panel has manifestly exceeded its powers, authority or jurisdiction by failing, for example, to apply the appropriate standard of review, where such action has materially affected the panel's decision and threatens the integrity of the binational panel process. Because the central tenet of Chapter 19 is that a panel must operate precisely as would the court it replaces, the Committee believes that misapplication of U.S. law in important areas is a clear threat to the integrity of the Chapter 19 process.

As provided under Annex 1904.13, the Committee believes that an extraordinary challenge committee should vacate an original panel decision or remand it to the original panel for action not inconsistent with the

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

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

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

Paragraph 1 also includes a substantive change from the CFTA provisions regarding the time limits for requesting judicial review in cases where a binational panel has dismissed binational panel review for lack of jurisdiction. In such cases, if an interested party with standing to file a summons and complaint has given timely notice that it intends to seek judicial review, the time limit for filing a summons and complaint in the CIT will begin to run the day after the dismissal, rather than on the 31st day after the dismissal, as under the CFTA. However, if a request for an extraordinary challenge committee is made with respect to the dismissal, section 411(1) provides that judicial review will be stayed during the consideration of the request and the CIT shall dismiss the action if the committee vacates or remands the dismissal decision. In cases where review by the CIT is provided as a result of the suspension of the binational panel review process or because of a settlement with a NAFTA country pursuant to Article 1905(7) that specifically provides for CIT review, the period for requesting such review shall not begin until the day after the notice of suspension or settlement is published in the Federal Register.

Effect of panel decisions on other cases.--Section 411(2) makes conforming amendments to section 516A(b) of the Tariff Act of 1930 to provide that, in making a decision in any judicial review proceeding brought under section 516A(a), a U.S. court is not bound by (but may take into consideration) a

final decision of a binational panel or extraordinary challenge committee. The Committee intends, as was the case under the CFTA, that a binational panel decision will be binding only with respect to the particular matter before the panel and that a U.S. court's consideration of panel decisions will be limited to the intrinsic persuasiveness of the statements in those decisions. A U.S. court should view panel decisions in the same fashion as it would view statements of respected commentators on the application of U.S. law. The binational panel process is not to effect any change in the substantive law of the United States or to provide any benefit to importers of goods from third countries. Thus, panel decisions will not be binding on the CIT, even if the same or related issues are raised in court actions reviewing determinations of the Department of Commerce or the ITC.

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

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

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

(2) Exclusive review of determinations by binational panels.--Section 411(4)(C) makes conforming amendments to section 516A(g)(2) of the Tariff Act of 1930 to provide that, as under the CFTA Act, final antidumping and countervailing duty determinations with regard to merchandise from a NAFTA country shall not be reviewable under section 516A, and no U.S. court has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise if binational panel review has been requested.

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

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

(5) Liquidation of entries.--Section 411(4)(G) makes conforming amendments to section 516A(g)(5) of the Tariff Act of 1930 to provide that, as under the CFTA Act, entries of merchandise covered by binational panel determinations shall be liquidated in a manner consistent with liquidation of entries subject to normal judicial review. Entries covered by such a determination that are entered prior to publication of a conflicting decision by a binational panel or extraordinary challenge committee shall be liquidated in accordance with the original determination. If the determination being reviewed by a panel is a determination in a section 751 review or a determination regarding the scope of an existing order, the Department of Commerce shall, upon request of an interested party who was a party to the proceeding and is a participant in the panel review, order continued suspension of liquidation of some or all entries pending final disposition of the panel review. Such actions shall not be subject to judicial review.

(6) Injunctive relief.--Paragraph 4(H) of section 411 makes conforming amendments to section 516A(g)(6) of the Tariff Act of 1930 to provide that,

as under the CFTA Act, the provision of section 516A(c)(2) relating to injunctive relief shall not apply.

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

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

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

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

(11) Suspension of binational panel process and provisions for judicial review in case of such suspension.--As noted above, NAFTA Article 1905 includes special provisions for safeguarding the binational panel process if the application of the domestic law of a NAFTA country frustrates the binational panel system. If consultations fail to resolve the dispute, and if a special committee convened under Article 1905 finds that a NAFTA Party's domestic

law has indeed frustrated the system, the complaining party may suspend the operation of the binational panel process. Section 411(4)(O) adds two new paragraphs--paragraphs 11 and 12--to section 516A(g) of the Tariff Act of 1930 to address this possibility, as well as the possibility that such suspension may eventually terminate.

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

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

SEC. 412. CONFORMING AMENDMENTS TO OTHER PROVISIONS OF THE TARIFF ACT OF 1930

(a) Regulations for Appraisement and Classification; Finality and Decision.--Sections 502(b) and 514(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b) and 1514(b)) are each amended by inserting "the North American Free Trade Agreement or" before "the United States-Canada Free-Trade Agreement".(b) Definition.--Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended--(1) by redesignating as paragraph (21) (and placing in numerical sequence) the second paragraph that is designated as paragraph (18)

(relating to the definition of the United States-Canada Agreement) in such section; and(2) by inserting after paragraph (21) (as redesignated by paragraph

(1) of this subsection) the following new paragraph:"(22) NAFTA.--The term 'NAFTA' means the North American Free Trade Agreement.".(c) Disclosure of Proprietary Information in Title VII Proceedings.-- Section 777(f) of the Tariff Act of 1930 (19 U.S.C. 1677f(f)) is amended--(1) by inserting "the North American Free Trade Agreement or" before "the United States-Canada Agreement" in the heading;(2) by inserting "the NAFTA or" before "the United States-Canada Agreement" each place it appears in paragraph (1)(A);(3) in the second sentence of paragraph (1)(A)--(A) by inserting "or extraordinary challenge committee" after

"binational panel"; and(B) by inserting "or committee" after "the panel";(4) in paragraph (1)(B)--(A) by inserting "the NAFTA or" before "the Agreement" in clauses

(iii) and (iv); and(B) by striking out "Government of Canada designated by an authorized agency of Canada" in clause (iv) and inserting "Government of a free trade area country (as defined in section 516A(f)(10)) designated by an authorized agency of such country";(5) in paragraph (2) by inserting ", including any extraordinary challenge," after "binational panel proceeding";(6) in paragraph (3)--(A) by inserting "or extraordinary challenge committee" after

"binational panel", and(B) by inserting "the NAFTA or" before "the United States-Canada Agreement";(7) by striking out "agency of Canada" in each of paragraphs (3) and

(4) and inserting "agency of a free trade area country (as defined in section 516A(f)(10))"; and(8) in the first sentence of paragraph (4) by inserting ", 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," after "Any person".

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Section 412(a) of H.R. 3450 makes conforming amendments to sections 502(b) and 514(b) of the Tariff Act of 1930 to incorporate reviews and decisions by binational panels under the Agreement. Section 412(b) corrects a numbering error in section 771 of the Tariff Act of 1930 and adds a definition of the term "NAFTA" to that section for purposes of the AD and CVD laws.

Section 412(c) of H.R. 3450 makes conforming changes to section 777(f) with respect to disclosure of proprietary information under protective orders issued under the binational panel system to panelists or committee members (other than Article III sitting judges) and other authorized persons. Section 412(c) exempts such judges, who are subject to the Trade Secrets Act, 18 U.S.C. 1905, from the sanctions provisions of section 777(f)(4).

Section 777 of the Tariff Act of 1930 provides for the protection by the administering authority and the ITC of business proprietary information submitted during the course of an AD or CVD proceeding. Section 777 also authorizes the release of certain business proprietary information under an administrative protective order to representatives of interested parties to a proceeding, and for the administering authority and the ITC to impose sanctions for violations of the terms of a protective order.

The U.S.-Canada FTA Implementation Act added a new section 777(f) of the Tariff Act of 1930 to authorize the release of business proprietary information under protective order to authorized persons under the binational panel review system. Section 777(f) also provides for sanctions and enforcement against unauthorized disclosure of business proprietary information under protective order by panel or committee members or other authorized persons. Section 412(c) extends these provisions to the NAFTA and clarifies that the authorization for the agencies to issue and enforce protective orders limiting access to information over which they claim a privilege, if a panel directs disclosure for purposes of Chapter 19 review, also applies if an extraordinary challenge committee does so.

Section 777(f)(3) also makes violation of a Canadian "undertaking" a violation of U.S. law, subject to the same sanctions provided under section 777(f)(4) with respect to violation of U.S. protective orders. This is because, under the U.S.-Canada FTA, Canada issues protective orders (called "undertakings") when AD or CVD determinations of Canada are being reviewed by binational panels. Some of these undertakings will be issued to authorized persons who reside in the United States and may not be amenable to enforcement by Canadian or Mexican authorities in the event of violation. Section 412 makes a conforming amendment to section 777(f)(3) to provide for enforcement of undertakings issued under the NAFTA by either Mexico or Canada.

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No Legislative History.

Senate Finance Committee

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

action contesting such a determination is filed in the CIT or binational panel review under the CFTA or the NAFTA is commenced.

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

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

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

SEC. 413. CONSEQUENTIAL AMENDMENT TO FREE-TRADE AGREEMENT ACT OF 1988

Section 410(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended by adding at the end the following new sentence: "In calculating the 7-year period referred to in paragraph (1), any time during which Canada is a NAFTA country (as defined in section 2(4) of the North American Free Trade Agreement Implementation Act) shall be disregarded.".

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Section 413 of H.R. 3450 provides that any time during which Canada is a NAFTA country shall be disregarded in calculating the seven-year period specified in section 410(a) of the U.S.-Canada FTA Implementation Act.

Article 1906 of the U.S.-Canada FTA provided that if the United States and Canada did not agree on a substitute system of rules for disciplining subsidies and unfair price practices within seven years, either party could terminate the agreement on six months' notice. Article 410(a) of the U.S.-Canada FTA Implementation Act provides that if no such agreement is entered into at the end of the seven-year period and if the President decides not to exercise the rights of the United States under article 1906 to terminate the agreement, the President shall submit a report to Congress explaining the reasons why continued adherence to the agreement is in the national economic interest of the United States.

Section 413 tolls the running of the seven-year period under the U.S.-Canada FTA for any time during which Canada is a NAFTA country and the United States applies the NAFTA to Canada. Such a tolling is consistent with Article 1907 of the NAFTA.

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No Legislative History.

Senate Finance Committee

Section 410(a) of the CFTA Act authorizes the establishment of a working group to discuss with Canadian officials, for a period of seven years, a substitute system for rules for antidumping and countervailing duties.

Section 413 provides that any time during which the NAFTA is in effect with respect to Canada will be disregarded in computing the seven years.

SEC. 414. CONFORMING AMENDMENTS TO TITLE 28, UNITED STATES CODE

(a) Court of International Trade.--Chapter 95 of title 28, United States Code, is amended--(1) in section 1581(i) by inserting "the North American Free Trade Agreement or" before "the United States-Canada Free-Trade Agreement";(2) in section 1584--(A) by amending the section heading to read as follows: "Sec. 1584. Civil actions under the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement"; and(B) by striking out "777(d)" and inserting "777(f)"; and(3) in the table of contents for such chapter by amending the entry for section 1584 to read as follows:

(b) Particular Proceedings.--Sections 2201(a) and 2643(c)(5) of title 28, United States Code, are each amended by striking out "Canadian merchandise," and inserting "merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930),".

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Title 28, United States Code, contains provisions that confer jurisdiction on the CIT for judicial review of AD and CVD determinations. Most determinations are subject to CIT jurisdiction under 28 U.S.C. 1581(c). A small group of AD and CVD matters are reviewable under the so-called "residual jurisdiction" provision of the CIT under 28 U.S.C. 1581(i). Certain amendments and clarifications to these provisions of Title 28 are necessary to implement the binational panel system under the Agreement.

The U.S.-Canada FTA Implementation Act amended 28 U.S.C. 1581(i) to withdraw jurisdiction from the CIT over AD and CVD determinations including merchandise from Canada, making such determinations reviewable by binational panels.

Section 414 of H.R. 3450 makes a conforming amendment to 28 U.S.C. 1581(i) to withdraw jurisdiction from the CIT over AD or CVD determinations involving merchandise from Mexico and makes such determinations reviewable by binational panels. These amendments to 28 U.S.C. 1581(i) were necessary because the precise scope of the "residual jurisdiction" authority is unclear. In the absence of these amendments there is the risk that a litigant might seek to invoke this provision in order to circumvent the binational panel system provided for at section 516A(g).

Article 1904(15) of the Agreement requires the United States and Canada to amend their respective laws to eliminate the issuance of declaratory judgments with respect to the goods of the other Party. The CIT is empowered to issue declaratory judgments as a general matter, but has never provided such relief in AD or CVD cases because it generally has jurisdiction only over final determinations. However, in order to implement the obligation under the Agreement, the U.S.-Canada FTA Implementation Act amended 28 U.S.C. 2643(c) and 28 U.S.C. 2201 to provide that no court of the United States, including the CIT, could order declaratory relief in any civil action involving an AD or CVD proceeding regarding a class or kind of merchandise determined by the administering authority to be Canadian. Section 414 of H.R. 3450 makes conforming amendments to these same sections of Title 28 to provide the same treatment to proceedings regarding a class or kind of merchandise determined by the administering authority to be Mexican.

Finally, the U.S.-Canada FTA Implementation Act added a new section 1584 to title 28 to give the CIT exclusive jurisdiction of any civil action that arises under section 777(d) of the Tariff Act of 1930 and is commenced by the United States to enforce administrative sanctions levied for violation of a protective order or an undertaking. This amendment to title 28 conformed to amendments under that bill to section 777(d) to provide for enforcement of administrative sanctions against violations of protective orders. Section

414(a)(2) of H.R. 3450 provides conforming amendments to apply the provision to binational panel proceedings involving imports from Mexico.

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No Legislative History.

Senate Finance Committee

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

SEC. 415. EFFECT OF TERMINATION OF NAFTA COUNTRY STATUS

(a) In General.--Except as provided in subsection (b), on the date on which a country ceases to be a NAFTA country, the provisions of this title (other than this section) and the amendments made by this title shall cease to have effect with respect to that country.

(b) Transition Provisions.--(1) Proceedings regarding protective orders and undertakings.--If on the date on which a country ceases to be a NAFTA country an investigation or enforcement proceeding concerning the violation of a protective order issued under section 777(f) of the Tariff Act of 1930 (as amended by this subtitle) or an undertaking of the Government of that country is pending, the investigation or proceeding shall continue, and sanctions may continue to be imposed, in accordance with the provisions of such section 777(f).(2) Binational panel and extraordinary challenge committee reviews.-- If on the date on which a country ceases to be a NAFTA country--(A) a binational panel review under article 1904 of the Agreement is pending, or has been requested; or(B) an extraordinary challenge committee review

under article 1904 of the Agreement is pending, or has been requested;

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Section 415 of H.R. 3450 addresses circumstances in which a country ceases to be a NAFTA country. Article 1903 authorizes a NAFTA Party to terminate the Agreement under specified circumstances.

Section 415 provides transitional provisions pertaining to cases in progress should the Agreement cease to be in force at some future date. If, on that date, an investigation or enforcement proceeding concerning the violation of an administrative protective order issued under section 777(f) as amended by section 411 of the H.R. 3450, or a Canadian or Mexican undertaking, is pending, the investigation or proceeding shall continue and sanctions may continue to be imposed in accordance with that section. If on that date a binational panel review is pending or has been requested on a final AD or CVD determination, that determination will be reviewable in the CIT as under present law. The time limits for commencing such judicial review shall not begin to run until the date the Agreement ceases to be in force.

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No Legislative History.

Senate Finance Committee

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

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

SEC. 416. EFFECTIVE DATE

The provisions of this title and the amendments made by this title take effect on the date the Agreement enters into force with respect to the United States, but shall not apply--(1) to any final determination described in paragraph (1)(B), or

(2)(B) (i), (ii), or (iii), of section 516A(a) of the Tariff Act of 1930 notice of which is published in the Federal Register before such date, or to a determination described in paragraph (2)(B)(vi) of section 516A(a) of such Act notice of which is received by the Government of Canada or Mexico before such date; or(2) to any binational panel review under the United States-Canada Free-Trade Agreement, or any extraordinary challenge arising out of any such review, that was commenced before such date.

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Section 416 of H.R. 3450 provides that the provisions of Title IV take effect on the date the NAFTA enters into force with respect to the United States but shall not apply to (1) specified final determinations published in the Federal Register or as to which notice was provided under the U.S.-Canada FTA to the Government of Canada, as the case may be, before that date or (2) any binational panel review under the U.S.-Canada FTA or any extraordinary challenge arising out of any such review, that was commenced before such date. This section implements Article 1906 of the NAFTA, which provides for prospective application.

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No Legislative History.

Senate Finance Committee

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

TITLE V--NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE AND OTHER PROVISIONS

House Ways & Means Committee Report

Title V of H.R. 3450 contains provisions establishing a NAFTA transitional worker adjustment assistance program; provisions relating to performance under the Agreement; and amendments to customs user fee authority and to the Internal Revenue Code to fund the estimated budgetary effects of NAFTA implementation. Provisions in Subtitle D relating to the implementation of supplemental agreements to the NAFTA on labor and environment and establishment of a North American Development Bank, within the jurisdiction of committees other than the Committee on Ways and Means, are not covered by this report.

The House Energy & Commerce Committee Report

Title V--NAFTA Transitional Adjustment Assistance and Other Provisions

Senate Finance Committee

Title V--NAFTA Transitional Adjustment Assistance and Other Provisions

Subtitle A--NAFTA Transitional Adjustment Assistance Program

House Ways & Means Committee Report

Subtitle A--NAFTA Transitional Adjustment Assistance Program

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee

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

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

likely to be among the most vulnerable and may have greater than average difficulty in finding new employment.

This new NAFTA program is intended to ensure that those workers who are dislocated as a result of the NAFTA receive assistance that enables them to return to productive employment. By expanding eligibility to include those who lose their jobs as a result of shifts in production to Mexico or Canada, not only as a result of increased imports, the new program is designed to remedy what has been identified as one of the shortcomings of the current TAA program. By combining TAA benefits (including income support payments for eligible workers, training, employment services, and job search and relocation allowances) with rapid response and other basic readjustment services available under other Department of Labor programs (which would be offered prior to final certification of eligibility for TAA benefits), it is intended to ensure that affected workers have the broadest possible menu of benefits and services available to them.

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

SEC. 501. SHORT TITLE

This subtitle may be cited as the "NAFTA Worker Security Act".

House Ways & Means Committee Report

Present law

Adjustment assistance is currently available to workers displaced as a result of trade competition under two Federal programs--the Trade Adjustment Assistance (TAA) program under Chapter 2 of Title II of the Trade Act of 1974, and the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) under Title III of the Job Training Partnership Act.

TAA is an entitlement program, consisting of trade readjustment allowances (TRA), employment services, training, and job search and relocation allowances for workers who lose their jobs because of increased imports. The program is administered by the Employment and Training Administration (ETA) of the Department of Labor through State and local offices of the Employment Service, under cooperative agreements between

each State and the Secretary of Labor. ETA processes petitions and issues certifications or denials of petitions by groups of workers for eligibility to apply for TAA. The State agencies act as Federal agents in providing program information, processing applications, determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

Subtitle A of Chapter 2 (Sections 221 through 225) sets forth the requirements on petitions and determinations. A group of three or more workers, their union, or authorized representative may file a petition with the Secretary for certification of group eligibility to apply for TAA benefits. To certify a petitioning group of workers as eligible to apply, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;
2. Sales and/or production of the firm or subdivision have decreased absolutely; and
3. Increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have contributed importantly to both the layoffs and the decline in sales and/or production.

The Secretary is required to make the eligibility determination within 60 days after a petition is filed.

Subchapter B of Chapter 2 (Sections 231 through 238) sets forth the TAA program benefits and the qualifying requirements and criteria for workers to receive these benefits. In order to be entitled to payment of income support (TRA) for any week of unemployment, the worker must be covered by a certification, file an application with the State agency, and meet various qualifying requirements with respect to date of separation, prior employment history, and have been entitled to and have exhausted all rights to unemployment insurance (UI). In addition, the worker must be enrolled in or have completed a training program approved by the Secretary in order to receive basic TAA payments, unless the Secretary has determined and submitted a written statement to the individual worker certifying that approval of training is not "feasible or appropriate." The Secretary is required to revoke this training waiver if the Secretary subsequently finds that it is feasible and appropriate to approve training for the worker.

The TRA payment for a week of total unemployment is equal to, and a continuation of, the most recent weekly benefit amount of UI benefits payable to that worker. The maximum amount of basic TRA benefits payable to a worker is 52 times the TRA payable for a week of total unemployment, minus the total amount of UI regular and extended benefits to which the worker was entitled. A worker may receive up to 26 additional weeks of TRA benefits after collecting basic benefits (up to a total maximum of 78 weeks) if that worker is participating in approved training, in order to assist in completing that training. To receive the additional benefits, the worker must apply for the training program within 210 days after certification or first qualifying separation, whichever date is later.

Employment services under Section 235 consist of counseling, vocational testing, job search and placement, and other supportive services, provided for under any other Federal law.

Training under Section 236 must be approved by the Secretary for a certified worker if six statutory conditions are met. Upon such approval, the worker is entitled to payment by the Secretary of the training costs up to an $80 million ceiling on the total amount of payment for training from TAA funds in any fiscal year.

Job search allowances under Section 237 are available to certified workers for reimbursement of up to 90 percent of necessary job search expenses, not to exceed $800 for any worker, and necessary expenses to participate in an approved job search program.

Relocation allowances under Section 238 are available to certified workers equal to 90 percent of reasonable and necessary transportation expenses plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

Subchapter C of Chapter 2 (Sections 239 through 249) contains various administrative provisions, including on agreements between the Secretary and the States. Section 245 authorizes appropriations to the Department of Labor of such sums as may be necessary for the program through fiscal year 1998; Section 285(b) provides for program termination on September 30, 1998.

The EDWAA program, in operation since July 1989, is designed to provide a comprehensive range of services to all workers dislocated for whatever reason. Any worker who has been terminated or has received a notice of termination and is unlikely to return to his or her previous industry or occupation is eligible for EDWAA services, including primary, secondary, and tertiary workers. These services include (1) rapid response, available at the worksite on announcement of a plant closing or mass layoff to provide early intervention often before layoffs actually occur; (2) basic readjustment services, including outreach and intake, counseling and development of individual readjustment plans, labor market information, job development, job search and placement assistance, supportive services, relocation assistance, and pre-dislocation adjustment programs; (3) retraining services; and (4) needs-related payments. Dislocated workers who have exhausted UI or do not qualify for UI may receive payments to help complete an approved training or education program, provided they are enrolled in a training program during the 13th week of their initial UI benefit period, in an amount not to exceed the individual's UI amount or the poverty level, whichever is higher.

The EDWAA program is funded through an annual appropriation. It is a State grant program with a local delivery system. Eighty percent of the funds are distributed to the States by formula based on State unemployment rates. At least 60 percent of these funds are then distributed to a network of local service delivery areas, which are administered by councils composed of private and public sector representatives; not more than 40 percent of these funds are retained for State activities. The Governor is responsible for overall program administration, management, allocating funds to substate areas,

and targeting funds to areas of major worker dislocations. The remaining 20 percent of the total funds are reserved by the Secretary of Labor to make discretionary grants to States or regions experiencing major worker displacements or to aid especially hard-hit workers or industries.

Explanation of provision

Sections 501 through 506 of H.R. 3450 set forth the "NAFTA Worker Security Act." Section 502 amends Chapter 2 of Title II of the Trade Act of 1974 to add a new Section 250 as a Subchapter D, establishing a NAFTA Transitional Adjustment Assistance Program. New Section 250(a) provides that 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 subchapter D if the Secretary determines that a significant number or proportion of the workers in the firm or subdivision of the firm have become or are threatened to become totally or partially separated, and either--

(1) sales and/or production of the firm or subdivision have decreased absolutely, imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision; or

(2) there has been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles produced by the firm or subdivision.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause. The Secretary shall issue regulations relating to the application of the criteria.

New section 250(b) provides for preliminary findings and basic assistance to workers. A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm or their union or other duly authorized representative) may file a petition for certification of eligibility to apply for adjustment assistance under subchapter D with the Governor of the State in which the worker's firm or subdivision is located. Upon receipt of the petition, the Governor shall notify the Secretary of Labor. Within 10 days thereafter, the Governor shall make a preliminary finding as to whether the petition meets the certification criteria and transmit the petition, together with a statement of the finding and reasons therefor, to the Secretary for action. If the preliminary finding is affirmative, the Governor shall ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

New section 250(c) requires the Secretary, within 30 days after receiving the petition, to determine whether the petition meets the certification criteria. Upon an affirmative determination, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for comprehensive assistance described under subsection (d). Upon denial of certification, the Secretary shall review the petition to determine if workers

meet the requirements of Subchapter A of the existing TAA program for certification.

New section 250(d) requires the provision of the following types of assistance to workers covered by a certification in the same manner and to the same extent as workers covered under a certification under Subchapter A of the existing TAA program:

Employment services described in section 235;

Training described in section 236, except that the total amount of payments for training under Subchapter D for any fiscal year shall not exceed $30 million;

Trade readjustment allowances described in sections 231 through 234, except that (a) the authority under section 231 to pay TRA upon a finding that it is not feasible or appropriate to approve a training program for a worker shall not apply to payment of TRA under Subchapter D; (b) in order for a worker to qualify for TRA under Subchapter D, the worker shall be enrolled in a training program approved by the Secretary by the later of the last day of the 16th week of the worker's initial unemployment compensation benefit period, or the last day of the 6th week after the week in which the Secretary issues a certification covering the worker. In extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for not more than 30 days;

Job search allowances described in section 237; and

Relocation allowances described in section 238.

The provisions of Subchapter C on administration of the existing TAA program shall apply in the same manner and to the same extent to the administration of the Subchapter D program, 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).

Section 503 of H.R. 3450 makes conforming amendments to various sections of Chapter 2 of Title II of the Trade Act of 1974, including the addition of a new section 249A to prohibit any worker from receiving assistance relating to a separation pursuant to certifications under both Subchapters A and D.

Section 504 amends section 245 of the Trade Act of 1974 to authorize appropriations 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.

Section 505 amends section 285(c) of the Trade Act of 1974, to provide for termination of assistance, vouchers, allowances, or other payment under Subchapter D after the earlier of September 30, 1998, or the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided under Subchapter D becomes effective. If, on or before the termination date, a worker is certified as eligible to apply for assistance under Subchapter D and is otherwise eligible to receive such assistance that worker shall continue

to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements.

Section 506 provides that the amendments made by sections 501 through 505 shall take effect on the date the NAFTA enters into force for the United States. No worker shall be certified as eligible to receive assistance under Subchapter D whose last total or partial separation occurred before such date of entry into force, except that any worker whose last total or partial separation occurs after the date of enactment of H.R. 3450, and before the date of entry into force of the NAFTA who would otherwise be eligible to receive assistance under Subchapter D shall be eligible to receive such assistance.

Reasons for change

Subtitle A incorporates a program proposed by the Administration to address concerns of the Congress and the private sector about the need for an effective and fully funded program to assist the adjustment of workers who may be adversely impacted by the NAFTA. The program incorporates the elements of the existing TAA and EDWAA programs which various studies and reports have determined to be most beneficial and effective in assisting worker adjustment. The Administration intends this program to be transitional until a new comprehensive program, legislation for which is expected to be introduced early in 1994, becomes operational. The transitional program combines for eligible workers the rapid response and basic readjustment services available under the EDWAA program, and the ability to engage in appropriate long-term training with income support plus job search and relocation allowances available under the TAA program.

In addition, the Administration has stated its intent (as reflected in the Statement of Administrative Action accompanying the implementing bill) to supplement the legislative provisions of the transitional program through administrative action. The Secretary of Labor will use existing authority under the EDWAA program to provide similar assistance to workers in secondary firms that supply or assemble products directly affected by the NAFTA, as well as to family farmers and farm workers adversely affected by the NAFTA who do not meet the eligibility requirements under the legislation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee

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

SEC. 502. ESTABLISHMENT OF NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

Chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.) is amended by adding at the end the following new subchapter:"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.

"(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)."

House Ways & Means Committee Report

Present law

Adjustment assistance is currently available to workers displaced as a result of trade competition under two Federal programs--the Trade Adjustment Assistance (TAA) program under Chapter 2 of Title II of the Trade Act of 1974, and the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) under Title III of the Job Training Partnership Act.

TAA is an entitlement program, consisting of trade readjustment allowances (TRA), employment services, training, and job search and relocation allowances for workers who lose their jobs because of increased imports. The program is administered by the Employment and Training

Administration (ETA) of the Department of Labor through State and local offices of the Employment Service, under cooperative agreements between each State and the Secretary of Labor. ETA processes petitions and issues certifications or denials of petitions by groups of workers for eligibility to apply for TAA. The State agencies act as Federal agents in providing program information, processing applications, determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

Subtitle A of Chapter 2 (Sections 221 through 225) sets forth the requirements on petitions and determinations. A group of three or more workers, their union, or authorized representative may file a petition with the Secretary for certification of group eligibility to apply for TAA benefits. To certify a petitioning group of workers as eligible to apply, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;
2. Sales and/or production of the firm or subdivision have decreased absolutely; and
3. Increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have contributed importantly to both the layoffs and the decline in sales and/or production.

The Secretary is required to make the eligibility determination within 60 days after a petition is filed.

Subchapter B of Chapter 2 (Sections 231 through 238) sets forth the TAA program benefits and the qualifying requirements and criteria for workers to receive these benefits. In order to be entitled to payment of income support (TRA) for any week of unemployment, the worker must be covered by a certification, file an application with the State agency, and meet various qualifying requirements with respect to date of separation, prior employment history, and have been entitled to and have exhausted all rights to unemployment insurance (UI). In addition, the worker must be enrolled in or have completed a training program approved by the Secretary in order to receive basic TAA payments, unless the Secretary has determined and submitted a written statement to the individual worker certifying that approval of training is not "feasible or appropriate." The Secretary is required to revoke this training waiver if the Secretary subsequently finds that it is feasible and appropriate to approve training for the worker.

The TRA payment for a week of total unemployment is equal to, and a continuation of, the most recent weekly benefit amount of UI benefits payable to that worker. The maximum amount of basic TRA benefits payable to a worker is 52 times the TRA payable for a week of total unemployment, minus the total amount of UI regular and extended benefits to which the worker was entitled. A worker may receive up to 26 additional weeks of TRA benefits after collecting basic benefits (up to a total maximum of 78 weeks) if that worker is participating in approved training, in order to assist in completing that training. To receive the additional benefits, the worker must apply for the training program within 210 days after certification or first qualifying separation, whichever date is later.

Employment services under Section 235 consist of counseling, vocational testing, job search and placement, and other supportive services, provided for under any other Federal law.

Training under Section 236 must be approved by the Secretary for a certified worker if six statutory conditions are met. Upon such approval, the worker is entitled to payment by the Secretary of the training costs up to an $80 million ceiling on the total amount of payment for training from TAA funds in any fiscal year.

Job search allowances under Section 237 are available to certified workers for reimbursement of up to 90 percent of necessary job search expenses, not to exceed $800 for any worker, and necessary expenses to participate in an approved job search program.

Relocation allowances under Section 238 are available to certified workers equal to 90 percent of reasonable and necessary transportation expenses plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

Subchapter C of Chapter 2 (Sections 239 through 249) contains various administrative provisions, including on agreements between the Secretary and the States. Section 245 authorizes appropriations to the Department of Labor of such sums as may be necessary for the program through fiscal year 1998; Section 285(b) provides for program termination on September 30, 1998.

The EDWAA program, in operation since July 1989, is designed to provide a comprehensive range of services to all workers dislocated for whatever reason. Any worker who has been terminated or has received a notice of termination and is unlikely to return to his or her previous industry or occupation is eligible for EDWAA services, including primary, secondary, and tertiary workers. These services include (1) rapid response, available at the worksite on announcement of a plant closing or mass layoff to provide early intervention often before layoffs actually occur; (2) basic readjustment services, including outreach and intake, counseling and development of individual readjustment plans, labor market information, job development, job search and placement assistance, supportive services, relocation assistance, and pre-dislocation adjustment programs; (3) retraining services; and (4) needs-related payments. Dislocated workers who have exhausted UI or do not qualify for UI may receive payments to help complete an approved training or education program, provided they are enrolled in a training program during the 13th week of their initial UI benefit period, in an amount not to exceed the individual's UI amount or the poverty level, whichever is higher.

The EDWAA program is funded through an annual appropriation. It is a State grant program with a local delivery system. Eighty percent of the funds are distributed to the States by formula based on State unemployment rates. At least 60 percent of these funds are then distributed to a network of local service delivery areas, which are administered by councils composed of private and public sector representatives; not more than 40 percent of these funds are retained for State activities. The Governor is responsible for overall program administration, management, allocating funds to substate areas,

and targeting funds to areas of major worker dislocations. The remaining 20 percent of the total funds are reserved by the Secretary of Labor to make discretionary grants to States or regions experiencing major worker displacements or to aid especially hard-hit workers or industries.

Explanation of provision

Sections 501 through 506 of H.R. 3450 set forth the "NAFTA Worker Security Act." Section 502 amends Chapter 2 of Title II of the Trade Act of 1974 to add a new Section 250 as a Subchapter D, establishing a NAFTA Transitional Adjustment Assistance Program. New Section 250(a) provides that 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 subchapter D if the Secretary determines that a significant number or proportion of the workers in the firm or subdivision of the firm have become or are threatened to become totally or partially separated, and either--

(1) sales and/or production of the firm or subdivision have decreased absolutely, imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision; or

(2) there has been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles produced by the firm or subdivision.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause. The Secretary shall issue regulations relating to the application of the criteria.

New section 250(b) provides for preliminary findings and basic assistance to workers. A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm or their union or other duly authorized representative) may file a petition for certification of eligibility to apply for adjustment assistance under subchapter D with the Governor of the State in which the worker's firm or subdivision is located. Upon receipt of the petition, the Governor shall notify the Secretary of Labor. Within 10 days thereafter, the Governor shall make a preliminary finding as to whether the petition meets the certification criteria and transmit the petition, together with a statement of the finding and reasons therefor, to the Secretary for action. If the preliminary finding is affirmative, the Governor shall ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

New section 250(c) requires the Secretary, within 30 days after receiving the petition, to determine whether the petition meets the certification criteria. Upon an affirmative determination, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for comprehensive assistance described under subsection (d). Upon denial of certification, the Secretary shall review the petition to determine if workers

meet the requirements of Subchapter A of the existing TAA program for certification.

New section 250(d) requires the provision of the following types of assistance to workers covered by a certification in the same manner and to the same extent as workers covered under a certification under Subchapter A of the existing TAA program:

Employment services described in section 235;

Training described in section 236, except that the total amount of payments for training under Subchapter D for any fiscal year shall not exceed $30 million;

Trade readjustment allowances described in sections 231 through 234, except that (a) the authority under section 231 to pay TRA upon a finding that it is not feasible or appropriate to approve a training program for a worker shall not apply to payment of TRA under Subchapter D; (b) in order for a worker to qualify for TRA under Subchapter D, the worker shall be enrolled in a training program approved by the Secretary by the later of the last day of the 16th week of the worker's initial unemployment compensation benefit period, or the last day of the 6th week after the week in which the Secretary issues a certification covering the worker. In extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for not more than 30 days;

Job search allowances described in section 237; and

Relocation allowances described in section 238.

The provisions of Subchapter C on administration of the existing TAA program shall apply in the same manner and to the same extent to the administration of the Subchapter D program, 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).

Section 503 of H.R. 3450 makes conforming amendments to various sections of Chapter 2 of Title II of the Trade Act of 1974, including the addition of a new section 249A to prohibit any worker from receiving assistance relating to a separation pursuant to certifications under both Subchapters A and D.

Section 504 amends section 245 of the Trade Act of 1974 to authorize appropriations 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.

Section 505 amends section 285(c) of the Trade Act of 1974, to provide for termination of assistance, vouchers, allowances, or other payment under Subchapter D after the earlier of September 30, 1998, or the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided under Subchapter D becomes effective. If, on or before the termination date, a worker is certified as eligible to apply for assistance under Subchapter D and is otherwise eligible to receive such assistance that worker shall continue

to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements.

Section 506 provides that the amendments made by sections 501 through 505 shall take effect on the date the NAFTA enters into force for the United States. No worker shall be certified as eligible to receive assistance under Subchapter D whose last total or partial separation occurred before such date of entry into force, except that any worker whose last total or partial separation occurs after the date of enactment of H.R. 3450, and before the date of entry into force of the NAFTA who would otherwise be eligible to receive assistance under Subchapter D shall be eligible to receive such assistance.

Reasons for change

Subtitle A incorporates a program proposed by the Administration to address concerns of the Congress and the private sector about the need for an effective and fully funded program to assist the adjustment of workers who may be adversely impacted by the NAFTA. The program incorporates the elements of the existing TAA and EDWAA programs which various studies and reports have determined to be most beneficial and effective in assisting worker adjustment. The Administration intends this program to be transitional until a new comprehensive program, legislation for which is expected to be introduced early in 1994, becomes operational. The transitional program combines for eligible workers the rapid response and basic readjustment services available under the EDWAA program, and the ability to engage in appropriate long-term training with income support plus job search and relocation allowances available under the TAA program.

In addition, the Administration has stated its intent (as reflected in the Statement of Administrative Action accompanying the implementing bill) to supplement the legislative provisions of the transitional program through administrative action. The Secretary of Labor will use existing authority under the EDWAA program to provide similar assistance to workers in secondary firms that supply or assemble products directly affected by the NAFTA, as well as to family farmers and farm workers adversely affected by the NAFTA who do not meet the eligibility requirements under the legislation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee

Section 502 amends Chapter 2 of Title II of the Trade Act of 1974 to add a new Subchapter D establishing the NAFTA Transitional Adjustment Assistance Program. It provides that a group of workers shall be certified as eligible to apply for adjustment assistance under the new subchapter if the Secretary of Labor determines that a significant number or proportion of the workers in

their firm (or its subdivision) have lost their jobs, or are threatened with such job loss, as a result of either (1) increased imports from Mexico or Canada of articles like or directly competitive with what their firm produces, or (2) a shift of production by their firm to Mexico or Canada of articles like or directly competitive with what their firm produces.

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

Section 502 establishes that eligibility under the new program will be determined under a two-step process. Workers petition for certification of eligibility with the Governor of the State where the layoffs occurred. The Governor must make a preliminary finding regarding eligibility within 10 days of receiving the petition, and then transmit the petition and finding to the Secretary of Labor. If the Governor finds that the petition meets the eligibility criteria, the Governor shall ensure that the workers receive early readjustment services, including job search and placement assistance and career counseling. The Secretary of Labor then must make a final decision on the petition within 30 days of receiving it from the Governor. If certified as eligible by the Secretary, workers are entitled to the full range of current TAA services and benefits.

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

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

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

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

SEC. 503. CONFORMING AMENDMENTS

(a) References.--Sections 221(a), 222(a), and 223(a) of the Trade Act of 1974 (19 U.S.C. 2271(a), 2272(a), and 2273(a)) are each amended by striking out "assistance under this chapter" and inserting "assistance under this subchapter".(b) Benefit Information.--Section 225(b) of the Trade Act of 1974 (19 U.S.C. 2275(b)) is amended by inserting "or subchapter D" after "subchapter A" each place it appears.(c) Nonduplication of Assistance.--Subchapter C of chapter 2 of title II of the Trade Act of 1974 is amended by adding at the end the following new section: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.".(d) Judicial Review.--Section 284(a) of the Trade Act of 1974 (19 U.S.C. 2395(a)) is amended by inserting "or section 250(c)" after "section 223".(e) Table of Contents.--The table of contents for chapter 2 of title II of the Trade Act of 1974 is amended--(1) by inserting after the item relating to section 249 the following new item:
and(2) by adding at the end thereof the following new items:"SUBCHAPTER D--NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM

House Ways & Means Committee Report

Present law

Adjustment assistance is currently available to workers displaced as a result of trade competition under two Federal programs--the Trade Adjustment Assistance (TAA) program under Chapter 2 of Title II of the Trade Act of 1974, and the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) under Title III of the Job Training Partnership Act.

TAA is an entitlement program, consisting of trade readjustment allowances (TRA), employment services, training, and job search and relocation allowances for workers who lose their jobs because of increased imports. The program is administered by the Employment and Training Administration (ETA) of the Department of Labor through State and local offices of the Employment Service, under cooperative agreements between each State and the Secretary of Labor. ETA processes petitions and issues certifications or denials of petitions by groups of workers for eligibility to apply for TAA. The State agencies act as Federal agents in providing program information, processing applications, determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

Subtitle A of Chapter 2 (Sections 221 through 225) sets forth the requirements on petitions and determinations. A group of three or more workers, their union, or authorized representative may file a petition with the Secretary for certification of group eligibility to apply for TAA benefits. To certify a petitioning group of workers as eligible to apply, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;
2. Sales and/or production of the firm or subdivision have decreased absolutely; and
3. Increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have contributed importantly to both the layoffs and the decline in sales and/or production.

The Secretary is required to make the eligibility determination within 60 days after a petition is filed.

Subchapter B of Chapter 2 (Sections 231 through 238) sets forth the TAA program benefits and the qualifying requirements and criteria for workers to receive these benefits. In order to be entitled to payment of income support (TRA) for any week of unemployment, the worker must be covered by a certification, file an application with the State agency, and meet various qualifying requirements with respect to date of separation, prior employment history, and have been entitled to and have exhausted all rights to unemployment insurance (UI). In addition, the worker must be enrolled in or have completed a training program approved by the Secretary in order to receive basic TAA payments, unless the Secretary has determined and submitted a written statement to the individual worker certifying that approval of training is not "feasible or appropriate." The Secretary is required to revoke this training waiver if the Secretary subsequently finds that it is feasible and appropriate to approve training for the worker.

The TRA payment for a week of total unemployment is equal to, and a continuation of, the most recent weekly benefit amount of UI benefits payable to that worker. The maximum amount of basic TRA benefits payable to a worker is 52 times the TRA payable for a week of total unemployment, minus the total amount of UI regular and extended benefits to which the worker was entitled. A worker may receive up to 26 additional weeks of TRA benefits after collecting basic benefits (up to a total maximum of 78 weeks) if

that worker is participating in approved training, in order to assist in completing that training. To receive the additional benefits, the worker must apply for the training program within 210 days after certification or first qualifying separation, whichever date is later.

Employment services under Section 235 consist of counseling, vocational testing, job search and placement, and other supportive services, provided for under any other Federal law.

Training under Section 236 must be approved by the Secretary for a certified worker if six statutory conditions are met. Upon such approval, the worker is entitled to payment by the Secretary of the training costs up to an $80 million ceiling on the total amount of payment for training from TAA funds in any fiscal year.

Job search allowances under Section 237 are available to certified workers for reimbursement of up to 90 percent of necessary job search expenses, not to exceed $800 for any worker, and necessary expenses to participate in an approved job search program.

Relocation allowances under Section 238 are available to certified workers equal to 90 percent of reasonable and necessary transportation expenses plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

Subchapter C of Chapter 2 (Sections 239 through 249) contains various administrative provisions, including on agreements between the Secretary and the States. Section 245 authorizes appropriations to the Department of Labor of such sums as may be necessary for the program through fiscal year 1998; Section 285(b) provides for program termination on September 30, 1998.

The EDWAA program, in operation since July 1989, is designed to provide a comprehensive range of services to all workers dislocated for whatever reason. Any worker who has been terminated or has received a notice of termination and is unlikely to return to his or her previous industry or occupation is eligible for EDWAA services, including primary, secondary, and tertiary workers. These services include (1) rapid response, available at the worksite on announcement of a plant closing or mass layoff to provide early intervention often before layoffs actually occur; (2) basic readjustment services, including outreach and intake, counseling and development of individual readjustment plans, labor market information, job development, job search and placement assistance, supportive services, relocation assistance, and pre-dislocation adjustment programs; (3) retraining services; and (4) needs-related payments. Dislocated workers who have exhausted UI or do not qualify for UI may receive payments to help complete an approved training or education program, provided they are enrolled in a training program during the 13th week of their initial UI benefit period, in an amount not to exceed the individual's UI amount or the poverty level, whichever is higher.

The EDWAA program is funded through an annual appropriation. It is a State grant program with a local delivery system. Eighty percent of the funds are distributed to the States by formula based on State unemployment rates. At least 60 percent of these funds are then distributed to a network of local

service delivery areas, which are administered by councils composed of private and public sector representatives; not more than 40 percent of these funds are retained for State activities. The Governor is responsible for overall program administration, management, allocating funds to substate areas, and targeting funds to areas of major worker dislocations. The remaining 20 percent of the total funds are reserved by the Secretary of Labor to make discretionary grants to States or regions experiencing major worker displacements or to aid especially hard-hit workers or industries.

Explanation of provision

Sections 501 through 506 of H.R. 3450 set forth the "NAFTA Worker Security Act." Section 502 amends Chapter 2 of Title II of the Trade Act of 1974 to add a new Section 250 as a Subchapter D, establishing a NAFTA Transitional Adjustment Assistance Program. New Section 250(a) provides that 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 subchapter D if the Secretary determines that a significant number or proportion of the workers in the firm or subdivision of the firm have become or are threatened to become totally or partially separated, and either--

(1) sales and/or production of the firm or subdivision have decreased absolutely, imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision; or

(2) there has been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles produced by the firm or subdivision.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause. The Secretary shall issue regulations relating to the application of the criteria.

New section 250(b) provides for preliminary findings and basic assistance to workers. A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm or their union or other duly authorized representative) may file a petition for certification of eligibility to apply for adjustment assistance under subchapter D with the Governor of the State in which the worker's firm or subdivision is located. Upon receipt of the petition, the Governor shall notify the Secretary of Labor. Within 10 days thereafter, the Governor shall make a preliminary finding as to whether the petition meets the certification criteria and transmit the petition, together with a statement of the finding and reasons therefor, to the Secretary for action. If the preliminary finding is affirmative, the Governor shall ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

New section 250(c) requires the Secretary, within 30 days after receiving the petition, to determine whether the petition meets the certification criteria. Upon an affirmative determination, the Secretary shall issue to

workers covered by the petition a certification of eligibility to apply for comprehensive assistance described under subsection (d). Upon denial of certification, the Secretary shall review the petition to determine if workers meet the requirements of Subchapter A of the existing TAA program for certification.

New section 250(d) requires the provision of the following types of assistance to workers covered by a certification in the same manner and to the same extent as workers covered under a certification under Subchapter A of the existing TAA program:

Employment services described in section 235;

Training described in section 236, except that the total amount of payments for training under Subchapter D for any fiscal year shall not exceed $30 million;

Trade readjustment allowances described in sections 231 through 234, except that (a) the authority under section 231 to pay TRA upon a finding that it is not feasible or appropriate to approve a training program for a worker shall not apply to payment of TRA under Subchapter D; (b) in order for a worker to qualify for TRA under Subchapter D, the worker shall be enrolled in a training program approved by the Secretary by the later of the last day of the 16th week of the worker's initial unemployment compensation benefit period, or the last day of the 6th week after the week in which the Secretary issues a certification covering the worker. In extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for not more than 30 days;

Job search allowances described in section 237; and

Relocation allowances described in section 238.

The provisions of Subchapter C on administration of the existing TAA program shall apply in the same manner and to the same extent to the administration of the Subchapter D program, 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).

Section 503 of H.R. 3450 makes conforming amendments to various sections of Chapter 2 of Title II of the Trade Act of 1974, including the addition of a new section 249A to prohibit any worker from receiving assistance relating to a separation pursuant to certifications under both Subchapters A and D.

Section 504 amends section 245 of the Trade Act of 1974 to authorize appropriations 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.

Section 505 amends section 285(c) of the Trade Act of 1974, to provide for termination of assistance, vouchers, allowances, or other payment under Subchapter D after the earlier of September 30, 1998, or the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided

under Subchapter D becomes effective. If, on or before the termination date, a worker is certified as eligible to apply for assistance under Subchapter D and is otherwise eligible to receive such assistance that worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements.

Section 506 provides that the amendments made by sections 501 through 505 shall take effect on the date the NAFTA enters into force for the United States. No worker shall be certified as eligible to receive assistance under Subchapter D whose last total or partial separation occurred before such date of entry into force, except that any worker whose last total or partial separation occurs after the date of enactment of H.R. 3450, and before the date of entry into force of the NAFTA who would otherwise be eligible to receive assistance under Subchapter D shall be eligible to receive such assistance.

Reasons for change

Subtitle A incorporates a program proposed by the Administration to address concerns of the Congress and the private sector about the need for an effective and fully funded program to assist the adjustment of workers who may be adversely impacted by the NAFTA. The program incorporates the elements of the existing TAA and EDWAA programs which various studies and reports have determined to be most beneficial and effective in assisting worker adjustment. The Administration intends this program to be transitional until a new comprehensive program, legislation for which is expected to be introduced early in 1994, becomes operational. The transitional program combines for eligible workers the rapid response and basic readjustment services available under the EDWAA program, and the ability to engage in appropriate long-term training with income support plus job search and relocation allowances available under the TAA program.

In addition, the Administration has stated its intent (as reflected in the Statement of Administrative Action accompanying the implementing bill) to supplement the legislative provisions of the transitional program through administrative action. The Secretary of Labor will use existing authority under the EDWAA program to provide similar assistance to workers in secondary firms that supply or assemble products directly affected by the NAFTA, as well as to family farmers and farm workers adversely affected by the NAFTA who do not meet the eligibility requirements under the legislation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee

Section 503 makes several technical amendments to conform the new Subchapter D with provisions in the current TAA statute, and to clarify that

no worker may receive assistance relating to the same layoff under both the current TAA program and the new program.

SEC. 504. AUTHORIZATION OF APPROPRIATIONS

Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended--(1) by striking "There" and inserting "(a) In General.--There",(2) by inserting ", other than subchapter D" after "chapter", and(3) by adding at the end the following new subsection:"(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.".

House Ways & Means Committee Report

Present law

Adjustment assistance is currently available to workers displaced as a result of trade competition under two Federal programs--the Trade Adjustment Assistance (TAA) program under Chapter 2 of Title II of the Trade Act of 1974, and the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) under Title III of the Job Training Partnership Act.

TAA is an entitlement program, consisting of trade readjustment allowances (TRA), employment services, training, and job search and relocation allowances for workers who lose their jobs because of increased imports. The program is administered by the Employment and Training Administration (ETA) of the Department of Labor through State and local offices of the Employment Service, under cooperative agreements between each State and the Secretary of Labor. ETA processes petitions and issues certifications or denials of petitions by groups of workers for eligibility to apply for TAA. The State agencies act as Federal agents in providing program information, processing applications, determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

Subtitle A of Chapter 2 (Sections 221 through 225) sets forth the requirements on petitions and determinations. A group of three or more workers, their union, or authorized representative may file a petition with the Secretary for certification of group eligibility to apply for TAA benefits. To certify a petitioning group of workers as eligible to apply, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;

2. Sales and/or production of the firm or subdivision have decreased absolutely; and

3. Increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have contributed importantly to both the layoffs and the decline in sales and/or production.

The Secretary is required to make the eligibility determination within 60 days after a petition is filed.

Subchapter B of Chapter 2 (Sections 231 through 238) sets forth the TAA program benefits and the qualifying requirements and criteria for workers to receive these benefits. In order to be entitled to payment of income support (TRA) for any week of unemployment, the worker must be covered by a certification, file an application with the State agency, and meet various qualifying requirements with respect to date of separation, prior employment history, and have been entitled to and have exhausted all rights to unemployment insurance (UI). In addition, the worker must be enrolled in or have completed a training program approved by the Secretary in order to receive basic TAA payments, unless the Secretary has determined and submitted a written statement to the individual worker certifying that approval of training is not "feasible or appropriate." The Secretary is required to revoke this training waiver if the Secretary subsequently finds that it is feasible and appropriate to approve training for the worker.

The TRA payment for a week of total unemployment is equal to, and a continuation of, the most recent weekly benefit amount of UI benefits payable to that worker. The maximum amount of basic TRA benefits payable to a worker is 52 times the TRA payable for a week of total unemployment, minus the total amount of UI regular and extended benefits to which the worker was entitled. A worker may receive up to 26 additional weeks of TRA benefits after collecting basic benefits (up to a total maximum of 78 weeks) if that worker is participating in approved training, in order to assist in completing that training. To receive the additional benefits, the worker must apply for the training program within 210 days after certification or first qualifying separation, whichever date is later.

Employment services under Section 235 consist of counseling, vocational testing, job search and placement, and other supportive services, provided for under any other Federal law.

Training under Section 236 must be approved by the Secretary for a certified worker if six statutory conditions are met. Upon such approval, the worker is entitled to payment by the Secretary of the training costs up to an $80 million ceiling on the total amount of payment for training from TAA funds in any fiscal year.

Job search allowances under Section 237 are available to certified workers for reimbursement of up to 90 percent of necessary job search expenses, not to exceed $800 for any worker, and necessary expenses to participate in an approved job search program.

Relocation allowances under Section 238 are available to certified workers equal to 90 percent of reasonable and necessary transportation expenses plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

Subchapter C of Chapter 2 (Sections 239 through 249) contains various administrative provisions, including on agreements between the Secretary and the States. Section 245 authorizes appropriations to the Department of Labor of such sums as may be necessary for the program through fiscal year 1998; Section 285(b) provides for program termination on September 30, 1998.

The EDWAA program, in operation since July 1989, is designed to provide a comprehensive range of services to all workers dislocated for whatever reason. Any worker who has been terminated or has received a notice of termination and is unlikely to return to his or her previous industry or occupation is eligible for EDWAA services, including primary, secondary, and tertiary workers. These services include (1) rapid response, available at the worksite on announcement of a plant closing or mass layoff to provide early intervention often before layoffs actually occur; (2) basic readjustment services, including outreach and intake, counseling and development of individual readjustment plans, labor market information, job development, job search and placement assistance, supportive services, relocation assistance, and pre-dislocation adjustment programs; (3) retraining services; and (4) needs-related payments. Dislocated workers who have exhausted UI or do not qualify for UI may receive payments to help complete an approved training or education program, provided they are enrolled in a training program during the 13th week of their initial UI benefit period, in an amount not to exceed the individual's UI amount or the poverty level, whichever is higher.

The EDWAA program is funded through an annual appropriation. It is a State grant program with a local delivery system. Eighty percent of the funds are distributed to the States by formula based on State unemployment rates. At least 60 percent of these funds are then distributed to a network of local service delivery areas, which are administered by councils composed of private and public sector representatives; not more than 40 percent of these funds are retained for State activities. The Governor is responsible for overall program administration, management, allocating funds to substate areas, and targeting funds to areas of major worker dislocations. The remaining 20 percent of the total funds are reserved by the Secretary of Labor to make discretionary grants to States or regions experiencing major worker displacements or to aid especially hard-hit workers or industries.

Explanation of provision

Sections 501 through 506 of H.R. 3450 set forth the "NAFTA Worker Security Act." Section 502 amends Chapter 2 of Title II of the Trade Act of 1974 to add a new Section 250 as a Subchapter D, establishing a NAFTA Transitional Adjustment Assistance Program. New Section 250(a) provides that 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 subchapter D if the Secretary determines that a significant number or proportion of the workers in the firm or subdivision of the firm have become or are threatened to become totally or partially separated, and either--

(1) sales and/or production of the firm or subdivision have decreased absolutely, imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision; or

(2) there has been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles produced by the firm or subdivision.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause. The Secretary shall issue regulations relating to the application of the criteria.

New section 250(b) provides for preliminary findings and basic assistance to workers. A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm or their union or other duly authorized representative) may file a petition for certification of eligibility to apply for adjustment assistance under subchapter D with the Governor of the State in which the worker's firm or subdivision is located. Upon receipt of the petition, the Governor shall notify the Secretary of Labor. Within 10 days thereafter, the Governor shall make a preliminary finding as to whether the petition meets the certification criteria and transmit the petition, together with a statement of the finding and reasons therefor, to the Secretary for action. If the preliminary finding is affirmative, the Governor shall ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

New section 250(c) requires the Secretary, within 30 days after receiving the petition, to determine whether the petition meets the certification criteria. Upon an affirmative determination, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for comprehensive assistance described under subsection (d). Upon denial of certification, the Secretary shall review the petition to determine if workers

meet the requirements of Subchapter A of the existing TAA program for certification.

New section 250(d) requires the provision of the following types of assistance to workers covered by a certification in the same manner and to the same extent as workers covered under a certification under Subchapter A of the existing TAA program:

Employment services described in section 235;

Training described in section 236, except that the total amount of payments for training under Subchapter D for any fiscal year shall not exceed $30 million;

Trade readjustment allowances described in sections 231 through 234, except that (a) the authority under section 231 to pay TRA upon a finding that it is not feasible or appropriate to approve a training program for a worker shall not apply to payment of TRA under Subchapter D; (b) in order for a worker to qualify for TRA under Subchapter D, the worker shall be enrolled in a training program approved by the Secretary by the later of the last day of the 16th week of the worker's initial unemployment compensation benefit period, or the last day of the 6th week after the week in which the Secretary issues a certification covering the worker. In extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for not more than 30 days;

Job search allowances described in section 237; and

Relocation allowances described in section 238.

The provisions of Subchapter C on administration of the existing TAA program shall apply in the same manner and to the same extent to the administration of the Subchapter D program, 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).

Section 503 of H.R. 3450 makes conforming amendments to various sections of Chapter 2 of Title II of the Trade Act of 1974, including the addition of a new section 249A to prohibit any worker from receiving assistance relating to a separation pursuant to certifications under both Subchapters A and D.

Section 504 amends section 245 of the Trade Act of 1974 to authorize appropriations 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.

Section 505 amends section 285(c) of the Trade Act of 1974, to provide for termination of assistance, vouchers, allowances, or other payment under Subchapter D after the earlier of September 30, 1998, or the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided under Subchapter D becomes effective. If, on or before the termination date, a worker is certified as eligible to apply for assistance under Subchapter D and is otherwise eligible to receive such assistance that worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements.

Section 506 provides that the amendments made by sections 501 through 505 shall take effect on the date the NAFTA enters into force for the United States. No worker shall be certified as eligible to receive assistance under Subchapter D whose last total or partial separation occurred before such date of entry into force, except that any worker whose last total or partial separation occurs after the date of enactment of H.R. 3450, and before the date of entry into force of the NAFTA who would otherwise be eligible to receive assistance under Subchapter D shall be eligible to receive such assistance.

Reasons for change

Subtitle A incorporates a program proposed by the Administration to address concerns of the Congress and the private sector about the need for an effective and fully funded program to assist the adjustment of workers who may be adversely impacted by the NAFTA. The program incorporates the elements of the existing TAA and EDWAA programs which various studies and reports have determined to be most beneficial and effective in assisting worker adjustment. The Administration intends this program to be transitional until a new comprehensive program, legislation for which is expected to be introduced early in 1994, becomes operational. The transitional program combines for eligible workers the rapid response and basic readjustment services available under the EDWAA program, and the ability to engage in appropriate long-term training with income support plus job search and relocation allowances available under the TAA program.

In addition, the Administration has stated its intent (as reflected in the Statement of Administrative Action accompanying the implementing bill) to supplement the legislative provisions of the transitional program through administrative action. The Secretary of Labor will use existing authority under the EDWAA program to provide similar assistance to workers in secondary firms that supply or assemble products directly affected by the NAFTA, as well as to family farmers and farm workers adversely affected by the NAFTA who do not meet the eligibility requirements under the legislation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 505. TERMINATION OF TRANSITION PROGRAM

Subsection (c) of section 285 of the Trade Act of 1974 (19 U.S.C. 2271 preceding note) is amended--(1) by striking "No" and inserting "(1) Except as provided in paragraph (2), no"; and(2) by adding at the end the following new paragraph:"(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,

House Ways & Means Committee

Present law

Adjustment assistance is currently available to workers displaced as a result of trade competition under two Federal programs--the Trade Adjustment Assistance (TAA) program under Chapter 2 of Title II of the Trade Act of 1974, and the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) under Title III of the Job Training Partnership Act.

TAA is an entitlement program, consisting of trade readjustment allowances (TRA), employment services, training, and job search and relocation allowances for workers who lose their jobs because of increased imports. The program is administered by the Employment and Training Administration (ETA) of the Department of Labor through State and local offices of the Employment Service, under cooperative agreements between each State and the Secretary of Labor. ETA processes petitions and issues

certifications or denials of petitions by groups of workers for eligibility to apply for TAA. The State agencies act as Federal agents in providing program information, processing applications, determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

Subtitle A of Chapter 2 (Sections 221 through 225) sets forth the requirements on petitions and determinations. A group of three or more workers, their union, or authorized representative may file a petition with the Secretary for certification of group eligibility to apply for TAA benefits. To certify a petitioning group of workers as eligible to apply, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;

2. Sales and/or production of the firm or subdivision have decreased absolutely; and

3. Increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have contributed importantly to both the layoffs and the decline in sales and/or production.

The Secretary is required to make the eligibility determination within 60 days after a petition is filed.

Subchapter B of Chapter 2 (Sections 231 through 238) sets forth the TAA program benefits and the qualifying requirements and criteria for workers to receive these benefits. In order to be entitled to payment of income support (TRA) for any week of unemployment, the worker must be covered by a certification, file an application with the State agency, and meet various qualifying requirements with respect to date of separation, prior employment history, and have been entitled to and have exhausted all rights to unemployment insurance (UI). In addition, the worker must be enrolled in or have completed a training program approved by the Secretary in order to receive basic TAA payments, unless the Secretary has determined and submitted a written statement to the individual worker certifying that approval of training is not "feasible or appropriate." The Secretary is required to revoke this training waiver if the Secretary subsequently finds that it is feasible and appropriate to approve training for the worker.

The TRA payment for a week of total unemployment is equal to, and a continuation of, the most recent weekly benefit amount of UI benefits payable to that worker. The maximum amount of basic TRA benefits payable to a worker is 52 times the TRA payable for a week of total unemployment, minus the total amount of UI regular and extended benefits to which the worker was entitled. A worker may receive up to 26 additional weeks of TRA benefits after collecting basic benefits (up to a total maximum of 78 weeks) if

that worker is participating in approved training, in order to assist in completing that training. To receive the additional benefits, the worker must apply for the training program within 210 days after certification or first qualifying separation, whichever date is later.

Employment services under Section 235 consist of counseling, vocational testing, job search and placement, and other supportive services, provided for under any other Federal law.

Training under Section 236 must be approved by the Secretary for a certified worker if six statutory conditions are met. Upon such approval, the worker is entitled to payment by the Secretary of the training costs up to an $80 million ceiling on the total amount of payment for training from TAA funds in any fiscal year.

Job search allowances under Section 237 are available to certified workers for reimbursement of up to 90 percent of necessary job search expenses, not to exceed $800 for any worker, and necessary expenses to participate in an approved job search program.

Relocation allowances under Section 238 are available to certified workers equal to 90 percent of reasonable and necessary transportation expenses plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

Subchapter C of Chapter 2 (Sections 239 through 249) contains various administrative provisions, including on agreements between the Secretary and the States. Section 245 authorizes appropriations to the Department of Labor of such sums as may be necessary for the program through fiscal year 1998; Section 285(b) provides for program termination on September 30, 1998.

The EDWAA program, in operation since July 1989, is designed to provide a comprehensive range of services to all workers dislocated for whatever reason. Any worker who has been terminated or has received a notice of termination and is unlikely to return to his or her previous industry or occupation is eligible for EDWAA services, including primary, secondary, and tertiary workers. These services include (1) rapid response, available at the worksite on announcement of a plant closing or mass layoff to provide early intervention often before layoffs actually occur; (2) basic readjustment services, including outreach and intake, counseling and development of individual readjustment plans, labor market information, job development, job search and placement assistance, supportive services, relocation assistance, and pre-dislocation adjustment programs; (3) retraining services; and (4) needs-related payments. Dislocated workers who have exhausted UI or do not qualify for UI may receive payments to help complete an approved training or education program, provided they are enrolled in a training program during the 13th week of their initial UI benefit period, in an amount

not to exceed the individual's UI amount or the poverty level, whichever is higher.

The EDWAA program is funded through an annual appropriation. It is a State grant program with a local delivery system. Eighty percent of the funds are distributed to the States by formula based on State unemployment rates. At least 60 percent of these funds are then distributed to a network of local service delivery areas, which are administered by councils composed of private and public sector representatives; not more than 40 percent of these funds are retained for State activities. The Governor is responsible for overall program administration, management, allocating funds to substate areas, and targeting funds to areas of major worker dislocations. The remaining 20 percent of the total funds are reserved by the Secretary of Labor to make discretionary grants to States or regions experiencing major worker displacements or to aid especially hard-hit workers or industries.

Explanation of provision

Sections 501 through 506 of H.R. 3450 set forth the "NAFTA Worker Security Act." Section 502 amends Chapter 2 of Title II of the Trade Act of 1974 to add a new Section 250 as a Subchapter D, establishing a NAFTA Transitional Adjustment Assistance Program. New Section 250(a) provides that 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 subchapter D if the Secretary determines that a significant number or proportion of the workers in the firm or subdivision of the firm have become or are threatened to become totally or partially separated, and either--

(1) sales and/or production of the firm or subdivision have decreased absolutely, imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision; or

(2) there has been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles produced by the firm or subdivision.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause. The Secretary shall issue regulations relating to the application of the criteria.

New section 250(b) provides for preliminary findings and basic assistance to workers. A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm or their union or other duly authorized representative) may file a petition for certification of eligibility to apply for

adjustment assistance under subchapter D with the Governor of the State in which the worker's firm or subdivision is located. Upon receipt of the petition, the Governor shall notify the Secretary of Labor. Within 10 days thereafter, the Governor shall make a preliminary finding as to whether the petition meets the certification criteria and transmit the petition, together with a statement of the finding and reasons therefor, to the Secretary for action. If the preliminary finding is affirmative, the Governor shall ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

New section 250(c) requires the Secretary, within 30 days after receiving the petition, to determine whether the petition meets the certification criteria. Upon an affirmative determination, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for comprehensive assistance described under subsection (d). Upon denial of certification, the Secretary shall review the petition to determine if workers meet the requirements of Subchapter A of the existing TAA program for certification.

New section 250(d) requires the provision of the following types of assistance to workers covered by a certification in the same manner and to the same extent as workers covered under a certification under Subchapter A of the existing TAA program:

Employment services described in section 235;

Training described in section 236, except that the total amount of payments for training under Subchapter D for any fiscal year shall not exceed $30 million;

Trade readjustment allowances described in sections 231 through 234, except that (a) the authority under section 231 to pay TRA upon a finding that it is not feasible or appropriate to approve a training program for a worker shall not apply to payment of TRA under Subchapter D; (b) in order for a worker to qualify for TRA under Subchapter D, the worker shall be enrolled in a training program approved by the Secretary by the later of the last day of the 16th week of the worker's initial unemployment compensation benefit period, or the last day of the 6th week after the week in which the Secretary issues a certification covering the worker. In extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for not more than 30 days;

Job search allowances described in section 237; and

Relocation allowances described in section 238.

The provisions of Subchapter C on administration of the existing TAA program shall apply in the same manner and to the same extent to the

administration of the Subchapter D program, 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).

Section 503 of H.R. 3450 makes conforming amendments to various sections of Chapter 2 of Title II of the Trade Act of 1974, including the addition of a new section 249A to prohibit any worker from receiving assistance relating to a separation pursuant to certifications under both Subchapters A and D.

Section 504 amends section 245 of the Trade Act of 1974 to authorize appropriations 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.

Section 505 amends section 285(c) of the Trade Act of 1974, to provide for termination of assistance, vouchers, allowances, or other payment under Subchapter D after the earlier of September 30, 1998, or the date on which legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided under Subchapter D becomes effective. If, on or before the termination date, a worker is certified as eligible to apply for assistance under Subchapter D and is otherwise eligible to receive such assistance that worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements.

Section 506 provides that the amendments made by sections 501 through 505 shall take effect on the date the NAFTA enters into force for the United States. No worker shall be certified as eligible to receive assistance under Subchapter D whose last total or partial separation occurred before such date of entry into force, except that any worker whose last total or partial separation occurs after the date of enactment of H.R. 3450, and before the date of entry into force of the NAFTA who would otherwise be eligible to receive assistance under Subchapter D shall be eligible to receive such assistance.

Reasons for change

Subtitle A incorporates a program proposed by the Administration to address concerns of the Congress and the private sector about the need for an effective and fully funded program to assist the adjustment of workers who may be adversely impacted by the NAFTA. The program incorporates the elements of the existing TAA and EDWAA programs which various studies and reports have determined to be most beneficial and effective in assisting worker adjustment. The Administration intends this program to be

transitional until a new comprehensive program, legislation for which is expected to be introduced early in 1994, becomes operational. The transitional program combines for eligible workers the rapid response and basic readjustment services available under the EDWAA program, and the ability to engage in appropriate long-term training with income support plus job search and relocation allowances available under the TAA program.

In addition, the Administration has stated its intent (as reflected in the Statement of Administrative Action accompanying the implementing bill) to supplement the legislative provisions of the transitional program through administrative action. The Secretary of Labor will use existing authority under the EDWAA program to provide similar assistance to workers in secondary firms that supply or assemble products directly affected by the NAFTA, as well as to family farmers and farm workers adversely affected by the NAFTA who do not meet the eligibility requirements under the legislation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 506. EFFECTIVE DATE

(a) In General.--The amendments made by sections 501, 502, 503, 504, and 505 shall take effect on the date the Agreement enters into force with respect to the United States.(b) Covered Workers.--(1) General rule.--Except as provided in paragraph (2), no worker shall be certified as eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974 (as added by this subtitle) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurred before such date of

entry into force.(2) Reachback.--Notwithstanding paragraph (1), any worker--(A) whose last total or partial separation from a firm (or appropriate subdivision of a firm) occurs--(i) after the date of the enactment of this Act, and(ii) before such date of entry into force, and(B) who would otherwise be eligible to receive assistance under subchapter D of chapter 2 of title II of the Trade Act of 1974,

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Present law

Adjustment assistance is currently available to workers displaced as a result of trade competition under two Federal programs--the Trade Adjustment Assistance (TAA) program under Chapter 2 of Title II of the Trade Act of 1974, and the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) under Title III of the Job Training Partnership Act.

TAA is an entitlement program, consisting of trade readjustment allowances (TRA), employment services, training, and job search and relocation allowances for workers who lose their jobs because of increased imports. The program is administered by the Employment and Training Administration (ETA) of the Department of Labor through State and local offices of the Employment Service, under cooperative agreements between each State and the Secretary of Labor. ETA processes petitions and issues certifications or denials of petitions by groups of workers for eligibility to apply for TAA. The State agencies act as Federal agents in providing program information, processing applications, determining individual worker eligibility for benefits, issuing payments, and providing reemployment services and training opportunities.

Subtitle A of Chapter 2 (Sections 221 through 225) sets forth the requirements on petitions and determinations. A group of three or more workers, their union, or authorized representative may file a petition with the Secretary for certification of group eligibility to apply for TAA benefits. To certify a petitioning group of workers as eligible to apply, the Secretary must determine that three conditions are met:

1. A significant number or proportion of the workers in the firm or subdivision of the firm have been or are threatened to be totally or partially laid off;

2. Sales and/or production of the firm or subdivision have decreased absolutely; and

3. Increased imports of articles like or directly competitive with articles produced by the firm or subdivision of the firm have contributed importantly to both the layoffs and the decline in sales and/or production.

The Secretary is required to make the eligibility determination within 60 days after a petition is filed.

Subchapter B of Chapter 2 (Sections 231 through 238) sets forth the TAA program benefits and the qualifying requirements and criteria for workers to receive these benefits. In order to be entitled to payment of income support (TRA) for any week of unemployment, the worker must be covered by a certification, file an application with the State agency, and meet various qualifying requirements with respect to date of separation, prior employment history, and have been entitled to and have exhausted all rights to unemployment insurance (UI). In addition, the worker must be enrolled in or have completed a training program approved by the Secretary in order to receive basic TAA payments, unless the Secretary has determined and submitted a written statement to the individual worker certifying that approval of training is not "feasible or appropriate." The Secretary is required to revoke this training waiver if the Secretary subsequently finds that it is feasible and appropriate to approve training for the worker.

The TRA payment for a week of total unemployment is equal to, and a continuation of, the most recent weekly benefit amount of UI benefits payable to that worker. The maximum amount of basic TRA benefits payable to a worker is 52 times the TRA payable for a week of total unemployment, minus the total amount of UI regular and extended benefits to which the worker was entitled. A worker may receive up to 26 additional weeks of TRA benefits after collecting basic benefits (up to a total maximum of 78 weeks) if that worker is participating in approved training, in order to assist in completing that training. To receive the additional benefits, the worker must apply for the training program within 210 days after certification or first qualifying separation, whichever date is later.

Employment services under Section 235 consist of counseling, vocational testing, job search and placement, and other supportive services, provided for under any other Federal law.

Training under Section 236 must be approved by the Secretary for a certified worker if six statutory conditions are met. Upon such approval, the worker is entitled to payment by the Secretary of the training costs up to an $80 million ceiling on the total amount of payment for training from TAA funds in any fiscal year.

Job search allowances under Section 237 are available to certified workers for reimbursement of up to 90 percent of necessary job search expenses, not to exceed $800 for any worker, and necessary expenses to participate in an approved job search program.

Relocation allowances under Section 238 are available to certified workers equal to 90 percent of reasonable and necessary transportation expenses

plus a lump sum payment of three times the worker's average weekly wage up to a maximum amount of $800.

Subchapter C of Chapter 2 (Sections 239 through 249) contains various administrative provisions, including on agreements between the Secretary and the States. Section 245 authorizes appropriations to the Department of Labor of such sums as may be necessary for the program through fiscal year 1998; Section 285(b) provides for program termination on September 30, 1998.

The EDWAA program, in operation since July 1989, is designed to provide a comprehensive range of services to all workers dislocated for whatever reason. Any worker who has been terminated or has received a notice of termination and is unlikely to return to his or her previous industry or occupation is eligible for EDWAA services, including primary, secondary, and tertiary workers. These services include (1) rapid response, available at the worksite on announcement of a plant closing or mass layoff to provide early intervention often before layoffs actually occur; (2) basic readjustment services, including outreach and intake, counseling and development of individual readjustment plans, labor market information, job development, job search and placement assistance, supportive services, relocation assistance, and pre-dislocation adjustment programs; (3) retraining services; and (4) needs-related payments. Dislocated workers who have exhausted UI or do not qualify for UI may receive payments to help complete an approved training or education program, provided they are enrolled in a training program during the 13th week of their initial UI benefit period, in an amount not to exceed the individual's UI amount or the poverty level, whichever is higher.

The EDWAA program is funded through an annual appropriation. It is a State grant program with a local delivery system. Eighty percent of the funds are distributed to the States by formula based on State unemployment rates. At least 60 percent of these funds are then distributed to a network of local service delivery areas, which are administered by councils composed of private and public sector representatives; not more than 40 percent of these funds are retained for State activities. The Governor is responsible for overall program administration, management, allocating funds to substate areas, and targeting funds to areas of major worker dislocations. The remaining 20 percent of the total funds are reserved by the Secretary of Labor to make discretionary grants to States or regions experiencing major worker displacements or to aid especially hard-hit workers or industries.

Explanation of provision

Sections 501 through 506 of H.R. 3450 set forth the "NAFTA Worker Security Act." Section 502 amends Chapter 2 of Title II of the Trade Act of 1974 to add a new Section 250 as a Subchapter D, establishing a NAFTA Transitional Adjustment Assistance Program. New Section 250(a) provides

that 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 subchapter D if the Secretary determines that a significant number or proportion of the workers in the firm or subdivision of the firm have become or are threatened to become totally or partially separated, and either--

(1) sales and/or production of the firm or subdivision have decreased absolutely, imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increase in imports contributed importantly to the workers' separation or threat of separation and to the decline in the sales or production of the firm or subdivision; or

(2) there has been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles produced by the firm or subdivision.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause. The Secretary shall issue regulations relating to the application of the criteria.

New section 250(b) provides for preliminary findings and basic assistance to workers. A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm or their union or other duly authorized representative) may file a petition for certification of eligibility to apply for adjustment assistance under subchapter D with the Governor of the State in which the worker's firm or subdivision is located. Upon receipt of the petition, the Governor shall notify the Secretary of Labor. Within 10 days thereafter, the Governor shall make a preliminary finding as to whether the petition meets the certification criteria and transmit the petition, together with a statement of the finding and reasons therefor, to the Secretary for action. If the preliminary finding is affirmative, the Governor shall ensure that rapid response and basic readjustment services authorized under other Federal law are made available to the workers.

New section 250(c) requires the Secretary, within 30 days after receiving the petition, to determine whether the petition meets the certification criteria. Upon an affirmative determination, the Secretary shall issue to workers covered by the petition a certification of eligibility to apply for comprehensive assistance described under subsection (d). Upon denial of certification, the Secretary shall review the petition to determine if workers meet the requirements of Subchapter A of the existing TAA program for certification.

New section 250(d) requires the provision of the following types of assistance to workers covered by a certification in the same manner and to

the same extent as workers covered under a certification under Subchapter A of the existing TAA program:

Employment services described in section 235;

Training described in section 236, except that the total amount of payments for training under Subchapter D for any fiscal year shall not exceed $30 million;

Trade readjustment allowances described in sections 231 through 234, except that (a) the authority under section 231 to pay TRA upon a finding that it is not feasible or appropriate to approve a training program for a worker shall not apply to payment of TRA under Subchapter D; (b) in order for a worker to qualify for TRA under Subchapter D, the worker shall be enrolled in a training program approved by the Secretary by the later of the last day of the 16th week of the worker's initial unemployment compensation benefit period, or the last day of the 6th week after the week in which the Secretary issues a certification covering the worker. In extenuating circumstances relating to enrollment in a training program, the Secretary may extend the time for enrollment for not more than 30 days;

Job search allowances described in section 237; and

Relocation allowances described in section 238.

The provisions of Subchapter C on administration of the existing TAA program shall apply in the same manner and to the same extent to the administration of the Subchapter D program, 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).

Section 503 of H.R. 3450 makes conforming amendments to various sections of Chapter 2 of Title II of the Trade Act of 1974, including the addition of a new section 249A to prohibit any worker from receiving assistance relating to a separation pursuant to certifications under both Subchapters A and D.

Section 504 amends section 245 of the Trade Act of 1974 to authorize appropriations 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.

Section 505 amends section 285(c) of the Trade Act of 1974, to provide for termination of assistance, vouchers, allowances, or other payment under Subchapter D after the earlier of September 30, 1998, or the date on which

legislation establishing a program providing dislocated workers with comprehensive assistance substantially similar to the assistance provided under Subchapter D becomes effective. If, on or before the termination date, a worker is certified as eligible to apply for assistance under Subchapter D and is otherwise eligible to receive such assistance that worker shall continue to be eligible to receive such assistance for any week for which the worker meets the eligibility requirements.

Section 506 provides that the amendments made by sections 501 through 505 shall take effect on the date the NAFTA enters into force for the United States. No worker shall be certified as eligible to receive assistance under Subchapter D whose last total or partial separation occurred before such date of entry into force, except that any worker whose last total or partial separation occurs after the date of enactment of H.R. 3450, and before the date of entry into force of the NAFTA who would otherwise be eligible to receive assistance under Subchapter D shall be eligible to receive such assistance.

Reasons for change

Subtitle A incorporates a program proposed by the Administration to address concerns of the Congress and the private sector about the need for an effective and fully funded program to assist the adjustment of workers who may be adversely impacted by the NAFTA. The program incorporates the elements of the existing TAA and EDWAA programs which various studies and reports have determined to be most beneficial and effective in assisting worker adjustment. The Administration intends this program to be transitional until a new comprehensive program, legislation for which is expected to be introduced early in 1994, becomes operational. The transitional program combines for eligible workers the rapid response and basic readjustment services available under the EDWAA program, and the ability to engage in appropriate long-term training with income support plus job search and relocation allowances available under the TAA program.

In addition, the Administration has stated its intent (as reflected in the Statement of Administrative Action accompanying the implementing bill) to supplement the legislative provisions of the transitional program through administrative action. The Secretary of Labor will use existing authority under the EDWAA program to provide similar assistance to workers in secondary firms that supply or assemble products directly affected by the NAFTA, as well as to family farmers and farm workers adversely affected by the NAFTA who do not meet the eligibility requirements under the legislation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 507. TREATMENT OF SELF-EMPLOYMENT ASSISTANCE PROGRAMS

(a) General Rule.--Section 3306 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:"(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 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,

"(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.".(b) Conforming Amendments.--(1) Section 3304(a)(4) of such Code is amended--(A) in subparagraph (D), by striking "; and" and inserting a semicolon;(B) in subparagraph (E), by striking the semicolon and inserting

"; and"; and(C) by adding at the end the following new subparagraph:"(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t));".(2) Section 3306(f) of such Code is amended--(A) in paragraph (3), by striking "; and" and inserting a semicolon;(B) in paragraph (4), by striking the period and inserting "; and"; and(C) by adding at the end the following new paragraph:"(5) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).".(3) Section 303(a)(5) of the Social Security Act (42 U.S.C. 503(a)(5)) is amended by striking "; and" and inserting ": 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".(c) State Reports.--Any State operating a self-employment program authorized by the Secretary of Labor under this section shall report annually to the Secretary on the number of individuals who participate in the self- employment assistance program, the number of individuals who are able to develop and sustain businesses, the operating costs of the program, compliance with program requirements, and any other relevant aspects of program operations requested by the Secretary.(d) Report to Congress.--Not later than 4 years after the date of the enactment of this Act, the Secretary of Labor shall submit a report to the Congress with respect to the operation of the program authorized under this section. Such report shall be based on the reports received from the States pursuant to subsection (c) and include such other information as the Secretary of Labor determines is appropriate.(e) Effective Date; Sunset.--(1) Effective date.--The provisions of this section and the amendments made by this section shall take effect on the date of the enactment of this Act.(2) Sunset.--The authority provided by this section, and the amendments made by this section, shall terminate 5 years after the date of the enactment of this Act.

House Ways & Means Committee Report

Present law

All funds withdrawn from the unemployment trust fund of a State must be used solely in payment of unemployment compensation, exclusive of administrative expenses and refunds of erroneously paid sums except: (1) certain authorized disability payments; (2) certain "Reed Act" expenses; (3) authorized health insurance costs; (4) repayments of overpayments; and (5) short-time compensation.

Explanation of provision

Section 507 of H.R. 3450 would amend the Internal Revenue Code and the Social Security Act to authorize States to withdraw funds from their accounts in the unemployment trust fund to pay self-employment allowances under a self-employment assistance program.

The provision would amend the Internal Revenue Code to define a self-employment assistance program as a program under which: (1) individuals meeting the eligibility criteria may receive a self-employment allowance in lieu of unemployment compensation under any State or Federal law for the purpose of assisting the individuals in establishing a business and becoming self-employed; (2) the allowance is payable in the same amount, on the same terms and subject to the same conditions as unemployment compensation, except that: (a) the requirements relating to availability for work, active work search, and refusal to accept employment are waived, (b) requirements relating to disqualifying income are not applied to income earned from self- employment, and (c) the individuals are considered unemployed for the purpose of State and Federal unemployment compensation laws; (3) individuals are eligible if they are eligible for unemployment compensation, are identified pursuant to a State worker profiling system as likely to exhaust regular unemployment compensation, and are participating in self-employment training that meets conditions established by the Secretary of Labor and the State agency and includes entrepreneurial training and supportive services; and (4) such individuals certify on a weekly basis that they have engaged full-time (including training) in establishing a business and becoming self-employed.

The Secretary of Labor would be required to submit to Congress a report on the self-employment assistance program not later than four years after enactment. The report must be based on reports of the States to the Secretary and may include other information the Secretary determines appropriate.

The amendments would be effective upon enactment, but would terminate five years after the date of enactment.

Reasons for change

Providing States the authority to establish and operate self-employment programs would significantly benefit workers that may be dislocated because of the NAFTA. The traditional system of unemployment compensation is primarily designed to provide income support for workers who are temporarily laid off or expect to be unemployed for only a short time. However, as a result of the NAFTA and other factors, some workers may lose their jobs permanently and need additional tools besides the basic income maintenance provided by the unemployment insurance system in order to re-enter the work force. For some of those workers, access to a self-employment program would be the best path for them to re-enter the work force. This provision gives States the ability to add the tool of self-employment training and support to the options available to help speed the transition of dislocated workers back into the work force.

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No Legislative History.

Senate Finance Committee Report

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

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

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

The aggregate number of individuals receiving a self-employment allowance may not at any time exceed five percent of the number of individuals receiving regular unemployment compensation under the State law at such

time. In addition, the program may not result in any cost to the Unemployment Trust Fund in excess of the cost that would be incurred by the State if the State had not participated in the self-employment program.

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

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

Subtitle B--Provisions Relating to Performance under the Agreement

House Ways & Means Committee Report

SUBTITLE B--PROVISIONS RELATING TO PERFORMANCE UNDER THE AGREEMENT

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

SUBTITLE B--PROVISIONS RELATING TO PERFORMANCE UNDER THE AGREEMENT

SEC. 511. DISCRIMINATORY TAXES

It is the sense of the Congress that when a State, province, or other governmental entity of a NAFTA country discriminatorily enforces sales or other taxes so as to afford protection to domestic production or domestic service providers, such enforcement is in violation of the terms of the Agreement. When such discriminatory enforcement adversely affects United States producers of goods or United States service providers, the Trade Representative should pursue all appropriate remedies to obtain removal of such discriminatory enforcement, including invocation of the provisions of the Agreement.

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 511 of H.R. 3450 expresses the Sense of the Congress that when a State, province, or other governmental entity of a NAFTA country discriminatorily enforces sales or other taxes so as to afford protection to domestic production or domestic service providers, such enforcement is in violation of the NAFTA. When such discriminatory enforcement adversely affects U.S. producers of goods or U.S. service providers, the Trade Representative should pursue all appropriate remedies to obtain removal of the discriminatory enforcement, including invoking consultation and possibly dispute settlement provisions of the NAFTA.

Reasons for change

Section 511 reflects Congressional concern arising from an 11 percent New Brunswick provincial sales tax which Canadian Customs began collecting at the Maine-New Brunswick border on July 1, 1993, on certain goods, including alcoholic beverages and tobacco products. This tax, imposed on purchases made in Maine, but not on inter-provincial purchases, is the subject of formal consultations with the Canadian government to address the harmful impact of the discriminatory tax on U.S. businesses in the context of the U.S.-Canada FTA. Section 511 is intended to ensure that the USTR pursues appropriate remedies, including under provisions of the NAFTA, to obtain removal of any future adverse discriminatory tax enforcement.

Relationship between tax treaties and NAFTA. Paragraph 2 of Article 2103 (Taxation) states that a tax convention, defined as a convention for the avoidance of double taxation or other international taxation agreement or arrangement, shall prevail to the extent of any inconsistency with NAFTA.

The Committee understands that, in the case of parallel rights and obligations under a tax convention and NAFTA, only the tax convention's procedural provisions with respect to such rights and obligations shall be used and, thus, the tax convention, subject to certain provisions and understandings described below, will prevail.

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

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

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

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

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

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

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

National treatment with respect to cross-border trade in services, and financial services. Subject to certain exceptions, Article 2103 provides that Article 1202 (Cross-Border Trade In Services--National Treatment) and Article 1405 (Financial Services--National Treatment) apply to taxation

measures on income, capital gains or the taxable capital of corporations, and to the asset tax under the Asset Tax Law of Mexico, that relate to the purchase or consumption of particular services. With regard to Article 1405, the Committee wishes to clarify that it intends only the national treatment requirements of paragraph 3 of Article 1405 (relating to the treatment of cross-border financial service provisions of another Party) to apply to such taxation measures.

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

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

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

This provision reflects the Committee's concern about an 11 percent sales tax imposed by the Province of New Brunswick, which Canadian Customs began collecting at the Maine-New Brunswick border on July 1, 1993, on certain

goods including alcoholic beverages and tobacco products. This tax, imposed on purchases made in the United States but not on those made in other Canadian provinces, is the subject of formal USTR consultations with the Government of Canada.

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

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

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

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

The Committee understands that rights or obligations in respect of a tax must be addressed by the terms of the tax convention if the tax convention

is to prevail over NAFTA in accordance with paragraph 2. Examples of such provisions include business profits, dividend, interest, royalty, capital gains and other income provisions; provisions concerning dependent or independent services; and nondiscriminatory treatment provisions. Other examples are the provisions in present or proposed U.S. tax conventions with the other NAFTA Parties that allow a Party to tax its citizens and residents. A further example is a provision in the proposed U.S. tax convention with Mexico limiting the benefits of the convention to qualified residents of the treaty parties. Under such a limitation on benefits provision, for example, the right of a party to a tax convention to impose tax on a royalty arising in that party and paid to a resident of the other party is addressed by the convention and therefore is not subject to NAFTA, even in a case in which the resident of the other party is not entitled to the benefits of the convention under a limitation on benefits provision. In addition, pursuant to the provisions of the U.S. tax conventions with the other NAFTA Parties, either party to the tax convention is permitted to impose a branch profits tax. Similarly, the nondiscrimination provisions of Canada's tax conventions with the other NAFTA Parties state that corporations controlled by residents of the other party to the tax convention will receive treatment no less favorable than corporations controlled by residents of a third party; thus, either party to those tax conventions may implement special measures with respect to taxation or any requirement connected thereto applicable to corporations controlled by its own residents.

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

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

2007. The Committee understands that the time periods set out above may be altered in any particular case by mutual agreement of the consulting competent authorities.

National treatment with respect to cross-border trade in services, and financial services.--Subject to certain exceptions, Article 2103 provides that Article 1202 (Cross-Border Trade In Services--National Treatment) and Article 1405 (Financial Services--National Treatment) apply to taxation measures on income, capital gains or the taxable capital of corporations, and to the asset tax under the Asset Tax Law of Mexico, that relate to the purchase or consumption of particular services. With regard to Article 1405, the Committee wishes to clarify that it intends only the national treatment requirements of paragraph 3 of Article 1405 (relating to the treatment of cross-border financial service provisions of another Party) to apply to such taxation measures.

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

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

SEC. 512. REVIEW OF THE OPERATION AND EFFECTS OF THE AGREEMENT

(a) Study.--By not later than July 1, 1997, the President shall provide to the Congress a comprehensive study on the operation and effects of the Agreement. The study shall include an assessment of the following factors:(1) The net effect of the Agreement on the economy of the United

States, including with respect to the United States gross national product, employment, balance of trade, and current account balance.(2) The industries (including agricultural industries) in the United States that have significantly increased exports to Mexico or Canada as a result of the Agreement, or in which imports into the United States from Mexico or Canada have increased significantly as a result of the Agreement, and the extent of any change in the wages, employment, or productivity in each such industry as a result of the Agreement.(3) The extent to which investment in new or existing production or other operations in the United States has been redirected to Mexico as a result of the Agreement, and the effect on United States employment of such redirection.(4) The extent of any increase in investment, including foreign direct investment and increased investment by United States investors, in new or existing production or other operations in the United States as a result of the Agreement, and the effect on United States employment of such investment.(5) The extent to which the Agreement has contributed to--(A) improvement in real wages and working conditions in Mexico,(B) effective enforcement of labor and environmental laws in Mexico, and(C) the reduction or abatement of pollution in the region of the United States-Mexico border.(b) Scope.--In assessing the factors listed in subsection (a), to the extent possible, the study shall distinguish between the consequences of the Agreement and events that likely would have occurred without the Agreement. In addition, the study shall evaluate the effects of the Agreement relative to aggregate economic changes and, to the extent possible, relative to the effects of other factors, including--(1) international competition,(2) reductions in defense spending,(3) the shift from traditional manufacturing to knowledge and information based economic activity, and(4) the Federal debt burden.(c) Recommendations of the President.--The study shall include any appropriate recommendations by the President with respect to the operation and effects of the Agreement, including recommendations with respect to the specific factors listed in subsection (a).(d) Recommendations of Certain Committees.--The President shall provide the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and any other committee that has jurisdiction over any provision of United States law that was either enacted or amended by the North American Free Trade Agreement Implementation Act. Each such committee may hold hearings and make recommendations to the President with respect to the operation and effects of the Agreement.

House Ways & Means Committee Report

Present law

Section 304(f) of the U.S.-Canada FTA Implementation Act requires the President to submit a biennial report to the Congress on the general effectiveness of operation of the U.S.-Canada FTA, the status of negotiations regarding agreements the President is authorized to enter into with Canada under section 304, the effectiveness and operation of any such agreement,

and the actions taken by the United States and Canada to implement further the FTA objectives. Section 107 of H.R. 3450 suspends section 304(f) on the date the United States and Canada agree to suspend the operation of the U.S.- Canada FTA by reason of the entry into force between them of the NAFTA.

Explanation of provision

Section 512 of H.R. 3450 requires the President to provide to the Congress by July 1, 1997, a comprehensive study on the operation and effects of the NAFTA. The study shall include an assessment of (1) the net effect of the NAFTA on the U.S. economy, including with respect to the U.S. gross national product, employment, balance of trade, and current account balance; (2) as a result of the NAFTA, the U.S. industries (including agricultural industries) that have significantly increased exports to Mexico or Canada, or in which U.S. imports from Mexico or Canada have increased significantly, and the extent of any change in the wages, employment, or productivity in each such industry; (3) the extent to which investment in new or existing production or other operations in the United States has been redirected to Mexico as a result of the NAFTA, and the effect of such redirection on U.S. employment; (4) the extent of any increase in investment, including foreign direct investment and increased U.S. investment in new or existing U.S. production or other operations as a result of the NAFTA, and the effect of such investment on U.S. employment; and (5) the extent to which the NAFTA has contributed to improvement in Mexican real wages and working conditions, effective enforcement of Mexican labor and environmental laws, and the reduction or abatement of pollution in the U.S.-Mexican border region.

In assessing these factors, the study shall distinguish, to the extent possible, between the consequences of the NAFTA and events that likely would have occurred without the NAFTA. The study shall also evaluate the effects of the NAFTA relative to aggregate economic changes and relative to the effects of other factors, to the extent possible, including international competition, reductions in defense spending, the shift from traditional manufacturing to knowledge and information based economic activity, and the Federal debt burden.

The study shall include any appropriate recommendations by the President with respect to the operation and effects of the NAFTA. The President shall provide the study to the House Committee on Ways and Means and Senate Committee on Finance and any other committee having jurisdiction over any provision of U.S. law enacted or amended by the NAFTA Implementation Act. Each committee may hold hearings and make recommendations to the President with respect to the operation and effects of the Agreement.

Reasons for change

The study will provide interested Congressional committees a comprehensive three-year review of the operation and effects of the NAFTA on the U.S. economy as well as on conditions in Mexico, to the extent that effects of the NAFTA can be distinguished from other factors. The results of the study should provide a useful basis for the President and the Congress to determine whether recommendations are warranted at that time with respect to the Agreement.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 513. ACTIONS AFFECTING UNITED STATES CULTURAL INDUSTRIES

Section 182 of the Trade Act of 1974 (19 U.S.C. 2242) is amended by adding at the end the following new subsection:"(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.".

House Ways & Means Committee Report

Present law

Paragraph 1 of article 2005 of the U.S.-Canada FTA exempts "cultural industries" (i.e., the print, film and video, music, radio and television sectors) from a number of the obligations of that agreement. Article 2005 also exempted from all obligations under the U.S.-Canada FTA "measures of equivalent commercial effect" taken in response to actions that would have been inconsistent with that agreement but for the exception.

The U.S.-Canada FTA Implementation Act did not contain a provision directly implementing U.S. rights under article 2005 of that agreement. No such provision was necessary. However, in the Statement of Administrative Action that accompanied the U.S.-Canada FTA Implementation Act, the Administration made clear that it was prepared to take action in accordance with U.S. rights under article 2005 to respond to any invocation by Canada of a "cultural industries" exemption under that article.

Explanation of provision

Section 513 of H.R. 3450 adds a new subsection (f) to section 182 of the Trade Act of 1974 to provide an express means of implementing the rights of the United States under Article 2106 of the NAFTA. Section 182(f) requires the U.S. Trade Representative to identify, within 30 days of the release of the annual National Trade Estimates Report on Foreign Trade Barriers, any new Canadian act, policy or practice affecting cultural industries that is actionable under article 2106. In deciding whether to identify an act, policy or practice, the Trade Representative will consult with the relevant domestic industries, the appropriate advisory committees, and take into account such other information as may be available. Any act, practice or policy identified under section 182(f) will become the subject of an investigation under section 301 of the Trade Act of 1974, unless the United States has already taken action against it.

Reasons for change

Article 2106, which calls up Annex 2106, carries forward Article 2005 of the U.S.-Canada FTA. Under Article 2106 of the NAFTA, Canada and the United States each retain each other the same rights to take actions with respect to those industries and the same right to respond to harm caused thereby.

Annex 2106 of the NAFTA is drafted to apply the corresponding provision of the U.S.-Canada FTA (Article 2005) equally and reciprocally to the United States and Canada. However, it was Canada alone that sought an exemption for "cultural industries." The United States agreed to include the exemption only in return for an explicit agreement that any action by Canada that would have been inconsistent with the U.S.-Canada FTA in the absence of the exemption would be subject to immediate suspension of equivalent trade benefits by the United States.

The Committee supports the Administration's commitment to use all appropriate tools at its disposal to discourage Canada and other countries from taking measures that discriminate against, or restrict market access for, the U.S. film, broadcasting, recording and publishing industries. In particular, the Committee notes the Administration's intent to consult with the Canadian Government regarding any proposed Canadian measures or policies that might lead to the exercise of, or reliance on, the "cultural industries" exemption. Should Canada choose to institute such measures, the Committee supports the intent of the Administration, after consultation with the relevant industries, to exercise fully, as appropriate, the right to retaliate unilaterally granted in the NAFTA and reflected in section 513 of H.R. 3450.

Accordingly, section 513 of H.R. 3450 provides authority under law for the United States to identify on an annual basis acts, policies or practices taken by Canada in connection with the exemption and to respond in

accordance with its explicit rights under the NAFTA to address any such invocation by Canada. Inclusion of section 513 further underscores the high priority the Committee attaches to adequate and effective protection of intellectual property rights and to fair and equitable market access to United States persons that rely upon copyright, patent and process patent protection, and the Committee's consequent concern with use of "cultural industries" exemptions in any context.

Further, it is the view of the Committee that the "cultural industries" provision of the NAFTA contained in Article 2106 neither enlarges nor diminishes the rights and obligations of the United States and Canada under the U.S.-Canada FTA. Under those terms, Canada may derogate from its obligations by adopting measures with respect to "cultural industries", and in such instance, the United States has the right, and is prepared to implement, measures of equivalent commercial effect sufficient to act as a deterrent. Such actions can be taken consistent with the NAFTA (which calls up Article 2005 of the U.S.-Canada FTA) under applicable U.S. trade laws. It is also the view of the Committee that, consistent with the NAFTA, measures of equivalent commercial effect could be taken under U.S. trade laws, in particular sections 182(f) or 301 of the Trade Act of 1974, in response to an invocation by Canada of its rights under Article 2106 of the NAFTA. Such measures of equivalent commercial effect could be taken in subject areas covered by provisions of the NAFTA but not by provisions of the U.S.-Canada FTA. In this regard, the United States could enact, for example, certain measures of equivalent commercial effect, consistent with the NAFTA, in the following areas among others: services, investment, intellectual property, government procurement, and rules of origin.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Section 513 amends the Trade Act of 1974 to add a new section 182(f) to that statute. It provides that by no later than 30 days after submission to Congress of the annual National Trade Estimates report, USTR shall identify any act, policy, or practice of Canada adopted or expanded after December 17, 1992 affecting cultural industries (as defined in the provision), and which is actionable under Article 2106 of the NAFTA. Any act, policy, or practice so identified should be treated, for purposes of section 301, as the basis for

Canada's identification under the "Special 301" law (section 182 of the Trade Act of 1974, as added by the Omnibus Trade and Competitiveness Act of 1988) as a "priority foreign country"--unless the United States has already taken action under Article 2106 in response to it. In determining whether to make such an identification, USTR shall consult with and take into account the views of the relevant U.S. industries, appropriate advisory committees, and appropriate Federal Government officials.

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

SEC. 514. REPORT ON IMPACT OF NAFTA ON MOTOR VEHICLE EXPORTS TO MEXICO

(a) Findings.--The Congress makes the following findings:(1) Trade in motor vehicles and motor vehicle parts is one of the most restricted areas of trade between the United States and Mexico.(2) The elimination of Mexico's restrictive barriers to trade in motor vehicles and motor vehicle parts over a 10-year period under the Agreement should increase substantially United States exports of such products to Mexico.(3) The Department of Commerce estimates that the Agreement provides the opportunity to increase United States exports of motor vehicles and motor vehicle parts by $1,000,000,000 during the first year of the Agreement's implementation with the potential for additional increases over the 10-year transition period.(4) The United States automotive industry has estimated that United States exports of motor vehicles to Mexico should increase to more than 60,000 units during the first year of the Agreement's implementation, which is substantially above the current level of 4,000 units.(b) Trade Representative Report.--No later than July 1, 1995, and annually thereafter through 1999, the Trade Representative shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on how effective the provisions of the Agreement are with respect to increasing United States exports of motor vehicles and motor

vehicle parts to Mexico. Each report shall identify and determine the following:(1) The patterns of trade in motor vehicles and motor vehicle parts between the United States and Mexico during the preceding 12-month period.(2) The level of tariff and nontariff barriers that were in force during the preceding 12-month period.(3) The amount by which United States exports of motor vehicles and motor vehicle parts to Mexico have increased from the preceding 12-month period as a result of the elimination of Mexican tariff and nontariff barriers under the Agreement.(4) Whether any such increase in United States exports meets the levels of new export opportunities anticipated under the Agreement.(5) If the anticipated levels of new United States export opportunities are not reached, what actions the Trade Representative is prepared to take to realize the benefits anticipated under the Agreement, including possible initiation of additional negotiations with Mexico for the purpose of seeking modifications of the Agreement.

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 514 of H.R. 3450 requires the U.S. Trade Representative to report annually for five years beginning July 1995 to the Congress on the effectiveness of the NAFTA's automotive trade provisions. These reports will include information on current bilateral automotive trade levels; remaining barriers; the amount U.S. exports have increased over the previous year; whether such increases meet anticipated levels of new exports; and if not, what actions the Trade Representative is prepared to take to realize those benefits, including, but not limited to, possible future negotiations with Mexico.

Reasons for change

The Committee feels it necessary to require this report because trade in motor vehicles and motor vehicle parts is currently one of the most restricted areas of trade between the United States and Mexico and because the elimination of Mexico's barriers to trade in motor vehicles and motor vehicle parts under the NAFTA over the next ten years is expected to substantially increase U.S. exports of such products to Mexico. This report will provide the means for tracking the evolution of U.S.-Mexico patterns of trade in motor vehicles and motor vehicle parts over the next several years in the interest of determining whether the United States did garner the enhanced export opportunities expected under the NAFTA in these sectors.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

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

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

SEC. 515. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE

(a) Amendment to the CBI.--The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) is amended by inserting after section 218 the following new section:"

SEC. 219. CENTER FOR THE STUDY OF WESTERN HEMISPHERIC TRADE."(a) Establishment.--The Commissioner of Customs, after consultation with appropriate officials in the State of Texas, is authorized and directed to make grants to an institution (or a consortium of such institutions) to assist such

institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (hereafter in this section referred to as the 'Center'). The Commissioner of Customs shall make the first grant not later than December 1, 1994, and the Center shall be established not later than February 1, 1995."(b) Scope of the Center.--The Center shall be a year-round program operated by an institution located in the State of Texas (or a consortium of such institutions), the purpose of which is to promote and study trade between and among Western Hemisphere countries. The Center shall conduct activities designed to examine--"(1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere,"(2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and"(3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere."(c) Consultation; Selection Criteria.--The Commissioner of Customs shall consult with appropriate officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. In selecting the appropriate institution, the Commissioner of Customs shall give consideration to--"(1) the institution's ability to carry out the programs and activities described in this section; and"(2) any resources the institution can provide the Center in addition to Federal funds provided under this program."(d) Programs and Activities.--The Center shall conduct the following activities:"(1) Provide forums for international discussion and debate for representatives from countries in the Western Hemisphere regarding issues which affect trade and other economic relations within the hemisphere, including the impact of the NAFTA on individual economies and the desirability and feasibility of possible accessions to the NAFTA by such countries."(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, including tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population."(3) Publish materials, disseminate information, and conduct seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries."(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries."(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the Center."(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center at the University of Miami at Coral Gables."(e) Definitions.--For purposes of this section--"(1) 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' mean 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.

(b) Authorization of Appropriations.--There are authorized to be appropriated $10,000,000 for fiscal year 1994, and such sums as may be necessary in the 3 succeeding fiscal years to carry out the purposes of section 219 of the Caribbean Basin Economic Recovery Act (as added by subsection (a)).

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 515 of H.R. 3450 amends the Caribbean Basin Economic Recovery Act to add a new section 219 authorizing and directing the Commissioner of Customs, after consultation with appropriate officials in the State of Texas and private sector authorities, to make grants to an institution (or a consortium of such institutions) to assist the institution in planning, establishing, and operating a Center for the Study of Western Hemispheric Trade. The Center shall be a year-round program operated by an institution in Texas to promote and study trade between and among Western Hemisphere countries.

The Center's activities shall be designed to examine the impact of the NAFTA on the economies in, and trade within the Western Hemisphere; the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and adjusting tariffs, reducing nontariff barriers, improving customs relations, and promoting economic relations among Western Hemisphere countries. The Center shall provide forums for

discussion and debate on issues affecting Western Hemisphere trade and economic relations; conduct studies and research projects on subjects affecting Western Hemisphere trade; publish materials, disseminate information, and conduct seminars and conferences for those seeking to do business or to invest in the Western Hemisphere; provide grants, fellowships, and other financial assistance to outstanding scholars and qualified graduate students from Western Hemisphere countries; and 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.

The Commissioner of Customs is directed to make grants to any institution selected as the site of the Center for fiscal years 1994, 1995, 1996, and 1997. There are authorized to be appropriated $10 million for fiscal year 1994, and such sums as may be necessary in the three succeeding fiscal years to carry out the purposes of section 219.

The Commissioner shall make the first grant not later than December 1, 1994. The Center shall be established not later than February 1, 1995. By July 1, 1994, and annually thereafter for years grants are made, the Commissioner shall submit a report to the House Committee on Ways and Means and Senate Committee on Finance on the operations and activities of the Center.

Reasons for change

The Committee intends that the Center be an academic research institute located in a university or college in Texas, which has both the largest border and largest amount of trade of any State with Mexico.

The Committee believes that the establishment of a Center for the Study of Western Hemispheric Trade in Texas will effectively complement the activities of the already established North/South Center in Florida and that both Centers are necessary given the importance of the region for economic, political, and cultural relations with the United States. The Committee also believes that the activities of these two Centers will be mutually enhanced through effective collaboration and intends that the newly-created Texas Center will implement cooperative agreements and academic exchanges with the North/South Center.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 516. EFFECTIVE DATE

(a) In General.--Except as provided in subsection (b), the provisions of this subtitle shall take effect on the date the Agreement enters into force with respect to the United States.(b) Exception.--Section 515 shall take effect on the date of the enactment of this Act.

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The provisions of Subtitle B, except section 515, take effect on the date the NAFTA enters into force with respect to the United States. Section 515 takes effect on the date of enactment of the NAFTA Implementation Act.

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No Legislative History.

Senate Finance Committee Report

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

Subtitle C—Funding

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SUBTITLE C--FUNDING

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No Legislative History.

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SUBTITLE C--FUNDING

PART 1--CUSTOMS USER FEES

House Ways & Means Committee Report

Part 1--Customs User Fees

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No Legislative History.

Senate Finance Committee Report

No Legislative History.

SEC. 521. FEES FOR CERTAIN CUSTOMS SERVICES

(a) In General.--Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended--(1) by amending paragraph (5) of subsection (a) to read as follows:"(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."(2) by adding at the end of paragraph (1) of subsection (b), the following flush sentence:"Subparagraph (A) shall not apply to fiscal years 1994, 1995, 1996, and 1997.",(3) in subsection (f)--(A) in paragraph (1), by striking "except" and all that follows through the end period and inserting: "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).",(B) in paragraph (3)(A), by striking the first parenthetical and inserting "(other than the fees under subsection (a) (9) and (10) and the excess fees determined by the Secretary under paragraph (5))",(C) in paragraph (4), by striking "under subsection (a)" and inserting "under subsection (a) (other than the excess fees determined by the Secretary under paragraph (5))", and(D) by adding at the end thereof the following new paragraph:"(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.", and(4) in paragraph (3) of subsection (j), by striking "September 30, 1998" and inserting "September 30, 2003".(b) Effective Date.--The amendments made by this section shall take effect on the date the Agreement enters into force with respect to the United States.

House Ways & Means Committee Report

Present law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) established a schedule of flat rate fees for customs processing of passengers and conveyances entering the United States. The Act imposed a $5 per arrival fee on passengers arriving on commercial vessels or aircraft from countries other than Mexico, Canada, U.S. territories, and the Caribbean and adjacent islands.

The so-called "COBRA fees" are deposited into a dedicated Customs User Fee Account in the general fund. The fees are used to pay the costs of inspectional overtime, premium pay, agency contributions for certain retirement expenses, preclearance operations, foreign language bonuses, and, to the extent funds remain, additional officers and equipment. The COBRA user fee account is not subject to annual authorization and appropriation. All user fee authority terminates September 30, 1998.

Explanation of provision

Section 521(a) of H.R. 3450 amends section 13031 of the COBRA to increase temporarily the current $5 passenger user fees to $6 for all international air and sea arrivals from the time NAFTA enters into force through FY 1997. Effective in FY 1998, the fee will revert to $5 per arrival.

Section 521(a) would also lift the current fee exemptions for air and sea passengers arriving from Mexico, Canada, the Caribbean, and the U.S. territories from the time the NAFTA enters into force through FY 1997, at which time the exemptions resume. Puerto Rico is considered a State for this purpose and passengers arriving from Puerto Rico will not have to pay a user fee. The increased user fee revenue will be dedicated, subject to appropriation, to cover the costs of Customs Service inspections that are not covered by current user fees.

The section also extends the existing passenger and conveyance fees as well as the merchandise processing fees through FY 2003.

Section 521(b) provides that the amendments made by this section take effect on the date the NAFTA enters into force with respect to the United States.

Reasons for change

Section 521 makes the necessary statutory changes to customs user fee authority to provide offsets against the revenue losses attributable to NAFTA in accordance with the PAY-GO requirements of the Budget Enforcement Act. According to the Congressional Budget Office (CBO), the 5-year effects of changes made by section 521 on direct spending amount to a savings of $758 million.

The Committee notes that section 521 ensures that the changes represent a true user fee by expressly requiring (1) the deposit of all new receipts in the existing customs user fee account; and (2) the use of these funds to cover Customs inspectional costs (including passenger processing costs) not currently covered by any existing user fee, subject to appropriation. The sunset of the provision and the exemption elimination after FY 1997 further demonstrate the limited nature of the changes.

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No Legislative History.

Senate Finance Committee Report

Section 521 amends section 13031 of the COBRA to increase temporarily from $5.00 to $6.50 Customs user fees charged on passengers arriving in the United States from abroad on commercial vessels or aircraft. Section 521 also temporarily lifts the current exemption for passengers arriving from Mexico, Canada, Caribbean nations, and U.S. territories (other than Puerto Rico). Both changes are effective from the date of entry into force of the NAFTA through September 30, 1997. These increased user fee revenues will be dedicated, subject to appropriation, only to cover the costs of Customs inspections services that are not covered by the current user fee.

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

PART 2--INTERNAL REVENUE CODE AMENDMENTS

House Ways & Means Committee Report

Part 2--Internal Revenue Code Amendments

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

No Legislative History.

SEC. 522. AUTHORITY TO DISCLOSE CERTAIN TAX INFORMATION TO THE UNITED STATES CUSTOMS SERVICE

(a) In General.--Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end thereof the following new paragraph:"(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."(b) Conforming Amendments.--Paragraphs (3)(A) and (4) of section 6103(p) of such Code are each amended by striking "or (13)" each place it appears and inserting "(13), or (14)".(c) Effective Date.--(1) In general.--The amendments made by this section shall take effect on the date the Agreement enters into force with respect to the United States.(2) Regulations.--Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury or his delegate shall issue temporary regulations to carry out section 6103(l)(14) of the Internal Revenue Code of 1986, as added by this section.

House Ways & Means Committee Report

Present law

Section 6103 of the Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Code. Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). In addition, no tax information may be furnished by

the Internal Revenue Service to another agency unless the other agency establishes procedures satisfactory to the Internal Revenue Service for safeguarding the tax information it receives (sec. 6103(p)).

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

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

Explanation of provision

Section 522 of H.R. 3450 amends section 6103 of the Code to permit the Secretary of the Treasury (or his delegate), upon written request from the Commissioner of the Customs Service, to disclose return information solely for the purpose of, and only to the extent necessary in, (1) ascertaining the correctness of any entry in audits as provided for in section 509 of the Tariff Act of 1930, or (2) other actions to recover any loss of revenue, or to collect duties, taxes, and fees, determined to be due and owing pursuant to such audits. Disclosure would be made to officers and employees of the Department of the Treasury. Disclosure of return information would be permitted with respect to taxes imposed by chapters 1 and 6. Accordingly, the provision generally would authorize the Secretary to disclose to the Customs Service, pursuant to regulations, those items of return information relevant and necessary to ascertain the correctness of declared values, and generally would allow the Customs Service to use this information in its audits of reported values and in certain actions resulting from such audits.

Section 522 contemplates neither disclosures of return information to the extent such disclosures would be inconsistent with a treaty or executive agreement to which the United States is a party nor disclosures of Advance Pricing Agreements (APA) (including any related information submitted or generated (except otherwise disclosable return information)). Under the APA program, companies and the Internal Revenue Service negotiate a pricing methodology for transactions between related entities. The effectiveness of the APA program relies on voluntary disclosure of sensitive information to the Internal Revenue Service; accordingly, information submitted or generated in the APA negotiating process should remain confidential.

The provision is effective on the date the NAFTA enters into force with respect to the United States. Not later than 90 days after the date of

enactment, the Secretary of the Treasury or his delegate must issue temporary regulations to carry out this provision.

Reasons for change

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

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No Legislative History.

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

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

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The bill contemplates neither disclosures of return information to the extent such disclosures would be inconsistent with a treaty or executive agreement to which the United States is a party nor disclosures of Advance Pricing Agreements (APA) (including any related information submitted or generated (except otherwise disclosable return information)). Under the APA program, companies and the Internal Revenue Service negotiate a pricing methodology

for transactions between related entities. The effectiveness of the APA program relies on voluntary disclosure of sensitive information to the Internal Revenue Service; accordingly, information submitted or generated in the APA negotiating process should remain confidential.

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

SEC. 523. USE OF ELECTRONIC FUND TRANSFER SYSTEM FOR COLLECTION OF CERTAIN TAXES

(a) General Rule.--Section 6302 of the Internal Revenue Code of 1986 (relating to mode or time of collection) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:"(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.".(b) Effective Date.--(1) In general.--The amendments made by this section shall take effect on the date the Agreement enters into force with respect to the United States.(2) Regulations.--Not later than 210 days after the date of enactment of this Act, the Secretary of the Treasury or his delegate shall prescribe temporary regulations under section 6302(h) of the Internal Revenue Code of 1986 (as added by this section).

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Present law

Section 6302 of the Internal Revenue Code requires employers to withhold income taxes and FICA taxes from wages paid to their employees. Employers also are liable for their portion of FICA taxes, excise taxes, and estimated payments of their corporate income tax liability. At present, they must deposit these taxes in a government depository (generally, a commercial bank or savings institution) within a period of time specified in Treasury regulations. Each deposit must be accompanied by a Federal tax deposit ("FTD") coupon, which supplies such information as the taxpayer's name, identification number, tax period, and type of tax. Depositories process the FTD coupon information and forward it to the IRS. Though taxpayers' accounts are debited for the deposited taxes on the date deposited, the amounts are generally not credited to the account of the Treasury until the following day.

Explanation of provision

Section 523 of H.R. 3450 requires the development and implementation of a new system that uses electronic fund transfer ("EFT") to remit certain taxes and convey FTD coupon information directly to the Treasury. The new system must be designed by the Treasury to operate in such a manner as to ensure that these taxes are credited to the general account of the Treasury on the date on which such taxes would otherwise have been required to be deposited under the FTD system. The use of the EFT system thus would eliminate the paperwork burden inherent in the paper-based FTD system, the one-day delay in crediting tax funds to the Treasury, and the requirement that depositories function as FTD information processors. The taxes involved are: income taxes withheld from employees, the employer and employee portions of FICA taxes (both HI and OASDI), excise taxes, and corporate estimated tax payments.

To provide an orderly transition from the present-law FTD system to the new EFT system, the new system is phased in over a period of years. It is phased in by increasing each year the percentage of total taxes subject to the new EFT system. In the first year, 3 percent of the total taxes are required to be made by electronic fund transfer, increasing to 58.3 percent (60 percent for excise taxes and corporate estimated tax payments) for the fourth and fifth years, and increasing to 94 percent in the following years. The specific implementation method required to achieve the target percentages is to be set forth in Treasury regulations. It is anticipated that the phase-in will begin with the largest employers. It is also anticipated that small employers and other taxpayers for whom this system would prove unduly burdensome or impractical will be offered alternatives to or exemptions from the Treasury regulations.

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

Section 523 takes effect on the date the NAFTA enters into force with respect to the United States. Not later than 210 days after the date of enactment, the Secretary of the Treasury (or his delegate) must issues temporary regulations to implement this provision. Those initial regulations must contain sufficient guidance to implement the provision for at least the first year it is effective. The Secretary may promulgate additional regulations

at a later date to implement the provision for subsequent years. It is anticipated that any subsequent regulations will be issued sufficiently far in advance so as to give taxpayers adequate notice of their responsibilities under the provision.

Reasons for change

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

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

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Subtitle D--Implementation of NAFTA Supplemental Agreements

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Subtitle D--Implementation of NAFTA Supplemental Agreements

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No Legislative History.

PART 1--AGREEMENTS RELATING TO LABOR AND ENVIRONMENT

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No Legislative History.

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No Legislative History.

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No Legislative History.

SEC. 531. AGREEMENT ON LABOR COOPERATION

(a) Commission for Labor Cooperation.--(1) Membership.--The United States is authorized to participate in the Commission for Labor Cooperation in accordance with the North American Agreement on Labor Cooperation.(2) Contributions to budget.--There are authorized to be appropriated to the President (or such agency as the President may designate) $2,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Labor Cooperation pursuant to Article 47 of the North American Agreement on Labor Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.(b) Definitions.--As used in this section--(1) the term "Commission for Labor Cooperation" means the commission established by Part Three of the North American Agreement on Labor Cooperation; and(2) the term "North American Agreement on Labor Cooperation" means the North American Agreement on Labor Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).

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No Legislative History.

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Committee on Foreign Relations

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

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

SEC. 532. AGREEMENT ON ENVIRONMENTAL COOPERATION

(a) Commission for Environmental Cooperation.--(1) Membership.--The United States is authorized to participate in the Commission for Environmental Cooperation in accordance with the North American Agreement on Environmental Cooperation.(2) Contributions to budget.--There are authorized to be appropriated to the President (or such agency as the President may designate) $5,000,000 for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Environmental Cooperation pursuant to Article 43 of the North American Agreement on Environmental Cooperation. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.(b) Definitions.--As used in this section--(1) the term "Commission for Environmental Cooperation" means the commission established by Part Three of the North American Agreement on Environmental Cooperation; and(2) the term "North American Agreement on Environmental Cooperation" means the North American Agreement on Environmental Cooperation Between the Government of the United States of America, the Government of Canada, and the Government of the United Mexican States (signed at Mexico City, Washington, and Ottawa on September 8, 9, 12, and 14, 1993).

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Section 532 authorizes the United States to participate in the Commission for Environmental Cooperation, which was established by the three NAFTA parties in the Agreement on Environmental Cooperation, and which shall be comprised of a Council, a Secretariat, and a Joint Public Advisory Committee.

This section authorizes to be appropriated to the President (or such agency as the President may designate) $5 million for each of fiscal years 1994 and 1995 for United States contributions to the annual budget of the Commission for Environmental Cooperation. Funds authorized by this provision are in addition to any funds otherwise available for such contributions, and are to remain available until expended.

Committee on Foreign Relations

Section 532 authorizes U.S. participation in the Commission for Environmental Cooperation. This section would allow the President to designate the Commission and its employees to receive appropriate privileges and immunities, as required by the North American Agreement on

Environmental Cooperation.

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

SEC. 533. AGREEMENT ON BORDER ENVIRONMENT COOPERATION COMMISSION

(a) Border Environment Cooperation Commission.--(1) Membership.--The United States is authorized to participate in the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement.(2) Contributions to the commission budget.--There are authorized to be appropriated to the President (or such agency as the President may designate) $5,000,000 for fiscal year 1994 and each fiscal year thereafter for United States contributions to the budget of the Border Environment Cooperation Commission pursuant to section 7 of Article III of Chapter I of the Border Environment Cooperation Agreement. Funds authorized to be appropriated for such contributions by this paragraph are in addition to any funds otherwise available for such contributions. Funds authorized to be appropriated by this paragraph are authorized to be made available until expended.(b) Civil Actions Involving the Commission.--For the purpose of any civil action which may be brought within the United States by or against the Border Environment Cooperation Commission in accordance with the Border Environment Cooperation Agreement (including an action brought to enforce an arbitral award against the Commission), the Commission shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States, or its agent appointed for the purpose of accepting service or notice of service, is located. Any such action to which the Commission is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States (including the courts enumerated in section 460 of title 28, United States Code) shall have original jurisdiction of any such action. When the Commission is a defendant in any action in a State court, it may at any time before trial remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28, United States Code.(c) Definitions.--As used in this section--(1) the term "Border Environment Cooperation Agreement" means the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank;(2) the terms "Border Environment Cooperation Commission" and "Commission" mean the commission established pursuant

to Chapter I of the Border Environment Cooperation Agreement; and(3) the term "United States" means the United States, its territories and possessions, and the Commonwealth of Puerto Rico.

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Section 533 authorizes the United States to participate in the Border Environment Cooperation Commission in accordance with the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank (known as the Border Environment Cooperation Agreement).

This section authorizes to be appropriated to the President (or such agency as the President may designate) $5 million for each of fiscal years 1994 and 1995 for United States contributions to the budget of the Border Environment Cooperation Commission. Funds authorized by this section are in addition to any funds otherwise available for such contributions, and shall remain available until expended.

This section also states that for the purpose of any civil action which may be brought within the United States by or against the Border Environment Cooperation Commission, the Commission shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States, or its agent appointed for the purpose of accepting service or notice of service, is located.

Committee on Foreign Relations

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

standards.

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

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

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

PART 2--NORTH AMERICAN DEVELOPMENT BANK AND RELATED PROVISIONS

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No Legislative History.

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Part B--North American Development Bank and related provisions

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No Legislative History.

SEC. 541. NORTH AMERICAN DEVELOPMENT BANK

(a) Acceptance of Membership.--The President is hereby authorized to accept membership for the United States in the North American Development Bank (hereafter in this part referred to as the "Bank") provided for in Chapter II of the Border Environment Cooperation Agreement (hereafter in this part referred to as the "Cooperation Agreement").(b) Subscription of Stock.--(1)

Subscription authority.--(A) In general.--The Secretary of the Treasury may subscribe on behalf of the United States up to 150,000 shares of the capital stock of the Bank.(B) Effectiveness of subscription.--Except as provided in paragraph (3), any such subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.(2) Limitations on authorization of appropriations.--For payment by the Secretary of the Treasury of the subscription of the United States for shares described in paragraph (1), there are authorized to be appropriated $1,500,000,000 ($225,000,000 of which may be used for paid- in capital and $1,275,000,000 of which may be used for callable capital) without fiscal year limitation.(3) Funding; limitation on callable capital subscriptions.--(A) Funding.--For fiscal year 1995, the Secretary of the Treasury shall pay to the Bank out of any sums in the Treasury not otherwise appropriated the sum of $56,250,000 for the paid-in portion of the United States share of the capital stock of the Bank, 10 percent of which may be transferred by the Bank to the President pursuant to section 543 to pay for the cost of direct and guaranteed Federal loans.(B) Limitation on callable capital subscriptions.--For fiscal year 1995, the Secretary of the Treasury shall subscribe to the callable capital portion of the United States share of the capital stock of the Bank in an amount not to exceed $318,750,000.(4) Disposition of net income distributed by the facility.--Any payment made to the United States by the Bank as a distribution of net income shall be covered into the Treasury as a miscellaneous receipt.(c) Compensation of Board Members.--No person shall be entitled to receive any salary or other compensation from the Bank or the United States for services as a Board member.(d) Applicability of Bretton Woods Agreements Act.--The provisions of section 4 of the Bretton Woods Agreements Act shall apply with respect to the Bank to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund.(e) Restrictions.--Unless authorized by law, neither the President nor any person or agency shall, on behalf of the United States--(1) subscribe to additional shares of stock of the Bank;(2) vote for or agree to any amendment of the Cooperation Agreement which increases the obligations of the United States, or which changes the purpose or functions of the Bank; or(3) make a loan or provide other financing to the Bank.(f) Federal Reserve Banks as Depositories.--Any Federal Reserve bank that is requested to do so by the Bank shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.(g) Jurisdiction of United States Courts and Enforcement of Arbitral Awards.--For the purpose of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Bank in accordance with the Cooperation Agreement, including an action brought to enforce an arbitral award against the Bank, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agency appointed for the purpose of accepting service or notice of service is located, and any such action to which the Bank shall be a party shall be deemed to arise under the laws of the United States, and the district courts

of the United States, including the courts enumerated in section 460 of title 28, United States Code, shall have original jurisdiction of any such action. When the Bank is a defendant in any action in a State court, it may at any time before trial remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28, United States Code.(h) Exemption From Securities Laws for Certain Securities Issued by the Bank; Reports Required.--(1) Exemptions from limitations and restrictions on the power of national banking associations to deal in and underwrite investment securities of the bank.--The seventh sentence of the seventh undesignated paragraph of section 5136 of the Revised Statutes of the United States

(12 U.S.C. 24), is amended by inserting "the North American Development Bank," after "Inter-American Development Bank,".(2) Exemption from securities laws for certain securities issued by the bank; reports required.--Any securities issued by the Bank (including any guarantee by the Bank, whether or not limited in scope) in connection with the raising of funds for inclusion in the Bank's capital resources as defined in Section 4 of Article II of Chapter II of the Cooperation Agreement, and any securities guaranteed by the Bank as to both the principal and interest to which the commitment in Section 3(d) of Article II of Chapter II of the Cooperation Agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c), and section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c). The Bank shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.(3) Authority of securities and exchange commission to suspend exemption; reports to the congress.--The Securities and Exchange Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, is authorized to suspend the provisions of paragraph (2) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this subsection and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

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Section 541 authorizes the President to accept membership for the United States in the North American Development Bank (Bank) established in the Border Environment Cooperation Agreement.

On behalf of the United States, the Secretary of the Treasury is authorized to subscribe up to 150,000 shares of the capital stock of the Bank. In payment for such shares, this section authorizes an appropriation of $1.5 billion without fiscal year limitation, $225 million of which shall be used for paid-in capital and $1.275 billion shall be used for callable capital. For fiscal year 1995, the Secretary of the Treasury shall pay to the Bank out of funds not otherwise appropriated the sum of $56.25 million for the paid-in portion of the capital stock, and shall subscribe to the callable capital portion of the U.S. share of capital stock in an amount not to exceed $318.75 million.

Unless authorized by law, neither the President nor any agency or person acting on behalf of the United States is authorized to subscribe to additional shares of stock of the Bank, vote for or agree to any amendment that increases the obligations of the United States, or make a loan or provide other financing to the Bank.

This section also provides that for purposes of any civil action within the United States involving the Bank, the Bank shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agency appointed for the purpose of accepting service or notice of service is located.

This section contains exemptions from the registration and ongoing disclosure provisions of the federal securities laws for the North American Development Bank (Bank). These exemptions are contained in Section 102(h) of the draft implementing language.

Paragraph (h)(1) amends to section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), to insert the Bank into the list of international financial institutions.

Paragraph (h)(2) provides that any securities issued by the Bank in connection with the raising of funds for inclusion in the Bank's capital resources, and any securities guaranteed by the Bank as to both the principal and interest, shall be deemed to be exempted securities within the meaning of the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act). The section also provides that the Bank shall file with the Securities and Exchange Commission (Commission) such annual and other reports with regard to such securities as the Commission deems appropriate in view of the special character of the Bank and its operations and necessary in the public interest or for the protection of investors.

Paragraph (h)(3) provides the Commission, acting in consultation with the National Advisory Council on International Monetary and Financial Problems, authority to suspend the provision of subsection (a) at any time as to any or all securities issued or guaranteed by the Bank during the period of such suspension. The subsection also provides that the Commission shall include

in its annual report to Congress such information as it shall deem advisable with regard to the operations and effect of this section (including any views submitted for this purpose by any association of dealers registered with the Commission).

Committee on Foreign Relations

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

Section 541(b) provides that any such subscription will be effective only to such extent or in such amounts as are provided in advance in appropriations acts. This section also authorizes the appropriation of $1,500,000,000 (representing $225,000,000 in paid-in capital and $1,275,000,000 in callable capital) for the U.S. subscription to its shares of the NADBank. In addition, section 541(b) provides that, for fiscal year 1995, the Secretary of the Treasury will pay to the NADBank out of any sums in the Treasury not otherwise appropriated the sum of $56,250,000 for the paid-in share portion of the U.S. share of the capital stock of the NADBank, and will subscribe to the callable portion of the U.S. share of the capital stock of the NADbank in an amount not to exceed $318,750,000.

The NADBank will be governed by a six-member board, with three members appointed by Mexico and three by the United States. Section 541(c) provides that the U.S. board members will not be entitled to any salary or other compensation from the bank or the United States for services as a board member.

Section 541(d) provides that the provisions of the Bretton Woods Agreements Act relating to the National Advisory Council on International Monetary and Financial Problems will apply with respect to the NADBank to the same extent as with respect to the World Bank and the International Monetary Fund.

Section 541(e) provides that, unless authorized by law, the United States may not subscribe to additional shares of stock to the NADBank, vote for or agree to any amendment of the agreement establishing the NADBank that would increase the obligations of the United States or change the purpose or functions of the NADBank, or make a loan or provide other financing to the NADBank.

Section 541(f) provides that any Federal Reserve bank that is requested to do so by the NADBank must act as its depository or as its fiscal agent, and that the Board of Governors of the Federal Reserve System will supervise and direct the carrying out of these functions by the Federal Reserve banks.

Section 541(h) extends to the NADBank certain exemptions from U.S.

securities laws that have been given in the past to the various multilateral development banks, and establishes related reporting requirements.

SEC. 542. STATUS, IMMUNITIES, AND PRIVILEGES

Article VIII of Chapter II of the Cooperation Agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon entry into force of the Cooperation Agreement.

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No Legislative History.

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No Legislative History.

Committee on Foreign Relations

Section 542 provides that the status, privileges and immunities provisions of the agreement establishing the NADBank will have full force and effect in the United States.

SEC. 543. COMMUNITY ADJUSTMENT AND INVESTMENT PROGRAM

(a) The President.--(1) The President may enter into an agreement with the Bank that facilitates implementation by the President of a program for community adjustment and investment in support of the Agreement pursuant to chapter II of the Cooperation Agreement (hereafter in this section referred to as the "community adjustment and investment program").(2) The President may receive from the Bank 10 percent of the paid-in capital actually paid to the Bank by the United States for the President to carry out, without further appropriations, through Federal agencies and their loan and loan guarantee programs, the community adjustment and investment program, pursuant to an agreement between the President and the Bank.(3) The President may select one or more Federal agencies that make loans or guarantee the repayment of loans to assist in carrying out the community adjustment and investment program, and may transfer the funds received from the Bank to such agency or agencies for the purpose of assisting in carrying out the community adjustment and investment program.(4)(A) Each Federal agency selected by the President to assist in carrying out the community adjustment and investment program shall use the funds

transferred to it by the President from the Bank to pay for the costs of direct and guaranteed loans, as defined in section 502 of the Congressional Budget Act of 1974, and, as appropriate, other costs associated with such loans, all subject to the restrictions and limitations that apply to such agency's existing loan or loan guarantee program.(B) Funds transferred to an agency under subparagraph (A) shall be in addition to the amount of funds authorized in any appropriations Act to be expended by that agency for its loan or loan guarantee program.(5) The President shall--(A) establish guidelines for the loans and loan guarantees to be made under the community adjustment and investment program;(B) endorse the grants made by the Bank for the community adjustment and investment program, as provided in Article I, section 1(b), and Article III, section 11(a), of Chapter II of the Cooperation Agreement; and(C) endorse any loans or guarantees made by the Bank for the community adjustment and investment program, as provided in Article I, section 1(b), and Article III, section 6 (a) and (c) of Chapter II of the Cooperation Agreement.(b) Advisory Committee.--(1) Establishment.--The President shall establish an advisory committee to be known as the Community Adjustment and Investment Program Advisory Committee (in this section referred to as the "Advisory Committee") in accordance with the provisions of the Federal Advisory Committee Act.(2) Membership.--(A) In general.--The Advisory Committee shall consist of 9 members of the public, appointed by the President, who, collectively, represent--(i) community groups whose constituencies include low-income families;(ii) any scientific, professional, business, nonprofit, or public interest organization or association which is neither affiliated with, nor under the direction of, a government;(iii) for-profit business interests; and(iv) other appropriate entities with relevant expertise.(B) Representation.--Each of the categories described in clauses

(i) through (iv) of subparagraph (A) shall be represented by no fewer than 1 and no more than 3 members of the Advisory Committee.(3) Function.--It shall be the function of the Advisory Committee--(A) to provide advice to the President regarding the implementation of the community adjustment and investment program, including advice on the guidelines to be established by the President for the loans and loan guarantees to be made pursuant to subsection

(a)(4), advice on identifying the needs for adjustment assistance and investment in support of the goals and objectives of the Agreement, taking into account economic and geographic considerations, and advice on such other matters as may be requested by the President; and(B) to review on a regular basis the operation of the community adjustment and investment program and provide the President with the conclusions of its review.(4) Terms of members.--(A) In general.--Each member of the Advisory Committee shall serve at the pleasure of the President.(B) Chairperson.--The President shall appoint a chairperson from among the members of the Advisory Committee.(C) Meetings.--The Advisory Committee shall meet at least annually and at such other times as requested by the President or the

chairperson. A majority of the members of the Advisory Committee shall constitute a quorum.(D) Reimbursement for expenses.--The members of the Advisory Committee may receive reimbursement for travel, per diem, and other necessary expenses incurred in the performance of their duties, in accordance with the Federal Advisory Committee Act.(E) Staff and facilities.--The Advisory Committee may utilize the facilities and services of employees of any Federal agency without cost to the Advisory Committee, and any such agency is authorized to provide services as requested by the Committee.(c) Ombudsman.--The President shall appoint an ombudsman to provide the public with an opportunity to participate in the carrying out of the community adjustment and investment program.(1) Function.--It shall be the function of the ombudsman--(A) to establish procedures for receiving comments from the general public on the operation of the community adjustment and investment program, to receive such comments, and to provide the President with summaries of the public comments; and(B) to perform an independent inspection and programmatic audit of the operation of the community adjustment and investment program and to provide the President with the conclusions of its investigation and audit.(2) Authorization of appropriations.--There are authorized to be appropriated to the President, or such agency as the President may designate, $25,000 for fiscal year 1995 and for each fiscal year thereafter, for the costs of the ombudsman.(d) Reporting Requirement.--The President shall submit to the appropriate congressional committees an annual report on the community adjustment and investment program (if any) that is carried out pursuant to this section. Each report shall state the amount of the loans made or guaranteed during the 12-month period ending on the day before the date of the report.

House Ways & Means Committee Report

No Legislative History.

The House Energy & Commerce Committee Report

No Legislative History.

Committee on Foreign Relations

Section 543(a) of the bill provides that the President may enter into an agreement with the NADBank that facilitates implementation by the President of a community adjustment and investment program in support of the NAFTA pursuant to the agreement establishing the NADBank. The agreement provides that the total amount of loans, guarantees and grants provided for community adjustment and investment must not exceed ten percent of the sum of the paid- in capital actually paid to the bank by the United States and the amount of callable shares for which the United States has an unqualified subscription.

In furtherance of this program, the President is authorized to receive from the NADBank ten percent of the paid-in capital actually paid to the bank by the United States and to transfer those funds to federal agencies that make or guarantee loans to pay the subsidy and, as appropriate, other costs associated with such loans or guarantees.

As specified in section 543(a)(4), such loans or guarantees will be subject to the restrictions and limitations that apply to the particular agency's existing loan or guarantee program, except that any funds transferred to an agency will be in addition to the amount of funds authorized in any appropriation act to be expended by that agency for its program.

Section 543(a)(5) provides that the President will establish guidelines for the loans and loan guarantees to be made by federal agencies under the community adjustment and investment program and endorse the grants and any loans or guarantees made by the NADBank for the community and investment program pursuant to the terms of the Border Environmental Cooperation Agreement.

Section 543(b) provides for the establishment of a public advisory committee in accordance with the Federal Advisory Committee Act. The committee will be composed of representatives of community groups whose constituencies include low-income families; nongovernmental organizations; business interests; and other appropriate entities, to be appointed by the President.

As set forth in section 543(b)(3), the advisory committee will provide advice to the President regarding the establishment of the community adjustment and investment program, including advice on the guidelines for loans and guarantees to be made under the program, advice on identifying the needs for adjustment assistance and investment in support of the goals and objectives of the NAFTA, taking into account economic and geographic considerations, and advice on such other matters as may be requested by the President. The advisory committee will also review, on a regular basis, the operation of the community adjustment and investment program and provide the President its conclusions.

Section 543(b)(4) provides, among other things, for the reimbursement of advisory committee members for travel, per diem and other necessary expenses incurred in the performance of their duties, and for the provision of a Secretariat and other services for the committee by appropriate federal agencies.

Under section 543(c), the President will appoint an ombudsman to provide the public with an opportunity to participate in the implementation of the community adjustment and investment program. The ombudsman will establish procedures for receiving comments from the public on the operation of the program, and will provide the President with summaries of those comments. The ombudsman will also perform an independent inspection and

audit of the operation of the program and provide the President with the conclusions of the investigation and audit.

SEC. 544. DEFINITION

For purposes of this part, the term "Border Environment Cooperation Agreement" (referred to in this part as the "Cooperation Agreement") means the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank.

House Ways & Means Committee Report

No Legislative History.

The House Energy & Commerce Committee Report

Section 544 provides that for purposes of this part, the term "Border Environment Cooperation Agreement" (referred to in this part as the "Cooperation Agreement") means the November 1993 Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank.

Senate Finance Committee Report

No Legislative History.

TITLE VI--CUSTOMS MODERNIZATION

House Ways & Means Committee Report

Title VI of H.R. 3450 encompasses four subtitles. The primary purpose of the Title is to streamline and automate the commercial operations of the U.S. Customs Service. The Title is also intended to improve compliance with the customs laws and provide safeguards, uniformity, and due process rights for importers. Subtitle A contains improvements in Customs enforcement and revisions required by the transition to electronic processing. The subtitle addresses electronic transmission to Customs of false or altered documents; Customs procedures with regard to detentions, seizures, publication of

rulings, examinations of books and witnesses, and handling of protests and appeals; accreditation of laboratories; recordkeeping responsibilities and requirements; and penalty provisions for importing controlled substances and non-compliance with manifest and recordkeeping requirements. Subtitle B authorizes the Secretary of the Treasury to establish the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial imports. For the first time, filing of entry information from a remote location is authorized. The subtitle establishes the ability of an importer to file entries and pay duties on a periodic basis. This subtitle also provides for electronic transmission of drawback claims, manifests, invoices and other documentation used for merchandise entry processing, and establishes the admissibility of electronically transmitted information in administrative and judicial proceedings. Subtitle C contains miscellaneous amendments to the Tariff Act of 1930. These include provisions which facilitate Customs collection of duties, enable Customs to dispose of seized or unclaimed merchandise more efficiently, authorize Customs to reimburse claims for damage of privately- owned property, provide for reimbursement of Customs for the costs incurred in collecting fees on behalf of other agencies, and authorize Customs to contract with private collection agencies to recover money owed the U.S. Government. In addition, the subtitle addresses vessel entry and clearance requirements.

Subtitle D addresses numerous conforming amendments supportive of the transition to automation. In addition, the subtitle modifies entry requirements for certain transport equipment used as an instrument of international trade. This subtitle also requires Customs reports to Congress on the antidumping and countervailing duty program, the Customs Compliance Measurement Program and on the level of fees collected by Central Examination Stations.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

The Customs Service will bear the chief responsibility for implementing and enforcing the provisions of the NAFTA. In addition to implementing the tariff phase-out schedule for thousands of products, as set forth in Annex 302.2, the Customs Service will also be tasked with monitoring and verifying compliance with each of the product-specific rules of origin found in Annex 401, as well as compliance with the general rules of origin provided for in Chapter 4. NAFTA Article 303 imposes significant limitations on duty drawback to help achieve the NAFTA's goal of creating a more integrated North American market. The Customs Service will be the agency tasked with ensuring compliance with the duty drawback rules. The Customs Service will also be required to review and evaluate the Certificates of Origin that are required under Chapter 5 for goods for which NAFTA tariff preferences are

sought. NAFTA Articles 502 and 504 set forth obligations relating to importations from NAFTA countries and exportations to NAFTA countries; again, the Customs Service is the agency charged with ensuring that these obligations are met. Under Article 509, the Customs Service will be required to provide advance rulings regarding compliance with the NAFTA rules of origin and the country of origin marking requirements found in Annex 311, as well as general eligibility for preferential treatment under Annex 302.2. And it will be the Customs Service that will assess the penalties required under Article 508 for noncompliance with the provisions of Chapters 3, 4, and 5 of NAFTA.

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

Title VI, the Customs Modernization Act, will significantly enhance the ability of the Customs Service to implement and enforce the NAFTA by increasing the agency's efficiency and productivity. Title VI accomplishes this goal by removing archaic statutory provisions requiring paper documentation and providing the full authority, under the National Customs Automation Program, for automated customs transactions. In return for facilitating the entry of merchandise through automation, Title VI contains a number of provisions to improve compliance with the customs laws, chiefly through penalties for failure to provide accurate information, including with respect to drawback claims, and for failure to keep the records that the Customs Service will require to audit or review entries of merchandise after they have been cleared and verify compliance with the NAFTA. Title VI also implements the concept of "informed compliance," which is premised on the belief that importers have a right to be informed about customs rules and regulations, as well as interpretive rulings, and to expect certainty that the Customs Service will not unilaterally change the rules without providing importers proper notice and an opportunity for comment. The Committee believes that these provisions, too, will improve compliance with the customs laws in general, as well as with the numerous rules and regulations that are specific to the NAFTA. Finally, Title VI includes a number of administrative modifications aimed at streamlining the agency's operations and improving the productivity of the Service. Taken together, the Committee strongly believes that the provisions of Title VI will assist the Customs Service in administering and enforcing the provisions of the NAFTA, as well as equipping the Service with the tools necessary to enforce effectively U.S.

trade and customs laws in general, while facilitating imports from NAFTA countries and other trading partners.

SEC. 601. REFERENCE

Whenever in subtitle A, B, or C an amendment or repeal is expressed in terms of an amendment to, or repeal of, a part, section, subsection, or other provision, the reference shall be considered to be made a part, section, subsection, or other provision of the Tariff Act of 1930 (19 U.S.C. 1202 et seq.).

House Ways & Means Committee Report

Whenever in subtitle A, B, or C an amendment or repeal is expressed in terms of an amendment to, or repeal of, a part, section, subsection, or other provision, the reference shall be considered to be made to a part, section, subsection, or other provision of the Tariff Act of 1930 (19 U.S.C. 1202 et seq.)

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Subtitle A--Improvements in Customs Enforcement

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Subtitle A--Improvements in Customs Enforcement

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Subtitle A--Improvements in Customs Enforcement

SEC. 611. PENALTIES FOR VIOLATIONS OF ARRIVAL, REPORTING, ENTRY, AND CLEARANCE REQUIREMENTS

Section 436 (19 U.S.C. 1436) is amended--(1) by amending subsection (a)--(A) by striking out "433" in paragraph (1) and inserting "431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)",(B) by amending paragraph (2) to read as follows:"(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", and(C) by amending paragraph (3) to read as follows:"(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"; and(2) by striking out "and entry" in the section heading and inserting "entry, and clearance".

House Ways & Means Committee Report

Present law

19 U.S.C. 1436 provides civil and criminal penalties for violations of the statute concerning the report of arrival of vessels, vehicles or aircraft, including the presentation of forged or altered documents.

Explanation of provision

Section 611 of H.R. 3450 amends 19 U.S.C. 1436 to provide penalties for violation of the arrival, entry, clearance and manifest requirements consistent with the provisions of section 3113(a) of the Anti-Drug Abuse Act of 1986 (Public Law 99-570; 100 Stat. 3207-81). Section 611 also makes current penalties for presenting false or altered data or manifests applicable to the transmitting of false or altered data or manifests to Customs through an electronic data interchange system.

Reasons for change

Section 611 will bring uniformity to the penalty provisions applicable to the arrival, entry, clearance and manifest laws and will modernize the law so as to recognize the use of electronic means of communication.

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No Legislative History.

Senate Finance Committee Report

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

SEC. 612. FAILURE TO DECLARE

Section 497(a) (19 U.S.C. 1497(a)) is amended--(1) by inserting "or transmitted" after "made" in paragraph (1)(A); and(2) by amending paragraph (2)(A) to read as follows:"(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".

House Ways & Means Committee Report

Present law

19 U.S.C. 1497 provides for forfeiture and penalties for the failure to declare articles. The amount of the penalty for an article that is a controlled substance is 1,000 percent of the value of the article.

Explanation of provision

Section 612 of H.R. 3450 amends 19 U.S.C. 1497 to provide that entries and declarations may be transmitted electronically, and to establish a minimum $500 penalty for the importation of undeclared controlled substances.

Reasons for change

Section 612 will modernize the administration of the statute by authorizing the electronic transmittal of entries and declarations and will ensure that an adequate penalty is assessed for the importation of small amounts of controlled substances.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 613. CUSTOMS TESTING LABORATORIES; DETENTION OF MERCHANDISE

(a) Amendment.--Section 499 (19 U.S.C. 1499) is amended to read as follows:"

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.

"(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.".(b) Existing Laboratories.--Accreditation under section 499(b) of the Tariff Act of 1930 (as added by subsection (a)) is not required for any private laboratory (including any gauger) that was accredited or approved by the Customs Service as of the day before the date of the enactment of this Act; but any such laboratory is subject to reaccreditation under the provisions of such section and the regulations promulgated there under.

House Ways & Means Committee Report

Present law

19 U.S.C. 1499 provides Customs with the authority to conduct examinations and detain imported merchandise. The statute stipulates that not less than one package of every invoice and not less than one package of every ten packages of merchandise shall be examined unless it is determined that a lesser number of packages can be examined. If there is evidence of fraud, the merchandise can be seized. If there is no evidence of fraud, the value of an article omitted on the entry shall be added and the duties paid thereon. The section also discusses circumstances relating to appraisements being held invalid.

Explanation of provision

Section 613 of H.R. 3450 amends 19 U.S.C. 1499 by removing obsolete examination requirements, authorizing the Secretary to designate examination sites, and providing for the collection of duties, fees and taxes on merchandise not specified in an invoice or entry.

Section 613 establishes a new subsection (b) which authorizes Customs to set procedures for the accreditation of commercial laboratories and the approval of commercial gaugers, and the suspension and revocation of accreditation or approvals. Procedures for accrediting commercial laboratories and gaugers will apply only when the determination of the elements relating to admissibility, quantity, or composition of imported merchandise is vested in or delegated to the Customs Service. Under section 613, commercial laboratories and gaugers may be accredited only to perform tests that otherwise would be performed by Customs laboratories. Laboratories and gaugers that are currently accredited under Customs'

regulations will not be required to reapply, but will be subject to reaccreditation. Section 613 also creates appeal rights for commercial laboratories and gaugers to challenge in the Court of International Trade any order or decision relating to their accreditation or reaccreditation or the assessment of a penalty within 60 days of its issuance. Section 613 further provides that, in the absence of Customs testing, Customs shall accept quantity and analysis results from the Customs' accredited laboratories and gaugers but does not limit or preclude Customs or any other Federal agency from independently testing, analyzing or quantifying any merchandise.

Section 613 further requires the Secretary of the Treasury to prescribe regulations that establish the conditions under which the Customs Service may suspend or revoke accreditation or institute penalties for violations of law, regulations or the commercial laboratory or gauger agreement. Such penalties shall not exceed $100,000 and shall be in addition to recoveries of any actual or potential loss of revenue that may have resulted from an intentionally falsified report or analysis submitted by an accredited laboratory or gauger. Section 613 also authorizes accreditation and reaccreditation charges.

Section 613 further provides that testing procedures and methodologies will, unless proprietary to the Customs Service (i.e. developed by Customs for enforcement purposes) or the holder of a copyright or patent, be made available upon request to laboratories and importers or their agents. Test results will, unless they reveal information proprietary to the Customs Service or the holder of a copyright or patent, be made available on request to the importer or its agents.

Section 613 also establishes a new subsection (c) which institutes procedures regarding the detention of merchandise by the Customs Service. This will provide the importer with notice of the detention decision and a remedy if the detention extends beyond 60 days. These procedures compel Customs to make a decision to release or detain merchandise within five working days after presentation of the merchandise for examination. The procedures will also require that, if Customs decides to detain merchandise, notice be given to interested parties of any detention. Section 613 further requires that the Customs Service provide copies of any Customs' testing results and a description of the analytical procedures and methodologies employed to any party having an interest in detained merchandise unless such disclosure reveals testing procedures and methodologies that are proprietary to the Customs Service (i.e., developed by Customs for enforcement purposes) or the holder of a copyright or patent.

Section 613 provides for expedited administrative and judicial review of detentions. The failure to make an admissibility decision concerning the detained merchandise within thirty days after the merchandise has been presented for examination will qualify as a decision to exclude for purposes of the protest law (19 U.S.C. 1514). If the protest is denied, the challenging

party may institute suit in the Court of International Trade (CIT). During judicial review of a detention, the Customs Service has, notwithstanding 28 U.S.C. 2639, the burden of proof in demonstrating that it has good cause for not reaching an admissibility decision. However, the burden remains with the complainant, in accordance with 28 U.S.C. 2639, if a suit is commenced after a decision on admissibility has been reached. If the Court of International Trade determines that the Customs Service has not met its burden of showing good cause for not reaching an admissibility decision, it shall order the appropriate relief which may include an order to release the merchandise. Once an action has commenced before the CIT, the Customs Service shall immediately notify the Court if a decision to release, exclude or seize has been reached.

Reasons for change

Section 613 will bring the law into conformity with existing practice regarding the examination and detention of merchandise and will codify Customs regulations and administrative guidelines concerning the use of commercial laboratories and gaugers. Nothing in this section is intended to change existing procedures in effect between Customs and other federal agencies regarding the referral of the admissibility decision to those agencies having authority over the disposition of the detained merchandise.

To provide for the adequacy of information available to Customs officials responsible for conducting examinations, the Committee intends that any entry or manifest information required for release which has been filed with the Customs Service, either electronically or in paper form, be available at the port of examination. In the case of remote filing of paper documentation after January 1, 1999, Customs shall be responsible for ensuring that the required information--including CF 3461, packing list, and the invoice--will be available to the appropriate official in the port of examination. The Committee intends that the absence of required entry or manifest information in a particular location shall not preclude or limit in any way the authority of the Customs Service to conduct examinations.

With regard to laboratories, the Committee urges Customs to expand the list of products and analyses open to accreditation. The Committee believes that Customs should consider promotion of these programs to the trade community by publishing annual updates of approved gaugers and accredited labs and soliciting suggestions from the importing community on expansion of the program. The Committee is concerned that Customs not provide disincentives to expansion of the accreditation program through the acceptance of test results from non-Customs approved/accredited gaugers and labs in those areas which are open to Customs approval or accreditation. This section is not intended to preclude Customs from accepting a company's in-house laboratory report or analyses pertaining to its own imports.

With regard to the imposition of penalties for the violation by laboratories or gaugers of law, regulations or accreditation agreements, the Committee intends that within a reasonable time following the enactment of this legislation, the Customs Service shall publish guidelines governing the imposition of and level of penalties and any mitigating factors that will be considered by the Customs Service in assessing such penalties. In the case of laboratories and gaugers, the Committee intends that penalties may be assessed and, as the statute indicates, in each case where gauger or lab results have been intentionally falsified in collusion with the importer, recoveries of lost revenue may also be sought. The penalty guidelines shall take into account the severity of the violation (e.g. failure to register new employee versus deliberate falsification of laboratory analysis) and the frequency of violations; penalties shall not be assessed for good faith differences in professional opinion, i.e., if the laboratory or gauger exercised reasonable care and diligence and employed qualified professionals who used recognized and acceptable scientific procedures to reach test results that are scientifically and professionally defensible.

With regard to the assessment of fees related to accreditation and reaccreditation, it is the Committee's intention that these fees be reasonable and limited to not more than the costs equivalent to those incurred by the Customs Service in performing services connected with the accreditation and reaccreditation of laboratories and gaugers.

It is the Committee's intent that testing procedures and methodologies, to the extent not proprietary or developed and used exclusively by the Customs Service for enforcement purposes, be made available on request to importers, laboratories and any others in the trade community expected to make use of such procedures and methodologies in connection with import activities. The Committee intends that the definition of "testing procedures and methodologies developed or used by the Customs Service for enforcement purposes" be construed as narrowly as possible to those whose revelation would materially assist an importer in potential circumvention of Customs laws and regulations. In the case of analytical methods and results which can be provided, it is the Committee's intention that these include not only the final Customs lab report, but also data and other information supportive of the lab results.

For example, if the Customs Service uses a standard, non-proprietary test to determine whether a textile material is considered coated, the analytical method should be made available to private laboratories fully accredited under the new program. So also should the test be made available to importers bringing textile materials to the United States. With equal importance, if the analysis is actually used by the Customs Service and results therefrom form the basis for the tariff classifications of an article, whether from an actual importation or accompanying a request for a binding ruling, the Customs Service shall, on request, furnish the importer of record, or the person requesting the ruling, with the results of that test (unless the

results would reveal proprietary or Customs developed testing procedures or methodologies). This will serve to inform the importer of how the Customs Service came to the classification decision at issue. Through this freer exchange of information, the Committee believes that trade facilitation will be served.

It is intended that the provisions set forth in subsection (c), relating to the detention of merchandise, provide a carefully balanced structure which allows the Customs Service, in the first instance, a minimum of 60 days in which to determine whether merchandise initially detained shall be excluded from entry or seized and forfeited if otherwise authorized under other provisions of law. After the passage of 60 days, an importer may institute an action in the Court of International Trade. If such action is taken, it is the Committee's intent that the burden of proof shall be on the Customs Service to show, by a preponderance of evidence, good cause as to why an admissibility decision had not been made prior to the time the importer commenced suit. Only in this special form of exclusion action will the burden of proof be on the Government. Thus, if, prior to commencement of the action, the Customs Service determines to exclude the merchandise from the United States, an importer wishing to challenge that decision shall bear the burden of proof consistent with the provisions set forth in 28 U.S.C. 2639.

In meeting the "good cause" burden related to an admissibility decision before the Court of International Trade, the Committee intends that the Customs Service may satisfy the "good cause" burden by showing that another federal agency with jurisdiction over an admissibility decision has not yet reached a determination regarding the admissibility of the merchandise. The Committee intends, however, that this not provide the basis for continued inordinate delay and would encourage the determination by the court of a reasonable date certain for a decision.

The Committee recognizes that Customs often detains merchandise on behalf of other Government agencies and is not directly involved in the activities which result in the decision to admit or exclude the merchandise. These agencies include the Food and Drug Administration (FDA) and the Department of Agriculture, among others. This procedure providing recourse through the Court of International Trade would be reserved for admissibility determinations for which the Customs Service is responsible. Nothing in this section is intended to change the procedures or relationship between Customs and other Federal agencies. However, this would not preclude application of this new procedure and remedy in those cases where Customs has the responsibility and authority to determine the admissibility of the merchandise, and such procedures and remedies are agreed to by the other agency.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

This section is also intended to codify Customs Service regulations and administrative guidelines concerning the use of commercial laboratories and gaugers. Section 613 authorizes the Customs Service to establish procedures for the accreditation of commercial laboratories and the approval of commercial gaugers, and for the suspension and revocation of accreditation or approvals, but such procedures will apply only when the determination of admissibility, quantity, or composition of imported merchandise is vested in or delegated to the Customs Service. Although the bill authorizes the Customs Service to impose a reasonable charge for accreditation or reaccreditation, it is the Committee's intent that these fees be equivalent to the costs incurred by the agency in performing such accreditation and reaccreditation.

Section 613 provides that laboratories and gaugers that are currently accredited under Customs Service regulations will not be required to reapply,

but will be subject to reaccreditation. This section also creates appeal rights for commercial laboratories and gaugers to challenge in the CIT any order or decision relating to their accreditation or reaccreditation or the assessment of a penalty within 60 days of its issuance. Section 613 provides that in the absence of Customs testing, the Customs Service shall accept quantity and analysis results from the laboratories and gaugers it accredits, but does not limit or preclude it or any other Federal agency from independently testing, analyzing, or quantifying any merchandise.

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

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

This section also sets forth procedures regarding the detention of merchandise by the Customs Service. These procedures compel the Customs Service to make a decision to release or detain merchandise within five working days after presentation of the merchandise for examination. The bill

requires the agency to notify the importer of any detention within five working days. The Customs Service must provide copies of any Customs' testing results and a description of the analytical procedures and methodologies employed to any party having an interest in detained merchandise unless such disclosure reveals testing procedures and methodologies that are proprietary to the holder of a patent or copyright or are developed by the Customs Service for enforcement purposes.

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

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

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

SEC. 614. RECORDKEEPING

Section 508 (19 U.S.C. 1508) is amended--(1) by amending subsection (a) to read as follows:"(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;

"(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."; and(2) by amending subsection (c) to read as follows:"(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.".

House Ways & Means Committee Report

Present law

19 U.S.C. 1508(a) provides generally that any owner, importer, consignee, or agent, must make, keep and render for examination and inspection records pertaining to any importation. Section 1508(c) provides that records be maintained for a period of 5 years from the date of entry. Section 1508(e) states that any person who fails to retain records of exports to Canada (as required in section 1508(b)) shall be liable to a civil penalty not to exceed $10,000.

Explanation of provision

Section 614 of H.R. 3450 expands the parties subject to the recordkeeping requirements of 19 U.S.C. 1508 to parties whose activities require filing an entry or declaration, parties transporting or storing merchandise carried or held under bond, parties who file drawback claims, and parties who cause an importation or the transportation or storage of merchandise held under bond. It also defines "records" for purposes of the recordkeeping laws to include information and data maintained in the form of electronically generated or machine readable data. The amendments made by this section clarify that any information pertaining to any of the activities described in subsection (a)(1) as well as any records containing information pertaining to any of the activities described in subsection (a)(1) are considered "records" for purposes of this law.

Finally, section 614 provides that records pertaining to drawback claims shall be kept for three years from the date the claim is paid; all other records required to be kept by this section, including those pertaining to exportations to Canada, shall be retained for five years from the date of importation or exportation (to Canada), as appropriate.

Reasons for change

These amendments will clarify the recordkeeping requirements for the importing community, close existing loopholes, and update the statute by bringing records made or retained by electronic means within the purview of the recordkeeping requirements.

It is the Committee's intent that Custom's recordkeeping requirement and examination authority is limited to those records which are referenced in the statute. The Committee emphasizes that Customs is not authorized to exceed its statutory authority in making "fishing expeditions" when requiring importers to maintain records and produce them for audit or inspection. It is the Committee's belief that the stipulation in section 615 of those records required to be produced for Customs upon request should restrict significantly potential for abuse.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 508 of the Tariff Act of 1930 provides that any owner, importer, consignee, or agent must make, keep and render for examination and inspection records pertaining to any importation. Section 508(c) provides that records be maintained for a period not to exceed five years from the date of entry.

Section 508(e) states that any person who fails to retain records of exports to Canada (as required under subsection (b)) shall be liable to a civil penalty not to exceed $10,000.

Section 614 imposes the recordkeeping requirements on parties whose activities require filing an entry or declaration, parties transporting or storing merchandise carried or held under bond, parties who file drawback claims, and parties who cause an importation or the transportation or storage of merchandise held under bond. This section also provides that information and data maintained in the form of electronically generated or machine readable data are "records" for purposes of the statute's recordkeeping requirements. Finally, section 614 provides that records pertaining to drawback claims shall be kept for three years from the date the claim is paid; all other records required to be kept by this section, including those pertaining to exportations to Canada, shall be retained for five years from the date of importation or exportation (to Canada), as appropriate. Section 205 of the implementing bill makes further changes to section 508 of the Tariff Act of 1930 to make the recordkeeping requirements applicable to exportations to NAFTA countries.

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

SEC. 615. EXAMINATION OF BOOKS AND WITNESSES

Section 509 (19 U.S.C. 1509) is amended as follows:(1) Subsection (a) is amended--(A) by striking out "and taxes" wherever it appears and inserting

", fees and taxes";(B) by amending paragraph (1) to read as follows:"(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);";(C) by amending that part of paragraph (2) that precedes subparagraph (D) to read as follows:"(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,"(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"; and(D) by striking out the comma at the end of subparagraph (D) and inserting a semicolon.(2) Subsections (b) and (c) are redesignated as subsections (c) and

(d), respectively.(3) The following new subsection is inserted after subsection (a):"(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.".(4) Subsection (d) (as redesignated by paragraph (2)) is amended--(A) by striking out "statements, declarations, or documents" in paragraph (1)(A) and inserting "those";(B) by inserting ", unless such customhouse broker is the importer of record on an entry" after "broker" in paragraph

(1)(C)(i);(C) by striking out "import" in each of paragraphs (2)(B) and

(4)(B);(D) by inserting "described in section 508" after "transactions" in each of paragraphs (2)(B) and (4)(B); and(E) by inserting ", fees," after "duties" in paragraph (4)(A).(5) The following new subsections are added at the end thereof:"(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;

"(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;

"(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 or 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."

House Ways & Means Committee Report

Present law

Section 509(a)(1), as amended (19 U.S.C. 1509(a)(1)) provides authority for the examination of records and witnesses. Section 1509(a)(2) provides the authority to summons the importer, or officer, employee, or agent of the importer; or any person having possession, custody, or care of the records; or any other person; and to require the production of the records. Section 1509(c) defines the terms "records", "summons", and "third-party record keeper" and sets forth special procedures for third-party summonses.

Explanation of provision

Section 615 of H.R. 3450 amends 19 U.S.C. 1509, subsection (a), by providing that records maintained in the form of electronically generated or machine readable data fall within the purview of this statute, and that records required for the entry of the merchandise, whether or not Customs waived their presentation at entry, shall be produced for Customs

examination within a reasonable time after demand for their production, taking into account the number, type and age of the item demanded. Section 615 also requires that the Customs Service identify and publish a list of the records that are required for the entry of merchandise. The failure to comply with a demand for the production of records required for the entry of merchandise may subject the non-complying party to an administrative penalty under subsection (g).

Subsection (b) of section 1509 sets forth procedures for the conduct of regulatory audits. These procedures require advance notification, entry and closing conferences, preparation of a written audit report within 90 days following the closing conference, and the sending of a copy of the audit report, subject to any applicable exemption from disclosure provided in the Freedom of Information Act (5 U.S.C. 552), to the audited party within 30 days of completion, unless a formal investigation has been commenced. This section expands the parties subject to Customs summons authority to include parties who export to Canada, transport or store merchandise under bond, or file any declaration, entry or drawback claim with Customs.

Section 615 establishes a new subsection (f) entitled "Recordkeeping Compliance Program". Customs shall establish this program, on a voluntary basis, after consulting with the importing community. Recordkeepers who are certified by Customs may participate in the program, or establish an alternative program suited to their and Customs particular needs, if they can show, among other things, comprehension of legal recordkeeping requirements, employment of procedures for explaining recordkeeping requirements to employees, for making, maintaining and producing records to Customs when demanded, for notifying Customs of variances to, or violations of, the recordkeeping compliance program, and for taking corrective action when notified by Customs of violations or problems regarding the program. Customs shall take into account the size and nature and volume of imports of an importing business when deciding to certify their programs.

Section 615 further establishes a new subsection (g) entitled "Penalties". This subsection provides penalties for the failure to comply with a lawful demand for records which are required for the entry of merchandise. The penalties apply to each release of merchandise from Customs custody. These penalties allow Customs to reduce the paperwork demands on an importer because Customs can waive the production of the records at entry while retaining authority to demand their production at a later time. The amount of the penalty will depend on whether the failure to produce the records is due to willful conduct or negligence. If the demanded information relates to the eligibility of merchandise for a column 1 special rate of duty, Customs may, in addition to issuing a penalty, liquidate an entry at the column 1 general rate of duty, or if the entry liquidated within a two-year period preceding the date of demand, reliquidate the entry at the column 1 general rate of duty.

No penalty shall be issued if the demand is substantially complied with by the production of other evidence satisfactory to the Customs Service, if an act of God or other natural casualty or disaster prevents compliance with a lawful demand, or if demanded information was presented to, and retained by, Customs at time of entry or submitted in response to an earlier demand.

Any penalty imposed under section 615 shall be in addition to any other penalty provided by law, except where the Customs Service assesses a penalty for violation of 19 U.S.C. 1592 for a material omission of demanded information, or where Customs takes disciplinary action against a customs broker under 19 U.S.C. 1641.

Recordkeepers that are certified by Customs for participation in the recordkeeping compliance program and are in general compliance with the program, shall, in the absence of willfulness or repeated violations, be issued a written warning notice (in lieu of a penalty) if they fail to comply with a demand for the production of records required for the entry of merchandise. Willfulness in failing to produce demanded records or repeated violations of law by a recordkeeper may result in the issuance of penalties and removal of certification for the recordkeeping compliance program.

Reasons for change

Under current law, Customs has no administrative recourse other than resorting to a Customs summons when requests for records are ignored. If the record keeper ignores the summons, Customs has no recourse but to go to court. This rarely occurred because of administrative burden and expense. The Committee recognizes that an administrative penalty is desirable because of the delay, burden and expense associated with pursuing enforcement of a Customs summons through the judicial system. Nonetheless, the Committee believes that only those records that are required for the entry of merchandise should be within the purview of the administrative penalty provision in subsection (g). The Committee intends that the issuance of an administrative penalty shall not reduce or limit in any way Customs' authority to issue summonses. The amendments modernize the law by statutorily recognizing that records may be retained by electronic means.

The Committee expects that in an era of "informed compliance," the Customs Service will continue to make expanded use of its Regulatory Audit program. The provisions adopted in Title VI will provide the importing community with certain safeguards which will enhance the value of the regulatory audit program in strengthening import procedures and recordkeeping. Section 509(b)(5) makes clear that the Customs Service will not be required to hold a closing conference or complete and furnish to a person being audited a copy of the written audit report if a formal investigation has been commenced. The Committee urges the Customs Service, however, to provide notice of the opening of a formal investigation

as soon as practicable, particularly in those cases in which there is sufficient cause to believe that records required to substantiate suspected concerns would not be rendered unavailable for presentation or destroyed. Additionally, any audit report provided to the audited party will be subject to Freedom of Information Act (5 U.S.C. 552) exemptions.

The Committee also expects that formal written audit reports will be of such quality as to further the informed compliance efforts which lie at the heart of this title, and that the exemptions to the Freedom of Information Act will be used judiciously and in a manner consistent with this objective. If, during a routine audit, a Customs Service's auditor believes that recordkeeping deficiencies exist, they should be pointed out to the audited party. Matters more properly characterized as involving tariff classification, valuation, or interpretation of law, however, should be brought to the attention of Customs officers with the appropriate expertise.

The new law will require the Customs Service to make available to the importing community a list of all records, statements, declarations or documents required by law or regulation for the entry of merchandise. It is the intention of the Committee that the Customs Service publish the list of records required for the entry of merchandise in the "Customs Bulletin" as soon as practicable following the enactment of this legislation. Examples of records required for the entry of merchandise include but are not limited to a commercial invoice, a packing list, certificates of origin Form A (where a claim for a preference is made), declarations of a foreign manufacturer, and any specific document or other agency form required, pursuant to regulation, for the admissibility into the United States of particular merchandise. Regulations in connection with this requirement shall also be published at a later date. Once this listing has been made available and importers have had an opportunity to familiarize themselves with the contents, the Committee expects the person on whom a demand has been made for any of the records under section 509(a)(1)(A) of the Act will furnish them under the "reasonable time" standard embodied in the law. The Committee also believes that Customs headquarters should exercise tight control over the imposition of recordkeeping penalties, and until the Customs Service gains some experience in administering this penalty, no such penalty should be issued without prior headquarters review and approval.

The Committee believes that the statute is relatively clear on how factors such as "number, type, and age of the item demanded" will impact on the obligation to produce. A single request for a single page document associated with a six-month old entry should be produced within a matter of days. In contrast, the production of 50 commercial invoices from an equal number of entries that were filed more than two years preceding the date of the demand obviously will take longer to produce, and may take as much as two to four weeks, depending on whether the records had to be retrieved from storage and the method of storage. Again, if the Informed Compliance Program works as the Committee intends, the Customs Service and the

importing public should be able to develop document production schedules that do not impact adversely on the current business at hand, but at the same time permit the Customs Service to verify the accuracy of information directly related to one or more import transactions.

Under section 615, imposition of a penalty for failure to comply is not mandatory. This will permit the Customs Service to exercise judgment as to whether a civil penalty is warranted. Clearly, if an importer has adopted a recordkeeping compliance program in consultation with the Customs Service, the penalties may be inappropriate. Furthermore, although the Committee recognizes that any penalty assessed by the Customs Service may be remitted or mitigated under 19 U.S.C. 1618, the Committee feels it proper to restate this by a clause in this section concerning administrative penalties assessed under subsection (g).

The Committee believes that there are three instances in which the substantial penalties for failure to produce certain records should not be imposed. First, where the information demanded has been presented to and retained by the Customs Service at the time of entry, recordkeeping penalties are clearly unwarranted. So also should be the case if the information demanded had been submitted in response to an earlier demand by the Customs Service. Second, failure to produce should not be penalized if it was the result of typical force majeure catastrophes, i.e. an act of God. Third, it is quite possible that compliance with the demand can be achieved through other means. If other evidence satisfies the Customs Service, no penalty should be assessed.

In the case of disciplinary action considered against brokers under this provision, the Committee recognizes that customs brokers may be recordkeepers under section 509. Their conduct is controlled under section 641 of the Tariff Act of 1930 which specifies penalties for violations of statute. By reason of commercial necessity, brokers may act as importers of record in cases where the actual importer does not have an entry bond. Their status as "brokers" does not change because of this and failure to maintain the records as specified in section 615 should not automatically subject them to penalties set forth in subsection (g).

The Committee intends, however, that Customs shall apply section 641 to brokers, including those who act as importers of record, unless there are exceptional circumstances. These occur when there is an egregious, flagrant or willful violation of the requirements of section 509, or when there is a pattern or practice of abuse occurring over a sustained period of time, also in willful disregard of those recordkeeping requirements. The recordkeeping penalty assessed under section 641 for failure to comply with a demand for information shall follow the same principles as is the case under section 509. Each failure by a broker to comply with a demand under section 509 shall be actionable under section 641, and subject the broker to revocation, suspension or monetary penalties in lieu of a penalty under section 509.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

day operations of the business while permitting the agency to verify in a timely manner the accuracy of information relating to import transactions.

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

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

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

taking corrective action when notified by the Customs Service of violations or problems regarding the program. The Customs Service shall take into account the size and nature and volume of imports of an importing business when deciding to certify its program.

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

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

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

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

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

SEC. 616. JUDICIAL ENFORCEMENT

The second sentence of section 510(a) (19 U.S.C. 1510(a)) is amended by inserting "and such court may assess a monetary penalty" after "as a contempt thereof".

House Ways & Means Committee Report

Present law

19 U.S.C. 1510 provides that a district court may issue a compliance order to a person who refuses to obey a Customs summons issued under 19

U.S.C. 1509. Pursuant to section 616, the failure to abide by such court order may be punished as a contempt of court.

Explanation of provision

Section 616 of H.R. 3450 amends 19 U.S.C. 1510 by granting district court judges authority to assess a monetary penalty, in addition to holding a violative party in contempt of court, for the failure to abide by a court order for the production of records.

Reasons for change

While the current remedy is to hold the violative party in contempt of court, section 616 gives the courts alternative remedies for the failure to abide by a court order.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 617. REVIEW OF PROTESTS

Section 515 (19 U.S.C. 1515) is amended by inserting at the end the following new subsections:"(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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1515 provides the procedures relating to review of protests, administrative review and modifications of decisions, and requests for accelerated disposition of protests.

Explanation of provision

Section 617 of H.R. 3450 amends 19 U.S.C. 1515 by allowing importers 60 days to request that the Commissioner of Customs review a decision denying an application for further review. Review of such a request will be based solely on the basis of the record before Customs at the time the application for further review was denied. Section 617 also authorizes Customs, on its own initiative or pursuant to a request by a protesting party, to void a protest denied contrary to proper instructions. Customs must act within 60 days after date of the request. Proper instructions include only those instructions that are issued by an appropriate customs official having the necessary authority vested by law or U.S. Customs Service to issue such instructions. Finally, section 617 provides that all administrative action pertaining to a protest or application for further review will terminate when an action is commenced in the Court of International Trade (CIT) arising out of such protests or applications and that any administrative action taken subsequent to the commencement of an action shall be null and void.

Reasons for change

Section 617 will permit the Commissioner of Customs to rectify erroneous denials of applications for further review and protests without recourse to the judicial system. Section 617 further provides the Commissioner of Customs the authority to void the denial of a protest, if appropriate.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 515 of the Tariff Act of 1930 provides procedures for review of protests, administrative review and modifications of decisions, and requests for accelerated disposition of protests. This section amends section 515 to allow importers to request that the Commissioner of Customs review a decision denying an application for further review. Review of such a request will be based solely on the basis of the record before the Customs Service at the time the application for further review was denied.

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

SEC. 618. REPEAL OF PROVISION RELATING TO RELIQUIDATION ON ACCOUNT OF FRAUD

Section 521 (19 U.S.C. 1521) is repealed.

House Ways & Means Committee Report

Present law

19 U.S.C. 1521 provides that if the appropriate Customs officer determines that there is fraud in the case, he may reliquidate the entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or reliquidation.

Explanation of provision

Section 618 of H.R. 3450 repeals 19 U.S.C. 1521.

It is no longer necessary to reliquidate an entry on account of fraud to recover duties because Customs may use 19 U.S.C. 1592(d) for such purpose.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 619. PENALTIES RELATING TO MANIFESTS

Section 584 (19 U.S.C. 1584) is amended--(1) by amending subsection (a)--(A) by striking out "appropriate customs officer" wherever it appears and inserting "Customs Service",(B) by striking out "officer demanding the same" in paragraph (1) and inserting "officer (whether of the Customs Service or the Coast Guard) demanding the same", and(C) by inserting "(electronically or otherwise)" after

"submission" in the last sentence of paragraph (1); and(2) by amending subsection (b)--(A) by striking out "the appropriate customs officer", "he"

(except in paragraph (1)(F)), and "such officer" wherever they appear and inserting "the Customs Service",(B) by striking out "written" wherever it appears (other than paragraph (1)(F)),(C) by inserting "or electronically transmit" after "issue" wherever it appears, and(D) by striking out "his intention" in the first sentence of paragraph (1) and inserting "intent".

House Ways & Means Committee Report

Present law

19 U.S.C. 1584 provides penalties for failure to produce a manifest and for manifest discrepancies, and penalty procedures.

Explanation of provision

Section 619 of H.R. 3450 amends 19 U.S.C. 1584 to reflect that manifests, notices, statements and claims may be electronically transmitted.

Reasons for change

These amendments are necessary to enable Customs to automate and utilize electronic means to transmit manifests, notices and other documents.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 620. UNLAWFUL UNLADING OR TRANSSHIPMENT

Section 586 (19 U.S.C. 1586) is amended--(1) by inserting ", or of a hovering vessel which has received or delivered merchandise while outside the territorial sea," after "from a foreign port or place" wherever it appears; and(2) by amending subsection (f)--(A) by striking out "the appropriate customs officer of the" and

"the appropriate customs officer within the" and inserting "the Customs Service at the"; and(B) by striking out "the appropriate customs officer is" and inserting "the Customs Service is".

House Ways & Means Committee Report

Present law

19 U.S.C. 1586 provides penalties for unlading prior to the grant of permission; transshipment to any vessel for purpose of unlawful entry; and for unlawful transshipment to any U.S. vessel. An unlading or transshipment because of accident, stress of weather, or other necessity may not be subject to a penalty.

Explanation of provision

Section 620 of H.R. 3450 amends 19 U.S.C. 1586 to make conforming amendments regarding hovering vessels and vessels receiving merchandise outside of the territorial waters.

Reasons for change

These amendments close existing loopholes. For example, under present law, vessels which leave U.S. territorial waters, receive merchandise from a vessel outside of territorial waters, and then return to the U.S. to unlade the merchandise may not be subject to a penalty. Section 620 would remedy this deficiency.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 621. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE; PRIOR DISCLOSURE

Section 592 (19 U.S.C. 1592) is amended--(1) by inserting "or electronically transmitted data or information" after "document" in subsection (a)(1)(A)(i);(2) by inserting "The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct." at the end of subsection (a)(2);(3) by amending subsection (b)--(A) by amending the first sentence of paragraph (1)(A)--(i) by striking out "the appropriate customs officer" and inserting "the Customs Service",(ii) by striking out "he" and inserting "it", and(iii) by striking out "his" and inserting "its", and(B) by amending paragraph (2)--(i) by striking out "the appropriate customs officer" wherever it appears and inserting "the Customs Service",(ii) by striking out "such officer" wherever it appears and inserting "the Customs Service", and(iii) by striking out "he" wherever it appears and inserting

"it";(4) by amending subsection (c)(4)--(A) by striking "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" in subparagraph (A)(i) and by striking out "time of disclosure in 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his" in subparagraph (B), and inserting in each place "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"; and(B) by inserting after the last sentence the following: "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."; and(5) by amending subsection (d)--(A) by striking out "the appropriate customs officer" and inserting "the Customs Service",(B) by striking out "duties" wherever it appears and inserting

"duties, taxes, or fees", and(C) by inserting ", Taxes or Fees" after "Duties" in the sideheading.

House Ways & Means Committee Report

Present law

19 U.S.C. 1592 provides that if merchandise is entered, introduced, or attempted to be entered or introduced by a false document, oral or written statement, or act, or omission which is material, and the result of fraud, gross negligence or negligence, the person(s) responsible may be liable for a civil monetary penalty. In certain cases, the merchandise can be seized. Following written notice concerning the violation, a prepenalty response and/or petition for relief may be filed requesting mitigation in accordance with established guidelines.

Explanation of provision

Section 621 of H.R. 3450 amends 19 U.S.C. 1592 by prohibiting the electronic transmittal to Customs of false information or data, and authorizing Customs to recover underpayment or non-payment of taxes and fees resulting from a violation of 19 U.S.C. 1592.

Section 621 also provides that the mere non-intentional repetition by an electronic system of an initial clerical error shall not constitute a pattern of negligent conduct.

Section 621 further amends 19 U.S.C. 1592 by defining commencement of a formal investigation, for prior disclosure purpose, as being the date recorded in writing by the Customs Service when facts and circumstances were discovered or information received to believe a possibility of a violation of 1592 existed.

Reasons for change

These amendments will enable Customs to penalize the submission of false or fraudulent data or information by electronic means by making current penalties for presenting false or altered data or information applicable to the transmitting of false or altered data or information to Customs through an electronic data interchange system.

In the view of the Committee, for "informed compliance" to work, it is essential that the importing community and the Customs Service share responsibility in seeing that, at a minimum, "reasonable care" is used in discharging those activities for which the importer has responsibility. These include, but are not limited to: furnishing of information sufficient to permit Customs to fix the final classification and appraisal of merchandise; taking measures that will lead to and assure the preparation of accurate documentation and providing sufficient pricing and financial information to permit proper valuation of merchandise.

In meeting the "reasonable care" standard, the Committee believes that an importer should consider utilization of one or more of the following aids to establish evidence of proper compliance: seeking guidance from the Customs Service through the pre-importation or formal ruling program; consulting with a Customs broker, a Customs consultant, or a public accountant or an attorney; using in-house employees such as counsel, a Customs administrator, of if valuation is an issue, a corporate controller, who have experience and knowledge of customs laws, regulations, and procedures; or, when appropriate, obtaining analyses from accredited labs and gaugers for determining technical qualities of an imported product.

For example, in seeking advice for a classification issue, the Committee expects an importer to consult with an attorney or an in-house employee having technical expertise about the particular merchandise in question. In seeking advice for a valuation question, the Committee expects an importer to consult with an attorney or a public accountant, and as appropriate, personnel within the company knowledgeable regarding the importer's accounting system and how cost elements are booked.

In using a qualified expert, the importer is also responsible for providing such expert with full and complete information sufficient for the expert to make entry or to provide advice as to how to make entry. If the above steps are taken, the importer will be presumed to have acted with "reasonable care" in making entry.

The following are two examples of how the reasonable care standard should be interpreted by Customs: (a) the failure to follow a binding ruling is a lack of reasonable care; and (b) an honest, good faith professional disagreement as to correct classification of a technical matter shall not be lack of reasonable care unless such disagreement has no reasonable basis (e.g., snow skis are entered as water skis).

To the extent that an importer fails to use reasonable care in classifying and valuing the merchandise and presenting other entry data, the Customs Service may impose a penalty under the appropriate culpability level of 19 U.S.C 1592. The Committee notes that, in the administration of present penalty guidelines, the Customs Service uses the following definitions of culpability.

1. Negligence. A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

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

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

The Committee endorses these "current practice" definitions and expects their continued use by the Customs Service in the administration of penalty provisions under the Act. The Committee also notes the recent decision of the Court of International Trade in United States v. Thorson Chemical Corp., 795 F. Supp. 1190 (CIT 1992), in which Judge Carman stated, "While the statute itself does not define [the three degrees of culpability], the Court is guided by case law and Customs' own regulations."

In view of concerns expressed by the Joint Industry Group and others, the Committee has provided specific statutory language on a form of conduct that will not be held to constitute a pattern of negligent conduct. With increased reliance on electronic systems, it is entirely possible that transposition of amounts, insertion of basic entry data, or other form of clerical error will be repeated many times over once incorporated into the system.

The Committee recognizes it is also possible that an initial clerical error may be repeated several times over by entry level clerks or typists whose job it is to prepare documents using a model format as their source guide as to what should be repeated. In such circumstances multiple repetitions of an initial clerical error may not constitute a pattern of negligent conduct. The Customs Service will be expected to examine the nature of the data transcription in issue, and the element of time and the number of importations involved.

Repetitive human errors in certain cases may also not constitute a pattern of negligence. Such determination shall be based on the existence and operation of quality control procedures, nature of the data transmission, number of importations handled, and the degree of time involved in the action creating the error. The failure to use reasonable care, as required by 19 U.S.C. 1484, resulting in repetitive errors, whether repeated by computers or humans, shall constitute a pattern of negligent conduct.

The element of time may impact on the process in at least two instances. First, if a repetitive error goes undetected for more than six months, the Committee believes the Customs Service should consider this a pattern of negligent conduct. Stated otherwise, assuming there were daily entries of merchandise in which this error was repeated, it would appear that the

exercise of reasonable care would catch the error. The converse could be true, of course, if there was but a single entry in that six month period.

There may well be cases in which repetitive clerical errors abound, not just in a single case of entry but multiple cases. Were such to be discovered by the Customs Service and not previously disclosed by the importer as a consequence of the exercise of reasonable care, the Committee does not intend that an importer be protected as in the case of an initial clerical error.

With regard to prior disclosure, the Committee believes there should be a clearly defined and objective standard by which to measure when a formal investigation has considered to be commenced. That objective standard has to lie in the creation of a formal document or electronic transmission that will serve as evidence, if so required, of the formal opening of an investigation. That document or transmission must be maintained by the Customs Office of Enforcement or other central unit to be designated within Customs.

If a Customs official has reasonable cause to believe that a violation of section 592 has occurred, it will be incumbent on that official to record the salient facts and provide them to the Office of Enforcement or other central unit. That office shall determine whether the facts merit the opening of a formal investigation. Furthermore, care must be taken to record for posterity, the essential facts (e.g., names, nature of investigation, type of issue such as undervaluation, marking date and time the case is opened, etc.). Recourse to this procedure will allay the trade community's concerns that prior disclosure benefits will be denied in the absence of tangible evidence.

The Committee does not intend that Customs disclose to the target of an investigation the fact that a formal investigation has been opened. Nonetheless, if the Customs Service determines that it is appropriate to issue a pre-penalty notice under authority of section 592(b)(1) of the Act, a copy of the written document or electronic transmission should be included as an exhibit. In that one document, it will be patently clear whether the violation alleged ties to information previously disclosed by the disclosing party. More importantly, the timing issue will be properly framed. If the importer's disclosure of the circumstances of the violation precedes the recorded disclosure date, the case should be treated as one involving prior disclosure. Conversely, if the disclosure did not precede the opening of the formal investigation, the disclosing party will be left with a single burden: to prove disclosure of the circumstances of the violation was made without knowledge of the commencement of a formal investigation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Under section 592 of the Tariff Act of 1930, if merchandise is entered, introduced, or attempted to be entered or introduced by a false document, oral or written statement, or act, or omission which is material, and the result of fraud, gross negligence or negligence, the person(s) responsible may be liable for a civil monetary penalty. In certain cases, the merchandise may be seized. Following written notice concerning the violation, a pre-penalty response and/or petition for relief may be filed requesting mitigation in accordance with established guidelines.

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

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

present penalty guidelines and expects the Service to continue to use these definitions in the administration of the penalty provisions:

(1) Negligence.--A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

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

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

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

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

The Committee also recognizes that repetitive human errors may not, in some cases, constitute a pattern of negligence. The Committee expects that the Customs Service will make its determination based on the existence and operation of quality control procedures, the nature of the data transmission, the number of importations handled, and the amount of time involved in the

action creating the error. The Committee intends, however, that a failure to use reasonable care as required by section 484 of the Tariff Act of 1930, where such failure results in repetitive errors, shall constitute a pattern of negligent conduct.

The Committee notes that the element of time may affect the determination in at least two instances. If a repetitive error goes undetected for more than six months, the Committee believes that the Customs Service should consider this a pattern of negligent conduct. For example, the Committee believes that the exercise of reasonable care should catch an error repeated in daily entries of merchandise. However, if there was but a single entry during that six-month period, the converse would be true. If the Customs Service discovers cases where there are repetitive clerical errors in multiple entries, and such errors have not previously been disclosed by the importer in its exercise of reasonable care, the Committee does not intend that the importer will be shielded from a finding of negligent conduct.

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

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

The Committee does not intend that the Customs Service disclose to the target of an investigation the fact that a formal investigation has opened. But if the agency determines that it is appropriate to issue a pre-penalty notice under section 592(b)(1), a copy of the written document or electronic transmission should be included as an exhibit. With that one document, it should be clear whether the alleged violation stems from information

previously disclosed by the disclosing party. The time of disclosure will also be defined. If the importer's disclosure of the circumstances of the violation precedes the opening of the formal investigation, the case should be treated as one involving prior disclosure. But if the disclosure did not precede the opening of the formal investigation, the disclosing party will be left with the burden of proving that disclosure of the violation was made without knowledge that a formal investigation had been commenced.

SEC. 622. PENALTIES FOR FALSE DRAWBACK CLAIMS

(a) Amendment.--Part V of title IV is amended by inserting after section 593 the following new section:"

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 nonintentional 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 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 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) 3rd 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.".(b) Effective Date.--The amendment made by subsection (a) applies to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by the Customs Service. The Customs Service shall publish notice of this date in the Customs Bulletin.

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 622 of H.R. 3450 creates a new section 19 U.S.C 1593A to establish penalty provisions for the submission of false drawback refund claims. Section 622 would create a "Drawback Compliance Program" similar to the "Recordkeeping Compliance Program" discussed earlier. Customs would be required under the voluntary program to inform potential drawback claimants clearly about their rights and obligations.

The maximum statutory penalty for violations based on fraud would be 3 times the loss of revenue. For negligence, a drawback claimant qualifying for the "Compliance Program" would be issued a "warning notice" for an alleged first violation and then would be issued the following penalties on an escalating scale:

2nd case--not to exceed 20 percent of the loss of revenue;

3rd case--not to exceed 50 percent of the loss of revenue; and

4th and--not to exceed 100 percent of the loss of revenue subsequent.

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

Repetitive violations would be subject to a time frame of a "rolling" three (3) year period (similar to a traffic violation) after which the "clock" would start over.

Reasons for change

Section 622 provides for improvements to the drawback filing process to facilitate the processing of claims and the administration of the program. The establishment of the compliance program and the penalty provisions is intended to support "informed compliance" with the new procedures and balance trade facilitation and enforcement concerns.

Effective date

On or after operational implementation of a nationwide automated drawback selectivity program by the Customs Service.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 622 creates, as part of the Tariff Act of 1930, a new section 593A to establish penalty provisions for the false submission of drawback refund claims and to establish a "Drawback Compliance Program" similar to the "Recordkeeping Compliance Program" described above. The Customs Service would be required under the voluntary program to inform potential drawback claimants clearly about their rights and obligations. The Committee believes that the provision of penalties and the establishment of a drawback compliance program will promote informed compliance while balancing both trade facilitation and trade enforcement concerns.

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

Second case--Not to exceed 20 percent of the loss of revenue;

Third case--Not to exceed 50 percent of the loss of revenue; and

Fourth and Subsequent--Not to exceed 100 percent of the loss of revenue.

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

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

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

SEC. 623. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION

Section 625 (19 U.S.C. 1625) is amended to read as follows:"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;

"(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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1625 provides that within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision), the Secretary of the Treasury shall publish the decision in the "Customs Bulletin" or shall otherwise make such decision available for public inspection.

Explanation of provision

Section 623 of H.R. 3450 amends 19 U.S.C. 1625 by requiring that interpretative rulings, ruling letters or internal advice memorandum be published within 90 days in the Customs Bulletin or otherwise be made available for public inspection. Section 623 further provides that adverse interpretative rulings may be appealed within Customs, and require that a ruling modifying or revoking an existing ruling be first published in the Customs Bulletin for notice and comment. The Secretary of the Treasury will give interested parties an opportunity to submit comments and will strictly

enforce the 30-day comment period in order to avoid unduly delaying the process, absent extraordinary circumstances. Also, section 623 states that Customs make available all information necessary for importers to comply with applicable laws and regulations.

Section 623 requires that a decision that limits the application of a court decision shall also be published for notice and comment in the Customs Bulletin.

Reasons for change

Section 623 will provide assurances of transparency concerning Customs rulings and policy directives through publication in the Customs Bulletin or other easily accessible source.

It is the Committee's intent that the Customs Service shall be deemed to have satisfied any publication requirements mandated by this section if it disseminates such information by the U.S. Customs Service electronic bulletin board and such information remains publicly available in an accessible, retrievable format.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 624. SEIZURE AUTHORITY

Section 596(c) (19 U.S.C. 1595a(c)) is amended to read as follows:"(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 or 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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1595a(c) provides that any merchandise that is introduced or attempted to be introduced contrary to law (other than in violation of 19 U.S.C. 1592) may be seized and forfeited.

Explanation of provision

Section 624 of H.R. 3450 amends 19 U.S.C.1595a(c) by amending Customs seizure authority to provide as follows: (1) merchandise that is stolen or smuggled or clandestinely imported, or that is contraband or a controlled substance, shall be seized and forfeited; (2) merchandise subject to a restriction or prohibition pertaining to health, safety or conservation may be seized and forfeited if not in compliance with the restriction or prohibition; (3) merchandise which requires the authorization of a United States agency, but that is not accompanied by such, may be seized and forfeited; and (4) merchandise subject to copyright, trademark, trade name, or trade dress protection, and merchandise that is intentionally, falsely marked with the name of a country which is not the country of origin in violation of 19 U.S.C. 1304 or for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have marking violations may also be seized and forfeited.

Section 624 further provides that if the merchandise is subject to quantitative restrictions requiring a permit and such document is not presented the merchandise shall be detained unless the permit is counterfeit in which case the merchandise shall be seized and forfeited. Also, if the merchandise is imported contrary to applicable law governing the classification or appraisement of the merchandise and there are no issues concerning the admissibility of the merchandise, it may be seized only in accordance with 19 U.S.C. 1592.

Reasons for change

Section 624 is intended to codify existing practice and is intended to clarify the circumstances under which merchandise may be seized and forfeited under this statute. Nothing in section 624 is intended to change existing procedures in effect between Customs and other federal agencies regarding the seizure, forfeiture or other disposition of merchandise. It is the Committee's intent that nothing in this provision will change current law or Custom's practices regarding parallel imports.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

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

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

Subtitle B--National Customs Automation Program

House Ways & Means Committee Report

SUBTITLE B--NATIONAL CUSTOMS AUTOMATION PROGRAM

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

SUBTITLE B--NATIONAL CUSTOMS AUTOMATION PROGRAM

SEC. 631. NATIONAL CUSTOMS AUTOMATION PROGRAM

Part I of title IV is amended--(1) by striking out:

"PART I--DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM" Subpart A--Definitions";

(2) by inserting after section 402 the following: "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.

"(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).

"(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)."

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 631 of H.R. 3450 defines the National Customs Automation Program (NCAP) and its components. Section 631 provides that NCAP is an automated and electronic system for processing commercial importations and lists the existing and planned components of NCAP. The list of planned components shall be expanded in the future as other components are initiated after the date of enactment. Participation in NCAP is voluntary, but Customs will establish eligibility criteria for participation. Section 631 also outlines the goals of NCAP.

Section 631 further requires Customs to provide Congress with an overall implementation plan for NCAP within 180 days of the enactment of this Act. For each planned NCAP component, Customs will also prepare a separate implementation plan in consultation with the trade community, test the component, and transmit to Congress the implementation plan, testing results and an evaluation report. Thirty legislative days after transmitting these reports on a new component, Customs may implement the component on a permanent basis. Customs must also evaluate the cargo selectivity and entry summary component, and develop a user satisfaction survey, and report to Congress these findings.

Section 631 would permit certain filers to transmit data to Customs under the new voluntary procedure called "remote location filing." This procedure would permit those filers to file data with Customs from any location

electronically regardless of where the merchandise arrives in the United States or where it is examined. A Program participant means, with respect to an entry of merchandise, any filer entitled to make entry under section 484(a)(2)(B).

Section 631 further provides specific conditions for the remote location filing component. If a filer qualifies and elects to file from a remote location, then the filer must present electronically specified core entry information on an entry by entry basis, including electronic entry of merchandise, electronic entry summary, automated invoice information, when required by Customs, and electronic payment of duties, fees, and taxes. Customs may expand this core entry list in the future by regulation as capabilities develop. If any of the above means for filing core entry information electronically are not used, then paper documentation shall be filed in the district designated for examination.

Customs may not permit any exemption or waiver from the requirements for participating in remote location filing. Also, Customs may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participating in remote location filing for enforcement purposes.

After satisfying the core entry information requirements, remote filers must meet specified additional entry information filing requirements. Any additional entry information, required by Customs to be presented prior to and including Customs' acceptance of entry summary information, may be filed from a remote location under the following conditions: if Customs can accept the information electronically, then it shall be filed electronically, or if not filed electronically, then the paper documentation shall be filed in the district designated for examination. (Customs shall publish a list of current electronic requirements for accepting this information, and shall expand the list as capabilities develop in the future.) If Customs cannot accept the additional information electronically, then prior to January 1, 1999, the paper documentation shall be filed in the district designated for examination; or on or after January 1, 1999, (1) the paper documentation shall be filed at the district designated for examination if it is required for release; or (2) if not required for release, the paper documentation may be filed at a remote location designated by Customs or the district designated for examination.

The importer may file any information required by Customs after entry summary in a remote location, whether using paper or electronic means. Finally, the U.S. General Accounting Office is required to review paperwork burdens on importers due to other agency requirements and the status of other agency automation efforts.

Reasons for change

Section 631 is needed to provide Customs with direct statutory authority for full electronic processing of all Customs related transactions. The Committee understands that NCAP is a single program encompassing all Customs electronic processing procedures. Therefore, the Committee expects that filers will either use NCAP electronic procedures, or use current procedures for filing paper documents. Nothing in section 631 is intended to preclude the current practice of filing paper documentation within a single district. However, it is the Committee's intent to encourage electronic filing whenever possible. To that end, the Committee intends that Customs will qualify as broad a membership of the trade community as possible in developing criteria for eligibility in NCAP. This should include, but not be limited to, importers, brokers, express couriers, transportation companies, including air and sea carriers, and foreign trade zone and sub-zone firms.

With respect to the consultation, planning, testing, reporting, and layover requirements in section 631, the Committee believes that these are necessary to ensure proper and timely NCAP implementation. The Committee expects Customs to consult with relevant parties regarding planned components, including importers, brokers, express couriers, sureties, transportation companies, including air and sea carriers, the National Treasury Employees Union and foreign trade zone and sub-zone firms, as necessary. The Committee intends that no further legislation is necessary before Customs may implement planned components of the Program, and that implementation may take place at any time after enactment, once Customs has satisfied the requirements of section 631. The Committee intends that testing by Customs of any planned NCAP component, including remote filing of paper documentation, shall not be limited by any provision in this section. Testing, however, must be conducted under carefully delineated circumstances: with objective measures of success or failure; a predetermined time frame and a defined class of participants. The Committee expects that prior notification of tests and their results would be made available both to the Congress and the private sector in sufficient detail to evaluate their outcome. The Committee also understands that, upon implementation of the remote filing component, the current "Port of Arrival Immediate Release and Enforcement Determination" (PAIRED) program will be discontinued.

With respect to remote filing, the core entry requirements are intended to apply as follows: electronic entry means electronic submission of form 3461 or form 3461 Alt. information; electronic entry summary means electronic submission of form 7501 or Import Activity Summary Statement (IASS) information; automated invoice information means use of Automated Invoice Interface (AII), but only applies when required by Customs; and electronic payment of duties, fees, and taxes means use of existing Automated Clearing House (ACH) procedures.

The Committee notes that concerns have been expressed by brokers about the possible effect of remote location filing on the competitive structure within their industry. Brokers have also expressed a concern that all Program participants be held to the same level playing field in terms of the requirements to participate in remote location filing, particularly as applicable to air couriers.

In this regard, the Committee is clarifying that participation in remote location filing is limited to those filers currently entitled to make entry under 19 U.S.C. 1484. Remote location filing does not expand the statutory right to make entry. This means that couriers who otherwise qualify to use remote location filing must participate through a customs broker. The level playing field language is intended to ensure that no participant gains a special exception or waiver from the requirements to participate in remote location filing. Furthermore, Customs will have the authority to deny any Program participant from participating in remote location filing and may remove a Program participant from participating in remote location filing for enforcement purposes. This is intended to ensure that Customs has the discretion to prevent filers from using remote location filing if they present an enforcement risk.

The Committee believes that the language of section 631 addresses the legitimate concerns of brokers; however, the Committee stresses that it does not intend in any way to disadvantage any party's ability, including the express carrier industry, from participating in remote location filing if that party otherwise qualifies.

The Committee understands that existing practices may differ among Customs districts with regard to the filing of paper documentation. In some cases, it can be filed at the port designated on the entry, within the district, in other cases, Customs current practice is to require filing at local district headquarters. Under these circumstances, the Committee intends that, where necessary, Customs shall designate, for each district, the appropriate location for the filing of documentation. These locations shall be identified to the trade both inside and outside of the district.

The Committee understands that section 631 will allow Customs to make more efficient use of its import specialist work force by channeling work to remote locations. However, the Committee believes that it is important to maintain a sufficient port-of-entry based import specialist force in critical industries. Therefore, the Committee expects Customs to maintain a sufficient number of steel import specialists in the top 15 steel ports, which account for between 85-90 percent of all steel imports.

The Committee does not intend that this bill prompt movement of Customs Service personnel from one location to another in order to implement the goals of the bill. This does not preclude the Customs Service

from reallocating positions or personnel as needed through normal factors such as budgetary constraints, major workload shifts, etc.

With respect to the GAO study, the Committee intends that GAO identify administrative barriers which may prevent other government agencies from developing electronic interfaces with the Customs Automated Commercial System, and also identify the cause of delays for agencies that have agreed to electronic interfaces, and have not yet completed them. The Committee intends to use this information to encourage other agencies to complete these links as soon as possible.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

This section is intended to give the Customs Service the direct statutory authority to implement the NCAP, which provides for full electronic processing of all Customs-related transactions. Section 631 defines the NCAP as an automated and electronic system for processing commercial importations and lists the existing and planned components of the program. The Committee understands that the list of planned components shall be expanded in the future as other components are initiated after the date of enactment. Participation in NCAP is voluntary, but the Customs Service will establish eligibility criteria for participation. Since NCAP is a single program encompassing all of the customs electronic processing procedures of the Customs Service, the Committee expects that filers will either use NCAP electronic procedures, or use current procedures for filing paper documents. It is the Committee's intention that nothing in this section shall preclude the current practice of filing paper documentation within a single district. The Committee intends, however, to encourage electronic filing whenever possible. The Committee expects that the Customs Service, in developing criteria for eligibility in NCAP, will qualify as broad a membership of the trade community as possible, including brokers, importers, express couriers, transportation companies, and foreign trade zone and sub-zone firms.

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

This section requires the Customs Service to provide the Committees on Finance and Ways and Means with a number of reports relating to the implementation of the NCAP. The Committee will also ask the GAO to prepare an evaluation, as described below, of the remote entry filing component of the NCAP. The purpose of these reports is to provide the Committees with a

comprehensive assessment of the progress achieved in implementing the NCAP and analyses of the effects the NCAP is having, or is expected to have, on the operations of the Customs Service, on the users of the program and on the trade community at large, including importers and small, medium-sized and large brokers.

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

Second, for each planned NCAP component, including remote filing, the bill requires the Customs Service to prepare a separate implementation plan in consultation with the trade community, test the component, and transmit to Congress the implementation plan, testing results, and an evaluation report. The Committee intends that the Customs Service consult with all relevant parties, including small, medium-sized and large brokers, importers, express couriers, sureties, transportation companies, including air and sea carriers, the National Treasury Employees Union and foreign trade zone and sub-zone firms, as necessary, in developing the implementation plan for each of the components. The Committee expects that testing of all planned components, including remote filing, will be conducted under carefully delineated circumstances with objective measures of success or failure, a predetermined timeframe and a defined class of participants. And in preparing its evaluation report on each of the components, the Committee expects the Customs Service to solicit the views of all of the relevant parties, including but not limited to all of the parties with whom the Customs Service consulted in developing the implementation plan. The Committee expects these evaluation reports will include detailed information on the scope of the testing and the parameters under which any testing was conducted and an objective assessment of the results. The Committee expects the evaluation reports of each of the components to include summaries of the comments received by all relevant parties.

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

Third, the GAO will also prepare an independent evaluation of the remote filing component of the program and transmit the report to the Committees on Finance and Ways and Means. In order to ensure that the GAO report and

the Customs Service report will be available to the Committees at approximately the same time, the Committee expects the Customs Service to inform the Committee well in advance of the approximate date on which it expects to submit the implementation plan, testing results and evaluation of remote entry filing to the Committee so that the GAO may begin its evaluation in a timely manner.

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

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

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

This section establishes specific conditions for the remote location filing component of NCAP. If a filer qualifies and elects to file from a remote location, then the filer must present electronically specified core entry information on an entry-by-entry basis, including electronic entry of

merchandise, electronic entry summary, automated invoice information (when required by the Customs Service) and electronic payment of duties, fees, and taxes. The Customs Service may expand this core entry list in the future by regulation as capabilities develop. If any of the above means for filing core entry information electronically are not used, then paper documentation shall be filed in the district designated for examination.

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

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

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

If the Customs Service cannot accept the additional information electronically, the circumstances under which filers may file remotely are limited. In all cases where a document that is necessary for the release of the merchandise cannot be electronically accepted, the paper documentation must always be filed in the Customs district designated by the entry filer for purposes of examination of the merchandise by the Customs Service. Before January 1, 1999, all other types of additional paper documentation must be filed in the district designated for examination. After January 1, 1999, only those paper documents that are not necessary for the release of the merchandise may be filed at a remote location. These dates reflect the Committee's view that an additional two years beyond the dates proposed by the Administration are necessary to allow the trade community to adjust to remote filing. It is the Committee's intent that all documents necessary for

the release of goods, including those documents required by other Federal agencies for release, which the Customs Service cannot accept electronically, be filed in the district designated for release and not remotely.

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

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

SEC. 632. DRAWBACK AND REFUNDS

(a) Amendments.--Section 313 (19 U.S.C. 1313) is amended as follows:(1) Subsection (a) is amended--(A) by inserting "or destruction under customs supervision" after

"Upon the exportation";(B) by inserting "provided that those articles have not been used prior to such exportation or destruction," after "manufactured or produced in the United States with the use of imported merchandise,";(C) by inserting "or destruction" after "refunded upon the exportation"; and(D) by striking out "wheat imported after ninety days after the date of the enactment of this Act" and inserting "imported wheat".(2) Subsection (b) is amended--(A) by striking out "duty-free or domestic merchandise" and inserting "any other merchandise (whether imported or domestic)";(B) by inserting ", or destruction under customs supervision," after "there shall be allowed upon the exportation";(C) by inserting "or destroyed" after "notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported";(D) by inserting ", but only if those articles have not been used prior to such exportation or destruction" after "an amount of drawback equal

to that which would have been allowable had the merchandise used therein been imported"; and(E) by inserting "or destruction under customs supervision" after

"but the total amount of drawback allowed upon the exportation".(3) Subsection (c) is amended to read as follows:"(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;

(4) Subsection (j) is amended to read as follows:"(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;

"(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 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);

"(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,

(5) Subsection (l) is amended by striking out "the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 309(b) shall be filed and completed," and inserting "the authority for the electronic submission of drawback entries".(6) Subsection (p) is amended to read as follows:"(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;

"(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).".(7) The following new subsections are inserted after subsection (p):"(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;

"(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.".(b) Application of Amendment to Finished Petroleum Derivatives.--Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the amendment made by paragraph (6) of subsection (a) shall apply to--(1) claims filed or liquidated on or after January 1, 1988, and(2) claims that are unliquidated, under protest, or in litigation on the date of the enactment of this Act.

House Ways & Means Committee Report

Present law

19 U.S.C. 1313 provides for drawback, that is, a refund or remission, in whole or in part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise and/or exportation of the merchandise on which the duty, tax or fee was assessed or collected, or substitute merchandise. Paragraph (1) provides that the Secretary of the Treasury shall issue regulations to assure compliance with the statute.

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

An importer whose foreign supplier failed to follow the importer's purchase specifications or samples is entitled to a duty refund if the importer returns the imported merchandise to Customs within 90 days after release, provides sufficient evidence to show that the foreign supplier failed to follow the importer's specifications or sample, and then exports the merchandise.

Dutiable articles or substitute fungible articles, when exported or destroyed, are eligible for duty refund if the exported or destroyed articles were not used in the U.S. and are in the same condition as the dutiable articles were when imported. The law allows testing, cleaning, repacking, and inspecting of the articles, however, before those articles are exported or destroyed.

Under current law, certain crude petroleum and petroleum derivatives which are stored in common storage with other crude petroleum or petroleum derivatives of the same kind and quality (defined as being classified under the same tariff heading) may be identified, for drawback purposes, by inventory records kept on a monthly basis if the articles are withdrawn for export from the common storage facility.

Dutiable packaging material must be used in the packaging of the dutiable article that is to be exported in order to qualify for a duty refund.

Explanation of provision

Section 632 of H.R. 3450 allows claims under the manufacturing drawback provisions if the articles are destroyed rather than exported. The bill would require that the exported articles not be used before exportation or destruction.

Section 632 amends the rejected merchandise drawback provisions to extend the period for return to Customs to 3 years, to allow destruction of

the imported merchandise as an alternative to exportation, and to allow the importer and foreign supplier to agree that the imported merchandise was defective without reference to purchase specifications or samples. If the importer and foreign supplier could not agree that the merchandise was defective, Customs would be required to make that determination. Under section 632, imported merchandise could be used for up to 3 years and the importer could get a duty refund if it was shown that the merchandise did not conform to specifications or sample or was defective at the time of importation.

Section 632 amends the same condition drawback provision to allow drawback on imported merchandise, or other domestic or imported merchandise substituted for the imported merchandise, which has not been used, rather than which is in the same condition and which has not been used. The provision is also amended to change the standard for substitution from "fungible" to "commercially interchangeable." Due to a recent court decision, the provision also permits an exporter or destroyer to endorse the right to claim drawback to the importer or any intermediate party.

Section 632 permits the electronic filing of drawback claims.

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

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

Section 632 sets a period of 3 years from date of exportation or destruction in which to file a complete claim.

Section 632 allows a company to buy another company's factory and satisfy the "one manufacturer" requirement, under certain conditions. Section 632 also allows a person to buy a factory or division of another company and include a transfer of drawback rights. In all cases, the value of the realty and personalty transferred must exceed the value of the drawback

rights transferred to prevent pure sales of drawback rights. Section 632 requires certifications against multiple claims of drawback rights.

Section 632 requires any person who provided a certification of a fact which enabled another person to perfect a claim for drawback to keep records to show the validity of the certified fact.

Section 632 codifies current Customs practice against "piggybacking" other duty exemption benefits (foreign-trade zones, bonded warehouses and duty-free temporary importation) onto the drawback benefits.

Section 632 provides that only one drawback claim per exportation or destruction of goods would be allowed, but provides for appropriate credit and deduction for claims covering components or ingredients.

Reasons for change

Section 632 contains provisions to address questions which have arisen in the implementation and administration of the drawback law. The Committee intends that these changes will serve to expand U.S. exports, facilitate drawback use, and ease administrative burdens. However, the Committee does not intend to create a "market" for drawback rights. The Committee maintains that the purpose of drawback continues to be to promote economic activity in the United States, resulting in increased exports. The Committee understands that, while section 632 will allow importers to make greater use of drawback, the Customs Service will be able to ensure greater compliance through the use of enhanced penalty and informed compliance provisions contained elsewhere in the subtitle.

With respect to manufacturing drawback, the provisions prohibiting the use of items claimed under drawback are not intended to prevent a manufacturer from testing or other post-production operations.

With respect to same condition or unused merchandise drawback, the Committee intends to permit the substitution of merchandise when it is "commercially interchangeable," rather than when it is "commercially identical." For substitution under this provision, the Committee intends that the general rule is that the party claiming drawback must either have paid the duties on the imported merchandise or have received from the person who imported and paid the duties on the imported merchandise a certificate of delivery for the imported merchandise, commercially interchangeable merchandise, or any combination thereof. The Committee further intends that in determining whether two articles were commercially interchangeable, the criteria to be considered would include, but not be limited to: Governmental and recognized industrial standards, part numbers, tariff classification, and relative values. The test should be applied more stringently if the article was destroyed rather than exported. The list of incidental operations permitted is expanded.

An amendment to the drawback statute by the Customs and Trade Act of 1990 (Public Law 101-382, section 484A), was intended to establish monthly accounting procedures for drawback payments on the covered crude petroleum and petroleum derivatives stored in common storage with other crude petroleum and petroleum derivatives of the same kind and quality. Because of the requirement that the crude petroleum and petroleum derivatives must be withdrawn for export from the common storage facility where they are stored, effective use of the provision has proven to be impracticable (because the covered petroleum products may be stored at numerous common storage facilities before reaching the common storage facility from which they are exported and because of the recordkeeping requirements necessary to trace the covered petroleum products to the common storage facility from which they are exported). The Committee amendment to subsection (p) of 19 U.S.C. 1313 permits effective use of present law and substantially reduces paperwork for the industry and administrative costs for the Government.

With respect to the filing period, by virtue of changes elsewhere in this subtitle (i.e., the recordkeeping provisions) the Committee understands that Customs would have 3 years from the date of payment of a claim to initiate the verification of that claim. This section would also allow a claimant who was denied drawback under one provision to raise alternative claims under other provisions by protest. The Committee understands that Customs would not interpret the provision for alternate claims as imposing a requirement on Customs to investigate all alternatives in addition to the claimed basis before liquidating the drawback claim as presented.

With regard to drawback successors, the Committee intends that a Trustee in Bankruptcy who has succeeded to all of the assets of an entity in bankruptcy would be considered to be a drawback successor.

With respect to existing Customs practices for auditing drawback claims, the Committee is concerned that Customs may be denying entire claims when, in fact, the claim is deficient only as to a small number of entries or due to minor omissions with a given claim. Therefore, the Committee expects that, if the entire universe of the claimed import entries and exports is audited, and the audit reveals that only a portion of a company's claims are deficient, drawback should be denied only on that portion found to be deficient. However, if only a representative sample of the claimed import entries and exports is audited, and the audit reveals that a significant portion of the audited claims is deficient, then denial of the audited company's drawback claims may extend beyond the portion audited.

In addition, the Committee is concerned that under current Customs Regulations, and recognizing that there is no statutory time limitation for the liquidation of drawback claims, the time frames for record retention, submission of drawback claims, and potential audit exposure are not consistent. Specifically, current regulations allow Customs to audit drawback

claims even after all relevant recordkeeping requirements have expired. Therefore, the Committee expects that Customs should issue drawback regulations which take into consideration the various time limitations for recordkeeping, filing claims, amendments and clarifications and for auditing and liquidating drawback claims. Such regulations should provide, to the maximum extent possible under law, that claimants will be encouraged to export merchandise through the allowance of drawback claims. Such regulations should provide for fair treatment of the business community, while ensuring that Customs has the necessary enforcement information.

Section 633 is effective upon date of enactment of the Act (see section 692). The Committee intends that this section is applicable to any drawback entry made on or after the date of enactment as well as to any drawback entry made before the date of enactment if the liquidation of the entry is not final on the date of enactment.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Under current law, if dutiable raw materials and substituted domestic or duty-free raw materials of the same kind and quality are used by one manufacturer to make new articles that are exported, those articles are deemed to have been made with the dutiable raw materials and duty is refunded. Section 632 permits drawback upon exportation or where merchandise has been destroyed under customs supervision, if such articles have not been used prior to exportation or destruction. This section also enacts current practice to permit drawback for the substitution of any materials, not just domestic or duty-free materials.

Current law provides that an importer whose foreign supplier failed to follow the importer's purchase specifications or samples is entitled to a duty refund if the importer returns the imported merchandise to the Customs Service within 90 days after release, provides sufficient evidence to show that the foreign supplier failed to follow the importer's specifications or sample, and then exports the merchandise. The implementing bill amends the rejected merchandise drawback provisions to extend the period for return to the

Customs Service to three years, to allow destruction of the imported merchandise as an alternative to exportation, and to allow the importer and foreign supplier to agree that the imported merchandise was defective without reference to purchase specifications or samples. If the importer and foreign supplier could not agree that the merchandise was defective, the Customs Service would be required to make that determination. Under this section, imported merchandise could be kept in the United States for up to three years, and the importer could get a duty refund if it was shown that the merchandise did not conform to specifications or sample or was defective at the time of importation.

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

Section 632 also changes the standard for substitution under same condition or unused merchandise drawback from "fungible" to "commercially interchangeable." It is the Committee's intent that "commercial interchangeability" does not mean interchangeable in all situations. The Committee intends that, in determining whether merchandise is "commercially interchangeable," the Customs Service should evaluate the critical properties of the substituted merchandise, rather than basing its determination on subjective standards. The Committee intends that, in determining the commercial interchangeability of two articles, the Customs Service should consider the following criteria, among other factors: governmental and recognized industry standards, part numbers, tariff

classification, and relative values. The Committee intends that the test be more stringently applied if the article was destroyed rather than exported. This section permits certain incidental operations with respect to the merchandise.

Section 632 also permits the electronic filing of drawback claims.

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

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

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

This section also establishes a period of three years from the date of export or destruction in which to file a complete claim. By virtue of changes elsewhere in this bill, the Committee understands that the Customs Service would have three years from the date of payment of a claim to initiate the verification of that claim. The bill also provides that, if a drawback claim is made under one subsection of section 313 of the Tariff Act of 1930 but is

denied, the claim will be deemed to have been filed under any other subsection if the claim is allowable under that subsection. The Committee understands that the Customs Service will not interpret this provision as imposing a requirement on it to investigate all alternatives in addition to the claimed basis before liquidating the drawback claim as presented, but will interpret the provision as allowing such a claimant to raise the alternative subsections by protest under section 514 of the Tariff Act of 1930.

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

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

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

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

Section 632 enters into effect upon the date of enactment of the Act (see section 692). The Committee intends that this section is applicable to any drawback entry made on or after the date of enactment as well as to any

drawback entry made before the date of enactment if the liquidation of the entry is not final on the date of enactment.

SEC. 633. EFFECTIVE DATE OF RATES OF DUTY

Section 315 (19 U.S.C. 1315) is amended--(1) by striking out "appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury," in the first sentence of subsection (a) and inserting "Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe,";(2) by striking out "customs custody" in the first sentence of subsection (b) and inserting "custody of the Customs Service"; and(3) by striking out "paragraph 813" in subsection (c) and inserting "chapter 98 of the Harmonized Tariff Schedule of the United States".

House Ways & Means Committee Report

Present law

19 U.S.C. 1315 sets forth the effective date of the applicable rate or rates of duty imposed on any article of merchandise entered for consumption or withdrawn from warehouse for consumption.

Explanation of provision

Section 633 of H.R. 3450 amends 19 U.S.C. 1315 by substituting "Customs" for "the appropriate customs officer" to reflect Customs modernization and automation objectives, and changes a reference to the old Tariff Schedules of the United States to a reference to the equivalent provision in the Harmonized Tariff Schedules of the United States.

Reasons for change

Section 633 contains largely conforming amendments to ensure compatibility with the modernization of Customs procedures set forth in this bill.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

This section of the bill makes technical and conforming amendments to section 315 of the Tariff Act of 1930, which sets forth the effective date of the applicable rate or rates of duty imposed on any article of merchandise entered for consumption or withdrawn from warehouse for consumption. The

implementing bill updates the language used in the section by substituting "Customs Service" for "the appropriate customs officer" to reflect agency's modernization and automation objectives, and changes a reference to the old Tariff Schedules of the United States (TSUS) to a reference to the equivalent provision in the Harmonized Tariff Schedule of the United States (HTSUS).

SEC. 634. DEFINITIONS

Section 401 (19 U.S.C. 1401) is amended--(1) by amending subsection (k) to read as follows:"(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)."; and(2) by inserting at the end thereof the following new subsections:"(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 to 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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1401 provides definitions of certain terms used in the tariff laws.

Explanation of provision

Section 634 of H.R. 3450 amends 19 U.S.C. 1401 by defining the following terms: "hovering vessel"; "electronic transmission"; "electronic entry"; "electronic data interchange system"; "National Customs Automation Program"; "import activity summary statement"; and "reconciliation".

In the case of "hovering vessels", the definition closes existing loopholes in the law. The other definitions provide certainty and clarity when using new terms which relate to NCAP.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 635. MANIFESTS

Section 431 (19 U.S.C. 1431) is amended--(1) by amending subsections (a) and (b) to read as follows:"(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."; and(2) by inserting after subsection (c) the following new subsection:"(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 for electronic transmittal of, the manifest required by subsection (a); and"(D) prescribe the manner for supplementing manifests with 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."

House Ways & Means Committee Report

Current law

19 U.S.C. 1431 requires the filing of a vessel manifest, and provides the form of, contents, signing and delivery of, and public disclosure of that manifest. The information filing requirements are specific.

Explanation of provision

Section 635 of H.R. 3450 amends 19 U.S.C. 1431 by deleting the specific requirements for the contents of a manifest and instead authorizes the Secretary of the Treasury to prescribe the manifest form and content and the manner of production and delivery of the manifest, i.e. authority to permit the electronic transmission of manifests to Customs. Section 635 further adds to section 1431 the provisions for correction of a manifest discrepancy currently in 19 U.S.C. 1440 which is being repealed by this title. Section 635 further authorizes the electronic processing of manifests.

Section 635 further provides that manifests may be supplemented by "bill of lading data" to be submitted with a manifest and to clarify responsibilities concerning production and delivery of manifests.

Section 635 further allows summary manifesting by carriers, including express consignment companies, of letter and document shipments which are already exempt from Customs entry requirements. Letter packs and document packs would be required to be segregated according to size and may be required to be segregated by country of origin.

Reasons for change

Section 635 permits Customs to link the manifest production requirements to better target high risk shipments according to such criteria as type of merchandise and country of origin. The Committee understands that, in many cases, the form and content of manifests have been developed and stipulated in international treaties to which the U.S. is a signatory, and that Customs will respect U.S. international obligations in developing its manifest requirements. Section 635 also modernizes Customs operations by authorizing the electronic processing of manifests and bill of lading data.

With respect to summary manifesting, the Committee intends that this new provision apply to express consignment companies. The Committee understands that these changes are desirable in order to minimize the recordkeeping and data processing burden on the affected industry. However, the Committee intends that these changes not adversely impact on Customs ability to enforce the trade and narcotics laws. Therefore, the Committee understands that letter and document packs that may contain "merchandise", especially monetary instruments, are still subject to the current separate manifesting requirements. The Committee also understands that Customs cannot guarantee overnight clearance of items subject to summary manifesting, since additional examination procedures that are not necessary for individually manifested shipments may be required. The Committee expects the Customs Service, however, to make best efforts to achieve overnight clearance of such items in most instances.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

responsibilities concerning production and delivery of manifests.

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

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

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

SEC. 636. INVOICE CONTENTS

Section 481 (19 U.S.C. 1481) is amended--(1) by amending subsection (a)--(A) by amending the matter preceding paragraph (1) to read as follows: "In General.--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 section shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:",(B) by amending paragraph (3) to read as follows:"(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;", and(C) by amending paragraph (10) to read as follows:"(10) Any other fact that the Secretary may by regulation require as

being necessary to a proper appraisement, examination and classification of the merchandise.";(2) by amending subsection (c) to read as follows:"(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."; and(3) by inserting before the period at the end of subsection (d) the following: "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".

House Ways & Means Committee Report

Present law

19 U.S.C. 1481(a) provides for the mandatory production of an invoice and specifies the information that must be stated on the invoice. Paragraph (b) provides the procedures for shipments not purchased and not shipped by the manufacturer. Paragraph (c) provides procedures for merchandise purchased in different consular districts. Paragraph (d) provides that the Secretary of the Treasury may provide exceptions to the requirements of this section by regulation.

Explanation of provision

Section 636 of H.R. 3450 amends 19 U.S.C. 1481 to allow importers to transmit to Customs by electronic means invoices, bills and other documents. It also authorizes importers and Customs to use partial invoices and the electronic equivalent of invoices, bills or other documents.

Reasons for change

Section 636 will update the law and repeal the provision concerning certified invoices as they are no longer used by Customs.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 481(a) of the Tariff Act of 1930 provides for the mandatory production of an invoice and specifies the information that must be stated on the invoice. Subsection (b) provides the procedures for shipments not purchased and not shipped by the manufacturer. Subsection (c) provides procedures for merchandise purchased in different consular districts. Subsection (d) provides that the Secretary of the Treasury may provide

exceptions to the requirements of this section by regulation. Section 636 of the implementing bill amends section 481 to allow importers to transmit invoices, bills and other documents to the Customs Service by electronic means. This section also authorizes importers and the Customs Service to use partial invoices and the electronic equivalent of invoices, bills, or other documents.

SEC. 637. ENTRY OF MERCHANDISE

(a) Amendments to Section 484.--Section 484 (19 U.S.C. 1484) is amended to read as follows:"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 therefor 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.".(b) Amendment to Section 771.--Section 771 (19 U.S.C. 1677) is amended by adding at the end the following new paragraph:"(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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1484 provides the essential requirements for the entry of merchandise.

Explanation of provision

Section 637 of H.R. 3450 amends 19 U.S.C. 1484 to authorize importers to transmit entry documents and/or data electronically to Customs. It permits the periodic filing of entries by authorizing the Secretary to prescribe by regulation the time periods within which an entry must be filed. These regulations will provide that an importer may transmit electronically, by the 20th day following the end of a calendar month, an import activity summary statement covering all or some of the entries or warehouse withdrawals made during the calendar month. This electronic transmission would substitute for the filing of individual entry summaries. Whether or not an importer chooses to use the entry/entry summary procedure or the entry/import activity summary statement, reconciliation would be available. Reconciliation is a new concept permitting those elements of an entry, other

than those elements relating to the admissibility of the merchandise, that are undetermined at the time an entry summary or an import activity summary statement is required to be submitted, to be provided to the Customs Services at a later time.

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

Section 637 also permits the use of the reconciliation procedures for antidumping and countervailing (AD/CVD) duty entries. Customs will be able to use these procedures for AD/CVD duty entries by extending the time when a reconciliation is due for the AD/CVD entries, beyond the 15-month time frame, to no later than 90 days after Customs notifies an importer that a period of review has been completed. Section 637 amends section 771 (19 U.S.C. 1677) to define the term "entry" to include a reconciliation; and also requires Customs to consult with the Department of Commerce in developing regulations to implement these procedures.

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

A novel approach, introduced in section 637, permits the liquidation of an entry despite the fact that undetermined information has not been transmitted to Customs through the reconciliation process. For example, if an entry covers merchandise for which the importer supplies "assists" which can only be captured on an annual basis, the importer can indicate to Customs that information contained in the entry is accurate for all purposes, other than its value as affected by the undetermined assists, and should be liquidated. Upon liquidation of the entry, any decision of the Customs Service entering into that liquidation, for example classification, could be protested pursuant to 19 U.S.C. 1514. When the "assist" information is later furnished in the reconciliation statement, the reconciliation statement will be treated as an entry, and liquidated. The decisions of the Customs Service pertaining only to the information contained in the liquidated reconciliation would be the proper subject of a protest.

In developing the regulations for periodic entry, the Committee intends that Customs will allow for weekly and monthly entries for merchandise shipments from general purpose foreign trade zones and subzones.

Reasons for change

The introduction into the law of two new provisions, the import activity summary statement and the reconciliation, will permit importers and customs brokers which are capable of interacting with Customs in an electronic mode to handle Customs transactions in a more business-like way, reducing paperwork and many of the administrative costs. The import activity summary statement is the electronic transmission, periodically, of the information now contained in individual entry summaries. Major U.S. companies will increase their competitiveness through cost reduction by being able to submit information in batch form. A reconciliation will permit importers to submit information not available at the time of entry that is necessary for the importer and the Customs Service to determine the correct amount of duty on a shipment. This new procedure will allow the Customs Service to finalize the duty assessment process by liquidating the underlying entry as to all merchandise covered by the entry, except for the merchandise identified by the importers as requiring the submission of additional information.

Concerning the use of the reconciliation procedures for AD/CVD entries, the Committee intends AD/CVD applications to be within the scope of the reconciliation process. The purpose of the reconciliation for AD/CVD cases will be for the importer to group entries together for purposes of assessment and liquidation. By amending section 1677 to define the term "entry" to include a reconciliation, the Committee stresses that the reconciliation entry represents the importer's liability for AD/CVD duties; and therefore, Customs may liquidate the underlying entries for purposes other than the collection of antidumping or countervailing duties. The Committee intends that Customs work closely with the Department of Commerce in developing regulations to implement this concept.

The requirement that importers use reasonable care in making entry establishes a "shared responsibility" between Customs and the trade community, and allows Customs to rely on the accuracy of the information submitted by importers and, in turn, streamline entry procedures. Under this new provision, the importer will have responsibility to use reasonable care when providing the initial classification and appraisement. In the view of the Committee, it is essential that this "shared responsibility" assure that, at a minimum, "reasonable care" is used in discharging those activities for which the importer has responsibility. These include, but are not limited to: furnishing of information sufficient to allow Customs to fix the final classification and appraisal of merchandise; taking measures that will lead to and assure the preparation of accurate documentation and providing sufficient pricing and financial information to permit proper valuation of merchandise. Section 621 above elaborates on the criteria used in evaluating whether a "reasonable care" standard is achieved.

Where an importer elects to submit a reconciliation, the Committee intends that reasonable care be used in preparing information contained in the reconciliation and the information contained in the entry summary or import activity summary statement that is certified by the importer for liquidation. However, in most instances, discrepancies and inaccuracies in information contained in entry summaries or portions of import activity summary statements for which a reconciliation will be submitted should not be penalized under 19 U.S.C. 1592 for failure to exercise reasonable care, since the importer, by noting its intent to submit a reconciliation, is indicating that the information in the entry summary or import activity summary statement relating to the reconciliation is incomplete.

The Committee intends that all certified electronic transmissions shall be as binding and have the same force and effect as a signed paper document. Section 637 is intended to preclude needless litigation by clearly stating that electronic transmittals are acceptable as evidence.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Section 637 also permits the use of the reconciliation procedures for antidumping/countervailing duties (AD/CVD) duty entries. The Customs Service will be able to use these procedures for AD/CVD duty entries by extending the time when a reconciliation is due for the AD/CVD entries,

beyond the 15-month time frame, to no later than 90 days after the Customs Service notifies an importer that a period of review has been completed. Section 637 amends section 771 of the Tariff Act of 1930 to define the term "entry" to include a reconciliation, and also requires the Customs Service to consult with the Department of Commerce in developing regulations to implement these procedures.

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

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

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

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

thus reducing paperwork and administrative costs.

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

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

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

SEC. 638. APPRAISEMENT AND OTHER PROCEDURES

Section 500 (19 U.S.C. 1500) is amended--(1) by striking out "The appropriate customs officer" and inserting "The Customs Service";(2) by striking out "appraise" in subsection (a) and inserting "fix the final appraisement of";(3) by striking out "ascertain the" in subsection (b) and inserting "fix the final";(4) by amending subsection (c)--(A) by inserting "final" after "fix the", and(B) by inserting ", taxes, and fees" after "duties" wherever it appears; and(5) by amending subsections (d) and (e) to read as follows:"(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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1500 provides that the appropriate Customs officer shall appraise the merchandise, ascertain the classification and rate of duty, fix the amount of duty to be paid and determine any increased or additional duties due or any excess of duties deposited, liquidate the entry, and give proper notice of liquidation.

Explanation of provision

Section 638 of H.R. 3450 amends 19 U.S.C. 1500 by substituting "Customs" for "the appropriate customs officer" to reflect automation and computerization realities and acknowledge that information and data may be electronically transmitted. As part of the "shared responsibility" concept, section 638 retains the requirement that Customs determine the amount of duties due, i.e., that Customs fix the final classification, appraisement and rate of duty on an entry, and liquidate the entry. Section 638 also reflects changes in the law which requires Customs to assess user fees and taxes on entries. Finally, section 638 authorizes Customs to liquidate reconciliations and authorizes Customs to give or electronically transmit notice of liquidation in such form and manner as is prescribed by regulation.

Reasons for change

Section 638 is necessary to conform to other changes made by this Act and will also facilitate the modernization of Customs procedures by allowing Customs to utilize electronic means to transmit notices of liquidation.

With respect to the concept of "shared responsibility," it is the intent of the Committee that the importers have the responsibility to correctly value and classify the merchandise and Customs have the responsibility to ensure entry was made correctly and determine the amount of duties due.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Under section 500 of the Tariff Act of 1930, the appropriate Customs Service official shall appraise merchandise, ascertain the classification and rate of duty, fix the amount of duty to be paid, and determine any increased or additional duties due or any excess of duties deposited, liquidate the entry,

and give proper notice of liquidation. Section 638 of this bill updates the law to reflect automation and computerization realities and acknowledge that information and data may be electronically transmitted. As part of the "shared responsibility" concept, it is the intent of the Committee that the importer have the responsibility to correctly value and classify the merchandise. This section retains the requirement that the Customs Service has the responsibility to ensure that entry was made correctly and determine the amount of duties due, i.e., that it fix the final classification, appraisement, and rate of duty on an entry, and liquidate the entry. The amendments made by this section also reflect changes in the law which require the Customs Service to assess user fees and taxes on entries. Finally, the bill authorizes the Customs Service to liquidate reconciliations and to give or transmit electronically notice of liquidation in such form and manner as is prescribed by regulation.

SEC. 639. VOLUNTARY RELIQUIDATIONS

Section 501 (19 U.S.C. 1501) is amended--(1) by striking out "the appropriate customs officer on his own initiative" and inserting "the Customs Service";(2) by inserting "or transmitted" after "given" wherever it appears; and(3) by amending the section heading to read as follows:"

SEC. 501. VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS SERVICE."

House Ways & Means Committee Report

Present law

19 U.S.C. 1501 provides that a liquidation of any entry may be reliquidated within 90 days from the date on which notice of the original liquidation is given.

Explanation of provision

Section 639 of H.R. 3450 amends 19 U.S.C. 1501 to authorize the electronic transmission of reliquidation notices.

Reasons for change

Section 639 is necessary to facilitate the modernization of Customs procedures by allowing Customs to utilize electronic means to transmit notices of reliquidation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 640. APPRAISEMENT REGULATIONS

Section 502 (19 U.S.C. 1502) is amended--(1) by amending subsection (a)--(A) by inserting "(including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned)" after "law",(B) by striking out "ports of entry, and" and inserting "ports of entry. The Secretary",(C) by inserting "or classifying" after "appraising" wherever it appears, and(D) by striking out "such port" and inserting "any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port"; and(2) by striking out subsection (b) and redesignating subsection (c) as subsection (b).

House Ways & Means Committee Report

Present law

19 U.S.C. 1502(a) provides that the Secretary of the Treasury shall issue regulations necessary to assure the proper appraisement, classification, assessment of duties at the ports of entry, and to direct any Customs officer to go from one port to another port to appraise the merchandise imported at that port. Section 1502(b) states that no ruling made by the Secretary of the Treasury imposing Customs duties shall be reversed or modified adversely to the U.S. except in concurrence with the Attorney General, or a final decision of the CIT, or a final decision of a binational panel pursuant to the U.S.-Canada Free-Trade Agreement.

Explanation of provision

Section 640 of H.R. 3450 amends 19 U.S.C. 1502 to facilitate the implementation of remote filing (section 201) by authorizing the Secretary to direct customs officers at one port to review entries filed at another port. It repeals the requirement that the concurrence of the Attorney General be obtained prior to the reversal of a ruling by the Secretary constructing any law imposing customs duties. Finally, the amendments authorize the Secretary to prescribe regulations for the issuance of binding rulings prior to the entry of merchandise.

Reasons for change

These amendments will provide greater certainty to importers through the binding rulings program while also permitting Customs to accelerate the entry process.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

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

SEC. 641. LIMITATION ON LIQUIDATION

Section 504 (19 U.S.C. 1504) is amended--(1) by amending subsection (a)--(A) by striking out "Except as provided in subsection (b)," and inserting "Unless an entry is extended under subsection (b) or suspended as required by statute or court order,",(B) by striking out "or" at the end of paragraph (2),(C) by inserting "or" after the semicolon at the end of paragraph

(3), and(D) by inserting the following new paragraph after paragraph (3):"(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;"; and(2) by amending subsections (b), (c), and (d) to read as follows:"(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.

"(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.".

House Ways & Means Committee Report

Present law

19 U.S.C. 1504 provides for the liquidation of entries within one year unless liquidation is extended or suspended. Liquidation can be extended by Customs or the importer or suspended because of statute or court order. Customs must provide notice of the extension or suspension of liquidation. Any entry not liquidated at the expiration of four years shall be deemed liquidated unless liquidation continues to be suspended. When the suspension is removed, the entry must be liquidated within 90 days.

Explanation of provision

Section 641 of H.R. 3450 amends 19 U.S.C. 1504 to make conforming amendments regarding the reconciliation of entries and the liquidation of entries subject to reconciliation. Section 641 provides that a reconciliation shall be treated as if it were an entry summary, and subject to the normal extension, suspension and protest requirements under 19 U.S.C. 1504 and 1514. Section 641 also authorizes the electronic transmittal of notices of extension and suspension of liquidation.

Section 641 also changes the time period, from 90 days to six months, in which the Secretary of the Treasury must liquidate a suspended entry after the suspension is removed; the six month period runs from the date Customs is notified by the Commerce Department, other agencies, or the court that the suspension has been removed.

Section 641 also removes the application of the four-year limitation to suspended entries. Such four year limitation will only apply to extended

entries, i.e. it sets the outer limit for extensions. Any entry whose liquidation is extended that is not liquidated within four years, and any entry whose liquidation is suspended and such suspension is subsequently removed but the entry is not liquidated within six months after Customs receives notice of the removal, shall be deemed liquidated at the rate of duty, value, quantity and amount of duty asserted by the importer of record at the time of entry.

Section 641 also provides that Customs must also inform sureties when a suspension is removed or extended. It further allows Customs to extend liquidation when information needed for insuring compliance with applicable law is not available to or in the possession of the Customs Service.

Reasons for change

Section 641 is necessary to implement the reconciliation process, and it permits Customs to use electronic means to communicate with the importing community. By removing the application of the four-year limitation to suspended entries, this section is intended to overturn the decision rendered in Nunn Bush Shoe v. United States, 784 F. Supp. 892 (CIT 1992).

With regard to notification of sureties, the bill corrects an omission in existing law and codifies existing administrative practice. Presently, Customs is only required to provide notice of an extension of liquidation of an entry to sureties when the liquidation is suspended by statute or court order. The statute does not require notice to be sent to the surety when liquidation is extended because Customs requires more information or when the importer requests an extension. The bill will now require notification of sureties in all three instances.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

In order to implement the reconciliation process, section 641 of the implementing bill makes conforming amendments regarding the reconciliation of entries and the liquidation of entries subject to reconciliation.

It provides that a reconciliation shall be treated as if it were an entry summary, and subject to the normal extension, suspension and protest requirements under sections 504 and 514 of the Tariff Act of 1930. To reflect technological changes, this section also authorizes the electronic transmittal of notices of extension and suspension of liquidation.

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

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

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

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

SEC. 642. PAYMENT OF DUTIES AND FEES

(a) Amendment to Section 505.--Section 505 (19 U.S.C. 1505) is amended to read as follows:"

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.".(b) Conforming Amendment.--Subsection (d) of section 520 (19 U.S.C. 1520(d)) is repealed.

House Ways & Means Committee Report

Present law

19 U.S.C. 1505(a) provides that unless merchandise is entered for warehouse or transported in bond, the importer shall deposit at the time of making entry or at such later time as the Secretary of the Treasury shall prescribe by regulation (but not to exceed 30 days after the date of entry) the duties estimated to be due. Section 1505(b) provides that the appropriate Customs officer shall collect any increased or additional duties due or refund any excess duties deposited as determined by liquidation or reliquidation. Section (c) provides that duties due upon liquidation or reliquidation shall be due 15 days thereafter, and unless payment is received within 30 days after that date, duties shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation.

Explanation of provision

Section 642 of H.R. 3450 amends 19 U.S.C. 1505 by providing Customs with authority to permit the periodic payment of duties, taxes, and fees. Periodic payments may be made by filing a monthly import activity summary statement together with the amounts due. This section further provides that interest will accrue on periodic payments from the first day of the month the import activity summary statement is or should be filed until the day the statement is actually filed. Section 642 also states that underpayment or overpayment of duties and fees determined at liquidation or reliquidation shall be either paid by the importer or refunded by the Government with interest, as appropriate. This section repeals 19 U.S.C. 1520(d).

Reasons for change

The amendments made by section 642 will allow Customs to streamline entry procedures by authorizing periodic payments of entries covered by an import activity summary statement rather than require entry by entry payment, and will also provide equity in the collection and refund of duties and taxes, together with interest, by treating collections and refunds equally.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Section 642 of the implementing bill provides the Customs Service with authority to permit the periodic payment of duties, taxes, and fees. The Committee believes that such periodic payments should permit the Customs Service to streamline entry procedures. Under this section, periodic payments may be made by filing a monthly import activity summary statement together with the amounts due. The section further provides that interest will accrue on periodic payments from the first day of the month the

import activity summary statement is or should be filed until the day the statement is actually filed. These changes also stipulate that underpayment or overpayment of duties and fees determined at liquidation or reliquidation shall be collected or refunded together with interest, as appropriate. The Committee believes that these changes will provide equity in the collection and refund of duties and taxes, together with interest, by treating collections and refunds the same.

SEC. 643. ABANDONMENT AND DAMAGE

Section 506 (19 U.S.C. 1506) is amended--(1) by striking out "the appropriate customs officer" and "such customs officer" wherever they appear and inserting "the Customs Service";(2) by amending paragraph (1)--(A) by striking out "not sent to the appraiser's stores for" and inserting "released without an",(B) by striking out "of the examination packages or quantities of merchandise",(C) by striking out "the appraiser's stores" and inserting "the Customs Service", and(D) by inserting "or entry" after "invoice", and(3) by amending paragraph (2)--(A) by inserting ", electronically or otherwise," after "files", and(B) by striking out "written".

House Ways & Means Committee Report

Current law

19 U.S.C. 1506 provides procedures for allowance in the estimation and liquidation of duties for abandonment or damage to merchandise.

Explanation of provision

Section 643 of H.R. 3450 amends 19 U.S.C. 1506 by making conforming amendments regarding entries and invoices, authorizing communication between Customs and the importing community through electronic means, and modernizing the law by deleting obsolete language.

Reasons for change

Section 643 is necessary to modernize Customs procedures.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 506 of the Tariff Act of 1930 provides that allowance shall be made in the estimation and liquidation of duties for abandonment or damage to merchandise pursuant to regulations prescribed by the Secretary of the

Treasury. Section 643 of the implementing bill deletes obsolete language, makes conforming amendments regarding entries and invoices, and authorizes communication between the Customs Service and the importing community through electronic means.

SEC. 644. CUSTOMS OFFICER'S IMMUNITY

Section 513 (19 U.S.C. 1513) is amended to read as follows:"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 or thing as to which any person might under this Act be entitled to protest or appeal from the decision of such officer."

House Ways & Means Committee Report

Present law

19 U.S.C. 1513 provides immunity to a Customs officer for any decision relating to appraisement, classification, or duties due on collection.

Explanation of provision

Section 644 of H.R. 3450 amends 19 U.S.C. 1513 by extending customs officers immunity to include the collection of fees and taxes.

Reasons for change

These amendments simply recognize that Customs collects taxes and fees as well as duties.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 645. PROTESTS

Section 514 (19 U.S.C. 1514) is amended--(1) by amending subsection (a)--(A) by striking out "appropriate customs officer" in the text preceding paragraph (1) and inserting "Customs Service",(B) by inserting "or reconciliation as to the issues contained therein," after "entry," in paragraph (5),(C) by striking out "and" and inserting "or" at the end of paragraph (6),(D) by striking out the comma at the end of paragraph (7) and inserting a semicolon, and(E) by striking out "appropriate customs officer, who" in the text following paragraph (7) and inserting "Customs Service, which";(2) by amending subsection (b) by striking out "appropriate customs officer" and inserting "Customs Service";(3) by amending the first sentence of subsection (c)(1) to read as follows: "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.";(4) by redesignating paragraph (2) of subsection (c) as paragraph (3) and by striking out "such customs officer" in such redesignated paragraph and inserting "the Customs Service";(5) by designating the last sentence of paragraph (1) of subsection

(c) as paragraph (2);(6) by striking out "customs officer" in subsection (d) and inserting "Customs Service"; and(7) by amending the section heading to read as follows:"

SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE."

House Ways & Means Committee Report

Present law

19 U.S.C. 1514 provides for the finality of the appropriate Customs officer's decisions and the procedures for protesting those decisions.

Explanation of provision

Section 645 of H.R. 3450 amends 19 U.S.C. 1514 to provide that reconciliation decisions may be protested, however the protest may only concern the issues contained in the reconciliation. Section 645 also authorizes the electronic transmittal of protests.

Reasons for change

These amendments are necessary to make conforming amendments concerning the reconciliation of entries, and to modernize and automate the protest procedure by permitting the use of electronic means to communicate.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 646. REFUNDS AND ERRORS

Section 520 (19 U.S.C. 1520) is amended--(1) by inserting "or reconciliation" after "entry" in paragraphs (1) and (4) of subsection (a); and(2) by amending subsection (c)--(A) by striking out "appropriate customs officer" wherever it appears and inserting "Customs Service",(B) by inserting "or reconciliation" after "reliquidate an entry", and(C) by inserting ", whether or not resulting from or contained in electronic transmission," after "inadvertence" the first place it appears in paragraph (1).

House Ways & Means Committee Report

Present law

19 U.S.C. 1520 provides that the Secretary of the Treasury is authorized to refund duties or monies on (1) excess duty deposits determined at liquidation or reliquidation; (2) erroneous or excessive fees, charges, or exactions; (3) remitted or mitigated fines, penalties, and forfeitures; and (4) duties, fees, charges, or exactions paid by reason of clerical error. Section 1520(c) provides that notwithstanding a valid protest not filed, the appropriate Customs officer may reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law; or any assessment of duty on household or personal effects in which an application for refund has been filed.

Explanation of provision

Section 646 of H.R. 3450 amends 19 U.S.C. 1520 by making conforming amendments regarding reconciliations, and by clarifying that clerical errors or other inadvertencies may result from or be contained in an electronic transmission. Section 1520(d) is repealed.

Reasons for change

These amendments recognize that in an automated electronic environment, clerical errors may result from computer programming errors or be repeated because of a single inputting error.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Under current law (section 520 of the Tariff Act of 1930), the Secretary of the Treasury is authorized to refund duties or monies on (1) excess duty deposits as determined at liquidation or reliquidation; (2) erroneous or excessive fees, charges, or exactions; (3) remitted or mitigated fines, penalties, and forfeitures; and (4) duties, fees, charges, or exactions paid by reason of clerical error. Section 520(c) provides that, notwithstanding that a valid protest was not filed, the appropriate Customs officer may reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law; or any assessment of duty on household or personal effects in which an application for refund has been filed. Section 520(d) provides that if a determination is made to reliquidate an entry as a result of a protest filed, or under section 520(c), or by court order, interest shall be allowed on any amount paid as increased or additional duties. Interest shall be calculated from the date of payment to the date of the refund or the filing of a summons, whichever occurs first. Section 646 of the implementing bill makes conforming amendments regarding reconciliations, and clarifies that clerical errors or other inadvertencies may result from or be contained in an electronic transmission. Section 520(d) is repealed in section 642 of this bill, which provides for interest payments.

SEC. 647. BONDS AND OTHER SECURITY

Section 623 (19 U.S.C. 1623) is amended--(1) by inserting "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" after "form of such bond" in subsection (b)(1); and(2) by inserting at the end of subsection (d) the following new sentence: "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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1623 provides that the Secretary of the Treasury is authorized by regulation to authorize the procedures for requiring bonds or other security to protect the revenue or to assure compliance with any provision of law, and to set the conditions, and form of the bonds.

Explanation of provision

Section 647 of H.R. 3450 amends 19 U.S.C. 1623 to permit the Secretary of the Treasury to authorize the electronic transmittal of bonds to Customs, and to clarify that any bond electronically transmitted shall be binding on the parties thereto and have the same force and effect as if it were manually executed, signed and filed.

Reasons for change

Section 647 is necessary to confirm that the electronic transmission to Customs will bind both the principal and surety. Section 647 is intended to eliminate potential defenses to claims raised by principals or sureties based solely upon the contention that the bond was not valid because it was not physically signed. This will also avoid the situation which can arise with written bonds, where the principal may not be bound due to the improper execution or non-execution of the bond, while a surety, who properly signed the bond, finds itself solely liable on the obligation.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 623 of the Tariff Act of 1930 gives the Secretary of the Treasury the authority to require or authorize Customs officers to require bonds or other security to protect the revenue or to assure compliance with any provision of law, and to set the conditions and form of the bonds. Section 647 of this bill permits the Secretary of the Treasury to authorize the electronic transmittal of bonds to the Customs Service and clarifies that any bond electronically transmitted shall be binding on the parties thereto and have the same force and effect as if it were manually executed, signed, and filed. This provision confirms that electronic transmission to the Customs Service will bind both the principal and surety. This section is intended to eliminate potential

defenses to claims raised by principals or sureties based solely on the contention that a bond is not valid because it is not physically signed. This provision is intended to avoid the situation which can arise with written bonds in which the principal may not be bound because of the improper execution or non-execution of a bond, while a surety, who properly signed the bond, finds itself solely liable on the obligation.

SEC. 648. CUSTOMHOUSE BROKERS

Section 641 (19 U.S.C. 1641) is amended--(1) by adding at the end of subsection (a)(2) the following new sentence: "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.";(2) by amending subsection (c)(1) to read as follows:"(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.";(3) by inserting at the end of subsection (c) the following new paragraph:"(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.";(4) by amending subsection (d)(2)(B)--(A) by striking out "appropriate customs officer" and inserting

"Customs Service" in the first and third sentences,(B) by striking out "he" and inserting "it" in the third sentence,(C) by striking out "15 days" and inserting "30 days" in the third sentence,(D) by striking out "the appropriate customs officer and the customs broker; they" and inserting "the Customs Service and the customs broker; which" in the sixth sentence,(E) by striking out "his" and inserting "the" in the seventh sentence, and(F) by striking out "for his decision" and inserting "for the decision" in the eighth sentence; and(5) by amending subsection (f) by striking out "United States Customs

Service." and inserting "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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1641 provides the procedures applicable to customs brokers including the issuance of licenses and permits; disciplinary actions including penalties, suspension or revocation of a license or permit; and fees to defray the costs of Customs administering this provision.

Explanation of provision

Section 648 of H.R. 3450 amends 19 U.S.C. 1641 to clarify that the definition of "customs business" does not include the mere electronic transmission of data received for transmission to Customs.

Section 648 further allows Customs to issue national and single district permits to licensed brokers. National permits are solely for use in "remote location filing" under section 631. Also, a broker may appoint another broker holding a local permit as a subagent under specified circumstances.

Section 648 further provides that records kept by brokers may be retained using modern technological methods for the retention of information and data. Furthermore, section 648 expands the time, from 15 days to 30 days, within which a hearing must be held after a broker is notified by Customs that a suspension or revocation hearing will take place. It also precludes the Secretary of the Treasury from preventing brokers from limiting their liability to other persons in the conduct of customs business.

Section 648 further requires the Secretary of the Treasury to prescribe regulations concerning the conversion of data to electronic retention mediums after the relevant Customs transaction and the use of centralized record retention systems.

Reasons for change

Section 648 will permit Customs and the importing community to communicate through the use of electronic means and allow brokers to modernize by using computer technology in their recordkeeping operations rather than requiring the paper retention of documents.

With respect to broker permits, the Committee intends that national permits would apply to brokers participating in remote entry filing, and the national permit will only be available for remote filing transactions. The Committee intends that single district permits would apply to brokers who do not participate in remote entry filing. With respect to subagents, the Committee intends that brokers with single district permits may serve as subagents for nationally permitted brokers.

Under the new business relationships likely to be established by automation, the bill permits brokers to limit their liability contractually to other persons in the conduct of customs business.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

This section also allows the Customs Service to issue national and single district permits to licensed brokers. The Committee intends that national permits are to be used solely for "remote location filing" under the NCAP. The Committee intends that single district permits will apply to brokers who do not participate in remote entry filing. The section also provides for the appointment of broker subagents so that brokers with single district permits may serve as subagents for nationally permitted brokers. The bill also permits brokers to limit their liability contractually to other persons in the conduct of customs business. This section also expands the time, from 15 days to 30 days, within which a hearing must be held after a broker is

notified by the Customs Service that a suspension or revocation hearing will take place.

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

SEC. 649. CONFORMING AMENDMENTS

(a) Place of Entry and Unlading.--Section 447 (19 U.S.C. 1447) is amended by striking out "the appropriate customs officer shall consider" and inserting "the Customs Service considers".(b) Unlading.--Section 449 (19 U.S.C. 1449) is amended by striking out "appropriate customs officer of such port issues a permit for the unlading of such merchandise or baggage," and inserting "Customs Service issues a permit for the unlading of such merchandise or baggage at such port."

House Ways & Means Committee Report

Present law

19 U.S.C. 1447 provides that it is unlawful to make entry of any vessel or to unlade cargo of any vessel other than at a port of entry, with certain exceptions. 19 U.S.C. 1449 requires that merchandise and baggage imported in any vessel shall be unladen at the port of entry which it is destined, subject to certain exceptions.

Explanation of provision

Section 649 of H.R. 3450 amends 19 U.S.C. 1447 and 1449 by making technical and conforming amendments regarding vessel entry and unlading.

Reasons for change

Section 649 is necessary to modernize vessel entry procedures.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Subtitle C--Miscellaneous Amendments to the Tariff Act of 1930

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SUBTITLE C--MISCELLANEOUS AMENDMENTS TO THE TARIFF ACT OF 1930

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No Legislative History.

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SUBTITLE C--MISCELLANEOUS AMENDMENTS TO THE TARIFF ACT OF 1930

SEC. 651. ADMINISTRATIVE EXEMPTIONS

Section 321 (19 U.S.C. 1321) is amended--(1) by amending subsection (a)(1)--(A) by striking out "of less than $10" and inserting "of an amount specified by the Secretary by regulation, but not less than $20,",(B) by inserting ", fees," after "duties" wherever it appears, and(C) by striking out "and" at the end thereof;(2) by amending subsection (a)(2)--(A) by striking out "shall not exceed--" and inserting "shall not exceed an amount specified by the Secretary by regulation, but not less than--",(B) by striking out "$50" and "$100" in subparagraph (A) and inserting "$100" and "$200", respectively,(C) by striking out "$25" in subparagraph (B) and inserting

"$200",(D) by striking out "$5" in subparagraph (C) and inserting

"$200", and(E) by striking the period at the end thereof and inserting "; and", and(3) by inserting a new paragraph (3) at the end of subsection (a) to read as follows:"(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."; and(4) by amending subsection (b)--(A) by striking out "to diminish any dollar amount specified in subsection (a) and"; and(B) by striking out "such subsection" wherever it appears and inserting "subsection (a)."

House Ways & Means Committee Report

Present law

19 U.S.C. 1321 provides for specific dollar limits that authorize eligibility for administrative exemptions from duty and taxes on articles such as gifts and personal and household goods.

An article qualifying for an administrative exemption is free of duty and tax, and no entry need be filed for the article (19 CFR 10.151; 10.152). 19 U.S.C. 1321 provides that the Secretary of the Treasury, in order to avoid expense and inconvenience to the government disproportionate to the revenue that would be collected, may--

(1) disregard a difference of less than $10 between the duty due on an entry and the estimated duties deposited thereon; and

(2) admit free of duty and tax, any article not exceeding--

(A) $50 in the case of bona fide gifts ($100 if the gift is from the Virgin Islands, Guam, or American Samoa) sent from foreign;

(B) $25 in the case of personal or household articles accompanying the traveler; and

(C) $5 in all other cases.

In summary, section (2)(A) applies to gifts sent from outside the customs territory of the United States (e.g., mailed shipments); (2)(B) applies to articles accompanying the traveler (applies when the $400 exemption from duty does not apply because the traveler has not been outside the United States for the required 48 hours); and (2)(C) applies to all other cases (i.e., not gifts sent from outside the customs territory of the United States or articles accompanying the traveler) which means, in most cases, low-value shipments.

The Committee notes that, under the Customs Regulations, quota merchandise is not eligible for an administrative exemption under (2)(C) [19 CFR 10.153(g)].

There is no provision in present law authorizing the waiver of duties.

Explanation of provision

Section 651 of H.R. 3450 amends 19 U.S.C. 1321 by increasing the statutorily specified dollar amounts that trigger eligibility for administrative exemptions. The dollar amounts were adjusted in 1975, 1978, and 1983 but have not kept pace with inflation.

Section 651 would raise--

The amount in (1) from $10 to $20;

The amounts in (2)(A) from $50 and $100, to $100 and $200;

The amount in (2)(B) from $25 to $200; and

The amount in (2)(C) from $5 to $200.

A new provision is added that will allow Customs to waive collection of duties, fees, and taxes on entered merchandise where the duty amount is less than $20.

Reasons for change

This amendment is necessitated by inflation and the substantial increases in passenger arrivals and low-value entries. It will permit Customs to streamline processing. The current amounts are not sufficiently high for the statutorily stated goal of limiting expense to the Government disproportionate to the revenue that is collected.

Waiver authority is needed where the expense and resources required to process the entry is disproportionate to the revenue that would be collected.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 652. REPORT OF ARRIVAL

Section 433 (19 U.S.C. 1433) is amended--(1) by amending subsection (a)(1)--(A) by striking out "or" at the end of subparagraph (B),(B) by inserting "or" after the semicolon at the end of subparagraph (C), and(C) by adding after subparagraph (C) the following:"(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;";(2) by striking out "present to customs officers such" in subsection

(d) and inserting "present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data,"; and(3) by amending subsection (e) to read as follows:"(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)."

House Ways & Means Committee Report

Present law

19 U.S.C. 1433 provides requirements for the immediate reporting of arrival applicable to vessels, vehicles and aircraft. Section 652 also provides for the presentation of necessary documents and for the prohibitions regarding unauthorized departures or passenger/merchandise discharges.

Explanation of provision

Section 652 of H.R. 3450 amends 19 U.S.C. 1433 by making conforming amendments regarding hovering vessels and by authorizing the electronic transmittal to Customs of documents, papers, manifests and other documents whose presentation is required by law.

Reasons for change

These amendments will allow Customs and the shipping industry to modernize and use available technology to meet applicable report of arrival requirements. Current law is antiquated and prevents adoption of modern electronic methods for the transmission of information and other technological applications.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 653. ENTRY OF VESSELS

Section 434 (19 U.S.C. 1434) is amended to read as follows:"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;

"(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 any such 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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1434 and 1435 provides the vessel entry requirements applicable to American and foreign vessels, and also provides for formal entry at the customhouse within 48 hours of arrival from a foreign port or place.

Explanation of provision

Section 653 of H.R. 3450 amends 19 U.S.C. 1434 and 1435 by amending or repealing antiquated provisions which prescribe vessel entry procedures with a degree of specificity which allows little or no administrative discretion. This section will consolidate in one section vessel entry requirements for American and foreign vessels. Section 653 will give the Secretary of the Treasury authority to provide by regulation the specific procedures pertaining to vessel entry. These regulations will permit preliminary vessel entry in lieu of, or before, formal entry is made (preliminary entry is currently provided for in 19 U.S.C. 1448). Customs is required to board a sufficient number of vessels to ensure compliance with the laws it enforces. Section 653 will also give the Secretary authority to prescribe by regulation the place and the manner in which formal and preliminary vessel entries are to be made.

Reasons for change

Section 653 will authorize entry to be made electronically pursuant to an electronic data interchange system. Section 653 adjusts the time of making vessel entry, and authorizes Customs to permit formal or preliminary vessel entry to be made outside a designated port of entry.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Sections 434 and 435 of the Tariff Act of 1930 provide the vessel entry requirements applicable to American and foreign vessels, and also provide for formal entry at the customhouse within 48 hours of arrival from a foreign port or place. Section 653 of the implementing bill amends antiquated provisions which prescribe vessel entry procedures with a degree of specificity that allows little or no administrative discretion. The implementing bill, by amending section 434 and repealing elsewhere in this bill section 435, consolidates in one section vessel entry requirements for American and foreign vessels. Under this section, the Secretary of the Treasury will have the authority to provide by regulation the specific procedures pertaining to vessel entry. These regulations will permit preliminary vessel entry in lieu of, or before, formal entry is made (preliminary entry is currently provided for in section 448 of the Tariff Act of 1930). This section also gives the Secretary authority to prescribe by regulation the place and the manner in which formal and preliminary vessel entries are to be made. This will authorize the Customs Service to permit formal or preliminary vessel entry to be made outside a designated port of entry. The implementing bill modifications also permit vessel entry to be made electronically.

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

SEC. 654. UNLAWFUL RETURN OF FOREIGN VESSEL PAPERS

Section 438 (19 U.S.C. 1438) is amended--(1) by striking out "section 435" and inserting "section 434";(2) by inserting ", or regulations issued thereunder," after "of this Act"; and(3) by striking out "the appropriate customs officer of the port where such vessel has been entered." and inserting "the Customs Service in the port in which such vessel has entered."

House Ways & Means Committee Report

Present law

19 U.S.C. 1438 provides for a penalty against a foreign consul who delivers vessel papers to a master of a foreign vessel before such master is able to produce a vessel clearance issued by Customs.

Explanation of provision

Section 654 of H.R. 3450 amends 19 U.S.C. 1438 by making technical conforming amendments.

Reasons for change

Section 654 is needed to make technical and conforming changes.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 655. VESSELS NOT REQUIRED TO ENTER

Section 441 (19 U.S.C. 1441) is amended--(1) by amending the text preceding paragraph (1) to read as follows:

"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):";(2) by amending paragraph (3) to read as follows:"(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.";(3) by redesignating paragraphs (4) and (5) as paragraphs (5) and

(6), respectively, and inserting after paragraph (3) the following:"(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) by amending paragraph (6) (as so redesignated) by striking out "enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers" and inserting "documented under chapter 121 of title 46, United States Code, with a Great Lakes endorsement"; and(5) by amending the section heading to read as follows:"

SEC. 441. EXCEPTIONS TO VESSEL ENTRY AND CLEARANCE REQUIREMENTS."

House Ways & Means Committee Report

Present law

19 U.S.C. 1441 provides a list of the types of vessels which are not required to make entry at the customhouse when arriving in the United States.

Explanation of provision

Section 655 of H.R. 3450 amends 19 U.S.C. 1441 by making the current exceptions from vessel entry requirements applicable to the clearance requirements. These amendments will also separately provide for the

treatment of: (1) vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning; and (2) United States documented vessels with recreational endorsement or undocumented United States pleasure vessels not engaged in trade. Finally, section 655 will change the time within which the master of a vessel exempt from entry under either of these exceptions is required to report the arrival to Customs from 24 hours after arrival to immediately upon arrival.

Reasons for change

Section 655 is needed to make the law consistent with current Customs practice and with the changes made to the report of arrival requirements in 19 U.S.C. 1433, by section 3111 of the Anti-Drug Abuse Act of 1986 (Public Law 99-570; 100 Stat. 3207).

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 656. UNLADING

Section 448(a) (19 U.S.C. 1448(a)) is amended--(1) by amending the first sentence--(A) by striking out "enter)" and inserting "enter or clear)",(B) by striking out "or vehicle arriving from a foreign port or place" and inserting "required to make entry under section 434, or vehicle required to report arrival under section 433,",(C) by inserting "or transmitted pursuant to an electronic data interchange system" after "issued", and(D) by striking out the colon after "officer" and the proviso and inserting a period;(2) by amending

the second sentence--(A) by striking out ", preliminary or otherwise,", and(B) by inserting ", electronically pursuant to an authorized electronic data interchange system or otherwise," after "may issue a permit";(3) by striking out the last sentence and inserting the following:

"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."; and(4) by striking out "the appropriate customs officer" and "such customs officer" wherever they appear and inserting "the Customs Service".

House Ways & Means Committee Report

Present law

19 U.S.C. 1448 provides the requirements for obtaining a permit from Customs prior to unlading merchandise, passengers or baggage; provides that preliminary entry may be made aboard vessels, but such does not excuse a vessel operator from making formal vessel entry at the customhouse; and provides that merchandise unladen under a permit must be retained at the place of unlading until the merchandise is entered (which must occur within 48 hours).

Explanation of provision

Section 656 of H.R. 3450 amends 19 U.S.C. 1448 by making a conforming amendment which adopts the entry and report of arrival requirements for purposes of the report of unlading requirements in this statute. Section 656 will also remove from section 1448 the authority for granting a preliminary entry (it will be provided for in 19 U.S.C. 1434, the substantive provision on vessel entry). The requirement that a boarding officer must examine the manifest before preliminary entry is permitted will be removed. Section 656 will also authorize Customs to electronically transmit to carriers permits allowing them to unlade merchandise. These permits will be transmitted pursuant to authorized electronic data interchange systems. Carriers will be obligated to notify Customs of merchandise unladen without entry having been made. Failure to so notify Customs will subject the owner or master of the vessel or vehicle or his agent to a civil penalty not to exceed $1,000 for each bill of lading for which notice is not given, and said party shall be responsible for the unladen

merchandise until removed from his control in accordance with 19 U.S.C. 1490.

Reasons for change

These amendments grant Customs flexibility regarding the granting of permission to unlade, modernize the law to recognize the use of electronic means of communication, and close loopholes concerning unladen merchandise which has not been entered. Section 656 will allow Customs to grant preliminary entry without the necessity of boarding the vessel. However, Customs will retain authority to board if it so wishes.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Current law (section 448 of the Tariff Act of 1930) provides the requirements for obtaining a permit from the Customs Service prior to unlading merchandise, passengers or baggage; provides that preliminary entry may be made aboard vessels (but such does not excuse a vessel operator from making formal vessel entry at the customhouse); and provides that merchandise unladen under a permit must be retained at the place of unlading until the merchandise is entered (which must occur within 48 hours). Section 656 of the implementing bill removes from section 448 the authority for granting a preliminary entry. (It will be provided for in section 434 of the Tariff Act of 1930, the substantive provision on vessel entry.) This section also eliminates the requirement that a boarding officer must examine the manifest before preliminary entry. The Committee notes, however, that the Customs Service will still have the authority to board vessels, and the Committee expects that the Customs Service will do so with such frequency as is warranted to ensure the effective enforcement of U.S. customs, trade and drug laws. As noted elsewhere in this report, the Committee expects that the Customs Service will continue to board in the future approximately as many vessels as it currently boards because the Committee is convinced that boarding, in some circumstances, can contribute substantially to the enforcement efforts of the Customs Service.
This section also authorizes the Customs Service to transmit electronically to carriers permits that allow them to unlade merchandise. These permits will be transmitted pursuant to authorized electronic data interchange systems. Carriers will be obligated to notify the Customs Service of unladen merchandise where entry has not been made. Failure to so notify the Customs Service will subject the owner or master of the vessel or vehicle or his agent to a civil penalty not to exceed $1,000 for each bill of lading for which notice is not given, and that party will be responsible for the unladen merchandise until removed from his control in accordance with section 490 of the Tariff Act of 1930.

SEC. 657. DECLARATIONS

Section 485 (19 U.S.C. 1485) is amended--(1) by amending subsection (a)--(A) by inserting "or transmit electronically" after "file", and(B) by inserting "and manner" after "form";(2) by amending subsection (d)--(A) by striking out "A importer" and inserting "An importer", and(B) by striking out "a importer" and inserting "an importer"; and(3) by inserting after subsection (f) the following new subsection:"(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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1485 requires the importer of record to make a declaration under oath setting forth specified facts relating to the imported merchandise.

Explanation of provision

Section 657 of H.R. 3450 amends 19 U.S.C. 1485 by authorizing the electronic transmittal of declarations and by making technical conforming amendments.

Reasons for change

Section 657 is needed to modernize Customs procedures.

Senate Finance Committee Report

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

SEC. 658. GENERAL ORDERS

Section 490 (19 U.S.C. 1490) is amended--(1) by amending subsection (a) to read as follows:"(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;

"(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.";(2) by amending subsection (b)--(A) by amending the heading for subsection (b) to read as follows:"(b) Request for Possession by Customs.--", and(B) by striking out "appropriate customs officer" and inserting

"Customs Service"; and(3) by adding at the end the following new subsection:"(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;

House Ways & Means Committee Report

Present law

19 U.S.C. 1490 requires Customs to place general order (unclaimed) merchandise in a bonded warehouse at the expense of the consignee until entry can be made.

Explanation of provision

Section 658 of H.R. 3450 amends 19 U.S.C. 1490 by deleting the requirement that customs officers take unentered merchandise into their custody and send it to a bonded warehouse. Instead, carriers will be required to notify a bonded warehouse of such unentered merchandise and the bonded warehouse shall arrange for the transportation of the unentered merchandise to his premises for storage at the risk and expense of the consignee. Section 658 also codifies current practice where merchandise that cannot be entered because of an incomplete entry is transported to a bonded warehouse. The Secretary will be authorized to establish procedures governing incomplete entries filed by the United States Government.

Reasons for change

Section 658 recognizes that incomplete entries may result from lack of adequate information electronically transmitted. Section 658 allows for the

entry to be completed, or, if not yet filed, initiated by the electronic transmittal of the required information or data. Section 658 recognizes that the Customs Service and importing community communicate through electronic means. Section 658 eliminates a legal fiction because customs officers do not actually take unentered merchandise into their custody.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Current law (section 490 of the Tariff Act of 1930) requires the Customs Service to place general order (unclaimed) merchandise in a bonded warehouse at the expense of the consignee until entry can be made. Section 658 of the implementing bill eliminates a legal fiction by deleting the requirement that Customs Service officers take unentered merchandise into their custody and send it to a bonded warehouse; Customs officers do not actually take unentered merchandise into their custody. Instead, carriers will be required to notify a bonded warehouse of such unentered merchandise and the bonded warehouse shall arrange for the transportation of the unentered merchandise to its premises for storage at the risk and expense of the consignee. This section also codifies current practice whereby merchandise that cannot be entered because of an incomplete entry is transported to a bonded warehouse. The amendments also recognize that incomplete entries may result from lack of adequate electronically transmitted information. This section also authorizes the Secretary of the Treasury to establish procedures governing incomplete entries of merchandise consigned to or owned by the U.S. Government.

SEC. 659. UNCLAIMED MERCHANDISE

Section 491 (19 U.S.C. 1491) is amended--(1) by amending subsection (a)--(A) by striking out "customs custody for one year" in the first sentence and inserting "in a bonded warehouse pursuant to section 490 for 6 months",(B) by striking out "public store or bonded warehouse for a period of one year" in the second sentence and inserting "pursuant to section 490 in a bonded warehouse for 6 months",(C) by striking out "estimated duties and storage" in the first sentence and inserting "estimated duties, taxes, fees, interest, storage,",(D) by inserting "taxes, fees, interest," after "duties," wherever it appears, and(E) by striking out "duties" in the last sentence and inserting

"duties, taxes, interest, and fees"; and(2) by redesignating subsection (b) as subsection (e) and inserting after subsection (a) the following new subsections:"(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."; and(3) by amending subsection (e) (as so redesignated) by striking out "appropriate customs officer" in paragraph (3) and inserting "Customs Service".

House Ways & Means Committee Report

Present law

19 U.S.C. 1491 provides that the unclaimed merchandise shall be stored for a period of one year before it is considered abandoned to the Government and sold at a public auction.

Explanation of provision

Section 659 of H.R. 3450 amends 19 U.S.C. 1491 by reducing from one year to six months the time that merchandise may remain in a bonded warehouse, without payment of applicable duties and storage charges, before it is considered unclaimed and abandoned to the Government. After six months in storage, Customs may sell the merchandise at public auction or notify all known interested parties that, unless entered for consumption, title to the subject merchandise shall vest in the United States 30 days after said notice. If the latter option is exercised, the amendment vests title to the goods in the United States free and clear of any liens and encumbrances so that the Customs Service or a transferee of the merchandise receives clean

title. The provision also allows the Government to retain the goods for official use or transfer them to any other federal, state, or local agency in lieu of sale. All transfer and storage charges and expenses on retained or transferred merchandise will be paid by the receiving agency. The rights of interested parties are protected in the same manner as if the goods were sold. Finally, the Secretary may grant relief to parties who can establish they did not receive notice that title to the merchandise will vest in the United States unless entry of the merchandise is made.

Reasons for change

These amendments will reduce the cost of storing and processing unclaimed or abandoned merchandise by reducing the waiting period during which the merchandise remains unclaimed before the Government can dispose of the merchandise. They will also allow Customs to streamline operations, and more efficiently convert unclaimed or abandoned merchandise to official use or transfer the merchandise to another Federal, State, or local agency.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

streamline the disposition of unclaimed merchandise while providing appropriate safeguards for all interested parties.

SEC. 660. DESTRUCTION OF MERCHANDISE

Section 492 (19 U.S.C. 1492) is amended--(1) by inserting ", retained for official use, or otherwise disposed of" after "destroyed"; and(2) by striking out "appropriate customs officer" and inserting "Customs Service".

House Ways & Means Committee Report

Present law

19 U.S.C. 1492 provides that any merchandise that is abandoned or forfeited to the Government which is subject to internal revenue tax and which the appropriate customs officer determines will not sell for a sufficient amount to pay such taxes, shall be destroyed instead of being sold at auction.

Explanation of provision

Section 660 of H.R. 3450 amends 19 U.S.C. 1492 by permitting the retention or other disposition of property rather than destruction where the proceeds of sale are insufficient to cover taxes.

Reasons for change

Section 660 will now parallel the forfeiture provisions. These amendments will reduce costs and provide more efficient disposition of abandoned or forfeited merchandise.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 661. PROCEEDS OF SALE

Section 493 (19 U.S.C. 1493) is amended--(1) by inserting "taxes, and fees," after "duties,";(2) by striking out "by the appropriate customs officer"; and(3) by striking out "such customs officer" and inserting "the Customs Service".

House Ways & Means Committee Report

Present law

19 U.S.C. 1493 provides that the surplus of the proceeds of sale, after payment of storage charges, expenses, duties, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited in the U.S. Treasury.

Explanation of provision

Section 661 of H.R. 3450 amends 19 U.S.C. 1493 by requiring that the proceeds from the sale of unclaimed merchandise be used first to pay outstanding duties, fees and taxes due on such merchandise, second the expenses of sale and other liens, and any remaining surplus of the proceeds will be deposited in the U.S. Treasury.

Reasons for change

These amendments grant appropriate priority to outstanding duties, taxes and fees and direct residual proceeds to cover expenses of sale and liens with any remaining proceeds deposited in the U.S. Treasury to offset related operating and enforcement expenses.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Section 493 of the Tariff Act of 1930 provides that the surplus of the proceeds of sale, after payment of storage charges, expenses, duties, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited in the U.S. Treasury. Under section 661, a priority is established for the disposition of any surplus proceeds of sale. Under this section, proceeds from the sale of unclaimed merchandise are to be used first to pay outstanding duties, fees, and taxes due on such merchandise. Thereafter, surplus proceeds may be applied to offset the expenses of sale and other liens, and any remaining surplus proceeds will be deposited in the U.S. Treasury.

SEC. 662. ENTRY UNDER REGULATIONS

Section 498(a) (19 U.S.C. 1498(a)) is amended--(1) by amending paragraph (1) to read as follows:"(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;"; and(2) by striking out "$10,000" in paragraph (2) and inserting "such amounts as the Secretary may prescribe".

House Ways & Means Committee Report

Present law

19 U.S.C. 1498 provides that the Secretary of the Treasury may issue regulations relating to the procedures applicable to informal entry.

Explanation of provision

Section 662 of H.R. 3450 amends 19 U.S.C. 1498 by raising the informal entry qualification amount from $1250 to an amount prescribed by regulations but not more than $2500. Section 662 also permits the Secretary to prescribe the dollar limit for the informal entry of statutorily specified articles of United States origin.

Reasons for change

These amendments will streamline the entry process and increase efficiency for informal entries.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 663. AMERICAN TRADEMARKS

Section 526(e)(3) (19 U.S.C. 1526(e)(3)) is amended--(1) by striking out "1 year" and inserting "90 days"; and(2) by striking out "appropriate customs officers" and inserting "the Customs Service".

House Ways & Means Committee Report

Present law

19 U.S.C. 1526(e)(3) provides that forfeited counterfeit trademark items shall be stored for a period of one year after the date of forfeiture before sale.

Explanation of provision

Section 663 of H.R. 3450 amends 19 U.S.C. 1526 by reducing the period of time forfeited counterfeit trademark items must be held before being sold at public auction from one year to 90 days.

Reasons for change

This amendment will reduce storage expenses to the Government and expedite the disposition of forfeited counterfeit trademark merchandise.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 664. SIMPLIFIED RECORDKEEPING FOR MERCHANDISE TRANSPORTED BY PIPELINE

Part IV of title IV is amended by inserting after section 553 the following new section:"

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."

House Ways & Means Committee Report

Present law

There is no present law specifically providing for the transportation in bond of merchandise by pipeline. Present law governing transportation in bond generally (entry for immediate transportation and entry for transportation and exportation; 19 U.S.C. 1552 and 1553, respectively) does not permit the commingling of the merchandise transported.

Explanation of provision

Accounting for merchandise in Customs' custody (i.e., bonded merchandise) moved by pipeline would be permitted on a quantitative basis. That is, if it was established (by a bill of lading or equivalent document of receipt, issued by the pipeline carrier) that a given quantity of the covered merchandise entered the pipeline, Customs could accept a bill of lading or equivalent document of receipt, issued by the pipeline carrier and accepted by the consignee) as identifying a like quantity being withdrawn from the pipeline. All involved parties would be subject to applicable recordkeeping requirements.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Section 664 of the implementing bill permits accounting for merchandise in Customs Service custody (i.e., bonded merchandise) moved by pipeline (thus, in most cases, commingled) on a quantitative basis. That is, if it is established (by a bill of lading or equivalent document of receipt, issued by the pipeline carrier) that a given quantity of the bonded merchandise entered the pipeline, the Customs Service may accept a bill of lading or equivalent document of receipt, issued by the pipeline carrier and accepted by the consignee as identifying a like quantity being withdrawn from the pipeline. All

involved parties would be subject to applicable recordkeeping requirements under sections 508 and 509 of the Tariff Act of 1930.

SEC. 665. ENTRY FOR WAREHOUSE

Section 557(a) (19 U.S.C. 1557(a)) is amended--(1) by designating the first 2 sentences of such subsection as paragraph (1);(2) by striking out in such paragraph (1) (as so designated) ": 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." and inserting the following: "; 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."; and(3) by designating the remaining sentences of such subsection as paragraph (2).

House Ways & Means Committee Report

Present law

Merchandise withdrawn from a customs bonded warehouse is subject to entry and applicable duties, when withdrawn for consumption, at the time of such withdrawal. Under another provision of law (19 U.S.C. 1309), merchandise withdrawn from a customs bonded warehouse for loading as supplies on qualifying aircraft is considered as exported.

Explanation of provision

Accounting for turbine fuel withdrawn from a customs bonded warehouse for use as supplies on qualifying aircraft on a monthly basis would be permitted. That is, if turbine fuel withdrawn from a customs bonded warehouse could be shown to have been used as supplies on qualifying aircraft within 30 days after withdrawal, the turbine fuel would not be subject to duty. Turbine fuel not shown to have been so used in this 30-day period would be subject to duty, which would be required to be deposited by the 40th day after withdrawal and subject to interest as of the date of withdrawal.

The nature of major airport fueling systems is that different lots (bonded, imported, domestic, etc.) of turbine fuel are commingled in a common hydrant system. Requiring multiple hydrant systems (for the different lots of

turbine fuel) is physically impracticable at most airports and could result in great expense. According to the industry, identifying the turbine fuel which is used for qualifying flights and that used for non-qualifying flights at the time that turbine fuel is entered into the common hydrant system is impracticable and, if possible, would result in great administrative expense and excessive paperwork. The amendment would permit the effective use of modern fueling systems at our airports, as well as permitting the intended use of the existing law permitting the duty-free withdrawal of supplies for qualifying aircraft, and would substantially reduce administrative costs and paper-work for the industry and administrative costs for the Government.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

Under section 557(a) of the Tariff Act of 1930, merchandise withdrawn from a customs bonded warehouse is subject to entry and applicable duties, when withdrawn for consumption, at the time of such withdrawal. Under section 309 of the Tariff Act of 1930, merchandise withdrawn from a customs bonded warehouse for loading as supplies on qualifying aircraft is considered to be exported.

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

SEC. 666. CARTAGE

The first sentence of section 565 (19 U.S.C. 1565) is amended to read as follows: "The cartage of merchandise entered for warehouse shall be done

by--"(1) cartmen appointed and licensed by the Customs Service; or"(2) carriers designated under section 551 to carry bonded merchandise;

House Ways & Means Committee Report

Present law

The statute requires merchandise entered for warehousing to be transported by a cartman licensed by Customs because the merchandise has not been released from Customs' custody.

Explanation of provision

Bonded carriers would be added to the list of persons eligible to cart merchandise within the limits of a port.

Reasons for change

The anomaly of separating intra-port transportation from interport transportation would be eliminated. The Secretary has authority under the bonded carrier and cartage statutes to determine the eligibility of applicants for either category.

On October 29, 1992, Customs published a document in the Federal Register proposing to amend the Customs Regulations to allow bonded carriers to transport merchandise within port limits without having to obtain a cartman's license. This provision will result in savings of time and money for both the trade and Customs.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Section 666 of the implementing bill adds bonded carriers to the list of persons eligible to cart merchandise within the limits of a port. Under section 551 of the Tariff Act of 1930, bonded carriers may currently transport bonded merchandise between ports. The implementing bill eliminates the anomaly of separating intraport transportation from interport transportation. The Secretary has authority under the bonded carrier and cartage statutes to

determine the eligibility of applicants for either category. This provision will result in savings of time and money for both the trade and Customs.

SEC. 667. SEIZURE

Section 612 (19 U.S.C. 1612) is amended--(1) by amending subsection (a)--(A) by striking out "the appropriate customs officer", "such officer" and "the customs officer" wherever they appear and inserting

"the Customs Service", and(B) by striking out "the appraiser's return and his" and inserting "its"; and(2) by amending subsection (b) to read as follows:"(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."

House Ways & Means Committee Report

Current law

19 U.S.C. 1612(b) provides that if the expense of storing a seized conveyance or merchandise is disproportionate to its value, and the value is less than $1,000, a customs officer may proceed to order its destruction.

Explanation of provision

Section 667 of H.R. 3450 amends 19 U.S.C. 1612 to permit Customs to dispose of seized conveyances or merchandise when the storage expense is disproportionate to the value of the seized conveyance or merchandise. Section 667 further provides that no customs officer shall be liable for the destruction or other disposition of property pursuant to this statute.

Reasons for change

Section 667 will allow Customs to reduce storage costs by eliminating the requirement that the value of a seized conveyance or merchandise be less than $1000 before Customs can proceed with summary sale and will also eliminate undue restrictions on the disposition of seized conveyances or merchandise.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 668. LIMITATION ON ACTIONS

Section 621 (19 U.S.C. 1621) is amended--(1) by inserting "any duty under section 592(d), 593A(d), or" before "any pecuniary penalty"; and(2) by striking out "discovered:" and all that follows thereafter and inserting the following: "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."

House Ways & Means Committee Report

Present law

19 U.S.C. 1621 provides for a five year statute of limitations for civil actions involving pecuniary penalties and forfeiture of property under the customs laws.

Explanation of provision

Section 668 of H.R. 3450 amends 19 U.S.C. 1621 by creating a statute of limitations for the recovery of lawful duties of which the United States was deprived as a result of a violation of 19 U.S.C. 1592 or 1593A.

Reasons for change

Section 668 is intended to provide importers with certainty regarding the extent of their liability for lawful duties by requiring that the Government initiate suit promptly or be foreclosed from recovering the duties.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 669. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES

The Tariff Act of 1930 is amended by inserting after section 528 the following new section:"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."

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 669 of H.R. 3450 creates a new statute, 19 U.S.C. 1529, which will require reimbursement to Customs for the expenses incurred in collecting fees on behalf of other Government agencies. The amounts reimbursed to Customs shall come from the fees collected. Section 669 will ensure that Customs recovers the costs incurred in administering fee collection programs on behalf of other Government agencies.

Reasons for change

Section 669 is needed to provide Customs with additional resources for revenue collection. The Committee believes, however, that Customs should make a good faith effort to collect all duties, taxes and fees, without regard to reimbursement.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 670. AUTHORITY TO SETTLE CLAIMS

The Tariff Act of 1930 is amended by inserting after section 629 the following new section:"

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."

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 670 of H.R. 3450 creates a new statute, 19 U.S.C. 1630, which grants the Secretary of the Treasury authority to settle claims, for less than $50,000, against certain Customs Service employees who, while acting within the scope of their employment, cause damage to privately-owned personal property. The statute will not apply, if a remedy is available under Chapter 171 of title 28, to damage to commercial property, claims presented more than one year after the harm occurs, or if presented by a Government employee acting within the scope of employment. Claims will be paid out of the Treasury Forfeiture Fund.

Reasons for change

Section 670 is intended to partially address the Committee on Ways and Means Subcommittee on Oversight's 1990 report finding that "Customs has little or no incentive to avoid damaging cargo during examinations" (WMCP: 101-22). The Oversight Subcommittee recommended that legislation be enacted to provide recourse or compensation to importers for merchandise unnecessarily damaged during the course of an examination. Section 670 does not completely address this recommendation, since the new authority to settle claims is discretionary, and does not apply to commercial shipments. The Ways and Means Subcommittee on Trade will continue work with the Subcommittee on Oversight to evaluate options to address this issue.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 671. USE OF PRIVATE COLLECTION AGENCIES

The Tariff Act of 1930 is amended by inserting after section 630 the following new section:"

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) of such section; and"(B) laws and regulations of the United States Government and State governments related to debt collection practices."

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 671 of H.R. 3450 creates a new statute, 19 U.S.C. 1631, which authorizes the Secretary of the Treasury to contract with private agencies for collection services to recover indebtedness arising under the Customs laws provided that the private collection agencies are employed only after Customs exhausts all administrative efforts to collect the indebtedness. Customs must continue to attempt collection through applicable surety bonds prior to utilizing a private collection agency. The Secretary will retain authority to settle any claims or refer the matter to the Justice Department for litigation. Finally, the private collection agency will be subject to the Freedom of Information Act (5 U.S.C. 552 et seq.) and all Federal and State laws and regulations related to debt collection practices.

Reasons for change

This new statute will provide greater revenue to the Government as it should result in the collection of a large percentage of the roughly $12 million Customs currently writes off as uncollectible.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

The Committee believes that the Customs Service should be granted the authority, as a last resort, to contract with private collection agencies to attempt to recover the indebtedness which the agency currently writes off as uncollectible. Section 671 creates a new provision, section 631 of the Tariff Act of 1930, which allows the Secretary of the Treasury to contract with private agencies for collection services to recover indebtedness arising under the customs laws, provided that the private collection agencies are employed only after the Customs Service exhausts all administrative efforts to collect the indebtedness. The Customs Service must continue to attempt collection through applicable surety bonds prior to utilizing a private collection agency. The Secretary of the Treasury will retain authority to settle any claims or refer the matter to the Department of Justice for litigation. Finally, the private collection agency will be subject to the Freedom of Information Act (5 U.S.C. 552 et seq.) and all Federal and State laws and regulations related to debt collection practices.

Subtitle D--Miscellaneous Provisions and Consequential and Conforming Amendments to Other Laws

House Ways & Means Committee Report

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

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 681. AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE

(a) Return Shipments.--General Note 4 of the Harmonized Tariff Schedule of the United States is amended--(1) by striking out "and" at the end of subdivision (c);(2) by inserting "and" after "1930," in subdivision (d);(3) by inserting after subdivision (d) the following:"(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,"; and(4) by adding at the end the following new sentence: "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.".(b) Entry Not Required for Locomotives and Railway Freight Cars.--(1) The Notes to chapter 86 of such Schedule are amended by inserting after note 3 the following new note:

(2) The U.S. Notes to subchapter V of chapter 99 of such Schedule are amended by inserting after note 8 the following new note:

(c) Instruments of International Traffic.--The U.S. Notes to subchapter III of chapter 98 of such Schedule is amended by inserting after note 3 the following new note:

House Ways & Means Committee Report

Present law

Under present regulations, shipments which leave the United States and are undeliverable to the country of destination (without having left the custody of the carrier or foreign customs service) are considered exports and have to be "re-entered" into the United States as imports.

Under present law, rail equipment brought into the United States from Canada is not subject to duty, but is subject to entry requirements.

Under present regulations, instruments of international traffic, such as containers, rail cars and locomotives, truck cabs and trailers are exempt from formal entry procedures required of all merchandise entering the United States.

Explanation of provision

Section 681 of H.R. 3450 provides for the exemption from entry requirements of returned shipments which left the United States, but proved undeliverable in the country of destination without having left the custody of the carrier or foreign customs.

Section 681 eliminates entry requirements for rail cars and locomotives on which no duty is owed. Section 681 authorizes the Secretary of the Treasury to impose reporting and bonding requirements to ensure that no duty is owed on rail cars and locomotives brought into the United States without being entered. The Secretary is authorized to develop regulations requiring the submission by railroads, equipment owners and lessors of

information demonstrating the rail equipment's eligibility for duty-free treatment. In addition, the Secretary is authorized to establish bonding requirements for companies to protect against rail equipment subject to a tariff from being brought into the U.S. without payment of duty.

Section 681 provides for the exemption from formal entry procedures of instruments of international traffic. These would be required to be accounted for when imported and exported into and out of the United States respectively, through the manifesting procedures required by all international carriers with U.S. Customs. Fees associated with the importation of these instruments would be reported and paid on a periodic basis based on regulations as issued by the Secretary of the Treasury and in accordance with International Conventions on instruments of international trade.

Reasons for change

Section 681 is intended to facilitate the processing of returned shipments which would normally be subject to unnecessary "re-entry" procedures as imports. The courier services were particularly concerned with the removal of this burdensome requirement.

Section 681 is intended to remove entry requirements as an impediment to use of Canadian freight cars and locomotives under the terms of the U.S.-Canada Free Trade Agreement. While U.S. duties have been removed on most Canadian rail equipment, rail roads have been unable to take full advantage of the removal of tariffs because of entry. Entry of freight cars is impractical because the decision to utilize a freight car for domestic service, which would require entry, would be made after a rail car has crossed the border and been unloaded. Entry of locomotives and rail cars has also proven burdensome since equipment repeatedly crossing the border for subsequent use in domestic service in the U.S. or Canada has to be entered each time.

The Committee encourages the Secretary of the Treasury to work closely with the railroads, equipment owners and lessors to develop the eligibility and bonding regulations described above. These should not substitute "new" entry requirements nor create practical difficulties for compliance.

Section 681 is also intended to eliminate unnecessary procedures related to the processing of entry of instruments of international traffic by providing for periodic reporting requirements and payment of fees. The Committee intends that these privileges are to be extended to instruments of international traffic only when they are imported, and only so long as they are used, in international traffic. If they are imported for other use, or if they are diverted in the United States from use in international traffic, they are subject to the ordinary requirements for a consumption entry, duties and applicable fees.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

This provision is intended to remove entry requirements that impede the use of Canadian freight cars and locomotives under the terms of the CFTA. While U.S. duties have been removed on most Canadian rail equipment, the Committee is concerned that railroads have been unable to take full advantage of the tariff removal because of the entry requirements. The Committee believes that entry of freight cars is impractical because the decision to use a freight car for domestic service, which would require entry, would be made after a rail car has crossed the border and been unloaded. The Committee understands that the entry requirements on locomotives and rail cars have been burdensome since equipment repeatedly crossing the border for subsequent use in domestic service in the United States must be entered each time. In developing the eligibility and bonding requirements described above, the Committee urges the Secretary to work closely with the railroads, equipment owners and lessors. The Committee is concerned that the Secretary not substitute new entry requirements for the old requirements or issue regulations that will make compliance difficult.

Under present regulations, instruments of international traffic, such as containers, rail cars and locomotives, truck cabs, and trailers, are exempt from formal entry procedures required of all merchandise entering the United States. This section of the implementing bill provides for the statutory exemption of these instruments from formal entry procedures. These instruments would be required to be accounted for when imported and

exported into and out of the United States, respectively, through the manifesting procedures required of all international carriers with U.S. Customs. Fees associated with the importation of these instruments would be reported and paid on a periodic basis based on regulations issued by the Secretary of the Treasury and in accordance with international conventions on instruments of international traffic. The Committee intends that these privileges are to be extended to instruments of international traffic only when they are imported, and only so long as they are used, in international traffic. If they are imported for other use, or if they are diverted in the United States from use in international traffic, they are subject to the ordinary requirements for a consumption entry, duties and applicable fees.

SEC. 682. CUSTOMS PERSONNEL AIRPORT WORK SHIFT REGULATION

Section 13031(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(g)) is amended--(1) by striking out "In addition to the regulations required under paragraph (2), the" and inserting "The";(2) by striking out paragraph (2); and(3) by redesignating paragraph (3) as paragraph (2).

House Ways & Means Committee Report

Present law

19 U.S.C. 58c requires the Customs Service to consult with the Treasury-level Advisory Committee on Commercial Operations (COAC) prior to implementing changes of inspectional work shifts at airports.

Explanation of provision

The provision would repeal the consultation requirement with the COAC. Committees at individual airports consisting of representatives of Customs, the Immigration and Naturalization Service, and the airlines will assume greater responsibility to change work shifts.

Reasons for change

Under present law, Customs has been unable to respond quickly and efficiently to changes in workloads at international airports. In some cases, a full calendar quarter may elapse between the time the need for a shift change becomes evident and the time when the change can be implemented. To prepare for the quarterly COAC review, Customs had to poll the field before each meeting to obtain details on inspectional shift changes at every international airport in the country. The Committee believes that the elimination of the consultation requirement will enable a more rapid and efficient response at the local level to the need for shift changes.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 683. USE OF HARBOR MAINTENANCE TRUST FUND AMOUNTS FOR ADMINISTRATIVE EXPENSES

(a) In General.--Paragraph (3) of section 9505(c) of the Internal Revenue Code of 1986 (relating to expenditures from Harbor Maintenance Trust Fund) is amended to read as follows:"(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.".(b) Effective Date.--The amendment made by subsection (a) shall apply to fiscal years beginning after the date of the enactment of this Act.

House Ways & Means Committee Report

Present law

Under present law (Internal Revenue Code section 9505(c)), amounts in the Harbor Maintenance Trust Fund ("Harbor Trust Fund") are available, as provided by appropriation Acts, for making expenditures:

(1) under section 210(a) of the Water Resources Development Act of 1986

(Corps of Engineers costs for dredging and maintaining harbors at U.S. ports);

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

(3) for payment of expenses incurred by the Department of the Treasury in administering the harbor maintenance excise tax ("harbor tax") (but not more than $5 million per fiscal year) for period during which no customs processing fee applies under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("1985 Act").

The customs processing fee currently is in effect through September 30, 1998. Thus, since the customs processing fee is in effect under the 1985 Act, the Trust Fund is not currently permitted to be used for Treasury Department expenses for administering the harbor tax. The Customs Service generally has the responsibility for collecting and administering the harbor tax. The Corps of Engineers and the Department of Commerce generate certain data related to shipments of commercial cargo.

Explanation of provision

Section 683 of H.R. 3450 allows (subject to appropriation) up to $5 million per fiscal year from the Harbor Trust Fund to be used for the payment of all expenses incurred by the Department of the Treasury in administering the harbor tax to improve compliance. This is accomplished by removing the current Harbor Trust Fund restriction against such use while the customs processing fee is in effect. Also, section 683 specifies that such Harbor Trust Fund amounts are available to be used to reimburse the Corps of Engineers and the Department of Commerce for their administrative expenses related to harbor tax collection and enforcement efforts.

Section 683 applies to fiscal years beginning after the date of enactment.

Reasons for change

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

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

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

(3) for payment of expenses incurred by the Department of the Treasury in administering the harbor maintenance excise tax ("harbor tax") (but no more than $5 million per fiscal year) for periods during which no Customs merchandise processing fee applies under paragraph (9) or (10) of section 13031(a) of the COBRA.

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

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

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

SEC. 684. AMENDMENTS TO TITLE 28, UNITED STATES CODE

(a) Amendments Relating to Accreditation of Private Laboratories.--Title 28 of the United States Code is amended as follows:(1) Section 1581(g) is amended by--(A) striking out "and" at the end of paragraph (1);(B) by striking out the period at the end of paragraph (2) and inserting "; and"; and(C) by adding at the end the following:"(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.".(2) Section 2631(g) is amended by inserting at the end the following new paragraph:"(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.".(3) Section 2636 is amended--(A) by redesignating subsection (h) as subsection (i); and(B) by inserting after subsection (g) the following new subsection:"(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.".(4) Section 2640 is amended--(A) by redesignating subsection (d) as subsection (e); and(B) by inserting after subsection (c) the following new subsection:"(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.".(5) Section 2642 is amended by inserting before the period the following: "or laboratories accredited by the Customs Service under section 499(b) of the Tariff Act of 1930".(b) Application of Subsection (a) Amendments.--For purposes of applying the amendments made by subsection (a), any decision or order of the Customs Service denying, suspending, or revoking the accreditation of a private laboratory on or after the date of the enactment of this Act and before regulations to implement section 499(b) of the Tariff Act of 1930 are issued shall be treated as having been denied, suspended, or revoked under such section 499(b).(c) Jurisdiction of Court.--Section 1582(1) of title 28, United States Code, is amended by inserting "593A," after "592,".(d) Filing of Official Documents.--Section 2635(a) of title 28, United States Code, is amended to read as follows:"(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."

House Ways & Means Committee Report

Present law

28 U.S.C. 1581 sets forth the actions in which the CIT is granted exclusive subject matter jurisdiction. 28 U.S.C. 3121 sets forth the persons entitled to commence specified civil actions in the CIT. 28 U.S.C. 3126 sets forth the time for commencement of specified actions in the CIT. 28 U.S.C. 2640 sets forth the scope and standard of review of the CIT. 28 U.S.C. 2642 authorizes the CIT to order an analysis of imported merchandise by U.S. agency laboratories.

Explanation of provision

Section 684 of H.R. 3450 amends 28 U.S.C. 1581 to provide exclusive jurisdiction to the CIT with respect to any decision or order of Customs to deny, suspend or revoke accreditation of private laboratories. Section 684 amends 28 U.S.C. 2631 to provide standing to persons whose private laboratory accreditation was denied, suspended or revoked by Customs to commence a civil action. Section 684 amends 28 U.S.C. 2636 to provide that a civil action contesting the denial, suspension or revocation by Customs of a private laboratory's accreditation is barred unless commenced within 60 days after the date of Customs' decision or order and in accordance with the rules of the CIT. Section 684 amends 28 U.S.C. 2640 to provide that in any civil action commenced to review an order or decision by Customs with respect to the denial, suspension or revocation of the accreditation of a private laboratory, the court shall review the action on the basis of the record before Customs at the time of issuing such decision or order. Section 684 amends 28 U.S.C. 2642 to authorize the CIT to order an analysis of imported merchandise and reports of laboratories accredited by Customs.

Section 684 also amends 28 U.S.C. 1582(l) to expand the jurisdiction of the CIT to the adjudication of drawback penalty provisions and amends 28 U.S.C. 2635(a) to provide for the filing of official documents with the CIT.

Reasons for change

Section 684 is needed to clarify judicial review of accreditation and assessment of penalty decisions for customs laboratories, provide for the adjudication of penalty provisions related to drawback and address the transmission of official documents to the Court of International Trade.

With regard to the filing of official documentation with the Court of International Trade, the statute is intended to provide the court with maximum flexibility to respond to the changes that must ensue from the new automated and electronic system for processing commercial importations. This will permit the court, consistent with Congressional policy, to respond promptly to any unanticipated problems by exercising its rulemaking authority under 28 U.S.C. 2071(a) and 2072. After receiving recommendations from its advisory committee (which includes

representatives of the Department of Justice, the Customs Service, and bar associations) as the court is required to do by 28 U.S.C. 2077(b), the court will be able to prescribe rules regulating such matters as: the information transmitted to the court; the manner and medium (paper, electronic, or otherwise) of the transmittal; the timing of the transmittal; and any other issue pertaining to providing the court with the information necessary to ensure viable judicial review.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

28 U.S.C. 2636 sets forth the time for commencement of specified actions in the CIT. Section 684 of the implementing bill provides that a civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation is barred unless commenced within 60 days after the date of the Customs Service decision or order and in accordance with the rules of the CIT. 28 U.S.C. 2640 sets forth the scope and standard of review of the CIT; section 684 of the implementing bill amends this section to provide that in any civil action commenced to review an order or decision by the Customs Service with respect to denial, suspension, or revocation of the accreditation of a private laboratory, the Court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order. 28 U.S.C. 2642 authorizes the CIT to order an analysis of imported merchandise by U.S. agency laboratories.

Section 684 expands the authorization by permitting the CIT to order reports of laboratories accredited by the Customs Service, in addition to ordering an analysis of imported merchandise.

Section 684 also amends 28 U.S.C. 1582(1) to expand the jurisdiction of the CIT to adjudicate drawback penalty provisions and amends 28 U.S.C.

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

SEC. 685. TREASURY FORFEITURE FUND

Section 9703 of title 31, United States Code (as added by Public Law 102-393), is amended--(1) by redesignating subparagraphs (E), (F), (G), (H), and (I) of subsection (a)(2) as subparagraphs (F), (G), (H), (I), and (J), respectively;(2) by inserting after subparagraph (D) of subsection (a)(2) the following new subparagraph:"(E) the payment of claims against employees of the Customs Service settled by the Secretary under section 630 of the Tariff Act of 1930;"; and(3) by striking out "shall" the first place it appears in subsection

(e) and inserting "may".

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Current law

31 U.S.C. 9703 establishes the Treasury Forfeiture Fund in which funds are deposited from the proceeds of seizures and forfeitures and which are subsequently allocated to certain Government expenses explicitly enumerated in that statute. The Treasury Fund superseded the Customs Forfeiture Fund established under 19 U.S.C. 1616b.

Explanation of provision

Section 685 of H.R. 3450 amends 31 U.S.C. 9703 to make conforming amendments to the Treasury Forfeiture Fund regarding the payment of claims against Customs Service employees.

Section 685 also permits, but does not require (as does current law), excess monies in the Treasury Forfeiture Fund to be invested in U.S. obligations.

Reasons for change

Section 685 provides conforming amendments to finance changes made in section 670 concerning compensation for damaged personal property, and provides Treasury with additional authority to manage excess forfeiture monies.

These provisions are consistent with the Committee's intent to continue its oversight and legislative activities with respect to the customs portion and funding of the new Treasury Fund. The new Fund was created as part of the Treasury, Postal Service and General Government Appropriations Act of 1993 (Public Law 102-338), without any formal review by the Committee on Ways and Means. On October 2, 1992, Chairman Rostenkowski wrote to House Speaker Foley notifying him of the Committee's intention to continue its jurisdictional prerogatives over Customs' forfeiture activities and financing.

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No Legislative History.

Senate Finance Committee Report

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

SEC. 686. AMENDMENTS TO THE REVISED STATUTES OF THE UNITED STATES

(a) Technical Amendments.--The Revised Statutes of the United States are amended as follows:(1) Section 2793 (19 U.S.C. 288, 46 U.S.C. App. 111, 123) is amended--(A) by striking out "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States," and inserting

"Documented vessels with a coastwise, Great Lakes endorsement,"; and(B) by striking out the first semicolon and all the text that follows thereafter and inserting a period.(2) Section 3126 (19 U.S.C. 293) is amended--(A) by striking out "Any vessel, on being duly registered in pursuance of the laws of the United States," and inserting "Any United States documented vessel with a registry or coastwise endorsement, or both" and(B) by striking out all the text occurring after the first sentence.(3) Section 3127 (19 U.S.C. 294) is

amended by striking out "in registered vessels" and inserting "a United States documented vessel with a registry or coastwise endorsement, or both,".(4) Section 4136 (46 U.S.C. App. 14) is amended by striking out--(A) "The Secretary of Commerce may issue a register or enrollment" and inserting "The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement"; and(B) "Secretary of Commerce," and inserting "Secretary of Transportation,".(5) Section 4336 (46 U.S.C. App. 277) is amended--(A) by striking out "register or enrollment or license of any vessel" and inserting "certificate of documentation of any documented vessel"; and(B) by striking out "Secretary of the Treasury is not required to have its register or enrollment or license" and inserting "Secretary of Transportation is not required to have its certificate of documentation".(b) Clearance Requirements.--Section 4197 of such Revised Statutes (46 U.S.C. App. 91) is amended to read as follows:"

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 be 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 a 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."

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Section 686. Amendments to the revised statutes of the United States

Present law

Section 4197 of the Revised Statutes, as amended (46 U.S.C. App. 91), provides the vessel clearance requirements for any vessel bound to a foreign port. Sections 2793, 3126, and 3127 of the Revised Statutes, as amended (19 U.S.C. 288, 46 U.S.C. App. 111, 123; 19 U.S.C. 293; and 19 U.S.C. 294), contain various provisions relating to the entry and clearance of vessels.

Explanation of provision

Section 686 of H.R. 3450 amends section 4197 of the Revised Statutes by consolidating the provisions relating to vessel clearance and the departure provisions of the permit to proceed requirements now found in 19 U.S.C. 1443 and 46 U.S.C. App. 313. This section will continue to contain the basic requirements for clearance and will be the counterpart of the basic vessel entry statute, found in amended 19 U.S.C. 1434. Penalties for violation of this section will be provided in 19 U.S.C. 1436.

The amended section provides that a vessel departing from a port or place in the United States bound outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea will be required to obtain Customs clearance. Furthermore, this section will give the Secretary authority to prescribe by regulation the manner in which clearance is to be obtained, including the documents, data, or information which must be submitted or electronically transmitted to obtain the clearance. Finally, the amendments continue to permit the granting of clearance before compliance with all of the requirements for clearance under certain circumstances and they authorize Customs to permit clearance to be obtained outside a designated port of entry.

The amendments to sections 2793, 3126, and 3127 delete obsolete portions of those provisions and make current language describing the documentation of vessels referred to in the provisions.

Reasons for change

This provision is needed to consolidate vessel clearance requirements, establish the basic requirements for clearance and specify circumstances when all requirements need not be met. This added provision will make the clearance requirements consistent with the report of arrival and entry requirements for such vessels.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

Section 686 of the implementing bill also provides that a vessel departing from a port or place in the United States bound outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea will be required to obtain Customs Service clearance. Furthermore, this section will give the Secretary authority to prescribe by regulation the manner in which clearance is to be obtained, including the documents, data, or information which must be submitted or electronically transmitted to obtain the clearance. This section will continue to permit, under certain circumstances, the granting of clearance before all of the requirements for clearance have been complied with. This section also authorizes the Customs Service to permit clearance to be obtained outside a designated port of entry.

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

SEC. 687. AMENDMENTS TO TITLE 18, UNITED STATES CODE

Section 965(a) of title 18, United States Code, is amended--(1) by striking out "sections 91, 92, and 94 of Title 46" and inserting "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),";(2) by striking out "the collector of customs for the district wherein such vessel is then located" and inserting "the Customs Service"; and(3) by striking out "the collector like" and inserting in lieu thereof "the Customs Service like".

House Ways & Means Committee Report

Present law

18 U.S.C. 965(a) imposes certain requirements on masters of vessels in connection with the delivery of cargo during times of war when the United States is a neutral party.

Explanation of provision

Section 687 of H.R. 3450 adopts conforming amendments necessitated by enactment of this legislation, as well as amendments to correct outdated and antiquated provisions.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 688. AMENDMENT TO THE ACT TO PREVENT POLLUTION FROM SHIPS

Section 9(e) of the Act to Prevent Pollution from Ships (94 Stat. 2301, 33 U.S.C. 1908(e)) is amended by striking out "shall refuse or revoke" and all of the text following thereafter and inserting "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."

House Ways & Means Committee Report

Present law

33 U.S.C. 1908(e) authorizes the Secretary of the Treasury to revoke certain clearance and permit rights for ships subject to the MARCOL Protocol found to be liable for pollution-related violations.

Explanation of provision

Section 688 of H.R. 3450 adopts conforming amendments necessitated by enactment of this legislation, as well as amendments to correct outdated and antiquated provisions.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

SEC. 689. MISCELLANEOUS TECHNICAL AMENDMENTS

(a) Act of October 3, 1913.--The Act of October 3, 1913, is amended--(1) in section IV, J, subsection 1 (19 U.S.C. 128) by striking out "registered as a vessel of the United States," and inserting "documented under chapter 121 of title 46, United States Code,"; and(2) in section IV, J, subsection 3 (19 U.S.C. 131)--(A) by striking out "vessels of the United States" and inserting

"United States documented vessels"; and(B) by striking out "registered as a vessel of the United States." and inserting "documented under chapter 121 of title 46, United States Code.".(b) Act of August 5, 1935.--Section 4 of the Act of August 5, 1935 (19 U.S.C. 1704) is amended--(1) by striking out "whenever the collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, licensed, or numbered," and inserting "when the Secretary of Transportation";(2) by striking out "such collector" and inserting "the Secretary of Transportation";(3) by striking out "said collector shall revoke the registry, enrollment, license, or number of such vessel" and inserting "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)"; and(4) by striking out "Such collector and all persons" and inserting "The Secretary of Transportation and all persons".(c) Act of November 6, 1966.--Sections 2(e) and 3(e) of the Act of November 6, 1966 (46 U.S.C. App. 817d(e) and 817e(e)) are each amended--(1) by striking out "The collector of customs at" and inserting "At"; and(2) by inserting ", the Customs Service" after "subsection (a) of this section".

House Ways & Means Committee Report

Present law

19 U.S.C. 128 imposes a discriminating duty of 10 percent ad valorem on certain goods of foreign manufacture which are imported into the United States aboard foreign-documented vessels. Exceptions are made for goods imported pursuant to treaty of convention provisions, and for various other reasons.

19 U.S.C. 131 removes an absolute prohibition on the importation of goods aboard foreign vessels from vessels documented in countries having no such blanket prohibition regarding the use of United States vessels.

19 U.S.C. 1704 provides for the revocation of United States vessel documentation for any vessel regarding which sufficient evidence is presented which establishes that the vessel is engaged in or intended to be utilized in smuggling activities.

46 U.S.C. App. 817d(e) and 817(e) authorizes Customs to refuse departure or clearance for vessels that are not in compliance with provisions governing the financial responsibility of owners and charterers for death or injury to passengers or other persons and for indemnification of passengers for nonperformance of transportation.

Explanation of provision

Section 689 of H.R. 3450 adopts conforming amendments necessitated by enactment of this legislation, as well as amendments to correct outdated and antiquated provisions.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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

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

SEC. 690. REPEAL OF OBSOLETE PROVISIONS OF LAW

(a) Revised Statutes.--The following provisions of the Revised Statutes of the United States are repealed:(1) So much of section 2792 as is codified at 19 U.S.C. 289 and 46 U.S.C. App. 110 and 112 (as in effect on the date of the enactment of this Act).(2) Section 3111 (19 U.S.C. 282).(3) Section 3118 (19 U.S.C. 286).(4) Section 3119 (19 U.S.C. 287).(5) Section 3122 (19 U.S.C. 290).(6) Section 3124 (19 U.S.C. 291).(7) Section 3125 (19 U.S.C. 292).(8) Section 4198 (46 U.S.C. App. 94).(9) Section 4199 (46 U.S.C. App. 93).(10) Section 4201 (46 U.S.C. App. 96).(11) Section 4207.(12) Section 4208 (46 U.S.C. App. 102).(13) Section 4213 (46 U.S.C. App. 101).(14) So much of section 4221 as is codified at 46 U.S.C. App. 113 (as in effect on the date of the enactment of this Act).(15) Section 4222 (46 U.S.C. App. 126).(16) Sections 4306, 4307, and 4308 (46 U.S.C. App. 351 through 353).(17) Section 4332 (46 U.S.C. App. 274).(18) Section 4348 (46 U.S.C. App. 293).(19) Section 4358 (46 U.S.C. App. 306).(20) Section 4361 (46 U.S.C. App. 307).(21) Sections 4362 through 4369 (46 U.S.C. App. 308 through 315).(22) Sections 4573 through 4576 (46 U.S.C. App. 674 through 677).(b) Tariff Act of 1930.--The following sections of the Tariff Act of 1930 are repealed:(1) Section 432 (19 U.S.C. 1432).(2) Section 435 (19 U.S.C. 1435).(3) Section 437 (19 U.S.C. 1437).(4) Section 439 (19 U.S.C. 1439).(5) Section 440 (19 U.S.C. 1440).(6) Sections 443, 444, and 445 (19 U.S.C. 1443, 1444, and 1445).(7) Section 465 (19 U.S.C. 1465).(8) Section 482 (19 U.S.C. 1482).(9) Section 583 (19 U.S.C. 1583).(10) Section 585 (19 U.S.C. 1585).(c) Miscellaneous Provisions.--The following provisions are repealed:(1) Section 1 of the Act of February 10, 1900 (46 U.S.C. App. 131).(2) Section 2 of the Act of April 29, 1908 (46 U.S.C. App. 127).(3) Section 1 of the Act of July 1, 1916 (46 U.S.C. App. 130).(4) Sections 1 and 2 of the Act of July 3, 1926 (46 U.S.C. App. 293a and 293b).(5) The last undesignated paragraph of section 201 of the Act of August 5, 1935 (19 U.S.C. 1432a), is repealed.(6) The Act of June 16, 1937 (19 U.S.C. 1435b).(7) The Act of May 4, 1934 (46 U.S.C. App. 91a).(8) Section 1403(b) of the Water Resources Development Act of 1986

(Public Law 99-662; 26 U.S.C. 4461 note).

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Present law

The following Statutes contain outdated or antiquated provisions: 19 U.S.C. 282, 286, 287, 289, 290, 291, 292, 1432, 1432a, 1435, 1435b, 1437, 1439, 1440, 1443, 1444, 1445, 1465, 1482, 1583, and 1585. 46 U.S.C. App. 91a, 93, 94, 96, 101, 102, 113, 126, 274, 293, 293a, 293b, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 351, 352, 353, 674, 675, 676 and 677. Section 4207 of the Revised Statutes (uncodified) and section 1403 (b) of the

Water Resources Development Act of 1986 (Public Law 99-662, at 26 U.S.C. 4461 note).

Explanation of provision

Section 690 of H.R. 3450 repeals obsolete provisions of law in Titles 19 and 46 of the United States Code.

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No Legislative History.

Senate Finance Committee Report

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

SEC. 691. REPORTS TO CONGRESS

(a) Antidumping and Countervailing Duty Collections.--The Commissioner of Customs shall before the 60th day of each fiscal year after fiscal year 1994 submit to Congress a report regarding the collection during the preceding fiscal year of duties imposed under the antidumping and countervailing duty laws.(b) CES Fee Report.--(1) Amendment.--Section 9501(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 3 note) is amended by adding at the end the following new paragraph:"(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.".(2) Report.--Within 9 months after the date of the enactment of this subsection, the Commissioner of Customs shall submit to the Committees referred to in section 9501(c) of the Omnibus Budget Reconciliation Act of 1987, a report setting forth--(A) an estimate of the aggregate amount of fees paid to operators of centralized cargo examination stations during fiscal year 1993; and(B) the variations, if any, among customs districts with respect to the amounts of the fees charged for centralized cargo examination station services.(c) Compliance With Customs Laws.--Section 123 of the Customs and Trade Act of 1990 (19 U.S.C. 2083) is amended--(1) by redesignating subsection (d) as subsection (e), and(2) by inserting after subsection (c) the following:"(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) Courier Services Compliance Report.--The Commissioner of Customs shall initiate a compliance review of certain courier services which

may not be eligible for benefits under the regulations of the Customs Service prescribed in part 128 of title 19 of the Code of Federal Regulations and shall submit a report to Congress on the results of such review within 1 year after the date of the enactment of this Act.

House Ways & Means Committee Report

Present law

No provision.

Explanation of provision

Section 691 of H.R. 3450 provides that the Commissioner of Customs, shall submit to Congress annual reports regarding the collection of duties imposed under the antidumping and countervailing duty laws for entries liquidated after the effective date of this Act. The annual report shall include, on both a fiscal year basis and administrative review period basis, the value of imports and the cash deposits collected by case number, as well as the liquidation amounts by case number, including the computation of interest collected or refunded. Customs will also provide information relating to compliance initiatives taken and closed enforcement actions during the past fiscal year.

Section 691 also provides that the Commissioner of Customs shall submit a report on the total amount of Central Examination Station (CES) fees collected nationwide annually and on the variation in CES fees among the Customs districts. Section 691 will provide the Secretary with the authority to require the necessary data from CES operators.

Section 691 further provides that the Commissioner of Customs shall establish a Customs Compliance Program to estimate the level of compliance with the laws enforced by Customs. The Secretary shall report the results to the Committees annually for the next three fiscal years.

Section 691 also provides that the Commissioner of Customs shall initiate a compliance review of courier services operating under part 128 of title 19 of the Code of Federal Regulations and shall submit a report to Congress on the results.

Reasons for change

These reports are being requested to address existing and prospective concerns with current compliance levels and the potential adverse impact that improved facilitation could have on compliance efforts.

The Committee has concerns that Customs cannot readily produce data on collections under the antidumping and countervailing duty programs and does not apparently have readily available information on individual cases. This section is intended to partially address the Ways and Means Subcommittee on Oversight's 1990 report finding that "Customs cannot ensure that it is properly enforcing antidumping and countervailing duty orders issued by the Department of Commerce" (WMCP: 101-22). The Subcommittee recommended that Customs collect accurate data to ensure that all appropriate antidumping and countervailing duty is assessed and collected. The Committee intends to make sure that Customs fulfills this recommendation through the new reporting requirement.

In the case of establishment of the Compliance Program, the Committee believes that compliance monitoring is best achieved by creating an objective, statistically based method of measurement. This section is intended to address the Ways and Means Subcommittee on Oversight's 1990 report finding on problems with the Customs cargo examination program. It is also intended to allow Customs to better comply with the requirements for an annual threat assessment and trade enforcement strategy as required by 19 U.S.C. 2083.

The Committee further intends that the Customs Compliance Measurement Program serve the same purpose as the IRS's Taxpayer Compliance Measurement Program, i.e., to present a statistically valid estimate of the extent of compliance with the trade and narcotics laws by projecting random examination results to the overall population of import transactions. The Committee intends that Customs continue to consult with other agencies, such as IRS and GAO, in order to establish an appropriate methodology. The Committee intends that this requirement will be reviewed after the next three fiscal years.

Section 691 is also intended to address the Ways and Means Subcommittee on Oversight's 1990 report finding that "the costs of the Customs cargo examination program are distributed inequitably" (WMCP: 101-22). The report recommended that the costs of operating CES's be included in the cost base for the merchandise processing fee. The Committee has requested the report on CES fees to assist the Congress in the evaluation of whether it would be appropriate to include CES fees in the Merchandise Processing Fee. The report is also necessary to determine if variations in CES fees among ports contribute to "port shopping". The Committee intends that Customs is required to prepare a one-time report only. However, Customs will now have permanent authority to request CES fee information from CES operators on an ongoing basis.

The Committee intends that the Customs review of courier services operating under section 128 focus exclusively on the activities of the "on-board" couriers since their activities are alleged to be in questionable compliance with the requirements of the regulations.

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No Legislative History.

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

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

SEC. 692. EFFECTIVE DATE

This title takes effect on the date of the enactment of this Act. Speaker of the House of Representatives. Vice President of the United States and President of the Senate.

House Ways & Means Committee Report

Section 692 provides that Title VI is effective on the date of enactment of the Act.

The House Energy & Commerce Committee Report

No Legislative History.

Senate Finance Committee Report

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