

## TRADE ACT OF 1974

[Public Law 93–618, as amended]

[As Amended Through P.L. 117–286, Enacted December 27, 2022]

【Currency: This publication is a compilation of the text of Public Law 93-618. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate fair and free competition between the United States and foreign nations, to foster the economic growth of, and full employment in, the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the “Trade Act of 1974”.*

【19 U.S.C. 2101】

### TABLE OF CONTENTS

#### TITLE I—NEGOTIATING AND OTHER AUTHORITY

##### CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

- Sec. 101. Basic authority for trade agreements.
- Sec. 102. Barriers to and other distortions of trade.
- Sec. 103. Overall negotiating objective.
- Sec. 104. Sector negotiating objective.
- Sec. 104A. Negotiating objectives with respect to trade in services, foreign direct investment, and high technology products.
- Sec. 105. Bilateral trade agreements.
- Sec. 106. Agreements with developing countries.
- Sec. 107. International safeguard procedures.
- Sec. 108. Access to supplies.
- Sec. 109. Staging requirements and rounding authority.

##### CHAPTER 2—OTHER AUTHORITY

- Sec. 121. Steps to be taken toward GATT revision; authorization of appropriations for GATT.
- Sec. 122. Balance-of-payments authority.
- Sec. 123. Compensation authority.
- Sec. 124. Two-year residual authority to negotiate duties.
- Sec. 125. Termination and withdrawal authority.
- Sec. 126. Reciprocal nondiscriminating treatment.
- Sec. 127. Reservation of articles for national security or other reasons.

Sec. 128. Modification and continuance of treatment with respect to duties on high technology products.

CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

Sec. 131. International Trade Commission advice.  
Sec. 132. Advice from departments and other sources.  
Sec. 133. Public hearings.  
Sec. 134. Prerequisites for offers.  
Sec. 135. Advice from private and public sector.

CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Sec. 141. Office of the United States Trade Representative.

CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

Sec. 151. Bills implementing trade agreements on nontariff barriers and resolutions approving commercial agreements with Communist countries.  
Sec. 152. Resolutions disapproving certain actions.  
Sec. 153. Resolutions relating to extension of waiver authority under section 402.  
Sec. 154. Special rules relating to congressional procedures.

CHAPTER 6—CONGRESSIONAL LIAISON AND REPORTS

Sec. 161. Congressional delegates to negotiations.  
Sec. 162. Transmission of agreements to Congress.  
Sec. 163. Reports.

CHAPTER 7—UNITED STATES INTERNATIONAL TRADE COMMISSION

Sec. 171. Change of name of Tariff Commission.  
Sec. 172. Organization of the Commission.  
Sec. 173. Voting record of commissioners.  
Sec. 174. Representation in court proceedings.  
Sec. 175. Independent budget and authorization of appropriations.

CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE PRACTICES

Sec. 181. Actions concerning barriers to market access.  
Sec. 182. Identification of countries that deny adequate protection, or market access, for intellectual property rights.

TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS

Sec. 201. Action to facilitate positive adjustment to import competition.  
Sec. 202. Investigations, determinations, and recommendations by Commission.  
Sec. 203. Action by President after determination of import injury.  
Sec. 204. Monitoring, modifications, and termination of action.  
Sec. 205. Trade monitoring.

CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

SUBCHAPTER A—PETITIONS AND DETERMINATIONS

Sec. 221. Petitions.  
Sec. 222. Group eligibility requirements.  
Sec. 223. Determinations by Secretary of Labor.  
Sec. 224. Study by Secretary of Labor when International Trade Commission begins investigations.  
Sec. 225. Benefit information to workers.

SUBCHAPTER B—PROGRAM BENEFITS

PART I—TRADE READJUSTMENT ALLOWANCES

Sec. 231. Qualifying requirements for workers.  
Sec. 232. Weekly amounts.  
Sec. 233. Limitations on trade readjustment allowances.  
Sec. 234. Application of State laws.

PART II—TRAINING, OTHER EMPLOYMENT SERVICES AND ALLOWANCES

Sec. 235. Employment services.

- Sec. 236. Training.
- Sec. 237. Job search allowances.
- Sec. 238. Relocation allowances.

## SUBCHAPTER C—GENERAL PROVISIONS

- Sec. 239. Agreements with States.
- Sec. 240. Administration absent State agreement.
- Sec. 241. Payments to States.
- Sec. 242. Liabilities of certifying and disbursing officers.
- Sec. 243. Fraud and recovery of overpayments.
- Sec. 244. Penalties.
- Sec. 245. Authorization of appropriations.
- Sec. 246. Demonstration project for alternative trade adjustment assistance for older workers.
- Sec. 247. Definitions.
- Sec. 248. Regulations.
- Sec. 249. Subpena power.

## CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS

- Sec. 251. Petitions and determinations.
- Sec. 252. Approval of adjustment proposals.
- Sec. 253. Technical assistance.
- Sec. 254. Financial assistance.
- Sec. 255. Conditions for financial assistance.
- Sec. 256. Delegation of functions to Small Business Administration; authorization of appropriations.
- Sec. 257. Administration of financial assistance.
- Sec. 258. Protective provisions.
- Sec. 259. Penalties.
- Sec. 260. Suits.
- Sec. 261. Definition of firm.
- Sec. 262. Regulations.
- Sec. 264. Study by Secretary of Commerce when International Trade Commission begins investigation; action where there is affirmative finding.
- Sec. 265. Assistance to industries.

## CHAPTER 4—ADJUSTMENT ASSISTANCE FOR COMMUNITIES

- Sec. 271. Petitions and determinations.
- Sec. 272. Trade impacted area councils.
- Sec. 273. Program benefits.
- Sec. 274. Community adjustment assistance fund and authorization of appropriations.

## CHAPTER 5—MISCELLANEOUS PROVISIONS

- Sec. 280. General Accounting Office report.
- Sec. 281. Coordination.
- Sec. 282. Trade monitoring system.
- Sec. 283. Firms relocating in foreign countries.
- Sec. 284. Judicial review.
- Sec. 285. Termination.
- Sec. 286. Trade Adjustment Trust Fund.<sup>1</sup>
- Sec. 287. Imposition of additional fee.<sup>1</sup>

## CHAPTER 6—ADJUSTMENT ASSISTANCE FOR FARMERS

- Sec. 291. Definitions.
- Sec. 292. Petitions; group eligibility.
- Sec. 293. Determinations by Secretary of Agriculture.
- Sec. 294. Study by Secretary of Agriculture when International Trade Commission begins investigation.
- Sec. 295. Benefit information to agricultural commodity producers.
- Sec. 296. Qualifying requirements for agricultural commodity producers.
- Sec. 297. Fraud and recovery of overpayments.
- Sec. 298. Authorization of appropriations.

<sup>1</sup>The amendment made by section 1427(b) of Pub. L. 100-418 (102 Stat. 1254) adding the bracketed items did not become effective pursuant to section 1430(c) of such Public Law. See notes to sections 286 and 287.

## TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS  
AND RESPONSE TO FOREIGN TRADE PRACTICES

- Sec. 301. Actions by United States Trade Representative.
- Sec. 302. Initiation of investigations.
- Sec. 303. Consultation upon initiation of investigation.
- Sec. 304. Determinations by the Trade Representative.
- Sec. 305. Implementation of actions.
- Sec. 306. Monitoring of foreign compliance.
- Sec. 307. Modification and termination of actions.
- Sec. 308. Request for information.
- Sec. 309. Administration.
- Sec. 310. Trade enforcement priorities.

TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT RECEIVING  
NONDISCRIMINATORY TREATMENT

## CHAPTER 1—TRADE RELATIONS WITH CERTAIN COUNTRIES

- Sec. 401. Exception of the products of certain countries or areas.
- Sec. 402. Freedom of emigration in East-West trade.
- Sec. 403. United States personnel missing in action in Southeast Asia.
- Sec. 404. Extension of nondiscriminatory treatment.
- Sec. 405. Authority to enter into commercial agreements.
- Sec. 406. Market disruption.
- Sec. 407. Procedure for congressional approval or disapproval of extension of non-discriminatory treatment and Presidential reports.
- Sec. 408. Payment by Czechoslovakia of amounts owed United States citizens and nationals.
- Sec. 409. Freedom to emigrate to join a very close relative in the United States.

CHAPTER 2—RELIEF FROM MARKET DISRUPTION TO INDUSTRIES AND DIVERSION OF  
TRADE TO THE UNITED STATES MARKET

- Sec. 421. Action to address market disruption.
- Sec. 422. Action in response to trade diversion.
- Sec. 423. Regulations; termination of provision.

## TITLE V—GENERALIZED SYSTEM OF PREFERENCES

- Sec. 501. Authority to extend preferences.
- Sec. 502. Designation of beneficiary developing countries.
- Sec. 503. Designation of eligible articles.
- Sec. 506A. Designation of sub-Saharan African countries for certain benefits.
- Sec. 506B. Termination of benefits for sub-Saharan African countries.
- Sec. 504. Review and reports to Congress.
- Sec. 505. Date of termination.
- Sec. 506. Agricultural exports of beneficiary developing countries.
- Sec. 507. Definitions.

## TITLE VI—GENERAL PROVISIONS

- Sec. 601. Definitions.
- Sec. 603. International Trade Commission.
- Sec. 604. Consequential changes in the Tariff Schedules.
- Sec. 605. Separability.
- Sec. 606. International drug control.
- Sec. 607. Voluntary limitations on exports of steel to the United States.
- Sec. 608. Uniform statistical data on imports, exports, and production.
- Sec. 611. Review of protests in imports surcharge cases.
- Sec. 612. Trade relations with North American countries.
- Sec. 613. Limitation on credit to Russia.

TITLE VIII—TARIFF TREATMENT OF PRODUCTS OF, AND OTHER SANCTIONS  
AGAINST, UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-  
TRANSIT COUNTRIES

- Sec. 801. Short title.
- Sec. 802. Tariff treatment of products of uncooperative major drug producing or drug-transit countries.

Sec. 803. Sugar quota.  
Sec. 804. Progress reports.  
Sec. 805. Definitions.

TITLE IX—SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE

Sec. 901. Supplemental agricultural disaster assistance.  
Sec. 902. Agricultural Disaster Relief Trust Fund.  
Sec. 903. Jurisdiction.

**SEC. 2. STATEMENT OF PURPOSES.**

The purposes of this Act are, through trade agreements affording mutual benefits—

(1) to foster the economic growth of and full employment in the United States and to strengthen economic relations between the United States and foreign countries through open and nondiscriminatory world trade;

(2) to harmonize, reduce, and eliminate barriers to trade on a basis which assures substantially equivalent competitive opportunities for the commerce of the United States;

(3) to establish fairness and equity in international trading relations, including reform of the General Agreement on Tariffs and Trade;

(4) to provide adequate procedures to safeguard American industry and labor against unfair or injurious import competition, and to assist industries, firms, workers, and communities to adjust to changes in international trade flows;

(5) to open up market opportunities for United States commerce in nonmarket economies; and

(6) to provide fair and reasonable access to products of less developed countries in the United States market.

[19 U.S.C. 2102]

**TITLE I—NEGOTIATING AND OTHER  
AUTHORITY**

**CHAPTER 1—RATES OF DUTY AND OTHER  
TRADE BARRIERS**

**SEC. 101. BASIC AUTHORITY FOR TRADE AGREEMENTS.**

(a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this Act will be promoted thereby, the President—

(1) during the 5-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities thereof; and

(2) may proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any such trade agreement.

(b)(1) Except as provided in paragraph (2), no proclamation pursuant to subsection (a)(2) shall be made decreasing a rate of

duty to a rate below 40 percent of the rate existing on January 1, 1975.

(2) Paragraph (1) shall not apply in the case of any article for which the rate of duty existing on January 1, 1975, is not more than 5 percent ad valorem.

(c) No proclamation shall be made pursuant to subsection (a)(2) increasing any rate of duty to, or imposing a rate above, the higher of the following:

(1) the rate which is 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States as in effect on January 1, 1975, or

(2) the rate which is 20 percent ad valorem above the rate existing on January 1, 1975.

[19 U.S.C. 2111]

**SEC. 102. BARRIERS TO AND OTHER DISTORTIONS OF TRADE.**

(a) The Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The President is urged to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to harmonize, reduce, or eliminate such barriers to (and other distortions of) international trade. The President is further urged to utilize the authority granted by subsection (b) to negotiate trade agreements with other countries and instrumentalities providing on a basis of mutuality for the harmonization, reduction, or elimination of such barriers to (and other distortions of) international trade. Nothing in this subsection shall be construed as prior approval of any legislation which may be necessary to implement an agreement concerning barriers to (or other distortions of) international trade.

(b)(1) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this Act will be promoted thereby, the President, during the 13-year period beginning on the date of the enactment of this Act, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) of providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2)(A) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel.

(B) The negotiation of any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States shall take fully into account any product that benefits from a discriminatory pref-

erential tariff arrangement between Israel and a third country if the tariff preference on such product has been the subject of a challenge by the United States Government under the authority of section 301 of the Trade Act of 1974 and the General Agreement on Tariffs and Trade.

(C) Notwithstanding any other provision of this section, the requirements of subsections (c) and (e)(1) shall not apply to any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(3) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country that provides for the elimination or reduction of any duty imposed by the United States.

(4)(A) Notwithstanding paragraph (2), a trade agreement that provides for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) with any country other than Israel if—

(i) such country requested the negotiation of such an agreement, and

(ii) the President, at least 60 days prior to the date notice is provided under subsection (e)(1)—

(I) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(II) consults with such committees regarding the negotiation of such agreement.

(B) The provisions of section 151 shall not apply to an implementing bill (within the meaning of section 151(b)) if—

(i) such implementing bill contains a provision approving of any trade agreement which—

(I) is entered into under this section with any country other than Israel, and

(II) provides for the elimination or reduction of any duty imposed by the United States, and

(ii) either—

(I) the requirements of subparagraph (A) were not met with respect to the negotiation of such agreement, or

(II) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproved of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under subparagraph (A)(ii)(I) with respect to the negotiation of such agreement.

(C) The 60-day period described under paragraphs (A)(ii) and (B)(ii)(II) shall be computed without regard to—

(i) the days on which either House of Congress 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 of Congress is not in session.

(c) Before the President enters into any trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall consult with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and with each committee of the House and the Senate and each joint committee of the Congress which has jurisdiction over legislation involving subject matters which would be affected by such trade agreement. Such consultation shall include all matters relating to the implementation of such trade agreement as provided in subsections (d) and (e). If it is proposed to implement such trade agreement, together with one or more other trade agreements entered into under this section, in a single implementing bill, such consultation shall include the desirability and feasibility of such proposed implementation.

(d) Whenever the President enters into a trade agreement under this section providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade, he shall submit such agreement, together with a draft of an implementing bill (described in section 151(b)) and a statement of any administrative action proposed to implement such agreement, to the Congress as provided in subsection (e), and such agreement shall enter into force with respect to the United States only if the provisions of subsection (e) are complied with and the implementing bill submitted by the President is enacted into law.

(e) Each trade agreement submitted to the Congress under this subsection shall enter into force with respect to the United States if (and only if)—

(1) the President, not less than 90 days before the day on which he enters into such trade agreement, notifies the House of Representatives and the Senate of his intention to enter into such an agreement, and promptly thereafter publishes notice of such intention in the Federal Register;

(2) after entering into the agreement, the President transmits a document to the House of Representatives and to the Senate containing a copy of the final legal text of such agreement together with—

(A) a draft of an implementing bill and a statement of any administrative action proposed to implement such agreement, and an explanation as to how the implementing bill and proposed administrative action change or affect existing law, and

(B) a statement of his reasons as to how the agreement serves the interests of United States commerce and as to why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement; and

(3) the implementing bill is enacted into law.

(f) To insure that a foreign country or instrumentality which receives benefits under a trade agreement entered into under this section is subject to the obligations imposed by such agreement, the President may recommend to Congress in the implementing bill and statement of administrative action submitted with respect to such agreement that the benefits and obligations of such agree-



ment apply solely to the parties to such agreement, if such application is consistent with the terms of such agreement. The President may also recommend with respect to any such agreement that the benefits and obligations of such agreement not apply uniformly to all parties to such agreement, if such application is consistent with the terms of such agreement.

(g) For purposes of this section—

(1) the term “barrier” includes—

(A) the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate, and

(B) any duty or other import restriction;

(2) the term “distortion” includes a subsidy; and

(3) the term “international trade” includes—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

[19 U.S.C. 2112]

#### **SEC. 103. OVERALL NEGOTIATING OBJECTIVE.**

The overall United States negotiating objective under sections 101 and 102 shall be to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce. To the maximum extent feasible, the harmonization, reduction, or elimination of agricultural trade barriers and distortions shall be undertaken in conjunction with the harmonization, reduction, or elimination of industrial trade barriers and distortions.

[19 U.S.C. 2113]

#### **SEC. 104. SECTOR NEGOTIATING OBJECTIVE.**

(a) A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in subsection (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible be conducted on the basis of appropriate product sectors of manufacturing.

(c) For the purposes of this section and section 135, the United States Trade Representative together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations estab-

lished under section 135 and after consultation with interested private or non-Federal government organizations, identify appropriate product sectors of manufacturing.

(d) If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under section 101 or 102, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) is achieved by such agreement in each product sector or product sectors.

[19 U.S.C. 2114]

**SEC. 104A. NEGOTIATING OBJECTIVES WITH RESPECT TO THE TRADE IN SERVICES, FOREIGN DIRECT INVESTMENT, AND HIGH TECHNOLOGY PRODUCTS.**

(a) **TRADE IN SERVICES.—**

(1) **IN GENERAL.—**Principal United States negotiating objectives under section 102 shall be—

(A) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny national treatment and restrictions on the establishment and operation in such markets; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) are consistent with the commercial policies of the United States, and

(ii) will reduce or eliminate such barriers or distortions and help ensure open international trade in services.

(2) **DOMESTIC OBJECTIVES.—**In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(b) **FOREIGN DIRECT INVESTMENT.—**

(1) **IN GENERAL.—**Principal United States negotiating objectives under section 102 shall be—

(A) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principal of national treatment, and to reduce unreasonable barriers to establishment; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) will help ensure a free flow of foreign direct investment, and

(ii) will reduce or eliminate the trade distortive effects of certain investment related measures.

(2) **DOMESTIC OBJECTIVES.—**In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives in-

cluding, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(c) HIGH TECHNOLOGY PRODUCTS.—Principal United States negotiating objectives shall be—

(1) to obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

(2) to obtain the elimination or reduction of, or compensation for, the significantly distorting effects of foreign government acts, policies, or practices identified in section 181, with particular consideration given to the nature and extent of foreign government intervention affecting United States exports of high technology products or investments in high technology industries, including—

(A) foreign industrial policies which distort international rate or investment;

(B) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries;

(C) measures which fail to provide adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property (including trademarks, patents, and copyrights);

(D) measures which impair access to domestic markets for key commodity products; and

(E) measures which facilitate or encourage anti-competitive market practices or structures;

(3) to obtain commitments that official policy of foreign countries or instrumentalities will not discourage government or private procurement of foreign high technology products and related services;

(4) to obtain the reduction or elimination of all tariffs on, and other barriers to, United States exports of high technology products and related services;

(5) to obtain commitments to foster national treatment;

(6) to obtain commitments to—

(A) foster the pursuit of joint scientific cooperation between companies, institutions or governmental entities of the United States and those of the trading partners of the United States in areas of mutual interest through such measures as financial participation and technical and personnel exchanges, and

(B) ensure that access by all participants to the results of any such cooperative efforts should not be impaired; and

(7) to provide effective minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

(d) DEFINITION OF BARRIERS AND OTHER DISTORTIONS.—For purposes of subsection (a), the term “barriers to, or other distortions of, international trade in services” includes, but is not limited to—

(1) barriers to establishment in foreign markets, and

(2) restrictions on the operation of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.

[19 U.S.C. 2114a]

**SEC. 105. BILATERAL TRADE AGREEMENTS.**

If the President determines that bilateral trade agreements will more effectively promote the economic growth of, and full employment in, the United States, then, in such cases, a negotiating objective under sections 101 and 102 shall be to enter into bilateral trade agreements. Each such trade agreement shall provide for mutually advantageous economic benefits.

[19 U.S.C. 2115]

**SEC. 106. AGREEMENTS WITH DEVELOPING COUNTRIES.**

A United States negotiating objective under sections 101 and 102 shall be to enter into trade agreements which promote the economic growth of both developing countries and the United States and the mutual expansion of market opportunities.

[19 U.S.C. 2116]

**SEC. 107. INTERNATIONAL SAFEGUARD PROCEDURES.**

(a) A principal United States negotiating objective under section 102 shall be to obtain internationally agreed upon rules and procedures, in the context of the harmonization, reduction, or elimination of barriers to, and other distortions of, international trade, which permit the use of temporary measures to ease adjustment to changes occurring in competitive conditions in the domestic markets of the parties to an agreement resulting from such negotiations due to the expansion of international trade.

(b) Any agreement entered into under section 102 may include provisions establishing procedures for—

(1) notification of affected exporting countries,

(2) international consultations,

(3) international review of changes in trade flows,

(4) making adjustments in trade flows as the result of such changes, and

(5) international mediation.

Such agreements may also include provisions which—

(A) exclude, under specified conditions, the parties thereto from compensation obligations and retaliation, and

(B) permit domestic public procedures through which interested parties have the right to participate.

[19 U.S.C. 2117]

**SEC. 108. ACCESS TO SUPPLIES.**

(a) A principal United States negotiating objective under section 102 shall be to enter into trade agreements with foreign countries and instrumentalities to assure the United States of fair and

equitable access at reasonable prices to supplies of articles of commerce which are important to the economic requirements of the United States and for which the United States does not have, or cannot easily develop, the necessary domestic productive capacity to supply its own requirements.

(b) Any agreement entered into under section 102 may include provisions which—

(1) assure to the United States the continued availability of important articles at reasonable prices, and

(2) provide reciprocal concessions or comparable trade obligations, or both, by the United States.

[19 U.S.C. 2118]

**SEC. 109. STAGING REQUIREMENTS AND ROUNDING AUTHORITY.**

(a) Except as otherwise provided in this section, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement under section 101 shall not exceed the aggregate reduction which would have been in effect on such day if—

(1) a reduction of 3 percent ad valorem or a reduction of one-tenth of the total reduction, whichever is greater, had taken effect on the effective date of the first reduction proclaimed pursuant to section 101(a)(2) to carry out such agreement with respect to such article, and

(2) a reduction equal to the amount applicable under paragraph (1) had taken effect at 1-year intervals after the effective date of such first reduction.

This subsection shall not apply in any case where the total reduction in the rate of duty does not exceed 10 percent of the rate before the reduction.

(b) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitation provided by section 101(b) or subsection (a) of this section by not more than whichever of the following is lesser:

(1) the difference between the limitation and the next lower whole number, or

(2) one-half of 1 percent ad valorem.

(c)(1) No reduction in the rate of duty on any article pursuant to a trade agreement under section 101 shall take effect more than 10 years after the effective date of the first reduction proclaimed to carry out such trade agreement with respect to such article.

(2) If any part of a reduction takes effect, then any time thereafter during which any part of the reduction is not in effect by reason of legislation of the United States or action thereunder, the effect of which is to maintain or increase the rate of duty on an article, shall be excluded in determining—

(A) the 1-year intervals referred to in subsection (a)(2), and

(B) the expiration of the 10-year period referred to in paragraph (1) of this subsection.

[19 U.S.C. 2119]

**CHAPTER 2—OTHER AUTHORITY****SEC. 121. STEPS TO BE TAKEN TOWARD GATT REVISION; AUTHORIZATION OF APPROPRIATIONS FOR GATT.**

There are authorized to be appropriated annually such sums as may be necessary for the payment by the United States of its share of the expenses of the Contracting Parties to the General Agreement on Tariffs and Trade. This authorization does not imply approval or disapproval by the Congress of all articles of the General Agreement on Tariffs and Trade.

[19 U.S.C. 2131]

**SEC. 122. BALANCE-OF-PAYMENTS AUTHORITY.**

(a) Whenever fundamental international payments problems require special import measures to restrict imports—

(1) to deal with large and serious United States balance-of-payments deficits,

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,

the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States;

(B) temporary limitations through the use of quotas on the importation of articles into the United States; or

(C) both a temporary import surcharge described in subparagraph (A) and temporary limitations described in subparagraph (B).

The authority delegated under subparagraph (B) (and so much of subparagraph (C) as relates to subparagraph (B)) may be exercised (i) only if international trade or monetary agreements to which the United States is a party permit the imposition of quotas as a balance-of-payments measure, and (ii) only to the extent that the fundamental imbalance cannot be dealt with effectively by a surcharge proclaimed pursuant to subparagraph (A) or (C). Any temporary import surcharge proclaimed pursuant to subparagraph (A) or (C) shall be treated as a regular customs duty.

(b) If the President determines that the imposition of import restrictions under subsection (a) will be contrary to the national interest of the United States, then he may refrain from proclaiming such restrictions and he shall—

(1) immediately inform Congress of his determination, and

(2) immediately convene the group of congressional official advisers designated under section 161(a) and consult with them as to the reasons for such determination.

(c) Whenever the President determines that fundamental international payments problems require special import measures to increase imports—

(1) to deal with large and persistent United States balance-of-trade surpluses, as determined on the basis of the cost-insurance-freight value of imports, as reported by the Bureau of the Census, or

(2) to prevent significant appreciation of the dollar in foreign exchange markets.

the President is authorized to proclaim, for a period of 150 days (unless such period is extended by Act of Congress)—

(A) a temporary reduction (of not more than 5 percent ad valorem) in the rate of duty on any article; and

(B) a temporary increase in the value or quantity of articles which may be imported under any import restriction, or a temporary suspension of any import restriction.

Import liberalizing actions proclaimed pursuant to this subsection shall be of broad and uniform application with respect to product coverage except that the President shall not proclaim measures under this subsection with respect to those articles where in his judgment such action will cause or contribute to material injury to firms or workers in any domestic industry, including agriculture, mining, fishing, or commerce, or to impairment of the national security, or will otherwise be contrary to the national interest.

(d)(1) Import restricting actions proclaimed pursuant to subsection (a) shall be applied consistently with the principle of non-discriminatory treatment. In addition, any quota proclaimed pursuant to subparagraph (B) of subsection (a) shall be applied on a basis which aims at a distribution of trade with the United States approaching as closely as possible that which various foreign countries might have expected to obtain in the absence of such restrictions.

(2) Notwithstanding paragraph (1), if the President determines that the purposes of this section will best be served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action.

(3) After such time when there enters into force for the United States new rules regarding the application of surcharges as part of a reform of internationally agreed balance-of-payments adjustment procedures, the exemption authority contained in paragraph (2) shall be applied consistently with such new international rules.

(4) It is the sense of Congress that the President seek modifications in international agreements aimed at allowing the use of surcharges in place of quantitative restrictions (and providing rules to govern the use of such surcharges) as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries.

(e) Import restricting actions proclaimed pursuant to subsection (a) shall be of broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy. Such exceptions shall be limited to the unavailability of domestic supply at reasonable prices, the nec-

ecessary importation of raw materials, avoiding serious dislocations in the supply of imported goods, and other similar factors. In addition, uniform exceptions may be made where import restricting actions will be unnecessary or ineffective in carrying out the purposes of this section, such as with respect to articles already subject to import restrictions, goods in transit, or goods under binding contract. Neither the authorization of import restricting actions nor the determination of exceptions with respect to product coverage shall be made for the purpose of protecting individual domestic industries from import competition.

(f) Any quantitative limitation proclaimed pursuant to subparagraph (B) or (C) of subsection (a) on the quantity or value, or both, of an article—

(1) shall permit the importation of a quantity or value which is not less than the quantity or value of such article imported into the United States from the foreign countries to which such limitation applies during the most recent period which the President determines is representative of imports of such article, and

(2) shall take into account any increase since the end of such representative period in domestic consumption of such article and like or similar articles of domestic manufacture or production.

(g) The President may at any time, consistent with the provisions of this section, suspend, modify, or terminate, in whole or in part, any proclamation under this section either during the initial 150-day period of effectiveness or as extended by subsequent Act of Congress.

(h) No provision of law authorizing the termination of tariff concessions shall be used to impose a surcharge on imports into the United States.

[19 U.S.C. 2132]

#### SEC. 123. COMPENSATION AUTHORITY.

(a) Whenever—

(1) any action taken under chapter 1 of title II or chapter 1 of title III, or under chapter 2 of title IV of the Trade Act of 1974<sup>2</sup>; or

(2) any judicial or administrative tariff reclassification that becomes final after the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988;

increases or imposes any duty or other import restriction, the President—

(A) may enter into trade agreements with foreign countries or instrumentalities for the purpose of granting new concessions as compensation in order to maintain the general level of reciprocal and mutually advantageous concessions; and

(B) may proclaim such modification or continuance of any existing duty, or such continuance of existing duty-free or ex-

<sup>2</sup>Section 104 of Public Law 106-286 (114 Stat. 890) amended this paragraph by inserting after “title III” the following: “, or under chapter 2 of title IV of the Trade Act of 1974”. The inserted text probably should have been “, or under chapter 2 of title IV of this Act”.



cise treatment, as he determines to be required or appropriate to carry out any such agreement.

(b)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 70 percent of the existing rate of duty.

(2) Where the rate of duty in effect at any time is an intermediate stage under section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988, the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under such section 1102(a) by not more than 30 percent of such rate of duty, and may provide for a final rate of duty which is not less than 70 percent of the rate of duty proclaimed as the final stage under such section 1102(a).

(3) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(4) Any concessions granted under subsection (a)(1) shall be reduced and terminated according to substantially the same time schedule for reduction applicable to the relevant action under sections 203(e) and 204.

(c) Before entering into any trade agreement under this section with any foreign country or instrumentality, the President shall consider whether such country or instrumentality has violated trade concessions of benefit to the United States and such violation has not been adequately offset by the action of the United States or by such country or instrumentality.

(d) Notwithstanding the provisions of subsection (a), the authority delegated under section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 shall be used for the purpose of granting new concessions as compensation within the meaning of this section until such authority terminates.

(e) The provisions of this section shall apply by reason of action taken under chapter 1 of title III only if the President determines that action authorized under this section is necessary or appropriate to meet the international obligations of the United States.

[19 U.S.C. 2133]

**SEC. 124. TWO-YEAR RESIDUAL AUTHORITY TO NEGOTIATE DUTIES.**

(a) Whenever the President determines that any existing duties or other import restrictions of any foreign country or the United States are unduly burdening and restricting the foreign trade of the United States and that the purposes of this Act will be promoted thereby, the President—

(1) may enter into trade agreements with foreign countries or instrumentalities thereof, and

(2) may proclaim such modification or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties, as he determines to be required or appropriate to carry out any such trade agreement.

(b) Agreements entered into under this section in any 1-year period shall not provide for the reduction of duties, or the continuance of duty-free or excise treatment, for articles which account for more than 2 percent of the value of United States imports for the most recent 12-month period for which import statistics are available.

(c)(1) No proclamation shall be made pursuant to subsection (a) decreasing any rate of duty to a rate which is less than 80 percent of the existing rate of duty.

(2) No proclamation shall be made pursuant to subsection (a) decreasing or increasing any rate of duty to a rate which is lower or higher than the corresponding rate which would have resulted if the maximum authority granted by section 101 with respect to such article had been exercised.

(3) Where the rate of duty in effect at any time is an intermediate stage under section 109, the proclamation made pursuant to subsection (a) may provide for the reduction of each rate of duty at each such stage proclaimed under section 101 by not more than 20 percent of such rate of duty, and, subject to the limitation in paragraph (2), may provide for a final rate of duty which is not less than 80 percent of the rate of duty proclaimed as the final stage under section 101.

(4) If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitations provided by paragraphs (1) and (2) of this subsection by not more than the lesser of—

(A) the difference between such limitation and the next lower whole number, or

(B) one-half of 1 percent ad valorem.

(d) Agreements may be entered into under this section only during the 2-year period which immediately follows the close of the period during which agreements may be entered into under section 101.

[19 U.S.C. 2134]

#### SEC. 125. TERMINATION AND WITHDRAWAL AUTHORITY.

(a) Every trade agreement entered into under this Act shall be subject to termination, in whole or in part, or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months' notice.

(b) The President may at any time terminate, in whole or in part, any proclamation made under this Act.

(c) Whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930, withdraws, suspends, or modifies any obligation with respect to the trade of any foreign country or instrumentality thereof, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or

appropriate, in order to exercise the rights or fulfill the obligations of the United States. No proclamation shall be made under this subsection increasing any existing duty to a rate more than 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or 20 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

(d) Whenever any foreign country or instrumentality withdraws, suspends, or modifies the application of trade agreement obligations of benefit to the United States without granting adequate compensation therefor, the President, in pursuance of rights granted to the United States under any trade agreement and to the extent necessary to protect United States economic interests (including United States balance of payments), may—

(1) withdraw, suspend, or modify the application of substantially equivalent trade agreement obligations of benefit to such foreign country or instrumentality, and

(2) proclaim under subsection (c) such increased duties or other import restrictions as are appropriate to effect adequate compensation from such foreign country or instrumentality.

(e) Duties or other import restrictions required or appropriate to carry out any trade agreement entered into pursuant to this Act, section 201 of the Trade Expansion Act of 1962, or section 350 of the Tariff Act of 1930 shall not be affected by any termination, in whole or in part, of such agreement or by the withdrawal of the United States from such agreement and shall remain in effect after the date of such termination or withdrawal for 1 year, unless the President by proclamation provides that such rates shall be restored to the level at which they would be but for the agreement. Within 60 days after the date of any such termination or withdrawal, the President shall transmit to the Congress his recommendations as to the appropriate rates of duty for all articles which were affected by the termination or withdrawal or would have been so affected but for the preceding sentence.

(f) Before taking any action pursuant to subsection (b), (c), or (d), the President shall provide for a public hearing during the course of which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard, unless he determines that such prior hearings will be contrary to the national interest because of the need for expeditious action, in which case he shall provide for a public hearing promptly after such action.

[19 U.S.C. 2135]

**SEC. 126. RECIPROCAL NONDISCRIMINATORY TREATMENT.**

(a) Except as otherwise provided in this Act or in any other provision of law, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title shall apply to products of all foreign countries, whether imported directly or indirectly.

(b) The President shall determine, after the conclusion of all negotiations entered into under this Act or at the end of the 5-year period beginning on the date of enactment of this Act, whichever is earlier, whether any major industrial country has failed to make

concessions under trade agreements entered into under this Act which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities, provided by concessions made by the United States under trade agreements entered into under this Act, for the commerce of such country in the United States.

(c) If the President determines under subsection (b) that a major industrial country has not made concessions under trade agreements entered into under this Act which provide substantially equivalent competitive opportunities for the commerce of the United States, he shall, either generally with respect to such country or by article produced by such country, in order to restore equivalence of competitive opportunities, recommend to the Congress—

(1) legislation providing for the termination or denial of the benefits of concessions of trade agreements entered into under this Act made with respect to rates of duty or other import restrictions by the United States; and

(2) that any legislation necessary to carry out any trade agreement under section 102 shall not apply to such country.

(d) For purposes of this section, “major industrial country” means Canada, the European Economic Community, the individual member countries of such Community, Japan, and any other foreign country designated by the President for purposes of this subsection.

【19 U.S.C. 2136】

**SEC. 127. RESERVATION OF ARTICLES FOR NATIONAL SECURITY OR OTHER REASONS.**

(a) No proclamation shall be made pursuant to the provisions of this Act reducing or eliminating the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) While there is in effect with respect to any article any action taken under section 203 of this Act, or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862 or 1981), the President shall reserve such article from negotiations under this title (and from any action under section 122(c)) contemplating reduction or elimination of—

(A) any duty on such article,

(B) any import restriction imposed under such section, or

(C) any other import restriction, the removal of which will be likely to undermine the effect of the import restrictions referred to in subparagraph (B).

In addition, the President shall also so reserve any other article which he determines to be appropriate, taking into consideration information and advice available pursuant to and with respect to the matters covered by sections 131, 132, and 133, where applicable.

【19 U.S.C. 2137】

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**SEC. 128. MODIFICATION AND CONTINUANCE OF TREATMENT WITH RESPECT TO DUTIES ON HIGH TECHNOLOGY PRODUCTS.**

(a) In order to carry out any agreement concluded as a result of the negotiating objectives under section 104A(c), the President may proclaim, subject to the provisions of chapter 3—

- (1) such modification, elimination, or continuance of any existing duty, duty-free, or excise treatment, or
- (2) such additional duties,

as he deems appropriate.

(b) The President shall exercise his authority under subsection (a) of this section only with respect to the following subheadings listed in the Harmonized Tariff Schedule of the United States—

(1) transistors (provided for in subheadings 8541.21.00, 8541.29.00, and 8541.40.70);

(2) diodes and rectifiers (provided for in subheadings 8541.10.00, 8541.30.00, and 8541.40.60);

(3) monolithic integrated circuits (provided for in subheadings 8542.11.00 and 8542.19.00);

(4) other integrated circuits (provided for in subheading 8542.20.00);

(5) other components (provided for in subheading 8541.50.00);

(6) parts of semiconductors (provided for in subheadings 8541.90.00 and 8542.90.00); and

(7) units of automatic data processing machines (provided for in subheadings 8471.92.20, 8471.92.30, 8471.92.70, 8471.92.80, 8471.93.10, 8471.93.15, 8471.93.30, 8471.93.50, 8471.99.15, and 8471.99.60) and parts (provided for in subheading 8473.30.40), all the foregoing not incorporating a cathode ray tube.

(8) Digital processing units for automatic data processing machines, unboxed, consisting of a printed circuit (single or multiple) with one or more electronic integrated circuits or other semiconductor devices mounted directly thereon, certified as units designed for use other than in an automatic data processing machine of subheading 8471.20 (provided for in subheading 8471.91).

(c) TERMINATION.—The President may exercise his authority under this section only during the 5-year period beginning on the date of the enactment of the International Trade and Investment Act.

[19 U.S.C. 2138]

**CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS****SEC. 131. ADVICE FROM INTERNATIONAL TRADE COMMISSION.**

(a) LISTS OF ARTICLES WHICH MAY BE CONSIDERED FOR ACTION.—

- (1) In connection with any proposed trade agreement under section 123 of this Act or subsection (a) or (b) of section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, the President shall from time to time

publish and furnish the International Trade Commission (hereafter in this section referred to as the "Commission") with lists of articles which may be considered for modification or continuance of United States duties, continuance of United States duty-free or excise treatment, or additional duties. In the case of any article with respect to which consideration may be given to reducing or increasing the rate of duty, the list shall specify the provision of this subchapter under which such consideration may be given.

(2) In connection with any proposed trade agreement under section 103(b) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, the President may from time to time publish and furnish the Commission with lists of nontariff matters which may be considered for modification.

(b) **ADVICE TO PRESIDENT BY COMMISSION.**—Within 6 months after receipt of a list under subsection (a) or, in the case of a list submitted in connection with a trade agreement, within 90 days after receipt of such list, the Commission shall advise the President, with respect to each article or nontariff matter, of its judgment as to the probable economic effect of modification of the tariff or nontariff measure on industries producing like or directly competitive articles and on consumers, so as to assist the President in making an informed judgment as to the impact which might be caused by such modifications on United States interests, such as sectors involved in manufacturing, agriculture, mining, fishing, services, intellectual property, investment, labor, and consumers. Such advice may include in the case of any article the advice of the Commission as to whether any reduction in the rate of duty should take place over a longer period of time than the minimum period provided for in section 103(a)(4)(A) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

(c) **ADDITIONAL INVESTIGATIONS AND REPORTS REQUESTED BY THE PRESIDENT OR THE TRADE REPRESENTATIVE.**—In addition, in order to assist the President in his determination whether to enter into any agreement under section 123 of this Act or section 103(a) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, or how to develop trade policy, priorities or other matters (such as priorities for actions to improve opportunities in foreign markets), the Commission shall make such investigations and reports as may be requested by the President or the United States Trade Representative on matters such as effects of modification of any barrier to (or other distortion of) international trade on domestic workers, industries or sectors, purchasers, prices and quantities of articles in the United States.

(d) **COMMISSION STEPS IN PREPARING ITS ADVICE TO THE PRESIDENT.**—In preparing its advice to the President under this section, the Commission shall to the extent practicable—

(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles or services in question and the domestic industries producing the like or directly competitive articles or services;

(2) analyze the production, trade, and consumption of each like or directly competitive article or service, taking into con-

sideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

(3) describe the probable nature and extent of any significant change in employment, profit levels, and use of productive facilities; the overall impact of such or other possible changes on the competitiveness of relevant domestic industries or sectors; and such other conditions as it deems relevant in the domestic industries or sectors concerned which it believes such modifications would cause; and

(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be warranted, of particular proposed modifications affecting United States manufacturing, agriculture, mining, fishing, labor, consumers, services, intellectual property and investment, using to the fullest extent practicable United States Government facilities abroad and appropriate personnel of the United States.

(e) PUBLIC HEARING.—In preparing its advice to the President under this section, the Commission shall, after reasonable notice, hold public hearings.

[19 U.S.C. 2151]

**SEC. 132. ADVICE FROM EXECUTIVE DEPARTMENTS AND OTHER SOURCES.**

Before any trade agreement is entered into under section 123 of this Act or section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State and the Treasury, from the United States Trade Representative, and from such other sources as he may deem appropriate. Such advice shall be prepared and presented consistent with the provisions of Reorganization Plan Number 3 of 1979, Executive Order Number 12188 and section 141(c).

[19 U.S.C. 2152]

**SEC. 133. PUBLIC HEARINGS.**

(a) OPPORTUNITY FOR PRESENTATION OF VIEWS.—In connection with any proposed trade agreement under section 123 of this Act or section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published under section 131, any matter or article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings and prescribe regulations governing the conduct of such hearings. When appropriate, such

procedures shall apply to the development of trade policy and priorities.

(b) SUMMARY OF HEARINGS.—The organization holding such hearing shall furnish the President with a summary thereof.

【19 U.S.C. 2153】

**SEC. 134. PREREQUISITES FOR OFFERS.**

(a) In any negotiation seeking an agreement under section 123 of this Act or section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, the President may make a formal offer for the modification or continuance of any United States duty, import restrictions, or barriers to (or other distortions of) international trade, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, import restrictions, or other barrier to (or other distortion of) international trade including trade in services, foreign direct investment and intellectual property as covered by this title, with respect to any article or matter only after he has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 133. In addition, the President may make an offer for the modification or continuance of any United States duty, the continuance of United States duty-free or excise treatment, or the imposition of additional duties, with respect to any article included in a list published and furnished under section 131(a), only after he has received advice concerning such article from the Commission under section 131(b), or after the expiration of the 6-month or 90-day period provided for in that section, as appropriate, whichever first occurs.

(b) In determining whether to make offers described in subsection (a) in the course of negotiating any trade agreement under section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, and in determining the nature and scope of such offers, the President shall take into account any advice or information provided, or reports submitted, by—

(1) the Commission;

(2) any advisory committee established under section 135;

or

(3) any organization that holds public hearings under section 133;

with respect to any article, or domestic industry, that is sensitive, or potentially sensitive, to imports.

【19 U.S.C. 2154】

**SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.**

(a) IN GENERAL.—

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title or section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015;



(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the United States. The consultations shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS.—

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a). The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, nongovernmental environmental and conservation organizations, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 4 years or until the committee is scheduled to expire. An individual may be reappointed to committee for any number of terms. Appointments to the Committee shall be made without regard to political affiliation.

(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds

of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) GENERAL POLICY, SECTORAL, OR FUNCTIONAL ADVISORY COMMITTEES.—

(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President—

(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice—

(i) on matters referred to in subsection (a), and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Fed-

eral governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

(d) **POLICY, TECHNICAL, AND OTHER ADVICE AND INFORMATION.**—Committees established under subsection (c) shall meet at the call of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) **MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS.**—

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 shall be provided under the preceding sentence not later than the date that is 30 days after the date on which the President notifies Congress under section 106(a)(1)(A) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 102 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) **APPLICATION OF CHAPTER 10 OF TITLE 5, UNITED STATES CODE.**—The provisions of chapter 10 of title 5, United States Code, apply—

(1) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b); and

(2) to all other advisory committees which may be established under subsection (c) of this section, except that—

(A) the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of

sections 1009 and 1010 of title 5, United States Code (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or the President's designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives, or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section; and

(B) notwithstanding subsection (a) of section 1013 of title 5, United States Code, any committee established under subsection (b) or (c) may, in the discretion of the President or the President's designee, terminate not later than the expiration of the 4-year period beginning on the date of its establishment.

(g) TRADE SECRETS AND CONFIDENTIAL INFORMATION.—

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to—

(A) officers and employees of the United States designated by the United States Trade Representative;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 161(a)(1) or are designated by the chairmen of either such committee under section 161(b)(3)(A) and staff members of either such committee designated by the chairmen under section 161(b)(3)(A); and

(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 161(a)(2) or designated by the chairman of such committee under section 161(b)(3)(B) and staff members of such committee designated under section 161(b)(3)(B), but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee;

for use in connection with matters referred to in subsection (a).

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a), may be disclosed upon request to—

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), may be disclosed in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

(h) **ADVISORY COMMITTEE SUPPORT.**—The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) as such committees may reasonably require to carry out their activities.

(i) **CONSULTATION WITH ADVISORY COMMITTEES; PROCEDURES; NONACCEPTANCE OF COMMITTEE ADVICE OR RECOMMENDATIONS.**—It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

(1) significant issues and developments; and

(2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this title, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

(j) **PRIVATE ORGANIZATIONS OR GROUPS.**—In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g), on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer

interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a).

(k) SCOPE OF PARTICIPATION BY MEMBERS OF ADVISORY COMMITTEES.—Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such negotiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

(l) ADVISORY COMMITTEES ESTABLISHED BY DEPARTMENT OF AGRICULTURE.—The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c).

(m) NON-FEDERAL GOVERNMENT DEFINED.—As used in this section, the term “non-Federal government” means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof; or

(2) any agency or instrumentality of any entity described in paragraph (1).

[19 U.S.C. 2155]

## CHAPTER 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) There is established within the Executive Office of the President the Office of the United States Trade Representative (hereinafter in this section referred to as the “Office”).

(b)(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives, one Chief Agricultural Negotiator, and one Chief Innovation and Intellectual Property Negotiator, who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative, the Chief Agricultural Negotiator, or the Chief Innovation and Intellectual Property Negotiator submitted to the Senate for its ad-

vice and consent, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative, the Chief Agricultural Negotiator, and the Chief Innovation and Intellectual Property Negotiator shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(3) There shall be in the Office one Chief Transparency Officer. The Chief Transparency Officer shall consult with Congress on transparency policy, coordinate transparency in trade negotiations, engage and assist the public, and advise the United States Trade Representative on transparency policy.

(4) A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18, United States Code) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.

(5)(A) When the President submits to the Senate for its advice and consent a nomination of an individual for appointment as a Deputy United States Trade Representative under paragraph (2), the President shall include in that submission information on the country, regional offices, and functions of the Office of the United States Trade Representative with respect to which that individual will have responsibility.

(B) The President shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not less than 30 days prior to making any change to the responsibilities of any Deputy United States Trade Representative included in a submission under subparagraph (A), including the reason for that change.

(c)(1) The United States Trade Representative shall—

(A) have primary responsibility for developing, and for coordinating the implementation of, United States international trade policy, including commodity matters, and, to the extent they are related to international trade policy, direct investment matters;

(B) serve as the principal advisor to the President on international trade policy and shall advise the President on the impact of other policies of the United States Government on international trade;

(C) have lead responsibility for the conduct of, and shall be the chief representative of the United States for, international trade negotiations, including all negotiations on any matter considered under the auspices of the World Trade Organization, commodity and direct investment negotiations, in which the United States participates;

(D) issue and coordinate policy guidance to departments and agencies on basic issues of policy and interpretation arising in the exercise of international trade functions, including any matter considered under the auspices of the World Trade Organization, to the extent necessary to assure the coordination of international trade policy and consistent with any other law;

(E) act as the principal spokesman of the President on international trade;

(F) report directly to the President and the Congress regarding, and be responsible to the President and the Congress for the administration of, trade agreements programs;

(G) advise the President and Congress with respect to non-tariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements programs;

(H) be responsible for making reports to Congress with respect to matters referred to in subparagraphs (C) and (F);

(I) be chairman of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962, and shall consult with and be advised by such organization in the performance of his functions; and

(J) in addition to those functions that are delegated to the United States Trade Representative as of the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988, be responsible for such other functions as the President may direct.

(2) It is the sense of Congress that the United States Trade Representative should—

(A) be the senior representative on any body that the President may establish for the purpose of providing to the President advice on overall economic policies in which international trade matters predominate; and

(B) be included as a participant in all economic summit and other international meetings at which international trade is a major topic.

(3) The United States Trade Representative may—

(A) delegate any of his functions, powers, and duties to such officers and employees of the Office as he may designate; and

(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as he may deem appropriate.

(4) Each Deputy United States Trade Representative shall have as his principal function the conduct of trade negotiations under this Act and shall have such other functions as the United States Trade Representative may direct.

(5) The principal function of the Chief Agricultural Negotiator shall be to conduct trade negotiations and to enforce trade agreements relating to United States agricultural products and services. The Chief Agricultural Negotiator shall be a vigorous advocate on behalf of United States agricultural interests. The Chief Agricultural Negotiator shall perform such other functions as the United States Trade Representative may direct.

(6) The principal functions of the Chief Innovation and Intellectual Property Negotiator shall be to conduct trade negotiations and to enforce trade agreements relating to United States intellectual property and to take appropriate actions to address acts, policies, and practices of foreign governments that have a significant adverse impact on the value of United States innovation. The Chief Innovation and Intellectual Property Negotiator shall be a vigorous advocate on behalf of United States innovation and intellectual property interests. The Chief Innovation and Intellectual Property



Negotiator shall perform such other functions as the United States Trade Representative may direct.

(d)(1) In carrying out subsection (c) with respect to unfair trade practices, the United States Trade Representative shall—

(A) coordinate the application of interagency resources, including resources of the Interagency Center on Trade Implementation, Monitoring, and Enforcement established under subsection (h), to specific unfair trade practice cases;

(B) identify, and refer to the appropriate Federal department or agency for consideration with respect to action, each act, policy, or practice referred to in the report required under section 181(b), or otherwise known to the United States Trade Representative on the basis of other available information, that may be an unfair trade practice that either—

(i) is considered to be inconsistent with the provisions of any trade agreement and has a significant adverse impact on United States commerce, or

(ii) has a significant adverse impact on domestic firms or industries that are either too small or financially weak to initiate proceedings under the trade laws;

(C) identify practices having a significant adverse impact on United States commerce that the attainment of United States negotiating objectives would eliminate; and

(D) identify, on a biennial basis, those United States Government policies and practices that, if engaged in by a foreign government, might constitute unfair trade practices under United States law.

(2) For purposes of carrying out paragraph (1), the United States Trade Representative shall be assisted by an interagency unfair trade practices advisory committee composed of the Trade Representative, who shall chair the committee, and senior representatives of the following agencies, appointed by the respective heads of those agencies:

(A) The Bureau of Economics and Business Affairs of the Department of State.

(B) The United States and Foreign Commercial Services of the Department of Commerce.

(C) The International Trade Administration (other than the United States and Foreign Commercial Service) of the Department of Commerce.

(D) The Foreign Agricultural Service of the Department of Agriculture.

The United States Trade Representative may also request the advice of the United States International Trade Commission regarding the carrying out of paragraph (1).

(3) For purposes of this subsection, the term “unfair trade practice” means any act, policy, or practice that—

(A) may be a subsidy with respect to which countervailing duties may be imposed under subtitle A of title VII;

(B) may result in the sale or likely sale of foreign merchandise with respect to which antidumping duties may be imposed under subtitle B of title VII;

(C) may be either an unfair method of competition, or an unfair act in the importation of articles into the United States, that is unlawful under section 337; or

(D) may be an act, policy, or practice of a kind with respect to which action may be taken under title III of the Trade Act of 1974.

(e) The United States Trade Representative may, for the purpose of carrying out his functions under this section—

(1) subject to the civil service and classification laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary and prescribe their authority and duties, except that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive Schedule in section 5314 of title 5, United States Code;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS-18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) promulgate such rules and regulations as may be necessary to carry out the functions, powers and duties vested in him;

(4) utilize, with their consent, the services, personnel, and facilities of other Federal agencies;

(5) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the United States Trade Representative may deem appropriate, with any agency or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

(7) adopt an official seal, which shall be judicially noticed; and

(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of title 5, United States Code (relating to rates of per diem allowances in lieu of subsistence expenses);

(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office;

(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be required at a cost exceeding \$9,500; and

(11) provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which expenditures relating thereto were made.

(f) The United States Trade Representative shall, to the extent he deems it necessary for the proper administration and execution of the trade agreements programs of the United States, draw upon the resources of, and consult with, Federal agencies in connection with the performance of his functions.

(g)(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions the following:

(i) \$32,300,000 for fiscal year 2003.

(ii) \$33,108,000 for fiscal year 2004.

(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

(i) not to exceed \$98,000 may be used for entertainment and representation expenses of the Office; and

(ii) not to exceed \$1,000,000 shall remain available until expended.

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.

(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.

(h) INTERAGENCY CENTER ON TRADE IMPLEMENTATION, MONITORING, AND ENFORCEMENT.—

(1) ESTABLISHMENT OF CENTER.—There is established in the Office of the United States Trade Representative an Interagency Center on Trade Implementation, Monitoring, and Enforcement (in this section referred to as the “Center”).

(2) FUNCTIONS OF CENTER.—The Center shall support the activities of the United States Trade Representative in—

(A) investigating potential disputes under the auspices of the World Trade Organization;

(B) investigating potential disputes pursuant to bilateral and regional trade agreements to which the United States is a party;

(C) carrying out the functions of the United States Trade Representative under this section with respect to the monitoring and enforcement of trade agreements to which the United States is a party; and

(D) monitoring measures taken by parties to implement provisions of trade agreements to which the United States is a party.

(3) PERSONNEL.—

(A) DIRECTOR.—The head of the Center shall be a Director, who shall be appointed by the United States Trade Representative.

(B) ADDITIONAL EMPLOYEES.—A Federal agency may, in consultation with and with the approval of the United States Trade Representative, detail or assign one or more employees to the Center without any reimbursement from the Center to support the functions of the Center.

[19 U.S.C. 2171]

## CHAPTER 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

### SEC. 151. BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES.

(a) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section and sections 152 and 153 are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (b)(1), implementing revenue bills described in subsection (b)(2), approval resolutions described in subsection (b)(3), and resolutions described in subsections 152(a) and 153(a); and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) DEFINITIONS.—For purposes of this section—

(1) The term “implementing bill” means only a bill of either House of Congress which is introduced as provided in subsection (c) with respect to one or more trade agreements, or with respect to an extension described in section 282(c)(3) of the Uruguay Round Agreements Act, submitted to the House of Representatives and the Senate under section 102 of this Act, section 282 of the Uruguay Round Agreements Act, or section 106(a)(1) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 and which contains—

(A) a provision approving such trade agreement or agreements or such extension,

(B) a provision approving the statement of administrative action (if any) proposed to implement such trade agreement or agreements, and

(C) if changes in existing laws or new statutory authority is required to implement such trade agreement or agreements or such extension, provisions, necessary or appropriate to implement such trade agreement or agreements or such extension, either repealing or amending existing laws or providing new statutory authority.

(2) The term “implementing revenue bill or resolution” means an implementing bill, or approval resolution, which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

(3) The term “approval resolution” means only a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: “That the Congress approves the extension of nondiscriminatory treatment with respect to the products of \_\_\_\_\_ transmitted by the President to the Congress on \_\_\_\_\_.”, the first blank space being filled with the name of the country involved and the second blank space being filled with the appropriate date.

(c) INTRODUCTION AND REFERRAL.—

(1) On the day on which a trade agreement or extension is submitted to the House of Representatives and the Senate under section 102, section 282 of the Uruguay Round Agreements Act, or section 106(a)(1) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, the implementing bill submitted by the President with respect to such trade agreement or extension shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a trade agreement or extension is submitted, the implementing bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which the House is in session. Such bills shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

(2) On the day on which a bilateral commercial agreement, entered into under the IV of this Act after the date of the enactment of this Act, is transmitted to the House of Representatives and the Senate, an approval resolution with respect to such agreement shall be introduced (by request) in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such an agreement is transmitted, the approval resolution with respect to such agreement shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on

which that House is in session. The approval resolution introduced in the House shall be referred to the Committee on Ways and Means and the approval resolution introduced in the Senate shall be referred to the Committee on Finance.

(d) AMENDMENTS PROHIBITED.—No amendment to an implementing bill or approval resolution shall be in order in either the House of Representatives or the Senate; and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

(e) PERIOD FOR COMMITTEE AND FLOOR CONSIDERATION.—

(1) Except as provided in paragraph (2), if the committee or committees of either House to which an implementing bill or approval resolution has been referred have not reported it at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill or resolution and it shall be placed on the appropriate calendar. A vote on final passage of the bill or resolution shall be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the bill or resolution. If prior to the passage by one House of an implementing bill or approval resolution of that House, that House receives the same implementing bill or approval resolution from the other House, then—

(A) the procedure in that House shall be the same as if no implementing bill or approval resolution had been received from the other House; but

(B) the vote on final passage shall be on the implementing bill or approval resolution of the other House.

(2) The provisions of paragraph (1) shall not apply in the Senate to an implementing revenue bill or resolution. An implementing revenue bill or resolution received from the House shall be referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill or resolution at the close of the 15th day after its receipt by the Senate (or, if later, before the close of the 45th day after the corresponding implementing revenue bill or resolution was introduced in the Senate), such committee or committees shall be automatically discharged from further consideration of such bill or resolution and it shall be placed on the calendar. A vote on final passage of such bill or resolution shall be taken in the Senate on or before the close of the 15th day after such bill or resolution is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill or resolution.

(3) For purpose of paragraphs (1) and (2), in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

(f) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of an implementing bill or approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit an implementing bill or approval resolution or to move to reconsider the vote by which an implementing bill or approval resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of an implementing bill or approval resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to an implementing bill or approval resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of an implementing bill or approval resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(g) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of an implementing bill or approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on an implementing bill or approval resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill or approval resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill or approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill or approval resolution is not in order.

[19 U.S.C. 2191]

**SEC. 152. RESOLUTIONS DISAPPROVING CERTAIN ACTIONS.**

(a) CONTENTS OF RESOLUTIONS.—

(1) For purposes of this section, the term “resolution” means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: “That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on \_\_\_\_\_.”, the blank space being filled with the appropriate date; and

(B) a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress does not approve \_\_\_\_\_ transmitted to the Congress on \_\_\_\_\_.”, with the first blank space being filled in accordance with paragraph (2), and the second blank space being filled with the appropriate date.

(2) The first blank space referred to in paragraph (1)(B) shall be filled, in the case of a resolution referred to in section 407(c)(2), with the phrase “the report of the President submitted under section \_\_\_\_\_ of the Trade Act of 1974 with respect to \_\_\_\_\_” (with the first blank space being filled with “402(b)” or “409(b)”, as appropriate, and the second blank space being filled with the name of the country involved).

(b) REFERENCE TO COMMITTEES.—All resolutions introduced in the House of Representatives shall be referred to the Committee on Ways and Means and all resolutions introduced in the Senate shall be referred to the Committee on Finance.

(c) DISCHARGE OF COMMITTEE.—

(1) If the committee of either House to which a resolution has been referred has not reported it at the end of 30 days after its introduction, not counting any day which is excluded under section 154(b), it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution introduced with respect to the same matter, except that a motion to discharge—

(A) may only be made on the second legislative day after the calendar day on which the Member making the motion announces to the House his intention to do so; and

(B) is not in order after the Committee has reported a resolution with respect to the same matter.

(2) A motion to discharge under paragraph (1) may be made only by an individual favoring the resolution, and is highly privileged in the House and privileged in the Senate; and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amend-



ment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(d) FLOOR CONSIDERATION IN THE HOUSE.—

(1) A motion in the House of Representatives to proceed to the consideration of a resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the House of Representatives on a resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a resolution is agreed to or disagreed to.

(3) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a resolution in the House of Representatives shall be governed by the Rules of the House of Representatives applicable to other resolutions in similar circumstances.

(e) FLOOR CONSIDERATION IN THE SENATE.—

(1) A motion in the Senate to proceed to the consideration of a resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate in the Senate on a resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(3) Debate in the Senate on any debatable motion or appeal in connection with a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

(4) A motion in the Senate to further limit debate on a resolution, debatable motion, or appeal is not debatable. No

amendment to, or motion to recommit, a resolution is in order in the Senate.

(f) PROCEDURES IN THE SENATE.—

(1) Except as otherwise provided in this section, the following procedures shall apply in the Senate to a resolution to which this section applies:

(A)(i) Except as provided in clause (ii), a resolution that has passed the House of Representatives shall, when received in the Senate, be referred to the Committee on Finance for consideration in accordance with this section.

(ii) If a resolution to which this section applies was introduced in the Senate before receipt of a resolution that has passed the House of Representatives, the resolution from the House of Representatives shall, when received in the Senate, be placed on the calendar. If this clause applies, the procedures in the Senate with respect to a resolution introduced in the Senate that contains the identical matter as the resolution that passed the House of Representatives shall be the same as if no resolution had been received from the House of Representatives, except that the vote on passage in the Senate shall be on the resolution that passed the House of Representatives.

(B) If the Senate passes a resolution before receiving from the House of Representatives a joint resolution that contains the identical matter, the joint resolution shall be held at the desk pending receipt of the joint resolution from the House of Representatives. Upon receipt of the joint resolution from the House of Representatives, such joint resolution shall be deemed to be read twice, considered, read the third time, and passed.

(2) If the texts of joint resolutions described in section 152 or 153(a), whichever is applicable, concerning any matter are not identical—

(A) the Senate shall vote passage on the resolution introduced in the Senate, and

(B) the text of the joint resolution passed by the Senate shall, immediately upon its passage (or, if later, upon receipt of the joint resolution passed by the House), be substituted for the text of the joint resolution passed by the House of Representatives, and such resolution, as amended, shall be returned with a request for a conference between the two Houses.

(3) Consideration in the Senate of any veto message with respect to a joint resolution described in subsection (a)(2)(B) or section 153(a), including consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

[19 U.S.C. 2192]

**SEC. 153. RESOLUTIONS RELATING TO EXTENSION OF WAIVER AUTHORITY UNDER SECTION 402.**

(a) CONTENTS OF RESOLUTION.—For purposes of this section, the term “resolution” means only a joint resolution of the two

Houses of Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the extension of the authority contained in section 402(c) of the Trade Act of 1974 recommended by the President to the Congress on \_\_\_\_\_ with respect to \_\_\_\_\_.", with the first blank space being filled with the appropriate date, and the second blank space being filled with the names of those countries, if any, with respect to which such extension of authority is not approved, and with the clause beginning with "with respect to" being omitted if the extension of the authority is not approved with respect to any country.

(b) APPLICATION OF RULES OF SECTION 152; EXCEPTIONS.—

(1) Except as provided in this section, the provisions of section 152 shall apply to resolutions described in subsection (a).

(2) In applying section 152(c)(1), all calendar days shall be counted.

(3) That part of section 152(d)(2) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting a with-respect-to clause. Debate in the House of Representatives on any amendment to a resolution shall be limited to not more than 1 hour which shall be equally divided between those favoring and those opposing the amendment. A motion in the House to further limit debate on an amendment to a resolution is not debatable.

(4) That part of section 152(e)(4) which provides that no amendment is in order shall not apply to any amendment to a resolution which is limited to striking out or inserting the names of one or more countries or to striking out or inserting an except clause a with-respect-to clause. The time limit on a debate on a resolution in the Senate under section 152(e)(2) shall include all amendments to a resolution. Debate in the Senate on any amendment to a resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such amendment, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and minority leader may from time under their control on the passage of a resolution, allot additional time to any Senator during the consideration of any amendment. A motion in the Senate to further limit debate on an amendment to a resolution is not debatable.

(c) CONSIDERATION OF SECOND RESOLUTION NOT IN ORDER.—

It shall not be in order in either the House of Representatives or the Senate to consider a resolution with respect to a recommendation of the President under section 402(d) (other than a resolution described in subsection (a) received from the other House), if that House has adopted a resolution with respect to the same recommendation.

(d) PROCEDURES RELATING TO CONFERENCE REPORTS IN THE SENATE.—

(1) Consideration in the Senate of the conference report on any joint resolution described in subsection (a), including consideration of all amendments in disagreement (and all amendments thereto), and consideration of all debatable motions and appeals in connection therewith, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(2) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment to any amendment in disagreement shall be received unless it is a germane amendment.

[19 U.S.C. 2193]

**SEC. 154. SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES.**

(a) Whenever, pursuant to section 102(e), 203(b), 402(d), or 407(a) or (b), a document is required to be transmitted to the Congress, copies of such document shall be delivered to both Houses of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(b) For purposes of sections 203(c) and 407(c)(2), the 90-day period referred to in such sections shall be computed by excluding—

(1) the days on which 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

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House is not in session.

[19 U.S.C. 2194]

**CHAPTER 6—CONGRESSIONAL LIAISON AND REPORTS**

**SEC. 161. CONGRESSIONAL ADVISERS FOR TRADE POLICY AND NEGOTIATIONS.**

(a) SELECTION.—

(1) At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the chairman of the Committee on Ways and Means, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, and the President pro tempore of the Senate, upon the recommendation of the chairman of the Committee on Finance, shall select 5 members (not more than 3 of whom are members of the same political party) of such committee, who shall be designated congressional advisers on trade policy and negotiations. They shall provide advice on the development of trade policy and priorities for the implementation thereof. They shall

also be accredited by the United States Trade Representative on behalf of the President as official advisers to the United States delegations to international conferences, meetings, and negotiating sessions relating to trade agreements.

(2)(A) In addition to the advisers designated under paragraph (1) from the Committee on Ways and Means and the Committee on Finance—

(i) the Speaker of the House may select additional members of the House, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the House or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations; and

(ii) the President pro tempore of the Senate may select additional members of the Senate, for designation as congressional advisers regarding specific trade policy matters or negotiations, from any other committee of the Senate or joint committee of Congress that has jurisdiction over legislation likely to be affected by such matters or negotiations.

Members of the House and Senate selected as congressional advisers under this subparagraph shall be accredited by the United States Trade Representative.

(B) Before designating any member under subparagraph (A), the Speaker or the President pro tempore shall consult with—

(i) the chairman and ranking member of the Committee on Ways and Means or the Committee on Finance, as appropriate; and

(ii) the chairman and ranking minority member of the committee from which the member will be selected.

(C) Not more than 3 members (not more than 2 of whom are members of the same political party) may be selected under this paragraph as advisers from any committee of Congress.

(b) BRIEFING.—

(1) The United States Trade Representative shall keep each official adviser designated under subsection (a)(1) currently informed on matters affecting the trade policy of the United States and, with respect to possible agreements, negotiating objectives, the status of negotiations in progress, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement or any requirement of, amendment to, or recommendation under, such agreement.

(2) The United States Trade Representative shall keep each official adviser designated under subsection (a)(2) currently informed regarding the trade policy matters and negotiations with respect to which the adviser is designated.

(3)(A) The chairmen of the Committee on Ways and Means and the Committee on Finance may designate members (in addition to the official advisers under subsection (a)(1)) and staff members of their respective committees who shall have access to the information provided to official advisers under paragraph (1).

(B) The Chairman of any committee of the House or Senate or any joint committee of Congress from which official advisers are selected under subsection (a)(2) may designate other members of such committee, and staff members of such committee, who shall have access to the information provided to official advisers under paragraph (2).

(c) COMMITTEE CONSULTATION.—The United States Trade Representative shall consult on a continuing basis with the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the other appropriate committees of the House and Senate on the development, implementation, and administration of overall trade policy of the United States. Such consultations shall include, but are not limited to, the following elements of such policy:

(1) The principal multilateral and bilateral negotiating objectives and the progress being made toward their achievement.

(2) The implementation, administration, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(3) The actions taken, and proposed to be taken, under the trade laws of the United States and the effectiveness, or anticipated effectiveness, of such actions in achieving trade policy objectives.

(4) The important developments and issues in other areas of trade for which there must be developed proper policy response.

When necessary, meetings shall be held with each Committee in executive session to review matters under negotiation.

[19 U.S.C. 2211]

#### SEC. 162. TRANSMISSION OF AGREEMENTS TO CONGRESS.

(a) As soon as practicable after a trade agreement entered into under section 123 or 124 or under section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 has entered into force with respect to the United States, the President shall, if he has not previously done so, transmit a copy of such trade agreement to each House of the Congress together with a statement, in the light of the advice of the International Trade Commission under section 131(b), if any, and of other relevant considerations, of his reasons for entering into the agreement.

(b) The President shall transmit to each Member of the Congress a summary of the information required to be transmitted to each House under subsection (a). For purposes of this subsection, the term “Member” includes any Delegate or Resident Commissioner.

[19 U.S.C. 2212]

#### SEC. 163. REPORTS.

(a) ANNUAL REPORT ON TRADE AGREEMENTS PROGRAM AND NATIONAL TRADE POLICY AGENDA.—

(1) The President shall submit to the Congress during each calendar year (but not later than March 1 of that year) a report on—

- (A) the operation of the trade agreements program, and the provision of import relief and adjustment assistance to workers and firms, under this Act during the preceding calendar year; and
- (B) the national trade policy agenda for the year in which the report is submitted.
- (2) The report shall include, with respect to the matters referred to in paragraph (1)(A), information regarding—
- (A) new trade negotiations;
- (B) changes made in duties and nontariff barriers and other distortions of trade of the United States;
- (C) reciprocal concessions obtained;
- (D) changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor);
- (E) the extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of foreign countries;
- (F) the extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries;
- (G) the results of actions to obtain the removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment;
- (H) the measures being taken to seek the removal of other significant foreign import restrictions;
- (I) each of the referrals made under section 141(d)(1)(B) and any action taken with respect to such referral;
- (J) other information relating to the trade agreements program and to the agreements entered into thereunder;
- (K) the number of applications filed for adjustment assistance for workers and firms, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications; and
- (L) the operation of the Interagency Center on Trade Implementation, Monitoring, and Enforcement established under section 141(h), including—
- (i) information relating to the personnel of the Center, including a description of any employees detailed or assigned to the Center by a Federal agency under paragraph (3)(B) of such section;
- (ii) information relating to the functions of the Center; and
- (iii) an assessment of the operating costs of the Center.
- (3)(A) The national trade policy agenda required under paragraph (1)(B) for the year in which a report is submitted shall be in the form of a statement of—

- (i) the trade policy objectives and priorities of the United States for the year, and the reasons therefor;
  - (ii) the actions proposed, or anticipated, to be undertaken during the year to achieve such objectives and priorities, including, but not limited to, actions authorized under the trade laws and negotiations with foreign countries;
  - (iii) any proposed legislation necessary or appropriate to achieve any of such objectives or priorities; and
  - (iv) the progress that was made during the preceding year in achieving the trade policy objectives and priorities included in the statement provided for that year under this paragraph.
- (B) The President may separately submit any information referred to in subparagraph (A) to the Congress in confidence if the President considers confidentiality appropriate.
- (C) Before submitting the national trade policy agenda for any year, the President shall seek advice from the appropriate advisory committees established under section 135 and shall consult with the appropriate committees of the Congress.
- (D) The United States Trade Representative (hereafter referred to in this section as the “Trade Representative”) and other appropriate officials of the United States Government shall consult periodically with the appropriate committees of the Congress regarding the annual objectives and priorities set forth in each national trade policy agenda with respect to—
- (i) the status and results of the actions that have been undertaken to achieve the objectives and priorities; and
  - (ii) any development which may require, or result in, changes to any of such objectives or priorities.
- (b) ANNUAL TRADE PROJECTION REPORT.—
- (1) In order for the Congress to be informed of the impact of foreign trade barriers and macroeconomic factors on the balance of trade of the United States, the Trade Representative and the Secretary of the Treasury shall jointly prepare and submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives (hereafter referred to in this subsection as the “Committees”) on or before March 1 of each year a report which consists of—
- (A) a review and analysis of—
    - (i) the merchandise balance of trade,
    - (ii) the goods and services balance of trade,
    - (iii) the balance on the current account,
    - (iv) the external debt position,
    - (v) the exchange rates,
    - (vi) the economic growth rates,
    - (vii) the deficit or surplus in the fiscal budget, and
    - (viii) the impact on United States trade of market barriers and other unfair practices, of countries that are major trading partners of the United States, including, as appropriate, groupings of such countries;



(B) projections for each of the economic factors described in subparagraph (A) (except those described in clauses (v) and (viii)) for each of the countries and groups of countries referred to in subparagraph (A) for the year in which the report is submitted and for the succeeding year; and

(C) conclusions and recommendations, based upon the projections referred to in subparagraph (B), for policy changes, including trade policy, exchange rate policy, fiscal policy, and other policies that should be implemented to improve the outlook.

(2) To the extent that subjects referred to in paragraph (1) (A), (B), or (C) are covered in the national trade policy agenda required under subsection (a)(1)(B) or in other reports required by this Act or other law, the Trade Representative and the Secretary of the Treasury may, as appropriate, draw on the information, analysis, and conclusions, if any, in those reports for the purposes of preparing the report required by this subsection.

(3) The Trade Representative and the Secretary of the Treasury shall consult with the Chairman of the Board of Governors of the Federal Reserve System in the preparation of each report required under this subsection.

(4) The Trade Representative and the Secretary of the Treasury may separately submit any information, analysis, or conclusion referred to in paragraph (1) to the Committees in confidence if the Trade Representative and the Secretary consider confidentiality appropriate.

(5) After submission of each report required under paragraph (1), the Trade Representative and the Secretary of the Treasury shall consult with each of the Committees with respect to the report.

(c) ITC REPORTS.—The United States International Trade Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

(d) QUADRENNIAL PLAN AND REPORT.—

(1) QUADRENNIAL PLAN.—Pursuant to the goals and objectives of the strategic plan of the Office of the United States Trade Representative as required under section 306 of title 5, United States Code, the Trade Representative shall, every 4 years, develop a plan—

(A) to analyze internal quality controls and record management of the Office;

(B) to identify existing staff of the Office and new staff that will be necessary to support the trade negotiation and enforcement functions and powers of the Office (including those functions and powers of the Trade Policy Staff Committee) as described in section 141 and section 301;

(C) to identify existing staff of the Office and staff in other Federal agencies who will be required to be detailed or assigned to support interagency programs led by the Trade Representative, including any associated expenses;

(D) to provide an outline of budget justifications, including salaries and expenses as well as nonpersonnel ad-

ministrative expenses, for the fiscal years required under the strategic plan; and

(E) to provide an outline of budget justifications, including salaries and expenses as well as nonpersonnel administrative expenses, for interagency programs led by the Trade Representative for the fiscal years required under the strategic plan.

(2) REPORT.—

(A) IN GENERAL.—The Trade Representative shall submit to the appropriate congressional committees a report that contains the plan required under paragraph (1). Except as provided in subparagraph (B), the report required under this subparagraph shall be submitted in conjunction with the strategic plan of the Office as required under section 306 of title 5, United States Code.

(B) EXCEPTION.—The Trade Representative shall submit to the appropriate congressional committees an initial report that contains the plan required under paragraph (1) not later than June 1, 2016.

(C) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this paragraph, the term “appropriate congressional committees” means—

(i) the Committee on Finance and the Committee on Appropriations of the Senate; and

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

[19 U.S.C. 2213]

## CHAPTER 7—UNITED STATES INTERNATIONAL TRADE COMMISSION

### SEC. 171. CHANGE OF NAME OF TARIFF COMMISSION.

(a) The United States Tariff Commission (established by section 330 of the Tariff Act of 1930) is renamed as the United States International Trade Commission.

(b) Any reference in any law of the United States, or in any order, rule, regulation, or other document, to the United States Tariff Commission for the Tariff Commission) shall be considered to refer to the United States International Trade Commission.

[19 U.S.C. 2231]

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## CHAPTER 8—IDENTIFICATION OF MARKET BARRIERS AND CERTAIN UNFAIR TRADE ACTIONS

### SEC. 181. ESTIMATES OF BARRIERS TO MARKET ACCESS.

(a) NATIONAL TRADE ESTIMATES.—

(1) IN GENERAL.—For calendar year 1988, and for each succeeding calendar year, the United States Trade Representative, through the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962, and

with the assistance of the interagency advisory committee established under section 141(d)(2), shall—

(A) identify and analyze acts, policies, or practices of each foreign country which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons),

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services, and

(iii) United States electronic commerce,

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A), and

(C) make an estimate, if feasible, of—

(i) the value of additional goods and services of the United States,

(ii) the value of additional foreign direct investment by United States persons, and

(iii) the value of additional United States electronic commerce,

that would have been exported to, or invested in, or transacted with, each foreign country during such calendar year if each of such acts, policies, and practices of such country did not exist.

(2) CERTAIN FACTORS TAKEN INTO ACCOUNT IN MAKING ANALYSIS AND ESTIMATE.—In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party;

(D) any advice given through appropriate committees established pursuant to section 135; and

(E) the actual increase in—

(i) the value of goods and services of the United States exported to,

(ii) the value of foreign direct investment made in, and

(iii) the value of electronic commerce transacted with,

the foreign country during the calendar year for which the estimate under paragraph (1)(C) is made.

(3) INCLUSION OF CERTAIN DISCRIMINATORY LAWS, POLICIES, AND PRACTICES OF THE RUSSIAN FEDERATION.—For calendar year 2012 and each succeeding calendar year, the Trade Representative shall include in the analyses and estimates under

paragraph (1) an identification and analysis of any laws, policies, or practices of the Russian Federation that deny fair and equitable market access to United States digital trade.

(4) ANNUAL REVISIONS AND UPDATES.—The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) REPORT TO CONGRESS.—

(1) On or before April 30, 1989, and on or before March 31 of each succeeding calendar year, the Trade Representative shall submit a report on the analysis and estimates made under subsection (a) for the calendar year preceding such calendar year (which shall be known as the “National Trade Estimate”) to the President, the Committee on Finance of the Senate, and appropriate committees of the House of Representatives.

(2) REPORTS TO INCLUDE INFORMATION WITH RESPECT TO ACTION BEING TAKEN.—The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 301,

(B) negotiations or consultations with foreign governments, or

(C) a section on foreign anticompetitive practices, the toleration of which by foreign governments is adversely affecting exports of United States goods or services.

(3) CONSULTATION WITH CONGRESS ON TRADE POLICY PRIORITIES.—The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities. After the submission of the report required by paragraph (1), the Trade Representative shall also consult periodically with, and take into account the views of, the committees described in that paragraph regarding means to address the foreign trade barriers identified in the report, including the possible initiation of investigations under section 302 or other trade actions.

(c) ASSISTANCE OF OTHER AGENCIES.—

(1) FURNISHING OF INFORMATION.—The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section. In preparing the section of the report required by subsection (b)(2)(C), the Trade Representative shall consult in particular with the Attorney General.

(2) RESTRICTIONS ON RELEASE OR USE OF INFORMATION.—Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) PERSONNEL AND SERVICES.—The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

(d) ELECTRONIC COMMERCE.—For purposes of this section, the term “electronic commerce” has the meaning given that term in section 1104(3) of the Internet Tax Freedom Act.

【19 U.S.C. 2241】

**SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.**

(a) IN GENERAL.—By no later than the date that is 30 days after the date on which the annual report is submitted to Congressional committees under section 181(b), the United States Trade Representative (hereafter in this section referred to as the “Trade Representative”) shall identify—

(1) those foreign countries that—

(A) deny adequate and effective protection of intellectual property rights, or

(B) deny fair and equitable market access to United States persons that rely upon intellectual property protection, and

(2) those foreign countries identified under paragraph (1) that are determined by the Trade Representative to be priority foreign countries.

(b) SPECIAL RULES FOR IDENTIFICATIONS.—

(1) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall only identify those foreign countries—

(A) that have the most onerous or egregious acts, policies, or practices that—

(i) deny adequate and effective intellectual property rights, or

(ii) deny fair and equitable market access to United States persons that rely upon intellectual property protection,

(B) whose acts, policies, or practices described in subparagraph (A) have the greatest adverse impact (actual or potential) on the relevant United States products, and

(C) that are not—

(i) entering into good faith negotiations, or

(ii) making significant progress in bilateral or multilateral negotiations,

to provide adequate and effective protection of intellectual property rights.

(2) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

(A) consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, other appropriate officers of the Federal Government, and

(B) take into account 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) and petitions submitted under section 302.

(3) The Trade Representative may identify a foreign country under subsection (a)(1)(B) only if the Trade Representative finds that there is a factual basis for the denial of fair and equitable market access as a result of the violation of international law or agreement, or the existence of barriers, referred to in subsection (d)(3).

(4) In identifying foreign countries under paragraphs (1) and (2) of subsection (a), the Trade Representative shall take into account—

(A) the history of intellectual property laws and practices of the foreign country, including any previous identification under subsection (a)(2), and

(B) the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights.

(c) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS.—

(1) The Trade Representative may at any time—

(A) revoke the identification of any foreign country as a priority foreign country under this section, or

(B) identify any foreign country as a priority foreign country under this section, if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semi-annual report submitted to the Congress under section 309(3) a detailed explanation of the reasons for the revocation under paragraph (1) of the identification of any foreign country as a priority foreign country under this section.

(d) DEFINITIONS.—For purposes of this section—

(1) The term “persons that rely upon intellectual property protection” means persons involved in—

(A) the creation, production or licensing of works of authorship (within the meaning of sections 102 and 103 of title 17, United States Code) that are copyrighted, or

(B) the manufacture of products that are patented or for which there are process patents.

(2) A foreign country denies adequate and effective protection of intellectual property rights if the foreign country denies adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such foreign country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights, trade secrets, and mask works.

(3) A foreign country denies fair and equitable market access if the foreign country effectively denies access to a market for a product protected by a copyright or related right, patent, trademark, mask work, trade secret, or plant breeder’s right,

through the use of laws, procedures, practices, or regulations which—

(A) violate provisions of international law or international agreements to which both the United States and the foreign country are parties, or

(B) constitute discriminatory nontariff trade barriers.

(4) A foreign country may be determined to deny adequate and effective protection of intellectual property rights, notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act.

(e) PUBLICATION.—The Trade Representative shall publish in the Federal Register a list of foreign countries identified under subsection (a) and shall make such revisions to the list as may be required by reason of action under subsection (c).

(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<sup>3</sup>.

(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<sup>4</sup> 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).

<sup>3</sup>Section 506(a)(1) of Public Law 116–113 provides for an amendment to section 182(f)(1)(C) by striking “article 2106 of the North American Free Trade Agreement” and inserting “article 32.6 of the USMCA (as defined in section 3 of the United States-Mexico-Canada Agreement Implementation Act)”. Subsection (b) of section 506 of such Public Law provides “[t]he amendment made by subsection (a) shall take effect on the date on which the USMCA enters into force.”

<sup>4</sup>Section 506(a)(2) of Public Law 116–113 provides for an amendment to section 182(f)(2) by striking “article 2106 of the North American Free Trade Agreement” and inserting “article 32.6 of the USMCA”. Subsection (b) of section 506 of such Public Law provides “[t]he amendment made by subsection (a) shall take effect on the date on which the USMCA enters into force.”

(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.

(g) SPECIAL RULES FOR FOREIGN COUNTRIES ON THE PRIORITY WATCH LIST.—

(1) ACTION PLANS.—

(A) IN GENERAL.—Not later than 90 days after the date on which the Trade Representative submits the National Trade Estimate under section 181(b), the Trade Representative shall develop an action plan described in subparagraph (C) with respect to each foreign country described in subparagraph (B).

(B) FOREIGN COUNTRY DESCRIBED.—The Trade Representative shall develop an action plan under subparagraph (A) with respect to each foreign country that—

(i) the Trade Representative has identified for placement on the priority watch list; and

(ii) has remained on such list for at least one year.

(C) ACTION PLAN DESCRIBED.—An action plan developed under subparagraph (A) shall contain the benchmarks described in subparagraph (D) and be designed to assist the foreign country—

(i) to achieve—

(I) adequate and effective protection of intellectual property rights; and

(II) fair and equitable market access for United States persons that rely upon intellectual property protection; or

(ii) to make significant progress toward achieving the goals described in clause (i).

(D) BENCHMARKS DESCRIBED.—The benchmarks contained in an action plan developed pursuant to subparagraph (A) are such legislative, institutional, enforcement, or other actions as the Trade Representative determines to be necessary for the foreign country to achieve the goals described in clause (i) or (ii) of subparagraph (C).

(2) FAILURE TO MEET ACTION PLAN BENCHMARKS.—If, as of one year after the date on which an action plan is developed under paragraph (1)(A), the President, in consultation with the



Trade Representative, determines that the foreign country to which the action plan applies has not substantially complied with the benchmarks described in paragraph (1)(D), the President may take appropriate action with respect to the foreign country.

(3) PRIORITY WATCH LIST DEFINED.—In this subsection, the term “priority watch list” means the priority watch list established by the Trade Representative pursuant to subsection (a).

(h) ANNUAL REPORT.—Not later than 30 days after the date on which the Trade Representative submits the National Trade Estimate under section 181(b), the Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on actions taken under this section during the 12 months preceding such report, and the reasons for such actions, including—

(1) a list of any foreign countries identified under subsection (a);

(2) a description of progress made in achieving improved intellectual property protection and market access for persons relying on intellectual property rights; and

(3) a description of the action plans developed under subsection (g) and any actions taken by foreign countries under such plans.

[19 U.S.C. 2242]

## **TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION**

### **CHAPTER 1—POSITIVE ADJUSTMENT BY INDUSTRIES INJURED BY IMPORTS**

#### **SEC. 201. ACTION TO FACILITATE POSITIVE ADJUSTMENT TO IMPORT COMPETITION.**

(a) PRESIDENTIAL ACTION.—If the United States International Trade Commission (hereinafter referred to in this chapter as the “Commission”) determines under section 202(b) that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this chapter, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(b) POSITIVE ADJUSTMENT TO IMPORT COMPETITION.—

(1) For purposes of this chapter, a positive adjustment to import competition occurs when—

(A) the domestic industry—

(i) is able to compete successfully with imports after actions taken under section 204 terminate, or

(ii) the domestic industry experiences an orderly transfer of resources to other productive pursuits; and

(B) dislocated workers in the industry experience an orderly transition to productive pursuits.

(2) The domestic industry may be considered to have made a positive adjustment to import competition even though the industry is not of the same size and composition as the industry at the time the investigation was initiated under section 202(b).

【19 U.S.C. 2251】

**SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.**

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) A petition requesting action under this chapter for the purpose of facilitating positive adjustment to import competition may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

(2) A petition under paragraph (1)—

(A) shall include a statement describing the specific purposes for which action is being sought, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition; and

(B) may—

(i) subject to subsection (d)(1)(C)(i), request provisional relief under subsection (d)(1); or

(ii) request provisional relief under subsection (d)(2).

(3) Whenever a petition is filed under paragraph (1), the Commission shall promptly transmit copies of the petition to the Office of the United States Trade Representative and other Federal agencies directly concerned.

(4) A petitioner under paragraph (1) may submit to the Commission and the United States Trade Representative (hereafter in this chapter referred to as the “Trade Representative”), either with the petition, or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(5)(A) Before submitting an adjustment plan under paragraph (4), the petitioner and other entities referred to in paragraph (1) that wish to participate may consult with the Trade Representative and the officers and employees of any Federal agency that is considered appropriate by the Trade Representative, for purposes of evaluating the adequacy of the proposals being considered for inclusion in the plan in relation to specific actions that may be taken under this chapter.

(B) A request for any consultation under subparagraph (A) must be made to the Trade Representative. Upon receiving such a request, the Trade Representative shall confer with the petitioner and provide such assistance, including publication of appropriate notice in the Federal Register, as may be practicable in obtaining other participants in the consultation. No consultation may occur under subparagraph (A) unless the Trade Representative, or his delegate, is in attendance.

(6)(A) In the course of any investigation under subsection (b), the Commission shall seek information (on a confidential basis, to the extent appropriate) on actions being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(B) Regardless whether an adjustment plan is submitted under paragraph (4) by the petitioner, if the Commission makes an affirmative determination under subsection (b), any—

(i) firm in the domestic industry;  
(ii) certified or recognized union or group of workers in the domestic industry;  
(iii) State or local community;  
(iv) trade association representing the domestic industry; or  
(v) any other person or group of persons, may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

(7) Nothing in paragraphs (5) and (6) may be construed to provide immunity under the antitrust laws.

(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, part 1 of title III of the North American Free Trade Agreement Implementation Act, title II of the United States-Jordan Free Trade Area Implementation Act, title III of the United States-Chile Free Trade Agreement Implementation Act, title III of the United States-Singapore Free Trade Agreement Implementation Act, title III of the United States-Australia Free Trade Agreement Implementation Act, title III of the United States-Morocco Free Trade Agreement Implementation Act, title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, title III of the United States-Bahrain Free Trade Agreement Implementation Act, title III of the United States-Oman Free Trade Agreement Implementation Act, title III of the United States-Peru Trade Promotion Agreement Implementation Act, title III of the United States-Korea Free Trade Agreement Implementation Act, title III of the United States-Colombia Trade Promotion Agreement Implementation Act, title III of the United States-Panama Trade Promotion Agreement Implementation Act, and subtitle C of title III of the United States-Mexico-Canada Agreement Implementation Act<sup>5</sup>. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a

<sup>5</sup>References to Korea, Columbia, and Panama in the first sentence of section 202(a)(8) were carried out as amended by Public Laws 112-41 through 112-43. Section 107(a) of each of such Public Laws provides that “[e]xcept as provided in subsection (b), this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force”, which these amendments shown above are subject to such Agreement entering into force.

summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

(b) INVESTIGATIONS AND DETERMINATIONS BY COMMISSION.—

(1)(A) Upon the filing of a petition under subsection (a), the request of the President or the Trade Representative, the resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the Commission shall promptly make an investigation to determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

(B) For purposes of this section, the term “substantial cause” means a cause which is important and not less than any other cause.

(2)(A) Except as provided in subparagraph (B), the Commission shall make the determination under paragraph (1) within 120 days (180 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(B) If before the 100th day after a petition is filed under subsection (a)(1) the Commission determines that the investigation is extraordinarily complicated, the Commission shall make the determination under paragraph (1) within 150 days (210 days if the petition alleges that critical circumstances exist) after the date referred to in subparagraph (A).

(3) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted under subsection (a), to respond to the presentations of other parties and consumers, and otherwise to be heard.

(c) FACTORS APPLIED IN MAKING DETERMINATIONS.—

(1) In making determinations under subsection (b), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

(A) with respect to serious injury—

(i) the significant idling of productive facilities in the domestic industry,

(ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

(iii) significant unemployment or underemployment within the domestic industry;

(B) with respect to threat of serious injury—

(i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic

producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,

(ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,

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

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

(2) In making determinations under subsection (b), the Commission shall—

(A) consider the condition of the domestic industry over the course of the relevant business cycle, but may not aggregate the causes of declining demand associated with a recession or economic downturn in the United States economy into a single cause of serious injury or threat of injury; and

(B) examine factors other than imports which may be a cause of serious injury, or threat of serious injury, to the domestic industry.

The Commission shall include the results of its examination under subparagraph (B) in the report submitted by the Commission to the President under subsection (e).

(3) The presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) of paragraph (1) is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry.

(4) For purposes of subsection (b), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

(A) to the extent information is available, shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production;

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

(C) may, in the case of one or more domestic producers which produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United

States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

(5) In the course of any proceeding under this subsection, the Commission shall investigate any factor which in its judgment may be contributing to increased imports of the article under investigation. Whenever in the course of its investigation the Commission has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of subtitles A and B of title VII or section 337 of the Tariff Act of 1930, or other remedial provisions of law, the Commission shall promptly notify the appropriate agency so that such action may be taken as is otherwise authorized by such provisions of law.

(6) For purposes of this section:

(A)(i) The term “domestic industry” means, with respect to an article, the producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.

(ii) The term “domestic industry” includes producers located in the United States insular possessions.

(B) The term “significant idling of productive facilities” includes the closing of plants or the underutilization of production capacity.

(C) The term “serious injury” means a significant overall impairment in the position of a domestic industry.

(D) The term “threat of serious injury” means serious injury that is clearly imminent.

(d) PROVISIONAL RELIEF.—

(1)(A) An entity representing a domestic industry that produces a perishable agricultural product or citrus product that is like or directly competitive with an imported perishable agricultural product or citrus product may file a request with the Trade Representative for the monitoring of imports of that product under subparagraph (B). Within 21 days after receiving the request, the Trade Representative shall determine if—

(i) the imported product is a perishable agricultural product or citrus product; and

(ii) there is a reasonable indication that such product is being imported into the United States in such increased quantities as to be, or likely to be, a substantial cause of serious injury, or the threat thereof, to such domestic industry.

(B) If the determinations under subparagraph (A) (i) and (ii) are affirmative, the Trade Representative shall request, under section 332(g) of the Tariff Act of 1930, the Commission to monitor and investigate the imports concerned for a period not to exceed 2 years. The monitoring and investigation may include the collection and analysis of information that would expedite an investigation under subsection (b).

(C) If a petition filed under subsection (a)—

(i) alleges injury from imports of a perishable agricultural product or citrus product that has been, on the date the allegation is included in the petition, subject to monitoring by the Commission under subparagraph (B) for not less than 90 days; and

(ii) requests that provisional relief be provided under this subsection with respect to such imports; the Commission shall, not later than the 21st day after the day on which the request was filed, make a determination, on the basis of available information, whether increased imports (either actual or relative to domestic production) of the perishable agricultural product or citrus product are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a like or directly competitive perishable product or citrus product, and whether either—

(I) the serious injury is likely to be difficult to repair by reason of perishability of the like or directly competitive agricultural product; or

(II) the serious injury cannot be timely prevented through investigation under subsection (b) and action under section 203.

(D) At the request of the Commission, the Secretary of Agriculture shall promptly provide to the Commission any relevant information that the Department of Agriculture may have for purposes of making determinations and findings under this subsection.

(E) Whenever the Commission makes an affirmative preliminary determination under subparagraph (C), the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(F) The Commission shall immediately report to the President its determination under subparagraph (C) and, if the determination is affirmative, the finding under subparagraph (E).

(G) Within 7 days after receiving a report from the Commission under subparagraph (F) containing an affirmative determination, the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (E), shall proclaim such provisional relief that the President considers necessary to prevent or remedy the serious injury.

(2)(A) When a petition filed under subsection (a) alleges that critical circumstances exist and requests that provisional relief be provided under this subsection with respect to imports of the article identified in the petition, the Commission shall, not later than 60 days after the petition containing the request was filed, determine, on the basis of available information, whether—

(i) there is clear evidence that increased imports (either actual or relative to domestic production) of the arti-

cle are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and

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

(B) If the determinations under subparagraph (A)(i) and (ii) are affirmative, the Commission shall find the amount or extent of provisional relief that is necessary to prevent or remedy the serious injury. In carrying out this subparagraph, the Commission shall give preference to increasing or imposing a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(C) The Commission shall immediately report to the President its determinations under subparagraph (A)(i) and (ii) and, if the determinations are affirmative, the finding under subparagraph (B).

(D) Within 30 days after receiving a report from the Commission under subparagraph (C) containing an affirmative determination under subparagraph (A)(i) and (ii), the President, if he considers provisional relief to be warranted and after taking into account the finding of the Commission under subparagraph (B), shall proclaim, for a period not to exceed 200 days, such provisional relief that the President considers necessary to prevent or remedy the serious injury. Such relief shall take the form of an increase in, or the imposition of, a duty on imports, if such form of relief is feasible and would prevent or remedy the serious injury.

(3) If provisional relief is proclaimed under paragraph (1)(G) or (2)(D) in the form of an increase, or the imposition of, a duty, the President shall order the suspension of liquidation of all imported articles subject to the affirmative determination under paragraph (1)(C) or paragraph (2)(A), as the case may be, that are entered, or withdrawn from warehouse for consumption, on or after the date of the determination.

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

(i) if such relief was proclaimed under paragraph (1)(G) or (2)(D), the Commission makes a negative determination under subsection (b) regarding injury or the threat thereof by imports of such article;

(ii) action described in section 203(a)(3) (A) or (C) takes effect under section 203 with respect to such article;

(iii) a decision by the President not to take any action under section 203(a) with respect to such article becomes final; or

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

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



(C) If an increase in, or the imposition of, a duty that is proclaimed under section 203 on an imported article is different from a duty increase or imposition that was proclaimed for such an article under this section, then the entry of any such article for which liquidation was suspended under paragraph (3) shall be liquidated at whichever of such rates of duty is lower.

(D) If provisional relief in the form of an increase in, or the imposition of, a duty is proclaimed under this section with respect to an imported article and neither a duty increase nor a duty imposition is proclaimed under section 203 regarding such article, the entry of any such article for which liquidation was suspended under paragraph (3) may be liquidated at the rate of duty that applied before provisional relief was provided.

(5) For purposes of this subsection:

(A) The term "citrus product" means any processed oranges or grapefruit, or any orange or grapefruit juice, including concentrate.

(B) A perishable agricultural product is any agricultural article, including livestock, regarding which the Trade Representative considers action under this section to be appropriate after taking into account—

(i) whether the article has—

(I) a short shelf life,

(II) a short growing season, or

(III) a short marketing period,

(ii) whether the article is treated as a perishable product under any other Federal law or regulation; and

(iii) any other factor considered appropriate by the Trade Representative.

The presence or absence of any factor which the Trade Representative is required to take into account under clause (i), (ii), or (iii) is not necessarily dispositive of whether an article is a perishable agricultural product.

(C) The term "provisional relief" means—

(i) any increase in, or imposition of, any duty;

(ii) any modification or imposition of any quantitative restriction on the importation of an article into the United States; or

(iii) any combination of actions under clauses (i) and (ii).

(e) COMMISSION RECOMMENDATIONS.—

(1) If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall also recommend the action that would address the serious injury, or threat thereof, to the domestic industry and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

(2) The Commission is authorized to recommend under paragraph (1)—

(A) an increase in, or the imposition of, any duty on the imported article;

(B) a tariff-rate quota on the article;

- (C) a modification or imposition of any quantitative restriction on the importation of the article into the United States;
- (D) one or more appropriate adjustment measures, including the provision of trade adjustment assistance under chapter 2; or
- (E) any combination of the actions described in subparagraphs (A) through (D).
- (3) The Commission shall specify the type, amount, and duration of the action recommended by it under paragraph (1). The limitations set forth in section 203(e) are applicable to the action recommended by the Commission.
- (4) In addition to the recommendation made under paragraph (1), the Commission may also recommend that the President—
- (A) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat; or
- (B) implement any other action authorized under law that is likely to facilitate positive adjustment to import competition.
- (5) For purposes of making its recommendation under this subsection, the Commission shall—
- (A) after reasonable notice, hold a public hearing at which all interested parties shall be provided an opportunity to present testimony and evidence; and
- (B) take into account—
- (i) the form and amount of action described in paragraph (2) (A), (B), and (C) that would prevent or remedy the injury or threat thereof,
- (ii) the objectives and actions specified in the adjustment plan, if any, submitted under subsection (a)(4),
- (iii) any individual commitment that was submitted to the Commission under subsection (a)(6),
- (iv) any information available to the Commission concerning the conditions of competition in domestic and world markets, and likely developments affecting such conditions during the period for which action is being requested, and
- (v) whether international negotiations may be constructive to address the injury or threat thereof or to facilitate adjustment.
- (6) Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the recommendation required to be made under paragraph (1) or that may be made under paragraph (3). Members of the Commission who did not agree to the affirmative determination may submit, in the report required under subsection (f), separate views regarding what action, if any, should be taken under section 203.
- (f) REPORT BY COMMISSION.—
- (1) The Commission shall submit to the President a report on each investigation undertaken under subsection (b). The re-

port shall be submitted at the earliest practicable time, but not later than 180 days (240 days if the petition alleges that critical circumstances exist) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) and an explanation of the basis for the determination.

(B) If the determination under subsection (b) is affirmative, the recommendations for action made under subsection (e) and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) The findings required to be included in the report under subsection (c)(2).

(E) A copy of the adjustment plan, if any, submitted under section 201(b)(4).

(F) Commitments submitted, and information obtained, by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition.

(G) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (e) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers, and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (with the exception of the confidential information obtained under section 202(a)(6)(B) and any other information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

(g) EXPEDITED CONSIDERATION OF ADJUSTMENT ASSISTANCE PETITIONS.—If the Commission makes an affirmative determination under subsection (b)(1), the Commission shall promptly notify the Secretary of Labor and the Secretary of Commerce of the determination. After receiving such notification—

(1) the Secretary of Labor shall give expedited consideration to petitions by workers in the domestic industry for certification for eligibility to apply for adjustment assistance under chapter 2; and

(2) the Secretary of Commerce shall give expedited consideration to petitions by firms in the domestic industry for cer-

tification of eligibility to apply for adjustment assistance under chapter 3.

(h) LIMITATIONS ON INVESTIGATIONS.—

(1) Except for good cause determined by the Commission to exist, no investigation for the purposes of this section shall be made with respect to the same subject matter as a previous investigation under this chapter, unless 1 year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) No new investigation shall be conducted with respect to an article that is or has been the subject of an action under section 203(a)(3)(A), (B), (C), or (E) if the last day on which the President could take action under section 203 in the new investigation is a date earlier than that permitted under section 203(e)(7).

(3)(A) Not later than the date on which the Textiles Agreement enters into force with respect to the United States, the Secretary of Commerce shall publish in the Federal Register a list of all articles that are subject to the Textiles Agreement. An investigation may be conducted under this section concerning imports of any article that is subject to the Textiles Agreement only if the United States has integrated that article into GATT 1994 pursuant to the Textiles Agreement, as set forth in notices published in the Federal Register by the Secretary of Commerce, including the notice published under section 331 of the Uruguay Round Agreements Act.

(B) For purposes of this paragraph:

(i) The term “Textiles Agreement” means the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act.

(ii) The term “GATT 1994” has the meaning given that term in section 2(1)(B) of the Uruguay Round Agreements Act.

(i) LIMITED DISCLOSURE OF CONFIDENTIAL BUSINESS INFORMATION UNDER PROTECTIVE ORDER.—The Commission shall promulgate regulations to provide access to confidential business information under protective order to authorized representatives of interested parties who are parties to an investigation under this section.

[19 U.S.C. 2252]

**SEC. 203. ACTION BY PRESIDENT AFTER DETERMINATION OF IMPORT INJURY.**

(a) IN GENERAL.—

(1)(A) After receiving a report under section 202(f) containing an affirmative finding regarding serious injury, or the threat thereof, to a domestic industry, the President shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.

(B) The action taken by the President under subparagraph (A) shall be to such extent, and for such duration, subject to subsection (e)(1), that the President determines to be appropriate and feasible under such subparagraph.

(C) The interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 shall, with respect to each affirmative determination reported under section 202(f), make a recommendation to the President as to what action the President should take under subparagraph (A).

(2) In determining what action to take under paragraph (1), the President shall take into account—

(A) the recommendation and report of the Commission;

(B) the extent to which workers and firms in the domestic industry are—

(i) benefitting from adjustment assistance and other manpower programs, and

(ii) engaged in worker retraining efforts;

(C) the efforts being made, or to be implemented, by the domestic industry (including the efforts included in any adjustment plan or commitment submitted to the Commission under section 202(a)) to make a positive adjustment to import competition;

(D) the probable effectiveness of the actions authorized under paragraph (3) to facilitate positive adjustment to import competition;

(E) the short- and long-term economic and social costs of the actions authorized under paragraph (3) relative to their short- and long-term economic and social benefits and other considerations relative to the position of the domestic industry in the United States economy;

(F) other factors related to the national economic interest of the United States, including, but not limited to—

(i) the economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were not provided under this chapter,

(ii) the effect of the implementation of actions under this section on consumers and on competition in domestic markets for articles, and

(iii) the impact on United States industries and firms as a result of international obligations regarding compensation;

(G) the extent to which there is diversion of foreign exports to the United States market by reason of foreign restraints;

(H) the potential for circumvention of any action taken under this section;

(I) the national security interests of the United States; and

(J) the factors required to be considered by the Commission under section 202(e)(5).

(3) The President may, for purposes of taking action under paragraph (1)—

(A) proclaim an increase in, or the imposition of, any duty on the imported article;

(B) proclaim a tariff-rate quota on the article;

(C) proclaim a modification or imposition of any quantitative restriction on the importation of the article into the United States;

(D) implement one or more appropriate adjustment measures, including the provision of trade adjustment assistance under chapter 2;

(E) negotiate, conclude, and carry out agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;

(F) proclaim procedures necessary to allocate among importers by the auction of import licenses quantities of the article that are permitted to be imported into the United States;

(G) initiate international negotiations to address the underlying cause of the increase in imports of the article or otherwise to alleviate the injury or threat thereof;

(H) submit to Congress legislative proposals to facilitate the efforts of the domestic industry to make a positive adjustment to import competition;

(I) take any other action which may be taken by the President under the authority of law and which the President considers appropriate and feasible for purposes of paragraph (1); and

(J) take any combination of actions listed in subparagraphs (A) through (I).

(4)(A) Subject to subparagraph (B), the President shall take action under paragraph (1) within 60 days (50 days if the President has proclaimed provisional relief under section 202(d)(2)(D) with respect to the article concerned) after receiving a report from the Commission containing an affirmative determination under section 202(b)(1) (or a determination under such section which he considers to be an affirmative determination by reason of section 330(d) of the Tariff Act of 1930).

(B) If a supplemental report is requested under paragraph (5), the President shall take action under paragraph (1) within 30 days after the supplemental report is received, except that, in a case in which the President has proclaimed provisional relief under section 202(d)(2)(D) with respect to the article concerned, action by the President under paragraph (1) may not be taken later than the 200th day after the provisional relief was proclaimed.

(5) The President may, within 15 days after the date on which he receives a report from the Commission containing an affirmative determination under section 202(b)(1), request additional information from the Commission. The Commission shall, as soon as practicable but in no event more than 30 days after the date on which it receives the President's request, furnish additional information with respect to the industry in a supplemental report.

(b) REPORTS TO CONGRESS.—

(1) On the day the President takes action under subsection (a)(1), the President shall transmit to Congress a document describing the action and the reasons for taking the action. If the action taken by the President differs from the action required to be recommended by the Commission under section 202(e)(1), the President shall state in detail the reasons for the difference.

(2) On the day on which the President decides that there is no appropriate and feasible action to take under subsection (a)(1) with respect to a domestic industry, the President shall transmit to Congress a document that sets forth in detail the reasons for the decision.

(3) On the day on which the President takes any action under subsection (a)(1) that is not reported under paragraph (1), the President shall transmit to Congress a document setting forth the action being taken and the reasons therefor.

(c) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—If the President reports under subsection (b)(1) or (2) that—

(1) the action taken under subsection (a)(1) differs from the action recommended by the Commission under section 202(e)(1); or

(2) no action will be taken under subsection (a)(1) with respect to the domestic industry;

the action recommended by the Commission shall take effect (as provided in subsection (d)(2)) upon the enactment of a joint resolution described in section 152(a)(1)(A) within the 90-day period beginning on the date on which the document referred to in subsection (b)(1) or (2) is transmitted to the Congress.

(d) TIME FOR TAKING EFFECT OF CERTAIN RELIEF.—

(1) Except as provided in paragraph (2), any action described in subsection (a)(3)(A), (B), or (C), that is taken under subsection (a)(1) shall take effect within 15 days after the day on which the President proclaims the action, unless the President announces, on the date he decides to take such action, his intention to negotiate one or more agreements described in subsection (a)(3)(E) in which case the action under subsection (a)(3)(A), (B), or (C) shall be proclaimed and take effect within 90 days after the date of such decision.

(2) If the contingency set forth in subsection (c) occurs, the President shall, within 30 days after the date of the enactment of the joint resolution referred to in such subsection, proclaim the action recommended by the Commission under section 202(e)(1).

(e) LIMITATIONS ON ACTIONS.—

(1)(A) Subject to subparagraph (B), the duration of the period in which an action taken under this section may be in effect shall not exceed 4 years. Such period shall include the period, if any, in which provisional relief under section 202(d) was in effect.

(B)(i) Subject to clause (ii), the President, after receiving an affirmative determination from the Commission under section 204(c) (or, if the Commission is equally divided in its determination, a determination which the President considers to be an affirmative determination of the Commission), may extend the effective period of any action under this section if the President determines that—

(I) the action continues to be necessary to prevent or remedy the serious injury; and

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

(ii) The effective period of any action under this section, including any extensions thereof, may not, in the aggregate, exceed 8 years.

(2) Action of a type described in subsection (a)(3)(A), (B), or (C) may be taken under subsection (a)(1), under section 202(d)(1)(G), or under section 202(d)(2)(D) only to the extent the cumulative impact of such action does not exceed the amount necessary to prevent or remedy the serious injury.

(3) No action may be taken under this section which would increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is taken.

(4) 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 average quantity or value of such article entered into the United States in the most recent 3 years that are representative of imports of such article and for which data are available, unless the President finds that the importation of a different quantity or value is clearly justified in order to prevent or remedy the serious injury.

(5) An action described in subsection (a)(3)(A), (B), or (C) that has an effective period of more than 1 year shall be phased down at regular intervals during the period in which the action is in effect.

(6)(A) The suspension, pursuant to any action taken under this section, of—

(i) subheading 9802.00.60 or 9802.00.80 of the Harmonized Tariff Schedule of the United States with respect to an article; and

(ii) the designation of any article as an eligible article for purposes of title V;  
shall be treated as an increase in duty.

(B) No proclamation providing for a suspension referred to in subparagraph (A) with respect to any article may be made by the President, nor may any such suspension be recommended by the Commission under section 202(e), unless the Commission, in addition to making an affirmative determination under section 202(b)(1), determines in the course of its investigation under section 202(b) that the serious injury, or threat thereof, substantially caused by imports to the domestic industry producing a like or directly competitive article results from, as the case may be—

(i) the application of subheading 9802.00.60 or subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States; or

(ii) the designation of the article as an eligible article for the purposes of title V.

(7)(A) If an article was the subject of an action under subparagraph (A), (B), (C), or (E) of subsection (a)(3), no new action may be taken under any of those subparagraphs with respect to such article for—



- (i) a period beginning on the date on which the previous action terminates that is equal to the period in which the previous action was in effect, or
  - (ii) a period of 2 years beginning on the date on which the previous action terminates,
- whichever is greater.

(B) Notwithstanding subparagraph (A), if the previous action under subparagraph (A), (B), (C), or (E) of subsection (a)(3) with respect to an article was in effect for a period of 180 days or less, the President may take a new action under any of those subparagraphs with respect to such article if—

- (i) at least 1 year has elapsed since the previous action went into effect; and
- (ii) an action described in any of those subparagraphs has not been taken with respect to such article more than twice in the 5-year period immediately preceding the date on which the new action with respect to such article first becomes effective.

(f) CERTAIN AGREEMENTS.—

(1) If the President takes action under this section other than the implementation of agreements of the type described in subsection (a)(3)(E), the President may, after such action takes effect, negotiate agreements of the type described in subsection (a)(3)(E), and may, after such agreements take effect, suspend or terminate, in whole or in part, any action previously taken.

(2) If an agreement implemented under subsection (a)(3)(E) is not effective, the President may, consistent with the limitations contained in subsection (e), take additional action under subsection (a).

(g) REGULATIONS.—

(1) The President shall by regulation provide for the efficient and fair administration of all actions taken for the purpose of providing import relief under this chapter.

(2) In order to carry out an international agreement concluded under this chapter, the President may prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement. In addition, in order to carry out any agreement of the type described in subsection (a)(3)(E) that is concluded under this chapter with one or more countries accounting for a major part of United States imports of the article covered by such agreement, including imports into a major geographic area of the United States, the President may issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreement.

(3) Regulations prescribed under this subsection shall, to the extent practicable and consistent with efficient and fair administration, insure against inequitable sharing of imports by a relatively small number of the larger importers.

[19 U.S.C. 2253]

#### SEC. 204. MONITORING, MODIFICATION, AND TERMINATION OF ACTION.

(a) MONITORING.—

(1) So long as any action taken under section 203 remains in effect, the Commission shall monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the domestic industry to make a positive adjustment to import competition.

(2) If the initial period during which the action taken under section 203 is in effect exceeds 3 years, or if an extension of such action exceeds 3 years, the Commission shall submit a report on the results of the monitoring under paragraph (1) to the President and to the Congress not later than the date that is the mid-point of the initial period, and of each such extension, during which the action is in effect.

(3) In the course of preparing each report under paragraph (2), the Commission shall hold a hearing at which interested persons shall be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(4) Upon request of the President, the Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 203 which is under consideration.

(b) REDUCTION, MODIFICATION, AND TERMINATION OF ACTION.—

(1) Action taken under section 203 may be reduced, modified, or terminated by the President (but not before the President receives the report required under subsection (a)(2)(A)) if the President—

(A) after taking into account any report or advice submitted by the Commission under subsection (a) and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, determines, on the basis that either—

(i) the domestic industry has not made adequate efforts to make a positive adjustment to import competition, or

(ii) the effectiveness of the action taken under section 203 has been impaired by changed economic circumstances,

that changed circumstances warrant such reduction, or termination; or

(B) determines, after a majority of the representatives of the domestic industry submits to the President a petition requesting such reduction, modification, or termination on such basis, that the domestic industry has made a positive adjustment to import competition.

(2) Notwithstanding paragraph (1), the President is authorized to take such additional action under section 203 as may be necessary to eliminate any circumvention of any action previously taken under such section.

(3) Notwithstanding paragraph (1), the President may, after receipt of a Commission determination under section 129(a)(4) of the Uruguay Round Agreements Act and consulting with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, reduce, modify, or terminate action taken under section 203.

(c) EXTENSION OF ACTION.—

(1) Upon request of the President, or upon petition on behalf of the industry concerned filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 203 is to terminate, the Commission shall investigate to determine whether action under section 203 continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

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

(3) The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under section 203 is to terminate, unless the President specifies a different date.

(d) EVALUATION OF EFFECTIVENESS OF ACTION.—

(1) After any action taken under section 203 has terminated, the Commission shall evaluate the effectiveness of the actions in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b).

(2) During the course of the evaluation conducted under paragraph (1), the Commission shall, after reasonable public notice, hold a hearing on the effectiveness of the action. All interested persons shall have the opportunity to attend such hearing and to present evidence or testimony at such hearing.

(3) A report on the evaluation made under paragraph (1) and the hearings held under paragraph (2) shall be submitted by the Commission to the President and to the Congress by no later than the 180th day after the day on which the actions taken under section 203 terminated.

(e) OTHER PROVISIONS.—

(1) Action by the President under this chapter may be taken without regard to the provisions of section 126(a) of this Act but only after consideration of the relation of such actions to the international obligations of the United States.

(2) If the Commission treats as the domestic industry production located in a major geographic area of the United States under section 202(c)(4)(C), then the President shall take into account the geographic concentration of domestic production and of imports in that area in taking any action authorized under paragraph (1).

[19 U.S.C. 2254]

**SEC. 205. TRADE MONITORING.**

(a) MONITORING TOOL FOR IMPORTS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, the Commission shall make available on a website of the Commission an import monitoring tool to allow the public access to data on the volume and value of goods imported to the United States for the purpose of assessing whether such data has changed with respect to such goods over a period of time.

(2) DATA DESCRIBED.—For purposes of the monitoring tool under paragraph (1), the Commission shall use data compiled by the Department of Commerce and such other government data as the Commission considers appropriate.

(3) PERIODS OF TIME.—The Commission shall ensure that data accessed through the monitoring tool under paragraph (1) includes data for the most recent quarter for which such data are available and previous quarters as the Commission considers practicable.

(b) MONITORING REPORTS.—

(1) IN GENERAL.—Not later than 270 days after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, and not less frequently than quarterly thereafter, the Secretary of Commerce shall publish on a website of the Department of Commerce, and notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of the availability of, a monitoring report on changes in the volume and value of trade with respect to imports and exports of goods categorized based on the 6-digit subheading number of the goods under the Harmonized Tariff Schedule of the United States during the most recent quarter for which such data are available and previous quarters as the Secretary considers practicable.

(2) REQUESTS FOR COMMENT.—Not later than one year after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, the Secretary of Commerce shall solicit through the Federal Register public comment on the monitoring reports described in paragraph (1).

(c) SUNSET.—The requirements under this section terminate on the date that is seven years after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015.

[19 U.S.C. 2255]

## CHAPTER 2—ADJUSTMENT ASSISTANCE FOR WORKERS

### Subchapter A—Petitions and Determinations

#### SEC. 221. PETITIONS.

(a)(1) A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this chapter may be filed simultaneously with the Secretary and with the Governor of the State in which such workers' firm or subdivision is located by any of the following:

(A) The group of workers (including workers in an agricultural firm or subdivision of any agricultural firm).

(B) The certified or recognized union or other duly authorized representative of such workers.

(C) Employers of such workers, one-stop operators or one-stop partners (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act, on behalf of such workers.

(2) Upon receipt of a petition filed under paragraph (1), the Governor shall—

(A) ensure that rapid response assistance and appropriate core and intensive services (as described in section 134 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

(3) Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

[19 U.S.C. 2271]

#### **SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.**

(a) **IN GENERAL.**—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

(1) a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm or subdivision have decreased absolutely;

(ii) imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

(iii) the increase in imports described in 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)(i) there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

(ii)(I) the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

(II) the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

(III) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

(b) ADVERSELY AFFECTED SECONDARY WORKERS.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for trade adjustment assistance benefits under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

(1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility under subsection (a), and such supply or production is related to the article that was the basis for such certification (as defined in subsection (c) (3) and (4)); and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (1).

(c) For purposes of this section—

(1) The term “contributed importantly” means a cause which is important but not necessarily more important than any other cause.

(2)(A) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(B) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

(3) DOWNSTREAM PRODUCER.—The term “downstream producer” means a firm that performs additional, value-added production processes for a firm or subdivision, including a firm that performs final assembly or finishing, directly for another firm (or subdivision), for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm, if the certification of eligi-

bility under subsection (a) is based on an increase in imports from, or a shift in production to, Canada or Mexico.

(4) SUPPLIER.—The term “supplier” means a firm that produces and supplies directly to another firm (or subdivision) component parts for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm.

【19 U.S.C. 2272】

**SEC. 223. DETERMINATIONS BY SECRETARY OF LABOR.**

(a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 40 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this subchapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

【19 U.S.C. 2273】

**SEC. 224. STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION.**

(a) Whenever the International Trade Commission (hereafter referred to in this chapter as the “Commission”) begins an investigation under section 202 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 202(f). Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

[19 U.S.C. 2274]

#### **SEC. 225. BENEFIT INFORMATION TO WORKERS.**

(a) The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A of this chapter—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A in newspapers of general circulation in the areas in which such workers reside.

[19 U.S.C. 2275]

### **Subchapter B—Program Benefits**

#### **PART I—TRADE READJUSTMENT ALLOWANCES**

##### **SEC. 231. QUALIFYING REQUIREMENTS FOR WORKERS.**

(a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins more than 60 days after the



date on which the petition that resulted in such certification was filed under section 221, if the following conditions are met:

(1) Such worker's total or partial separation before his application under this chapter occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of employment at wages of \$30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(A) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training.

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States,

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision, or

(D) is on call-up for purposes of active duty in a reserve status in the Armed Forces of the United States, provided such active duty is "Federal service" as defined in 5 U.S.C. 8521(a)(1),

shall be treated as a week of employment at wages of \$30 or more, but not more than 7 weeks, in case of weeks described in subparagraph (A) or (C), or both (and not more than 26 weeks, in the case of weeks described in subparagraph (B) or (D)), may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) was entitled to (or would be entitled to if he applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance, except additional compensation that is funded by a State and is not reimbursed from any Federal funds, to which he was entitled (or would be entitled if he applied therefor); and

(C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker—

(A)(i) is enrolled in a training program approved by the Secretary under section 236(a), and

(ii) the enrollment required under clause (i) occurs no later than the latest of—

(I) the last day of the 16th week after the worker's most recent total separation from adversely affected employment which meets the requirements of paragraphs (1) and (2),

(II) the last day of the 8th week after the week in which the Secretary issues a certification covering the worker,

(III) 45 days after the later of the dates specified in subclause (I) or (II), if the Secretary determines there are extenuating circumstances that justify an extension in the enrollment period, or

(IV) the last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver issued pursuant to subsection (c),

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

(C) has received a written statement under subsection (c)(1) after the date described in subparagraph (B).

(b)(1) If—

(A) the Secretary determines that—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

(II) has ceased to participate in such training program before completing such training program, and

(ii) there is no justifiable cause for such failure or cessation, or

(B) the certification made with respect to such worker under subsection (c)(1) is revoked under subsection (c)(2),

no trade readjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).

(2) The provisions of subsection (a)(5) and paragraph (1) shall not apply with respect to any week of unemployment which begins—

(A) after the date that is 60 days after the date on which the petition that results in the certification that covers the worker is filed under section 221, and

(B) before the first week following the week in which such certification is made under subchapter (A).

(c) WAIVERS OF TRAINING REQUIREMENTS.—

(1)<sup>6</sup> ISSUANCE OF WAIVERS.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) if the Secretary determines that it is not feasible or appropriate for the worker, because of 1 or more of the following reasons:

(A) RECALL.—The worker has been notified that the worker will be recalled by the firm from which the separation occurred.

(B) MARKETABLE SKILLS.—The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U.S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(C) RETIREMENT.—The worker is within 2 years of meeting all requirements for entitlement to either—

(i) old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) (except for application therefor); or

(ii) a private pension sponsored by an employer or labor organization.

(D) HEALTH.—The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(E) ENROLLMENT UNAVAILABLE.—The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

(F) TRAINING NOT AVAILABLE.—Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302), and employers), no training that is suitable for the worker

<sup>6</sup>Paragraph (1) of section 406(a) of Public Law 114–27 provides that section 233(c)(1) of the Trade Act of 1974 “shall be applied and administered as if subparagraphs (A), (B), and (C) of that paragraph were not in effect”.

is available at a reasonable cost, or no training funds are available.

(2) DURATION OF WAIVERS.—

(A) IN GENERAL.—A waiver issued under paragraph (1) shall be effective for not more than 6 months after the date on which the waiver is issued, unless the Secretary determines otherwise.

(B) REVOCATION.—The Secretary shall revoke a waiver issued under paragraph (1) if the Secretary determines that the basis of a waiver is no longer applicable to the worker and shall notify the worker in writing of the revocation.

(3) AGREEMENTS UNDER SECTION 239.—

(A) ISSUANCE BY COOPERATING STATES.—Pursuant to an agreement under section 239, the Secretary may authorize a cooperating State to issue waivers as described in paragraph (1).

(B) SUBMISSION OF STATEMENTS.—An agreement under section 239 shall include a requirement that the cooperating State submit to the Secretary the written statements provided under paragraph (1) and a statement of the reasons for the waiver.

[19 U.S.C. 2291]

**SEC. 232. WEEKLY AMOUNTS.**

(a) Subject to subsections (b) and (c), the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c); and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary, shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) If a training allowance under any Federal law other than this Act, is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification under section 231(b)) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks

of trade readjustment allowance otherwise payable to him under section 233(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

[19 U.S.C. 2292]

**SEC. 233. LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.**

(a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2)<sup>7</sup> A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period (or, in the case of an adversely affected worker who requires a program of remedial education (as described in section 236(a)(5)(D)) in order to complete training approved for the worker under section 236, the 130-week period) that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) within the period which is described in section 231(a)(1), and

(B) with respect to which the worker meets the requirements of section 231(a)(2).

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 52 additional weeks in the 52-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A).

<sup>7</sup> Paragraph (2)(A) of section 406(a) of Public Law 114-27 provides as follows:

(2) section 233 of that Act shall be applied and administered—

(A) in subsection (a)—

(i) in paragraph (2), by substituting "104-week period" for "104-week period" and all that follows through "130-week period"; and

(ii) in paragraph (3)—

(I) in the matter preceding subparagraph (A), by substituting "65" for "52"; and

(II) by substituting "78-week period" for "52-week period" each place it appears;

and

Payments for such additional weeks may be made only for weeks in such 52-week period during which the individual is participating in such training.

(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).

(c) Amounts payable to an adversely affected worker under this part shall be subject to such adjustment on a week-to-week basis as may be required by section 232(b).

(d) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms "benefit year" and "extended benefit period" shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(e) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.

(f) For purposes of this chapter, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 30 days if—

- (1) the worker was participating in a training program approved under section 236(a) before the beginning of such break in training, and
- (2) the break is provided under such training program.

(g)<sup>8</sup> Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 236 which includes a program of remedial education (as described in section 236(a)(5)(D)), and in accordance with regulations prescribed by the Secretary,

<sup>8</sup> Paragraph (2)(B) of section 406(a) of Public Law 114-27 provides:

(B) by applying and administering subsection (g) as if it read as follows:

(g) PAYMENT OF TRADE READJUSTMENT ALLOWANCES TO COMPLETE TRAINING Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 236 that leads to the completion of a degree or industry-recognized credential, payments may be made as trade readjustment allowances for not more than 13 weeks within such period of eligibility as the Secretary may prescribe to account for a break in training or for justifiable cause that follows the last week for which the worker is otherwise entitled to a trade readjustment allowance under this chapter if—

- (1) payment of the trade readjustment allowance for not more than 13 weeks is necessary for the worker to complete the training;
- (2) the worker participates in training in each such week; and
- (3) the worker—
  - (A) has substantially met the performance benchmarks established as part of the training approved for the worker;
  - (B) is expected to continue to make progress toward the completion of the training; and
  - (C) will complete the training during that period of eligibility.

payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter.

【19 U.S.C. 2293】

**SEC. 234. APPLICATION OF STATE LAWS.**

Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated, shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

【19 U.S.C. 2294】

PART II—TRAINING, OTHER EMPLOYMENT SERVICES, AND  
ALLOWANCES

**SEC. 235. EMPLOYMENT SERVICES.**

The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law, including the services provided through one-stop delivery systems described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)). The Secretary shall, whenever appropriate, procure such services through agreements with the State.

【19 U.S.C. 2295】

**SEC. 236. TRAINING.**

(a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area career and technical education schools, as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006, and employers),

(E) the worker is qualified to undertake and complete such training, and

(F) such training is suitable for the worker and available at a reasonable cost, the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on his behalf by the Secretary directly or through a voucher system. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2)(A) The total amount of payments that may be made under paragraph (1) for any fiscal year shall not exceed \$220,000,000.

(B) If, during any fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the amount of the limitation imposed under subparagraph (A), the Secretary shall decide how the portion of such limitation that has not been expended at the time of such estimate is to be apportioned among the States for the remainder of such fiscal year.

(3) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

(4)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(5) The training programs that may be approved under paragraph (1) include, but are not limited to—

(A) employer-based training, including—

(i) on-the-job training, and

(ii) customized training,

(B) any training program provided by a State pursuant to title I of the Workforce Investment Act of 1998,

(C) any training program approved by a private industry council established under section 102 of such Act,

(D) any program of remedial education,

(E) any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—



- (i) under any Federal or State program other than this chapter, or
- (ii) from any source other than this section, and
- (F) any other training program approved by the Secretary.
- (6)(A) The Secretary is not required under paragraph (1) to pay the costs of any training approved under paragraph (1) to the extent that such costs are paid—
- (i) under any Federal or State program other than this chapter, or
- (ii) from any source other than this section.
- (B) Before approving any training to which subparagraph (A) may apply, the Secretary may require that the adversely affected worker enter into an agreement with the Secretary under which the Secretary will not be required to pay under this section the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in clause (i) or (ii) of subparagraph (A).
- (7) The Secretary shall not approve a training program if—
- (A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,
- (B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and
- (C) such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.
- (8) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subchapter A at any time after the date on which the group is certified under subchapter A, without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled.
- (9) The Secretary shall prescribe regulations which set forth the criteria under each of the subparagraphs of paragraph (1) that will be used as the basis for making determinations under paragraph (1).
- (b) The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—
- (1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or
- (2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations, and
- (c) The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) in equal monthly installments, but the Secretary may pay

such costs, notwithstanding any other provision of this section, only if—

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

(2) such training does not impair existing contracts for services or collective bargaining agreements,

(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

(5) the employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

(8) the employer is provided reimbursement of not more than 50 percent of the wage rate of the participant, for the cost of providing the training and additional supervision related to the training,

(9) the employer has not received payment under subsection (a)(1) with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).

(d) A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under subsection (a), because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under paragraph (1) and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

(e) For purposes of this section the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employ-

ment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

(f) For purposes of this section, the term "customized training" means training that is—

(1) designed to meet the special requirements of an employer or group of employers;

(2) conducted with a commitment by the employer or group of employers to employ an individual upon successful completion of the training; and

(3) for which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training, as determined by the Secretary.

[19 U.S.C. 2296]

**SEC. 237. JOB SEARCH ALLOWANCES.**

(a) **JOB SEARCH ALLOWANCE AUTHORIZED.**—

(1) **IN GENERAL.**—An adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application with the Secretary for payment of a job search allowance.

(2) **APPROVAL OF APPLICATIONS.**—The Secretary may grant an allowance pursuant to an application filed under paragraph (1) when all of the following apply:

(A) **ASSIST ADVERSELY AFFECTED WORKER.**—The allowance is paid to assist an adversely affected worker who has been totally separated in securing a job within the United States.

(B) **LOCAL EMPLOYMENT NOT AVAILABLE.**—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) **APPLICATION.**—The worker has filed an application for the allowance with the Secretary before—

(i) the later of—

(I) the 365th day after the date of the certification under which the worker is certified as eligible; or

(II) the 365th day after the date of the worker's last total separation; or

(ii) the date that is the 182d day after the date on which the worker concluded training, unless the worker received a waiver under section 231(c).

(b) **AMOUNT OF ALLOWANCE.**—

(1) **IN GENERAL.**—An allowance granted under subsection (a) shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by the Secretary in regulations.

(2) **MAXIMUM ALLOWANCE.**—Reimbursement under this subsection may not exceed \$1,250 for any worker.

(3) **ALLOWANCE FOR SUBSISTENCE AND TRANSPORTATION.**—Reimbursement under this subsection may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b) (1) and (2).

(c) EXCEPTION.—Notwithstanding subsection (b), the Secretary shall reimburse any adversely affected worker for necessary expenses incurred by the worker in participating in a job search program approved by the Secretary.

[19 U.S.C. 2297]

**SEC. 238. RELOCATION ALLOWANCES.**

(a) RELOCATION ALLOWANCE AUTHORIZED.—

(1) IN GENERAL.—Any adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this section.

(2) CONDITIONS FOR GRANTING ALLOWANCE.—A relocation allowance may be granted if all of the following terms and conditions are met:

(A) ASSIST AN ADVERSELY AFFECTED WORKER.—The relocation allowance will assist an adversely affected worker in relocating within the United States.

(B) LOCAL EMPLOYMENT NOT AVAILABLE.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) TOTAL SEPARATION.—The worker is totally separated from employment at the time relocation commences.

(D) SUITABLE EMPLOYMENT OBTAINED.—The worker—

(i) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wishes to relocate; or

(ii) has obtained a bona fide offer of such employment.

(E) APPLICATION.—The worker filed an application with the Secretary before—

(i) the later of—

(I) the 425th day after the date of the certification under subchapter A of this chapter; or

(II) the 425th day after the date of the worker's last total separation; or

(ii) the date that is the 182d day after the date on which the worker concluded training, unless the worker received a waiver under section 231(c).

(b) AMOUNT OF ALLOWANCE.—The relocation allowance granted to a worker under subsection (a) includes—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b) (1) and (2) specified in regulations prescribed by the Secretary) incurred in transporting the worker, the worker's family, and household effects; and

(2) a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of \$1,250.

(c) LIMITATIONS.—A relocation allowance may not be granted to a worker unless—

- (1) the relocation occurs within 182 days after the filing of the application for relocation assistance; or
- (2) the relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under section 236(b) (1) and (2).

[19 U.S.C. 2298]

## Subchapter C—General Provisions

### SEC. 239. AGREEMENTS WITH STATES.

(a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as “cooperating States” and “cooperating States agencies” respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, but in accordance with subsection (f), will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, (3) will make any certifications required under section 231(c)(2), and (4) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of this Act and under title I of the Workforce Investment Act of 1998 upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this chapter.

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

- (1) advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits,

- (2) facilitate the early filing of petitions under section 221 for any workers that the agency considers are likely to be eligible for benefits under this chapter,

(3) advise each adversely affected worker to apply for training under section 236(a) before, or at the same time, the worker applies for trade readjustment allowances under part I of subchapter B, and

(4) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.

(g) In order to promote the coordination of workforce investment activities in each State with activities carried out under this chapter, any agreement entered into under this section shall provide that the State shall submit to the Secretary, in such form as the Secretary may require, the description and information described in paragraphs (8) and (14) of section 112(b) of the Workforce Investment Act of 1998.

[19 U.S.C. 2311]

**SEC. 240. ADMINISTRATION ABSENT STATE AGREEMENT.**

(a) In any State where there is no agreement in force between a State or its agency under section 239, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subchapter B of this chapter, including provision for a fair hearing for any worker whose application for payments is denied.

(b) A final determination under subsection (a) with respect to entitlement to program benefits under subchapter B of this chapter is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

[19 U.S.C. 2312]

**SEC. 241. PAYMENTS TO STATES.**

(a) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this chapter.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Secretary of the Treasury.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

[19 U.S.C. 2313]

**SEC. 242. LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS.**

(a) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud

the United States, be liable with respect to any payment certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

【19 U.S.C. 2314】

**SEC. 243. FRAUD AND RECOVERY OF OVERPAYMENTS.**

(a)(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this chapter to which the person was not entitled, including a payment referred to in subsection (b), such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary may waive such repayment if such agency or the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would be contrary to equity and good conscience.

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this chapter by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this chapter to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter.

(c) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an oppor-

tunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Any amount recovered under this section shall be returned to the Treasury of the United States.

[19 U.S.C. 2315]

**SEC. 244. PENALTIES.**

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 239 shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

[19 U.S.C. 2316]

**SEC. 245. AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—There are authorized to be appropriated to the Department of Labor, for the period beginning October 1, 2001, and ending December 31, 2007<sup>9</sup>, such sums as may be necessary to carry out the purposes of this chapter.

(b) **PERIOD OF EXPENDITURE.**—Funds obligated for any fiscal year to carry out activities under sections 235 through 238 may be expended by each State receiving such funds during that fiscal year and the succeeding two fiscal years.

[19 U.S.C. 2317]

**SEC. 246. DEMONSTRATION PROJECT FOR ALTERNATIVE TRADE ADJUSTMENT ASSISTANCE FOR OLDER WORKERS.**

(a) **IN GENERAL.**—

(1) **ESTABLISHMENT.**—Not later than 1 year after the date of enactment of the Trade Adjustment Assistance Reform Act of 2002, the Secretary shall establish an alternative trade adjustment assistance program for older workers that provides the benefits described in paragraph (2).

(2) **BENEFITS.**

(A) **PAYMENTS.**—A State shall use the funds provided to the State under section 241 to pay, for a period not to exceed 2 years, to a worker described in paragraph (3)(B), 50 percent of the difference between—

(i) the wages received by the worker from reemployment; and

(ii) the wages received by the worker at the time of separation.

(B) **HEALTH INSURANCE.**—A worker described in paragraph (3)(B) participating in the program established under paragraph (1) is eligible to receive, for a period not to exceed 2 years, a credit for health insurance costs under section 35 of the Internal Revenue Code of 1986, as added by section 201 of the Trade Act of 2002.

(3) **ELIGIBILITY.**—

<sup>9</sup>Paragraph (3) of section 406(a) of Public Law 114–27 provides that section 245(a) of the Trade Act of 1974 shall be applied and administered by substituting “June 30, 2022” for “December 31, 2007”.



(A) FIRM ELIGIBILITY.—

(i) IN GENERAL.—The Secretary shall provide the opportunity for a group of workers on whose behalf a petition is filed under section 221 to request that the group of workers be certified for the alternative trade adjustment assistance program under this section at the time the petition is filed.

(ii) CRITERIA.—In determining whether to certify a group of workers as eligible for the alternative trade adjustment assistance program, the Secretary shall consider the following criteria:

(I) Whether a significant number of workers in the workers' firm are 50 years of age or older.

(II) Whether the workers in the workers' firm possess skills that are not easily transferable.

(III) The competitive conditions within the workers' industry.

(iii) DEADLINE.—The Secretary shall determine whether the workers in the group are eligible for the alternative trade adjustment assistance program by the date specified in section 223(a).

(B) INDIVIDUAL ELIGIBILITY.—A worker in the group that the Secretary has certified as eligible for the alternative trade adjustment assistance program may elect to receive benefits under the alternative trade adjustment assistance program if the worker—

(i) is covered by a certification under subchapter A of this chapter;

(ii) obtains reemployment not more than 26 weeks after the date of separation from the adversely affected employment;

(iii) is at least 50 years of age;

(iv) earns not more than \$50,000 a year in wages from reemployment;

(v) is employed on a full-time basis as defined by State law in the State in which the worker is employed; and

(vi) does not return to the employment from which the worker was separated.

(4) TOTAL AMOUNT OF PAYMENTS.—The payments described in paragraph (2)(A) made to a worker may not exceed \$10,000 per worker during the 2-year eligibility period.

(5) LIMITATION ON OTHER BENEFITS.—Except as provided in paragraph (2)(B), if a worker is receiving payments pursuant to the program established under paragraph (1), the worker shall not be eligible to receive any other benefits under this title.

(b) TERMINATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), no payments may be made by a State under the program established under subsection (a)(1) after the date that is 5 years

after the date on which such program is implemented by the State<sup>10</sup>.

(2) EXCEPTION.—Notwithstanding paragraph (1), a worker receiving payments under the program established under subsection (a)(1) on the termination date described in paragraph (1) shall continue to receive such payments if the worker meets the criteria described in subsection (a)(3)(B).

[19 U.S.C. 2318]

**SEC. 247. DEFINITIONS.**

For purposes of this chapter—

(1) The term “adversely affected employment” means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

(2) The term “adversely affected worker” means an individual who, because of lack of work in adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

[(3) Repealed.]

(4) The term “average weekly wage” means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual’s total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(5) The term “average weekly hours” means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term “partial separation” means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

[(7) Repealed.]

(8) The term “State” includes the District of Columbia and the Commonwealth of Puerto Rico: and the term “United

<sup>10</sup> Paragraph (4) of section 406(a) of Public Law 114–27 provides that section 246(b)(1) of the Trade Act of 1974 shall be applied and administered by substituting “June 30, 2022” for “the date that is 5 years” and all that follows through “State”.

States” when used in the geographical sense includes such Commonwealth.

(9) The term “State agency” means the agency of the State which administers the State law.

(10) The term “State law” means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(11) The term “total separation” means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(12) The term “unemployment insurance” means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad Unemployment Insurance Act. The terms “regular compensation”, “additional compensation”, and “extended compensation” have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note.)

(13) The term “week” means a week as defined in the applicable State law.

(14) The term “week of unemployment” means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term “benefit period” means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term “on-the-job training” means training provided by an employer to an individual who is employed by the employer.

(17)(A) The term “job search program” means a job search workshop or job finding club.

(B) The term “job search workshop” means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

(C) The term “job finding club” means a job search workshop which includes a period (1 and 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.

[19 U.S.C. 2319]

#### SEC. 248. REGULATIONS.

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

[19 U.S.C. 2320]

**SEC. 249. SUBPENA POWER.**

(a) The Secretary may require by subpena the attendance of witnesses and the production of evidence necessary for him to make a determination under the provisions of this chapter.

(b) If a person refuses to obey a subpena issued under subsection (a), a United States district court within the jurisdiction of which the relevant proceeding under this chapter is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpena.

[19 U.S.C. 2321]

### **CHAPTER 3—ADJUSTMENT ASSISTANCE FOR FIRMS**

**SEC. 251. PETITIONS AND DETERMINATIONS.**

(a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Commerce (hereinafter in this chapter referred to as the “Secretary”) by a firm (including any agricultural firm) or its representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person, organization, or group found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary’s publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

(A) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

(B) that—

(i) sales or production, or both, of the firm have decreased absolutely, or

(ii) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

(C)<sup>11</sup> increases of imports of articles like or directly competitive with articles which are produced by such firm contrib-

<sup>11</sup>Section 1421(b)(2) of Pub. L. 100-418 (102 Stat. 1244) amends subparagraph (C) of section 251(c)(1) to read as follows:

“(C) increases of imports of articles like or directly competitive with articles—

“(i) which are produced by such firm, or

“(ii) for which such firm provides essential goods or essential services, contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.”.

uted importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(2) For purposes of paragraph (1)(C)—

(A) The term “contributed importantly” means a cause which is important but not necessarily more important than any other cause.

(B)(i) Any firm which engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

(ii) Any firm that engages in exploration or drilling for oil or natural gas, or otherwise producing articles directly competitive with imports of oil and with imports of natural gas.

(d) A determination shall be made by the Secretary as soon as possible after the date on which the petition is filed under this section, but in any event not later than 60 days after that date.

【19 U.S.C. 2341】

#### SEC. 252. APPROVAL OF ADJUSTMENT PROPOSALS.

(a) A firm certified under section 251 as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary for adjustment assistance under this chapter. Such application shall include a proposal for the economic adjustment of such firm.

(b)(1) Adjustment assistance under this chapter consists of technical assistance. The Secretary shall approve a firm’s application for adjustment assistance only if the Secretary determines that the firm’s adjustment proposal—

(A) is reasonably calculated to materially contribute to the economic adjustment of the firm,

(B) gives adequate consideration to the interests of the workers of such firm, and

(C) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

(2) The Secretary shall make a determination as soon as possible after the date on which an application is filed under this section, but in no event later than 60 days after such date.

(c) Whenever the Secretary determines that any firm no longer requires assistance under this chapter, he shall terminate the certification of eligibility of such firm and promptly have notice of such termination published in the Federal Register. Such termination shall take effect on the termination date specified by the Secretary.

【19 U.S.C. 2342】

#### SEC. 253. TECHNICAL ASSISTANCE.

(a) The Secretary may provide a firm, on terms and conditions as the Secretary determines to be appropriate, with such technical assistance as in his judgment will carry out the purposes of this chapter with respect to the firm. The technical assistance furnished under this chapter may consist of one or more of the following:

The amendment did not become effective pursuant to section 1430(d) of such Public Law (102 Stat. 1257). See notes for section 1430 of Pub. L. 100-418 (as amended) set out in section 2397 of title 19, United States Code, and the determination by the President that certain import fees are not in the national economic interest.

(1) Assistance to a firm in preparing its petition for certification of eligibility under section 251 of this chapter.

(2) Assistance to a certified firm in developing a proposal for its economic adjustment.

(3) Assistance of a certified firm in the implementation of such a proposal.

(b)(1) The Secretary shall furnish technical assistance under this chapter through existing agencies and through private individuals, firms, or institutions (including private consulting services), or by grants to intermediary organizations (including Trade Adjustment Assistance Centers).

(2) In the case of assistance furnished through private individuals, firms, or institutions (including private consulting services), the Secretary may share the cost thereof (but not more than 75 percent of such cost for assistance described in paragraph (2) or (3) of subsection (a) may be borne by the United States).

(3) The Secretary may make grants to intermediary organizations in order to defray up to 100 percent of administrative expenses incurred in providing such technical assistance to a firm.

[19 U.S.C. 2343]

#### SEC. 254. FINANCIAL ASSISTANCE.

(a) The Secretary may provide to a firm, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of direct loans or guarantees of loans as in his judgment will materially contribute to the economic adjustment of the firm. The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) Loans or guarantee of loans shall be made under this chapter only for the purpose of making funds available to the firm—

(1) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or

(2) to supply such working capital as may be necessary to enable the firm to implement its adjustment proposal.

(c) No direct loan may be provided to a firm under this chapter if the firm can obtain loan funds from private sources (with or without a guarantee) at a rate no higher than the maximum interest per annum that a participating financial institution may establish on guaranteed loans made pursuant to section 7(a) of the Small Business Act.

(d) Notwithstanding any other provision of this chapter, no direct loans or guarantees of loans may be made under this chapter after the date of enactment of the Trade Adjustment Assistance Reform and Extension Act of 1986.

[19 U.S.C. 2344]

#### SEC. 255. CONDITIONS FOR FINANCIAL ASSISTANCE.

(a) No financial assistance shall be provided under this chapter unless the Secretary determines—

(1) that the funds required are not available from the firm's own resources; and

(2) that there is reasonable assurance of repayment of the loan.

(b)(1) The rate of interest on direct loans made under this chapter shall be—

(A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods of maturity that are comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent, plus

(B) an amount adequate in the judgment of the Secretary of Commerce to cover administrative costs and probable losses under the program.

(2) The Secretary may not guarantee any loan under this chapter if—

(A) the rate of interest on either the portion to be guaranteed, or the portion not to be guaranteed, is determined by the Secretary to be excessive when compared with other loans bearing Federal guarantees and subject to similar terms and conditions; and

(B) the interest on the loan is exempt from Federal income taxation under section 103 of the Internal Revenue Code of 1954.

(c) The Secretary shall make no loan or guarantee of a loan under section 254(b)(1) having a maturity in excess of 25 years or the useful life of the fixed assets (whichever period is shorter), including renewals and extensions; and shall make no loan or guarantee of a loan under section 254(b)(2) having a maturity in excess of 10 years, including extensions and renewals. Such limitations on maturities shall not, however, apply—

(1) to securities or obligations received by the Secretary as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

(2) to an extension or renewal for an additional period not exceeding 10 years, if the Secretary determines that such extension or renewal is reasonably necessary for the orderly liquidation or servicing of the loan.

(d)(1) In making guarantees of loans, and in making direct loans, the Secretary shall give priority to firms which are small within the meaning of the Small Business Act (and regulations promulgated thereunder).

(2) For any direct loan made, or any loan guaranteed, under the authority of this chapter, the Secretary may enter into arrangements for the servicing, including foreclosure, of such loans or evidences of indebtedness on terms which are reasonable and which protect the financial interests of the United States.

(e) The following conditions apply with respect to any loan guaranteed under this chapter:

(1) No guarantee may be made for an amount which exceeds 90 percent of the outstanding balance of the unpaid principal and interest on the loan.

(2) The loan may be evidenced by multiple obligations for the guaranteed and nonguaranteed portions of the loan.

(3) The guarantee agreement shall be conclusive evidence of the eligibility of any obligation guaranteed thereunder for such guarantee, and the validity of any guarantee agreement shall be incontestable, except for fraud or misrepresentation by the holder.

(f) The Secretary shall maintain operating reserve with respect to anticipated claims under guarantees made under this chapter. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200).

(g) The Secretary may charge a fee to a lender which makes a loan guaranteed under this chapter in such amount as is necessary to cover the cost of administration of such guarantee.

(h)(1) The aggregate amount of loans made to any firm which are guaranteed under this chapter and which are outstanding at any time shall not exceed \$3,000,000.

(2) The aggregate amount of direct loans made to any firm under this chapter which are outstanding at any time shall not exceed \$1,000,000.

#### Preference for Firms Having Employee Stock Ownership Plans

(i)(1) When considering whether to grant a direct loan or to guarantee a loan to a corporation which is otherwise certified under section 251, the Secretary shall give preference to a corporation which agrees with respect to such loan to fulfill the following requirements—

(A) 25 percent of the principal amount of the loan is paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by the recipient corporation, by a parent or subsidiary of such corporation, or by several corporations including the recipient corporation,

(B) the employee stock ownership plan meets the requirements of this subsection, and

(C) the agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of this section.

(2) An employee stock ownership plan does not meet the requirements of this subsection unless the governing instrument of the plan provides that—

(A) the amount of the loan paid under paragraph (1)(A) to the qualified trust will be used to purchase qualified employer securities,

(B) the qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation, and

(C) from time to time, as the qualified trust repays such amount, the trust will allocate qualified employer securities among the individual accounts of participants and their beneficiaries in accordance with the provisions of paragraph (4).

(3) The agreement among the recipient corporation, the lender, and the qualified trust does not meet the requirements of this subsection unless—



(A) it is unconditionally enforceable by any party against the others, jointly and severally,

(B) it provides that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under paragraph (2)(B) which are actually received by such trust,

(C) it provides that amounts received by the recipient corporation from the qualified trust for qualified employer securities purchased for the purpose of this subsection will be used exclusively by the recipient corporation for those purposes for which it may use that portion of the loan paid directly to it by the lender,

(D) it provides that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities for purposes of this subsection, and

(E) it provides that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to meet its obligations to make repayments of principal and interest on the amount of the loan received by the trust without regard to whether such contributions are deductible by the corporation under section 404 of the Internal Revenue Code of 1954 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

(4) At the close of each plan year, an employee stock ownership plan shall allocate to the accounts of participating employees that portion of the qualified employer securities the cost of which bears substantially the same ratio to the cost of all the qualified employer securities purchased under paragraph (2)(A) of this subsection as the amount of the loan principal and interest repaid by the qualified trust during that year bears to the total amount of the loan principal and interest payable by such trust during the term of such loan. Qualified employer securities allocated to the individual account of a participant during one plan year must bear substantially the same proportion to the amount of all such securities allocated to all participants in the plan as the amount of compensation paid to such participant bears to the total amount of compensation paid to all such participants during that year.

(5) For purposes of this subsection, the term—

(A) “employee stock ownership plan” means a plan described in section 4975(e)(7) of the Internal Revenue Code of 1954,

(B) “qualified trust” means a trust established under an employee stock ownership plan and meeting the requirements of title I of the Employee Retirement Income Security Act of 1974 and section 401 of the Internal Revenue Code of 1954,

(C) “qualified employer securities” means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on

other common stock issued by the issuing corporation and with voting power being exercised by the participants in the employee stock ownership plan after it is allocated to their plan accounts, and

(D) “equity capital” means, with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in paragraph (3)(D)), less the amount of its indebtedness.

[19 U.S.C. 2345]

**SEC. 256. DELEGATION OF FUNCTIONS TO SMALL BUSINESS ADMINISTRATION; AUTHORIZATION OF APPROPRIATIONS.**

(a) In the case of any firm which is small (within the meaning of the Small Business Act and regulations promulgated thereunder), the Secretary may delegate all of his functions under this chapter (other than the functions under sections 251 and 252(d) with respect to the certification of eligibility and section 264) to the Administrator of the Small Business Administration.

(b) There are authorized to be appropriated to the Secretary \$16,000,000 for each of fiscal years 2003 through 2007, and \$4,000,000 for the 3-month period beginning on October 1, 2007<sup>12</sup>, to carry out the Secretary’s functions under this chapter in connection with furnishing adjustment assistance to firms. Amounts appropriated under this subsection shall remain available until expended.

(c) The unexpended balances of appropriations authorized by section 312(d) of the Trade Expansion Act of 1962 are transferred to the Secretary to carry out his functions under this chapter.

[19 U.S.C. 2346]

**SEC. 257. ADMINISTRATION OF FINANCIAL ASSISTANCE.**

(a) In making and administering guarantees and loans under section 254, the Secretary may—

(1) require security for any such guarantee or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees or loans until such time as such ob-

<sup>12</sup>Paragraph (5) of section 406(a) of Public Law 114–27 provides that section 256(b) of the Trade Act of 1974 shall be applied and administered by substituting “the 1-year period beginning on July 1, 2021” for “each of fiscal years 2003 through 2007, and \$4,000,000 for the 3-month period beginning on October 1, 2007”.

Section 541(a) of division B of Public Law 113–235 provides as follows: During the period beginning on January 1, 2015, and ending on December 31, 2015, the provisions of chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.), as in effect on December 31, 2014, shall apply, except that in applying and administering such provisions, section 256(b) of that Act shall be applied and administered by substituting “\$16,000,000 for the period beginning on January 1, 2015, and ending December 31, 2015” for “\$16,000,000 for each of fiscal years 2003 through 2007, and \$4,000,000 for the 3-month period beginning on October 1, 2007”.

ligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 254.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

(c) All repayments of loans, payments of interest, and other receipts arising out of transactions entered into by the Secretary pursuant to this chapter, shall be available for financing functions performed under this chapter, including administrative expenses in connection with such functions.

(d) To the extent the Secretary deems it appropriate, and consistent with the provisions of section 552(b)(4) and section 552b(c)(4) of title 5, United States Code, that portion of any record, material or data received by the Secretary in connection with any application for financial assistance under this chapter which contains trade secrets or commercial or financial information regarding the operation or competitive position of any business shall be deemed to be privileged or confidential within the meaning of those provisions.

(e) Direct loans made, or loans guaranteed, under this chapter for the acquisition or development of real property or other capital assets shall ordinarily be secured by a first lien on the assets to be financed and shall be fully amortized. To the extent that the Secretary finds that exceptions to these standards are necessary to achieve the objectives of this chapter, he shall develop appropriate criteria for the protection of the interests of the United States.

[19 U.S.C. 2347]

#### **SEC. 258. PROTECTIVE PROVISIONS.**

(a) Each recipient of adjustment assistance under this chapter shall keep records which fully disclose the amount and disposition by such recipient of the proceeds, if any, of such adjustment assistance, and which will facilitate an effective audit. The recipient shall also keep such other records as the Secretary may prescribe.

(b) The Secretary and the Comptroller General of the United States shall have access for the purposes of audit and examination to any books, documents, papers, and records of the recipient pertaining to adjustment assistance under this chapter.

(c) No adjustment assistance under this chapter shall be extended to any firm unless the owners, partners, or officers certify to the Secretary—

(1) the names of any attorneys, agents, and other persons engaged by or on behalf of the firm for the purpose of expediting applications for such adjustment assistance; and

(2) the fees paid or to be paid to any such person.

(d) No financial assistance shall be provided to any firm under this chapter unless the owners, partners, or officers shall execute an agreement binding them and the firm for a period of 2 years after such financial assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any person who, on the date such assistance or any part thereof was provided, or within 1 year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which the Secretary shall have determined involve discretion with respect to the provision of such financial assistance.

[19 U.S.C. 2348]

#### **SEC. 259. PENALTIES.**

Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, or whoever willfully overvalues any security, for the purpose of influencing in any way a determination under this chapter, or for the purpose of obtaining money, property, or anything of value under this chapter, shall be fined not more than \$5,000 or imprisoned for not more than 2 years, or both.

[19 U.S.C. 2349]

#### **SEC. 260. CIVIL ACTIONS.**

In providing technical and financial assistance under this chapter the Secretary may sue and be sued in any court of record of a State having general jurisdiction or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against him or his property. Nothing in this section shall be construed to except the activities pursuant to sections 253 and 254 from the application of sections 516, 547, and 2679 of title 28 of the United States Code.

[19 U.S.C. 2350]

#### **SEC. 261. DEFINITIONS.**

For purposes of this chapter, the term "firm" includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. A firm, together with any predecessor or successor firm, or any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

[19 U.S.C. 2351]

#### **SEC. 262. REGULATIONS.**

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

[19 U.S.C. 2352]

[Section 263 (19 U.S.C. 2353) repealed by Public Law 97-35, sec. 2526, 95 Stat 893.]

**SEC. 264. STUDY BY SECRETARY OF COMMERCE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION; ACTION WHERE THERE IS AFFIRMATIVE FINDING.**

(a) Whenever the Commission begins an investigation under section 202 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of firms in the domestic industry producing the like or directly competitive article which have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the orderly adjustment of such firms to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 202(f). Upon making its report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

(c) Whenever the Commission makes an affirmative finding under section 202(b) that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, the Secretary shall make available, to the extent feasible, full information to the firms in such industry about programs which may facilitate the orderly adjustment to import competition of such firms, and he shall provide assistance in the preparation and processing of petitions and applications of such firms for program benefits.

[19 U.S.C. 2354]

**SEC. 265. ASSISTANCE TO INDUSTRIES.**

(a) The Secretary may provide technical assistance, on such terms and conditions as the Secretary deems appropriate, for the establishment of industrywide programs for new product development, new process development, export development, or other uses consistent with the purposes of this chapter. Such technical assistance may be provided through existing agencies, private individuals, firms, universities and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other non-profit industry organizations in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under section 223 or 251.

(b) Expenditures for technical assistance under this section may be up to \$10,000,000 annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

[19 U.S.C. 2355]

## CHAPTER 4—ADJUSTMENT ASSISTANCE FOR COMMUNITIES

【The Adjustment Assistance for Communities program terminated on September 30, 1982】

## CHAPTER 5—MISCELLANEOUS PROVISIONS

### SEC. 280. GENERAL ACCOUNTING OFFICE REPORT.

(a) The Comptroller General of the United States shall conduct a study of the adjustment assistance programs established under chapters 2, 3, and 4 of this title and shall report the results of such study to the Congress no later than January 31, 1980. Such report shall include an evaluation of—

(1) the effectiveness of such programs in aiding workers, firms, and communities to adjust to changed economic conditions resulting from changes in the patterns of international trade; and

(2) the coordination of the administration of such programs and other Government programs which provide unemployment compensation and relief to depressed areas.

(b) In carrying out his responsibilities under this section, the Comptroller General shall, to the extent practical, avail himself of the assistance of the Departments of Labor and Commerce. The Secretaries of Labor and Commerce shall make available to the Comptroller General any assistance necessary for an effective evaluation of the adjustment assistance programs established under this title.

【19 U.S.C. 2391】

### SEC. 281. COORDINATION.

There is established the Adjustment Assistance Coordinating Committee to consist of a Deputy United States Trade Representative as Chairman, and the officials charged with adjustment assistance responsibilities of the Departments of Labor and Commerce and the Small Business Administration. It shall be the function of the Committee to coordinate the adjustment assistance policies, studies, and programs of the various agencies involved and to promote the efficient and effective delivery of adjustment assistance benefits.

【19 U.S.C. 2392】

### SEC. 282. TRADE MONITORING SYSTEM.

The Secretary of Commerce and the Secretary of Labor shall establish and maintain a program to monitor imports of articles into the United States which will reflect changes in the volume of such imports, the relation of such imports to changes in domestic production, changes in employment within domestic industries producing articles like or directly competitive with such imports, and the extent to which such changes in production and employment are concentrated in specific geographic regions of the United States. A summary of the information gathered under this section

shall be published regularly and provided to the Adjustment Assistance Coordinating Committee, the International Trade Commission, and to the Congress.

【19 U.S.C. 2393】

**SEC. 283. FIRMS RELOCATING IN FOREIGN COUNTRIES.**

Before moving productive facilities from the United States to a foreign country, every firm should—

(1) provide notice of the move to its employees who are likely to be totally or partially separated as a result of the move at least 60 days before the date of such move, and

(2) provide notice of the move to the Secretary of Labor and the Secretary of Commerce on the same day it notifies employees under paragraph (1).

(b) It is the sense of the Congress that every such firm should—

(1) apply for and use all adjustment assistance for which it is eligible under this title,

(2) offer employment opportunities in the United States, if any exist, to its employees who are totally or partially separated workers as a result of the move, and

(3) assist in relocating employees to other locations in the United States where employment opportunities exist.

【19 U.S.C. 2394】

**SEC. 284. JUDICIAL REVIEW.**

(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, an agricultural commodity producer (as defined in section 291(2)) aggrieved by a determination of the Secretary of Agriculture under section 293, or a community or any other interested domestic party aggrieved by a final determination of the Secretary of Commerce under section 271 of this title may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

(b) The findings of fact by the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor, the Secretary of Commerce, or the Secretary of Agriculture, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for the Federal Circuit as prescribed by the rules of such court. The judgment of the Court of Appeals for the Federal Circuit shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28.

[19 U.S.C. 2395]

**SEC. 285. TERMINATION.**<sup>13</sup>

(a) ASSISTANCE FOR WORKERS.—

(1) IN GENERAL.—Except as provided in paragraph (2), trade adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 2 after December 31, 2007<sup>14</sup>.

(2) EXCEPTION.—Notwithstanding paragraph (1), a worker shall continue to receive trade adjustment assistance benefits and other benefits under chapter 2 for any week for which the worker meets the eligibility requirements of that chapter, if on or before December 31, 2007<sup>14</sup>, the worker is—

(A) certified as eligible for trade adjustment assistance benefits under chapter 2 of this title; and

(B) otherwise eligible to receive trade adjustment assistance benefits under chapter 2.

(b)<sup>15</sup> OTHER ASSISTANCE.—

<sup>13</sup>Section 406 of Public Law 114–27 provides:

(a) APPLICATION OF PRIOR LAW.—Subject to subsection (b), beginning on July 1, 2021, the provisions of chapters 2, 3, 5, and 6 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.), as in effect on January 1, 2014, shall be in effect and apply, except that in applying and administering such chapters—

(1) \* \* \*

\* \* \* \* \*

(b) EXCEPTIONS.—The provisions of chapters 2, 3, 5, and 6 of title II of the Trade Act of 1974, as in effect on the date of the enactment of this Act, shall continue to apply on and after July 1, 2021, with respect to—

(1) workers certified as eligible for trade adjustment assistance benefits under chapter 2 of title II of that Act pursuant to petitions filed under section 221 of that Act before July 1, 2021;

(2) firms certified as eligible for technical assistance or grants under chapter 3 of title II of that Act pursuant to petitions filed under section 251 of that Act before July 1, 2021; and

(3) agricultural commodity producers certified as eligible for technical or financial assistance under chapter 6 of title II of that Act pursuant to petitions filed under section 292 of that Act before July 1, 2021.

<sup>14</sup>Paragraph (7)(A) of section 406(a) of Public Law 114–27 provides that section 285(a) of the Trade Act of 1974 shall be applied and administered by substituting “June 30, 2022” for “December 31, 2007” each place it appears.

<sup>15</sup>Paragraph (7)(B) of section 406(a) of Public Law 114–27 provides:

(B) by applying and administering subsection (b) as if it read as follows:

(b) OTHER ASSISTANCE.—

(1) ASSISTANCE FOR FIRMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 3 after June 30, 2022.

(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 3 pursuant to a petition filed under section 251 on or before June 30, 2022, may be provided—

(i) to the extent funds are available pursuant to such chapter for such purpose; and

and



(1) ASSISTANCE FOR FIRMS.—Technical assistance may not be provided under chapter 3 after December 31, 2007.

(2) ASSISTANCE FOR FARMERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 6 after December 31, 2007.

(B) EXCEPTION.—Notwithstanding subparagraph (A), an agricultural commodity producer (as defined in section 291(2)) shall continue to receive adjustment assistance benefits and other benefits under chapter 6, for any week for which the agricultural commodity producer meets the eligibility requirements of chapter 6, if on or before December 31, 2007, the agricultural commodity producer is—

- (i) certified as eligible for adjustment assistance benefits under chapter 6; and
- (ii) is otherwise eligible to receive adjustment assistance benefits under such chapter 6.

【19 U.S.C. 2271 note】

**SEC. 286.<sup>16</sup> TRADE ADJUSTMENT ASSISTANCE TRUST FUND.**

(a) There is hereby established within the Treasury of the United States a trust fund to be known as the Trade Adjustment Assistance Trust Fund (hereinafter in this section referred to as the “Trust Fund”), consisting of such amounts as may be transferred or credited to the Trust Fund as provided in this section or appropriated to the Trust Fund under subsection (e).

(b)(1) The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty imposed by section 287.

(2) The amounts which are required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

(ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.

(2) FARMERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), assistance may not be provided under chapter 6 after June 30, 2022.

(B) EXCEPTION.—Notwithstanding subparagraph (A), any assistance approved under chapter 6 on or before June 30, 2022, may be provided—

- (i) to the extent funds are available pursuant to such chapter for such purpose; and
- (ii) to the extent the recipient of the assistance is otherwise eligible to receive such assistance.

<sup>16</sup>Section 286 (as added by section 1427(a) of Pub. L. 100–418; 102 Stat. 1251–1254), regarding a trade adjustment assistance trust fund, did not become effective pursuant to section 1430(c) of such Public Law.

See provisions regarding effective date for the amendment made by section 1427(a) [adding section 286 to the Trade Act of 1974] as provided in section 1430(c) of Pub. L. 100–418 and the determination of the President of the United States that certain import fees are not in the national economic interest set out in a note for section 2397 of title 19, United States Code.

(c)(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted and on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(2)(A) The Secretary of the Treasury shall invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interestbearing obligations of the United States. For such purpose, such obligations may be acquired—

- (i) on original issue at the issue price, or
- (ii) by purchase of outstanding obligations at the market price.

(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(d)(1) Amounts in the Trust Fund shall be available—

(A) for the payment of drawbacks and refunds of the duty imposed by section 287 that are allowable under any other provision of Federal law,

(B) as provided in appropriation Acts—

- (i) for expenditures that are required to carry out the provisions of chapters 2 and 3, including administrative costs, and
- (ii) for payments required under subsection (e)(2).

(2) None of the amounts in the Trust Fund shall be available for the payment of loans guaranteed under chapter 3 or for any other expenses relating to financial assistance provided under chapter 3.

(3)(A) If the total amount of funds expended in any fiscal year to carry out chapters 2 and 3 (including administrative costs) exceeds an amount equal to 0.15 percent of the total value of all articles upon which a duty was imposed by section 287 during the preceding 1-year period, the Secretary of Labor and the Secretary of Commerce (in consultation with the Secretary of the Treasury) shall, notwithstanding any provision of chapter 2 or 3, make a pro rata reduction in—

- (i) the amounts of the trade readjustment allowances that are paid under part I of subchapter B of chapter 2, and
- (ii) the assistance provided under chapter 3,

to ensure (based on estimates of the amount of funds that will be necessary to carry out chapters 2 and 3, and of the amount of revenue that will be raised by section 287, during the remainder of such fiscal year and for the fiscal year succeeding such fiscal year) that all workers and firms eligible for assistance under chapter 2 or 3 receive some assistance under chapter 2 or 3 and that the ex-

penditures made in providing such assistance during the remainder of such fiscal year and the fiscal year succeeding such fiscal year do not exceed the amount of funds available in the Trust Fund to pay for such expenditures.

(B) No reduction may be made under this paragraph in the amount of any trade readjustment allowance payable under part I of subchapter B of chapter 2 to any worker who received such trade readjustment allowance under such part for the week preceding the first week for which such reduction is otherwise being made under this paragraph.

(C) If a pro rata reduction made under subparagraph (A) is in effect at the close of a fiscal year, the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, may adjust or modify such reduction at the beginning of the fiscal year succeeding such fiscal year, based on estimates of the amount of funds that will be necessary to carry out chapters 2 and 3, and of the amount of revenue that will be raised by section 287, during that succeeding fiscal year.

(D) Any pro rata reduction made under subparagraph (A), and any pro rata reduction adjusted or modified under subparagraph (C), shall cease to apply after the week in which—

(i) a 1-year period ends during which the total amount of funds that would have been expended to carry out chapters 2 and 3, including administrative costs, if such reduction were not in effect did not exceed an amount equal to 0.15 percent of the total value of all articles upon which a duty was imposed during such 1-year period, or

(ii) the Secretary of Labor and the Secretary of Commerce, in consultation with the Secretary of the Treasury, determine that the amount of funds available in the Trust Fund are sufficient to carry out chapters 2 and 3 without such reduction.

(e)(1)(A) There are authorized to be appropriated to the Trust Fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures described in subsection (d)(1)(B).

(B) Any advance appropriated to the Trust Fund under the authority of subparagraph (A) may be paid to the Trust Fund only to the extent that the total amount of advances paid during the fiscal year to the Trust Fund from any appropriation authorized under subparagraph (A) that are outstanding after such advance is paid to the Trust Fund does not exceed the lesser of—

(i) the excess of—

(I) the total amount of funds that the Secretary of the Treasury (in consultation with the Secretary of Labor and the Secretary of Commerce) estimates will be necessary for the payments and expenditures described in subparagraphs (A) and (B) of subsection (d)(1) for such fiscal year, over

(II) the total amount of funds that the Secretary of the Treasury estimates will be available in the Trust Fund during the fiscal year (determined without regard to any advances made under this subsection during such fiscal year), or

(ii) the excess of—

(I) an amount equal to 0.15 percent of the total value of all articles upon which the Secretary of the Treasury estimates a duty will be imposed by section 287 during such fiscal year, over

(II) the amount described in clause (i)(II).

(2) Advances made to the Trust Fund from appropriations authorized under paragraph (1)(A) shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury of the United States when the Secretary of the Treasury determines that sufficient funds are available in the Trust Fund for such purposes.

(3) Interest on advances made from appropriations authorized under paragraph (1)(A) shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding.

[19 U.S.C. 2396]

**SEC. 287. IMPOSITION OF ADDITIONAL FEE.**<sup>17</sup>

(a) In addition to any other fee imposed by law, there is hereby imposed a fee on all articles entered, or withdrawn from warehouse, for consumption in the customs territory of the United States during any fiscal year.

(b)(1) The rate of the fee imposed by subsection (a) shall be a uniform ad valorem rate proclaimed by the President that is equal to the lesser of—

(A) 0.15 percent, or

(B) the percentage that is sufficient to provide the funding necessary to—

(i) carry out the provisions of chapters 2 and 3, and

(ii) repay any advances made under section 286(e).

(2) The President shall issue a proclamation setting forth the rate of the fee imposed by subsection (a) by no later than the date that is 15 days before the first date on which a fee is imposed under subsection (a).

(3)(A) For each fiscal year succeeding the first fiscal year in which a fee is imposed under subsection (a), the President shall issue a proclamation adjusting the rate of the fee imposed by subsection (a) during such fiscal year to the ad valorem rate that meets the requirements of paragraph (1) for such fiscal year.

(B) Any proclamation issued under subparagraph (A) for a fiscal year shall be issued at least 30 days before the beginning of such fiscal year.

(c)(1) Except as otherwise provided in this subsection, duty-free treatment provided with respect to any article under any other pro-

<sup>17</sup>Section 287 (as added by section 1428(b) of Pub. L. 100-418; 102 Stat. 1255), regarding an imposition of additional fee, did not become effective pursuant to section 1430(b) of such Public Law.

See provisions regarding effective date for the amendment made by section 1428(b) [adding section 287 to the Trade Act of 1974] as provided in section 1430(b) of Pub. L. 100-418 and the determination of the President of the United States that certain import fees are not in the national economic interest set out in a note for section 2397 of title 19, United States Code.

vision of law shall not prevent the imposition of a fee with respect to such article by subsection (a).

(2) No fee shall be imposed by subsection (a) with respect to—

(A) any article (other than an article provided for in item 870.40, 870.45, 870.50, 870.55, or 870.60 of the Tariff Schedules of the United States) that is treated as duty-free under schedule 8 of the Tariff Schedules of the United States, or

(B) any article which has a value of less than \$1,000.

[19 U.S.C. 2397]

## CHAPTER 6—ADJUSTMENT ASSISTANCE FOR FARMERS

### SEC. 291. DEFINITIONS.

In this chapter:

(1) **AGRICULTURAL COMMODITY.**—The term “agricultural commodity” means any agricultural commodity (including livestock) in its raw or natural state.

(2) **AGRICULTURAL COMMODITY PRODUCER.**—The term “agricultural commodity producer” has the same meaning as the term “person” as prescribed by regulations promulgated under section 1001(e) of the Food Security Act of 1985 (7 U.S.C. 1308(e)) (before the amendment made by section 1703(a) of the Food, Conservation, and Energy Act of 2008).

(3) **CONTRIBUTED IMPORTANTLY.**—

(A) **IN GENERAL.**—The term “contributed importantly” means a cause which is important but not necessarily more important than any other cause.

(B) **DETERMINATION OF CONTRIBUTED IMPORTANTLY.**—The determination of whether imports of articles like or directly competitive with an agricultural commodity with respect to which a petition under this chapter was filed contributed importantly to a decline in the price of the agricultural commodity shall be made by the Secretary.

(4) **DULY AUTHORIZED REPRESENTATIVE.**—The term “duly authorized representative” means an association of agricultural commodity producers.

(5) **NATIONAL AVERAGE PRICE.**—The term “national average price” means the national average price paid to an agricultural commodity producer for an agricultural commodity in a marketing year as determined by the Secretary.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

[19 U.S.C. 2401]

### SEC. 292. PETITIONS; GROUP ELIGIBILITY.

(a) **IN GENERAL.**—A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary by a group of agricultural commodity producers or by their duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that the Secretary has received the petition and initiated an investigation.

(b) **HEARINGS.**—If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings,

submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(c) **GROUP ELIGIBILITY REQUIREMENTS.**—The Secretary shall certify a group of agricultural commodity producers as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

(1) that the national average price for the agricultural commodity, or a class of goods within the agricultural commodity, produced by the group for the most recent marketing year for which the national average price is available is less than 80 percent of the average of the national average price for such agricultural commodity, or such class of goods, for the 5 marketing years preceding the most recent marketing year; and

(2) that increases in imports of articles like or directly competitive with the agricultural commodity, or class of goods within the agricultural commodity, produced by the group contributed importantly to the decline in price described in paragraph (1).

(d) **SPECIAL RULE FOR QUALIFIED SUBSEQUENT YEARS.**—A group of agricultural commodity producers certified as eligible under section 293 shall be eligible to apply for assistance under this chapter in any qualified year after the year the group is first certified, if the Secretary determines that—

(1) the national average price for the agricultural commodity, or class of goods within the agricultural commodity, produced by the group for the most recent marketing year for which the national average price is available is equal to or less than the price determined under subsection (c)(1); and

(2) the requirements of subsection (c)(2) are met.

(e) **DETERMINATION OF QUALIFIED YEAR AND COMMODITY.**—In this chapter:

(1) **QUALIFIED YEAR.**—The term “qualified year”, with respect to a group of agricultural commodity producers certified as eligible under section 293, means each consecutive year after the year in which the group is certified and in which the Secretary makes the determination under subsection (c) or (d), as the case may be.

(2) **CLASSES OF GOODS WITHIN A COMMODITY.**—In any case in which there are separate classes of goods within an agricultural commodity, the Secretary shall treat each class as a separate commodity in determining group eligibility, the national average price, and level of imports under this section and section 296.

[19 U.S.C. 2401a]

**SEC. 293. DETERMINATIONS BY SECRETARY OF AGRICULTURE.**

(a) **IN GENERAL.**—As soon as practicable after the date on which a petition is filed under section 292, but in any event not later than 40 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section

292 (c) or (d), as the case may be, and shall, if the group meets the requirements, issue a certification of eligibility to apply for assistance under this chapter covering agricultural commodity producers in any group that meets the requirements. Each certification shall specify the date on which eligibility under this chapter begins.

(b) NOTICE.—Upon making a determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register, together with the Secretary's reasons for making the determination.

(c) TERMINATION OF CERTIFICATION.—Whenever the Secretary determines, with respect to any certification of eligibility under this chapter, that the decline in price for the agricultural commodity covered by the certification is no longer attributable to the conditions described in section 292, the Secretary shall terminate such certification and promptly cause notice of such termination to be published in the Federal Register, together with the Secretary's reasons for making such determination.

[19 U.S.C. 2401b]

**SEC. 294. STUDY BY SECRETARY OF AGRICULTURE WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION.**

(a) IN GENERAL.—Whenever the International Trade Commission (in this chapter referred to as the "Commission") begins an investigation under section 202 with respect to an agricultural commodity, the Commission shall immediately notify the Secretary of the investigation. Upon receipt of the notification, the Secretary shall immediately conduct a study of—

(1) the number of agricultural commodity producers producing a like or directly competitive agricultural commodity who have been or are likely to be certified as eligible for adjustment assistance under this chapter, and

(2) the extent to which the adjustment of such producers to the import competition may be facilitated through the use of existing programs.

(b) REPORT.—Not later than 15 days after the day on which the Commission makes its report under section 202(f), the Secretary shall submit a report to the President setting forth the findings of the study described in subsection (a). Upon making the report to the President, the Secretary shall also promptly make the report public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of the report published in the Federal Register.

[19 U.S.C. 2401c]

**SEC. 295. BENEFIT INFORMATION TO AGRICULTURAL COMMODITY PRODUCERS.**

(a) IN GENERAL.—The Secretary shall provide full information to agricultural commodity producers about the benefit allowances, training, and other employment services available under this title and about the petition and application procedures, and the appropriate filing dates, for such allowances, training, and services. The Secretary shall provide whatever assistance is necessary to enable groups to prepare petitions or applications for program benefits under this title.

(b) NOTICE OF BENEFITS.—

(1) IN GENERAL.—The Secretary shall mail written notice of the benefits available under this chapter to each agricultural commodity producer that the Secretary has reason to believe is covered by a certification made under this chapter.

(2) OTHER NOTICE.—The Secretary shall publish notice of the benefits available under this chapter to agricultural commodity producers that are covered by each certification made under this chapter in newspapers of general circulation in the areas in which such producers reside.

(3) OTHER FEDERAL ASSISTANCE.—The Secretary shall also provide information concerning procedures for applying for and receiving all other Federal assistance and services available to workers facing economic distress.

[19 U.S.C. 2401d]

**SEC. 296. QUALIFYING REQUIREMENTS FOR AGRICULTURAL COM-MODITY PRODUCERS.**

(a) IN GENERAL.—

(1) REQUIREMENTS.—Payment of a adjustment assistance under this chapter shall be made to an adversely affected agricultural commodity producer covered by a certification under this chapter who files an application for such assistance within 90 days after the date on which the Secretary makes a determination and issues a certification of eligibility under section 293, if the following conditions are met:

(A) The producer submits to the Secretary sufficient information to establish the amount of agricultural commodity covered by the application filed under this subsection that was produced by the producer in the most recent year.

(B) The producer certifies that the producer has not received cash benefits under any provision of this title other than this chapter.

(C) The producer's net farm income (as determined by the Secretary) for the most recent year is less than the producer's net farm income for the latest year in which no adjustment assistance was received by the producer under this chapter.

(D) The producer certifies that the producer has met with an Extension Service employee or agent to obtain, at no cost to the producer, information and technical assistance that will assist the producer in adjusting to import competition with respect to the adversely affected agricultural commodity, including—

(i) information regarding the feasibility and desirability of substituting 1 or more alternative commodities for the adversely affected agricultural commodity; and

(ii) technical assistance that will improve the competitiveness of the production and marketing of the adversely affected agricultural commodity by the producer, including yield and marketing improvements.

(2) LIMITATIONS.—



## (A) ADJUSTED GROSS INCOME.—

(i) IN GENERAL.—Notwithstanding any other provision of this chapter, an agricultural commodity producer shall not be eligible for assistance under this chapter in any year in which the average adjusted gross income of the producer exceeds the level set forth in section 1001D of the Food Security Act of 1985.

(ii) CERTIFICATION.—To comply with the limitation under subparagraph (A), an individual or entity shall provide to the Secretary—

(I) a certification by a certified public accountant or another third party that is acceptable to the Secretary that the average adjusted gross income of the producer does not exceed the level set forth in section 1001D of the Food Security Act of 1985; or

(II) information and documentation regarding the adjusted gross income of the producer through other procedures established by the Secretary.

(B) COUNTER-CYCLICAL PAYMENTS.—The total amount of payments made to an agricultural producer under this chapter during any crop year may not exceed the limitation on counter-cyclical payments set forth in section 1001(c) of the Food Security Act of 1985.

(C) DEFINITIONS.—In this subsection:

(i) ADJUSTED GROSS INCOME.—The term “adjusted gross income” means adjusted gross income of an agricultural commodity producer—

(I) as defined in section 62 of the Internal Revenue Code of 1986 and implemented in accordance with procedures established by the Secretary; and

(II) that is earned directly or indirectly from all agricultural and nonagricultural sources of an individual or entity for a fiscal or corresponding crop year.

(ii) AVERAGE ADJUSTED GROSS INCOME.—

(I) IN GENERAL.—The term “average adjusted gross income” means the average adjusted gross income of a producer for each of the 3 preceding taxable years.

(II) EFFECTIVE ADJUSTED GROSS INCOME.—In the case of a producer that does not have an adjusted gross income for each of the 3 preceding taxable years, the Secretary shall establish rules that provide the producer with an effective adjusted gross income for the applicable year.

(b) AMOUNT OF CASH BENEFITS.—

(1) IN GENERAL.—Subject to the provisions of section 298, an adversely affected agricultural commodity producer described in subsection (a) shall be entitled to adjustment assistance under this chapter in an amount equal to the product of—

(A) one-half of the difference between—

(i) an amount equal to 80 percent of the average of the national average price of the agricultural commodity covered by the application described in subsection (a) for the 5 marketing years preceding the most recent marketing year, and

(ii) the national average price of the agricultural commodity for the most recent marketing year, and

(B) the amount of the agricultural commodity produced by the agricultural commodity producer in the most recent marketing year.

(2) SPECIAL RULE FOR SUBSEQUENT QUALIFIED YEARS.—The amount of cash benefits for a qualified year shall be determined in the same manner as cash benefits are determined under paragraph (1), except that the average national price of the agricultural commodity shall be determined under paragraph (1)(A)(i) by using the 5-marketing-year period used to determine the amount of cash benefits for the first certification.

(c) MAXIMUM AMOUNT OF CASH ASSISTANCE.—The maximum amount of cash benefits an agricultural commodity producer may receive in any 12-month period shall not exceed \$10,000.

(d) LIMITATIONS ON OTHER ASSISTANCE.—An agricultural commodity producer entitled to receive a cash benefit under this chapter—

(1) shall not be eligible for any other cash benefit under this title, and

(2) shall be entitled to employment services and training benefits under part II of subchapter B of chapter 2.

[19 U.S.C. 2401e]

#### SEC. 297. FRAUD AND RECOVERY OF OVERPAYMENTS.

(a) IN GENERAL.—

(1) REPAYMENT.—If the Secretary, or a court of competent jurisdiction, determines that any person has received any payment under this chapter to which the person was not entitled, such person shall be liable to repay such amount to the Secretary, except that the Secretary may waive such repayment if the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such person; and

(B) requiring such repayment would be contrary to equity and good conscience.

(2) RECOVERY OF OVERPAYMENT.—Unless an overpayment is otherwise recovered, or waived under paragraph (1), the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter.

(b) FALSE STATEMENT.—A person shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter—

(1) if the Secretary, or a court of competent jurisdiction, determines that the person—

(A) knowingly has made, or caused another to make, a false statement or representation of a material fact; or

(B) knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this chapter to which the person was not entitled.

(c) NOTICE AND DETERMINATION.—Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the Secretary has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the person concerned, and the determination has become final.

(d) PAYMENT TO TREASURY.—Any amount recovered under this section shall be returned to the Treasury of the United States.

(e) PENALTIES.—Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter shall be fined not more than \$10,000 or imprisoned for not more than 1 year, or both.

[19 U.S.C. 2401f]

#### SEC. 298. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated and there are appropriated to the Department of Agriculture not to exceed \$90,000,000 for each of the fiscal years 2003 through 2007 to carry out the purposes of this chapter, and there are authorized to be appropriated and there are appropriated to the Department of Agriculture to carry out this chapter \$9,000,000 for the 3-month period beginning on October 1, 2007<sup>18</sup>.

(b) PROPORTIONATE REDUCTION.—If in any year the amount appropriated under this chapter is insufficient to meet the requirements for adjustment assistance payable under this chapter, the amount of assistance payable under this chapter shall be reduced proportionately.

[19 U.S.C. 2401g]

## TITLE III—RELIEF FROM UNFAIR TRADE PRACTICES

### CHAPTER 1—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

#### SEC. 301. ACTIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) MANDATORY ACTION.—

<sup>18</sup> Paragraph (6) of section 406(a) of Public Law 114–27 provides that section 298(a) of the Trade Act of 1974 shall be applied and administered by substituting “the 1-year period beginning on July 1, 2021” for “each of the fiscal years” and all that follows through “October 1, 2007”.

(1) If the United States Trade Representative determines under section 304(a)(1) that—

(A) the rights of the United States under any trade agreement are being denied; or

(B) an act, policy, or practice of a foreign country—

(i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable and burdens or restricts United States commerce;

the Trade Representative shall take action authorized in subsection (c), subject to the specific direction, if any, of the President regarding any such action, and shall take all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to enforce such rights or to obtain the elimination of such act, policy, or practice.

Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(2) The Trade Representative is not required to take action under paragraph (1) in any case in which—

(A) the Dispute Settlement Body (as defined in section 121(5) of the Uruguay Round Agreements Act) has adopted a report, or a ruling issued under the formal dispute settlement proceeding provided under any other trade agreement finds, that—

(i) the rights of the United States under a trade agreement are not being denied, or

(ii) the act, policy, or practice—

(I) is not a violation of, or inconsistent with, the rights of the United States, or

(II) does not deny, nullify, or impair benefits to the United States under any trade agreement;

or

(B) the Trade Representative finds that—

(i) the foreign country is taking satisfactory measures to grant the rights of the United States under a trade agreement,

(ii) the foreign country has—

(I) agreed to eliminate or phase out the act, policy, or practice, or

(II) agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative,

(iii) it is impossible for the foreign country to achieve the results described in clause (i) or (ii), as appropriate, but the foreign country agrees to provide to the United States compensatory trade benefits that are satisfactory to the Trade Representative,

(iv) in extraordinary cases, where the taking of action under this subsection would have an adverse impact on the United States economy substantially out of proportion to the benefits of such action, taking into

account the impact of not taking such action on the credibility of the provisions of this chapter, or

(v) the taking of action under this subsection would cause serious harm to the national security of the United States.

(3) Any action taken under paragraph (1) to eliminate an act, policy, or practice shall be devised so as to affect goods or services of the foreign country in an amount that is equivalent in value to the burden or restriction being imposed by that country on United States commerce.

(b) DISCRETIONARY ACTION.—If the Trade Representative determines under section 304(a)(1) that—

(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and

(2) action by the United States is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under subsection (c), subject to the specific direction, if any, of the President regarding any such action, and all other appropriate and feasible action within the power of the President that the President may direct the Trade Representative to take under this subsection, to obtain the elimination of that act, policy, or practice.

Actions may be taken that are within the power of the President with respect to trade in any goods or services, or with respect to any other area of pertinent relations with the foreign country.

(c) SCOPE OF AUTHORITY.—

(1) For purposes of carrying out the provisions of subsection (a) or (b) or section 306(c), the Trade Representative is authorized to—

(A) suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection;

(B) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate;

(C) in a case in which the act, policy, or practice also fails to meet the eligibility criteria for receiving duty-free treatment under subsections (b) and (c) of section 502 of this Act, subsections (b) and (c) of section 212 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b) and (c)), or subsections (c) and (d) of section 203 of the Andean Trade Preference Act (19 U.S.C. 3202(c) and (d)), withdraw, limit, or suspend such treatment under such provisions, notwithstanding the provisions of subsection (a)(3) of this section; or

(D) enter into binding agreements with such foreign country that commit such foreign country to—

(i) eliminate, or phase out, the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b),

(ii) eliminate any burden or restriction on United States commerce resulting from such act, policy, or practice, or

(iii) provide the United States with compensatory trade benefits that—

(I) are satisfactory to the Trade Representative, and

(II) meet the requirements of paragraph (4).

(2)(A) Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in paragraph (1), the Trade Representative may, for purposes of carrying out the provisions of subsection (a) or (b)—

(i) restrict, in the manner and to the extent the Trade Representative determines appropriate, the terms and conditions of any such authorization, or

(ii) deny the issuance of any such authorization.

(B) Actions described in subparagraph (A) may only be taken under this section with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(i) a petition is filed under section 302(a), or

(ii) a determination to initiate an investigation is made by the Trade Representative under section 302(b).

(C) Before the Trade Representative takes any action under this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(3) The actions the Trade Representative is authorized to take under subsection (a) or (b) may be taken against any goods or economic sector—

(A) on a nondiscriminatory basis or solely against the foreign country described in such subsection, and

(B) without regard to whether or not such goods or economic sector were involved in the act, policy, or practice that is the subject of such action.

(4) Any trade agreement described in paragraph (1)(D)(iii) shall provide compensatory trade benefits that benefit the economic sector which includes the domestic industry that would benefit from the elimination of the act, policy, or practice that is the subject of the action to be taken under subsection (a) or (b), or benefit the economic sector as closely related as possible to such economic sector, unless—

(A) the provision of such trade benefits is not feasible,

or

(B) trade benefits that benefit any other economic sector would be more satisfactory than such trade benefits.

(5) If the Trade Representative determines that actions to be taken under subsection (a) or (b) are to be in the form of import restrictions, the Trade Representative shall—

(A) give preference to the imposition of duties over the imposition of other import restrictions, and

(B) if an import restriction other than a duty is imposed, consider substituting, on an incremental basis, an equivalent duty for such other import restriction.

(6) Any action taken by the Trade Representative under this section with respect to export targeting shall, to the extent possible, reflect the full benefit level of the export targeting to the beneficiary over the period during which the action taken has an effect.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this chapter—

(1) The term “commerce” includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) An act, policy, or practice of a foreign country that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3)(A) An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

(B) Acts, policies, and practices that are unreasonable include, but are not limited to, any act, policy, or practice, or any combination of acts, policies, or practices, which—

(i) denies fair and equitable—

(I) opportunities for the establishment of an enterprise,

(II) provision of adequate and effective protection of intellectual property rights notwithstanding the fact that the foreign country may be in compliance with the specific obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights referred to in section 101(d)(15) of the Uruguay Round Agreements Act,

(III) nondiscriminatory market access opportunities for United States persons that rely upon intellectual property protection, or

(IV) market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by enterprises or among enterprises in the foreign country that have the effect of restricting, on a basis that is inconsistent with commercial considerations, access of United States goods or services to a foreign market,

(ii) constitutes export targeting,

(iii) constitutes a persistent pattern of conduct that—

(I) denies workers the right of association,

(II) denies workers the right to organize and bargain collectively,

(III) permits any form of forced or compulsory labor,

(IV) fails to provide a minimum age for the employment of children, or

(V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers, or

(iv)<sup>19</sup> constitutes a persistent pattern of conduct by the government of a foreign country under which that government fails to effectively enforce commitments under agreements to which the foreign country and the United States are parties, including with respect to trade in goods, trade in services, trade in agriculture, foreign investment, intellectual property, digital trade in goods and services and cross-border data flows, regulatory practices, state-owned and state-controlled enterprises, localization barriers to trade, labor and the environment, anticorruption, trade remedy laws, textiles, and commercial partnerships.

(C)(i) Acts, policies, and practices of a foreign country described in subparagraph (B)(iii) shall not be treated as being unreasonable if the Trade Representative determines that—

(I) the foreign country has taken, or is taking, actions that demonstrate a significant and tangible overall advancement in providing throughout the foreign country (including any designated zone within the foreign country) the rights and other standards described in the subclauses of subparagraph (B)(iii), or

(II) such acts, policies, and practices are not inconsistent with the level of economic development of the foreign country.

(ii) The Trade Representative shall publish in the Federal Register any determination made under clause (i), together with a description of the facts on which such determination is based.

(D) For purposes of determining whether any act, policy, or practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms shall be taken into account, to the extent appropriate.

(E) The term “export targeting” means any government plan or scheme consisting of a combination of coordinated actions (whether carried out severally or jointly) that are bestowed on a specific enterprise, industry, or group thereof, the effect of which is to assist the enterprise, industry, or group to become more competitive in the export of a class or kind of merchandise.

(F)(i) For the purposes of subparagraph (B)(i)(II), adequate and effective protection of intellectual property rights includes adequate and effective means under the laws of the foreign country for persons who are not citizens or nationals of such country to secure, exercise, and enforce rights and enjoy com-

<sup>19</sup>The margin for clause (iv), as added by section 607(3) of Public Law 114125, does not conform with the existing margins in subparagraph (B).



mercial benefits relating to patents, trademarks, copyrights and related rights, mask works, trade secrets, and plant breeder's rights.

(ii) For purposes of subparagraph (B)(i)(IV), the denial of fair and equitable nondiscriminatory market access opportunities includes restrictions on market access related to the use, exploitation, or enjoyment of commercial benefits derived from exercising intellectual property rights in protected works or fixations or products embodying protected works.

(4)(A) An act, policy, or practice is unjustifiable if the act, policy, or practice is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Acts, policies, and practices that are unjustifiable include, but are not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment or the right of establishment or protection of intellectual property rights.

(5) Acts, policies, and practices that are discriminatory include, when appropriate, any act, policy, and practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(7) The term "foreign country" includes any foreign instrumentality. Any possession or territory of a foreign country that is administered separately for customs purposes shall be treated as a separate foreign country.

(8) The term "Trade Representative" means the United States Trade Representative.

(9) The term "interested persons", only for purposes of sections 302(a)(4)(B), 304(b)(1)(A), 306(c)(2), and 307(a)(2), includes, but is not limited to, domestic firms and workers, representatives of consumer interests, United States product exporters, and any industrial user of any goods or services that may be affected by actions taken under subsection (a) or (b).

[19 U.S.C. 2411]

#### SEC. 302. INITIATION OF INVESTIGATIONS.

##### (a) PETITIONS.—

(1) Any interested person may file a petition with the Trade Representative requesting that action be taken under section 301 and setting forth the allegations in support of the request.

(2) The Trade Representative shall review the allegations in any petition filed under paragraph (1) and, not later than 45 days after the date on which the Trade Representative received the petition, shall determine whether to initiate an investigation.

(3) If the Trade Representative determines not to initiate an investigation with respect to a petition, the Trade Representative shall inform the petitioner of the reasons therefor

and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(4) If the Trade Representative makes an affirmative determination under paragraph (2) with respect to a petition, the Trade Representative shall initiate an investigation regarding the issues raised in the petition. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period beginning on the date of affirmative determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition, or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(b) INITIATION OF INVESTIGATION BY MEANS OTHER THAN PETITION.—

(1)(A) If the Trade Representative determines that an investigation should be initiated under this chapter with respect to any matter in order to determine whether the matter is actionable under section 301, the Trade Representative shall publish such determination in the Federal Register and shall initiate such investigation.

(B) The Trade Representative shall, before making any determination under subparagraph (A), consult with appropriate committees established pursuant to section 135.

(2)(A) By no later than the date that is 30 days after the date on which a country is identified under section 182(a)(2), the Trade Representative shall initiate an investigation under this chapter with respect to any act, policy, or practice of that country that—

(i) was the basis for such identification, and

(ii) is not at that time the subject of any other investigation or action under this chapter.

(B) The Trade Representative is not required under subparagraph (A) to initiate an investigation under this chapter with respect to any act, policy, or practice of a foreign country if the Trade Representative determines that the initiation of the investigation would be detrimental to United States economic interests.

(C) If the Trade Representative makes a determination under subparagraph (B) not to initiate an investigation, the Trade Representative shall submit to the Congress a written report setting forth, in detail—

(i) the reasons for the determination, and

(ii) the United States economic interests that would be adversely affected by the investigation.

(D) The Trade Representative shall, from time to time, consult with the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and other appropriate officers of the Federal Government, during any inves-

tigation initiated under this chapter by reason of subparagraph (A).

(c) DISCRETION.—In determining whether to initiate an investigation under subsection (a) or (b) of any act, policy, or practice that is enumerated in any provision of section 301(d), the Trade Representative shall have discretion to determine whether action under section 301 would be effective in addressing such act, policy, or practice.

[19 U.S.C. 2412]

**SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.**

(a) IN GENERAL.—

(1) On the date on which an investigation is initiated under section 302, the Trade Representative, on behalf of the United States, shall request consultations with the foreign country concerned regarding the issues involved in such investigation.

(2) If the investigation initiated under section 302 involves a trade agreement and a mutually acceptable resolution is not reached before the earlier of—

(A) the close of the consultation period, if any, specified in the trade agreement, or

(B) the 150th day after the day on which consultation was commenced,

the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement.

(3) The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate committees established pursuant to section 135 in preparing United States presentations for consultations and dispute settlement proceedings.

(b) DELAY OF REQUEST FOR CONSULTATIONS.—

(1) Notwithstanding the provisions of subsection (a)—

(A) the United States Trade Representative may, after consulting with the petitioner (if any), delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 304 shall be extended for the period of such delay.

(2) The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required under section 309(a)(3).

[19 U.S.C. 2413]

**SEC. 304. DETERMINATIONS BY THE TRADE REPRESENTATIVE.**

(a) IN GENERAL.—

(1) On the basis of the investigation initiated under section 302 and the consultations (and the proceedings, if applicable) under section 303, the Trade Representative shall—

(A) determine whether—

(i) the rights to which the United States is entitled under any trade agreement are being denied, or

(ii) any act, policy, or practice described in subsection (a)(1)(B) or (b)(1) of section 301 exists, and

(B) if the determination made under subparagraph (A) is affirmative, determine what action, if any, the Trade Representative should take under subsection (a) or (b) of section 301.

(2) The Trade Representative shall make the determinations required under paragraph (1) on or before—

(A) in the case of an investigation involving a trade agreement, except an investigation initiated pursuant to section 302(b)(2)(A) involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 101(d)(15) of the Uruguay Round Agreements Act) or the GATT 1994 (as defined in section 2(1)(B) of that Act) relating to products subject to intellectual property protection, the earlier of—

(i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or

(ii) the date that is 18 months after the date on which the investigation is initiated, or

(B) in all cases not described in subparagraph (A) or paragraph (3), the date that is 12 months after the date on which the investigation is initiated.

(3)(A) If an investigation is initiated under this chapter by reason of section 302(b)(2) and—

(i) the Trade Representative considers that rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights or the GATT 1994 relating to products subject to intellectual property protection are involved, the Trade Representative shall make the determination required under paragraph (1) not later than 30 days after the date on which the dispute settlement procedure is concluded; or

(ii) the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation not later than the date that is 6 months after the date on which such investigation is initiated.

(B) If the Trade Representative determines with respect to an investigation initiated by reason of section 302(b)(2) (other than an investigation involving a trade agreement) that—

(i) complex or complicated issues are involved in the investigation that require additional time,

(ii) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will provide

adequate and effective protection of intellectual property rights, or

(iii) such foreign country is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights, the Trade Representative shall publish in the Federal Register notice of such determination and shall make the determinations required under paragraph (1) with respect to such investigation by no later than the date that is 9 months after the date on which such investigation is initiated.

(4) In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement, the Trade Representative, within 15 days after the close of such dispute settlement period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum dispute settlement period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement at any stage.

(b) CONSULTATION BEFORE DETERMINATIONS.—

(1) Before making the determinations required under subsection (a)(1), the Trade Representative, unless expeditious action is required—

(A) shall provide an opportunity (after giving not less than 30 days notice thereof) for the presentation of views by interested persons, including a public hearing if requested by any interested person,

(B) shall obtain advice from the appropriate committees established pursuant to section 135, and

(C) may request the views of the United States International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to any goods or service.

(2) If the Trade Representative does not comply with the requirements of subparagraphs (A) and (B) of paragraph (1) because expeditious action is required, the Trade Representative shall, after making the determinations under subsection (a)(1), comply with such subparagraphs.

(c) PUBLICATION.—The Trade Representative shall publish in the Federal Register any determination made under subsection (a)(1), together with a description of the facts on which such determination is based.

[19 U.S.C. 2414]

**SEC. 305. IMPLEMENTATION OF ACTIONS.**

(a) ACTIONS TO BE TAKEN UNDER SECTION 301.—

(1) Except as provided in paragraph (2), the Trade Representative shall implement the action the Trade Representative determines under section 304(a)(1)(B) to take under sec-

tion 301, subject to the specific direction, if any, of the President regarding any such action, by no later than the date that is 30 days after the date on which such determination is made.

(2)(A) Except as otherwise provided in this paragraph, the Trade Representative may delay, by not more than 180 days, the implementation of any action that is to be taken under section 301—

(i) if—

(I) in the case of an investigation initiated under section 302(a), the petitioner requests a delay, or

(II) in the case of an investigation initiated under section 302(b)(1) or to which section 304(a)(3)(B) applies, a delay is requested by a majority of the representatives of the domestic industry that would benefit from the action, or

(ii) if the Trade Representative determines that substantial progress is being made, or that a delay is necessary or desirable to obtain United States rights or satisfactory solution with respect to the acts, policies, or practices that are the subject of the action.

(B) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 301 with respect to any investigation to which section 304(a)(3)(A)(ii) applies.

(C) The Trade Representative may not delay under subparagraph (A) the implementation of any action that is to be taken under section 301 with respect to any investigation to which section 304(a)(3)(B) applies by more than 90 days.

(b) ALTERNATIVE ACTIONS IN CERTAIN CASES OF EXPORT TARGETING.—

(1) If the Trade Representative makes an affirmative determination under section 304(a)(1)(A) involving export targeting by a foreign country and determines to take no action under section 301 with respect to such affirmation determination, the Trade Representative—

(A) shall establish an advisory panel to recommend measures which will promote the competitiveness of the domestic industry affected by the export targeting,

(B) on the basis of the report of such panel submitted under paragraph (2)(B) and subject to the specific direction, if any, of the President, may take any administrative actions authorized under any other provision of law, and, if necessary, propose legislation to implement any other actions, that would restore or improve the international competitiveness of the domestic industry affected by the export targeting, and

(C) shall, by no later than the date that is 30 days after the date on which the report of such panel is submitted under paragraph (2)(B), submit a report to the Congress on the administrative actions taken, and legislative proposals made, under subparagraph (B) with respect to the domestic industry affected by the export targeting.

(2)(A) The advisory panels established under paragraph (1)(A) shall consist of individuals appointed by the Trade Representative who—

(i) earn their livelihood in the private sector of the economy, including individuals who represent management and labor in the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 304(a)(1)(A), and

(ii) by education or experience, are qualified to serve on the advisory panel.

(B) By no later than the date that is 6 months after the date on which an advisory panel is established under paragraph (1)(A), the advisory panel shall submit to the Trade Representative and to the Congress a report on measures that the advisory panel recommends be taken by the United States to promote the competitiveness of the domestic industry affected by the export targeting that is the subject of the affirmative determination made under section 304(a)(1)(A).

[19 U.S.C. 2415]

#### SEC. 306. MONITORING OF FOREIGN COMPLIANCE.

(a) IN GENERAL.—The Trade Representative shall monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country to provide a satisfactory resolution of a matter subject to investigation under this chapter or subject to dispute settlement proceedings to enforce the rights of the United States under a trade agreement providing for such proceedings.

(b) ACTION ON THE BASIS OF MONITORING.—

(1) IN GENERAL.—If, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section 301(a). For purposes of section 301, any such determination shall be treated as a determination made under section 304(a)(1).

(2) WTO DISPUTE SETTLEMENT RECOMMENDATIONS.—

(A) FAILURE TO IMPLEMENT RECOMMENDATION.—If the measure or agreement referred to in subsection (a) concerns the implementation of a recommendation made pursuant to dispute settlement proceedings under the World Trade Organization, and the Trade Representative considers that the foreign country has failed to implement it, the Trade Representative shall make the determination in paragraph (1) no later than 30 days after the expiration of the reasonable period of time provided for such implementation under paragraph 21 of the Understanding on Rules and Procedures Governing the Settlement of Disputes that is referred to in section 101(d)(16) of the Uruguay Round Agreements Act.

(B) REVISION OF RETALIATION LIST AND ACTION.—

(i) IN GENERAL.—Except as provided in clause (ii), in the event that the United States initiates a retaliation

tion list or takes any other action described in section 301(c)(1)(A) or (B) against the goods of a foreign country or countries because of the failure of such country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, the Trade Representative shall periodically revise the list or action to affect other goods of the country or countries that have failed to implement the recommendation.

(ii) EXCEPTION.—The Trade Representative is not required to revise the retaliation list or the action described in clause (i) with respect to a country, if—

(I) the Trade Representative determines that implementation of a recommendation made pursuant to a dispute settlement proceeding described in clause (i) by the country is imminent; or

(II) the Trade Representative together with the petitioner involved in the initial investigation under this chapter (or if no petition was filed, the affected United States industry) agree that it is unnecessary to revise the retaliation list.

(C) SCHEDULE FOR REVISING LIST OR ACTION.—The Trade Representative shall, 120 days after the date the retaliation list or other section 301(a) action is first taken, and every 180 days thereafter, review the list or action taken and revise, in whole or in part, the list or action to affect other goods of the subject country or countries.

(D) STANDARDS FOR REVISING LIST OR ACTION.—In revising any list or action against a country or countries under this subsection, the Trade Representative shall act in a manner that is most likely to result in the country or countries implementing the recommendations adopted in the dispute settlement proceeding or in achieving a mutually satisfactory solution to the issue that gave rise to the dispute settlement proceeding. The Trade Representative shall consult with the petitioner, if any, involved in the initial investigation under this chapter.

(E) RETALIATION LIST.—The term “retaliation list” means the list of products of a foreign country or countries that have failed to comply with the report of the panel or Appellate Body of the WTO and with respect to which the Trade Representative is imposing duties above the level that would otherwise be imposed under the Harmonized Tariff Schedule of the United States.

(F) REQUIREMENT TO INCLUDE RECIPROCAL GOODS ON RETALIATION LIST.—The Trade Representative shall include on the retaliation list, and on any revised lists, reciprocal goods of the industries affected by the failure of the foreign country or countries to implement the recommendation made pursuant to a dispute settlement proceeding under the World Trade Organization, except in cases where existing retaliation and its corresponding preliminary retaliation list do not already meet this requirement.



(c) EXERCISE OF WTO AUTHORIZATION TO SUSPEND CONCESSIONS OR OTHER OBLIGATIONS.—If—

- (1) action has terminated pursuant to section 307(c),
  - (2) the petitioner or any representative of the domestic industry that would benefit from reinstatement of action has submitted to the Trade Representative a written request for reinstatement of action, and
  - (3) the Trade Representative has completed the requirements of subsection (d) and section 307(c)(3),
- the Trade Representative may at any time determine to take action under section 301(c) to exercise an authorization to suspend concessions or other obligations under Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (referred to in section 101(d)(16) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(16))).

(d) CONSULTATIONS.—Before making any determination under subsection (b) or (c), the Trade Representative shall—

- (1) consult with the petitioner, if any, involved in the initial investigation under this chapter and with representatives of the domestic industry concerned; and
- (2) provide an opportunity for the presentation of views by interested persons.

[19 U.S.C. 2416]

**SEC. 307. MODIFICATION AND TERMINATION OF ACTIONS.**

(a) IN GENERAL.—

(1) The Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section 301 if—

- (A) any of the conditions described in section 301(a)(2) exist,
- (B) the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased, or
- (C) such action is being taken under section 301(b) and is no longer appropriate.

(2) Before taking any action under paragraph (1) to modify or terminate any action taken under section 301, the Trade Representative shall consult with the petitioner, if any, and with representatives of the domestic industry concerned, and shall provide opportunity for the presentation of views by other interested persons affected by the proposed modification or termination concerning the effects of the modification or termination and whether any modification or termination of the action is appropriate.

(b) NOTICE; REPORT TO CONGRESS.—The Trade Representative shall promptly publish in the Federal Register notice of, and report in writing to the Congress with respect to, any modification or termination of any action taken under section 301 and the reasons therefor.

(c) REVIEW OF NECESSITY.—

- (1) If—

- (A) a particular action has been taken under section 301 during any 4-year period, and
- (B) neither the petitioner nor any representative of the domestic industry which benefits from such action has submitted to the Trade Representative during the last 60 days of such 4-year period a written request for the continuation of such action,
- such action shall terminate at the close of such 4-year period.
- (2) The Trade Representative shall notify by mail the petitioner and representatives of the domestic industry described in paragraph (1)(B) of any termination of action by reason of paragraph (1) at least 60 days before the date of such termination.
- (3) If a request is submitted to the Trade Representative under paragraph (1)(B) to continue taking a particular action under section 301, or if a request is submitted to the Trade Representative under section 306(c)(2) to reinstate action, the Trade Representative shall conduct a review of—
- (A) the effectiveness in achieving the objectives of section 301 of—
- (i) such action, and
- (ii) other actions that could be taken (including actions against other products or services), and
- (B) the effects of such actions on the United States economy, including consumers.

[19 U.S.C. 2417]

**SEC. 308. REQUEST FOR INFORMATION.**

(a) **IN GENERAL.**—Upon receipt of written request therefor from any person, the Trade Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign country with respect to particular goods, services, investment, or intellectual property rights, to the extent that such information is available to the Trade Representative, or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) **IF INFORMATION NOT AVAILABLE.**—If information that is requested by a person under subsection (a) is not available to the Trade Representative or other Federal agencies, the Trade Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government;

or

(2) decline to request the information and inform the person in writing of the reasons for refusal.

(c) **CERTAIN BUSINESS INFORMATION NOT MADE AVAILABLE.**—

(1) Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of

title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

【19 U.S.C. 2418】

#### SEC. 309. ADMINISTRATION.

The Trade Representative shall—

(1) issue regulations concerning the filing of petitions and the conduct of investigations and hearings under this subchapter,

(2) keep the petitioner regularly informed of all determinations and developments regarding the investigation conducted with respect to the petition under this chapter, including the reasons for any undue delays, and

(3) submit a report to the House of Representatives and the Senate semiannually describing—

(A) the petitions filed and the determinations made (and reasons therefor) under section 302,

(B) developments in, and the current status of, each investigation or proceeding under this chapter,

(C) the actions taken, or the reasons for no action, by the Trade Representative under section 301 with respect to investigations conducted under this chapter, and

(D) the commercial effects of actions taken under section 301.

【19 U.S.C. 2419】

#### SEC. 310. TRADE ENFORCEMENT PRIORITIES.

(a) TRADE ENFORCEMENT PRIORITIES, CONSULTATIONS, AND REPORT.—

(1) TRADE ENFORCEMENT PRIORITIES CONSULTATIONS.—Not later than May 31 of each calendar year that begins after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, the United States Trade Representative

(in this section referred to as the “Trade Representative”) shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the prioritization of acts, policies, or practices of foreign governments that raise concerns with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, or otherwise create or maintain barriers to United States goods, services, or investment.

(2) IDENTIFICATION OF TRADE ENFORCEMENT PRIORITIES.— In identifying acts, policies, or practices of foreign governments as trade enforcement priorities under this subsection, the Trade Representative shall focus on those acts, policies, and practices the elimination of which is likely to have the most significant potential to increase United States economic growth, and take into account all relevant factors, including—

(A) the economic significance of any potential inconsistency between an obligation assumed by a foreign government pursuant to a trade agreement to which both the foreign government and the United States are parties and the acts, policies, or practices of that government;

(B) the impact of the acts, policies, or practices of a foreign government on maintaining and creating United States jobs and productive capacity;

(C) the major barriers and trade distorting practices described in the most recent National Trade Estimate required under section 181(b);

(D) the major barriers and trade distorting practices described in other relevant reports addressing international trade and investment barriers prepared by a Federal agency or congressional commission during the 12 months preceding the date of the most recent report under paragraph (3);

(E) a foreign government’s compliance with its obligations under any trade agreements to which both the foreign government and the United States are parties;

(F) the implications of a foreign government’s procurement plans and policies; and

(G) the international competitive position and export potential of United States products and services.

(3) REPORT ON TRADE ENFORCEMENT PRIORITIES AND ACTIONS TAKEN TO ADDRESS.—

(A) IN GENERAL.—Not later than July 31 of each calendar year that begins after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, the Trade Representative shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on acts, policies, or practices of foreign governments identified as trade enforcement priorities based on the consultations under paragraph (1) and the criteria set forth in paragraph (2).

(B) REPORT IN SUBSEQUENT YEARS.—The Trade Representative shall include, when reporting under subparagraph (A) in any calendar year after the calendar year that

begins after the date of the enactment of the Trade Facilitation and Trade Enforcement Act of 2015, a description of actions taken to address any acts, policies, or practices of foreign governments identified as trade enforcement priorities under this subsection in the calendar year preceding that report and, as relevant, any calendar year before that calendar year.

(b) SEMIANNUAL ENFORCEMENT CONSULTATIONS.—

(1) IN GENERAL.—At the same time as the reporting under subsection (a)(3), and not later than January 31 of each following year, the Trade Representative shall consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the identification, prioritization, investigation, and resolution of acts, policies, or practices of foreign governments of concern with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, or that otherwise create or maintain trade barriers.

(2) ACTS, POLICIES, OR PRACTICES OF CONCERN.—The semiannual enforcement consultations required by paragraph (1) shall address acts, policies, or practices of foreign governments that raise concerns with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, or otherwise create or maintain trade barriers, including—

(A) engagement with relevant trading partners;

(B) strategies for addressing such concerns;

(C) availability and deployment of resources to be used in the investigation or resolution of such concerns;

(D) the merits of any potential dispute resolution proceeding under the WTO Agreements or any other trade agreement to which the United States is a party relating to such concerns; and

(E) any other aspects of such concerns.

(3) ACTIVE INVESTIGATIONS.—The semiannual enforcement consultations required by paragraph (1) shall address acts, policies, or practices that the Trade Representative is actively investigating with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, including—

(A) strategies for addressing concerns raised by such acts, policies, or practices;

(B) any relevant timeline with respect to investigation of such acts, policies, or practices;

(C) the merits of any potential dispute resolution proceeding under the WTO Agreements or any other trade agreement to which the United States is a party with respect to such acts, policies, or practices;

(D) barriers to the advancement of the investigation of such acts, policies, or practices; and

(E) any other matters relating to the investigation of such acts, policies, or practices.

(4) ONGOING ENFORCEMENT ACTIONS.—The semiannual enforcement consultations required by paragraph (1) shall ad-

dress all ongoing enforcement actions taken by or against the United States with respect to obligations under the WTO Agreements or any other trade agreement to which the United States is a party, including—

- (A) any relevant timeline with respect to such actions;
- (B) the merits of such actions;
- (C) any prospective implementation actions;
- (D) potential implications for any law or regulation of the United States;
- (E) potential implications for United States stakeholders, domestic competitors, and exporters; and
- (F) other issues relating to such actions.

(5) ENFORCEMENT RESOURCES.—The semiannual enforcement consultations required by paragraph (1) shall address the availability and deployment of enforcement resources, resource constraints on monitoring and enforcement activities, and strategies to address those constraints, including the use of available resources of other Federal agencies to enhance monitoring and enforcement capabilities.

(c) INVESTIGATION AND RESOLUTION.—In the case of any acts, policies, or practices of a foreign government identified as a trade enforcement priority under subsection (a), the Trade Representative shall, not later than the date of the first semiannual enforcement consultations held under subsection (b) after the identification of the priority, take appropriate action to address that priority, including—

- (1) engagement with the foreign government to resolve concerns raised by such acts, policies, or practices;
- (2) initiation of an investigation under section 302(b)(1) with respect to such acts, policies, or practices;
- (3) initiation of negotiations for a bilateral agreement that provides for resolution of concerns raised by such acts, policies, or practices; or
- (4) initiation of dispute settlement proceedings under the WTO Agreements or any other trade agreement to which the United States is a party with respect to such acts, policies, or practices.

(d) ENFORCEMENT NOTIFICATIONS AND CONSULTATION.—

(1) INITIATION OF ENFORCEMENT ACTION.—The Trade Representative shall notify and consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives in advance of the initiation of any formal trade dispute by or against the United States taken in regard to an obligation under the WTO Agreements or any other trade agreement to which the United States is a party. With respect to a formal trade dispute against the United States, if advance notification and consultation are not possible, the Trade Representative shall notify and consult at the earliest practicable opportunity after initiation of the dispute.

(2) CIRCULATION OF REPORTS.—The Trade Representative shall notify and consult with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives in advance of the announced or anticipated circulation of any report of a dispute settlement panel or the

Appellate Body of the World Trade Organization or of a dispute settlement panel under any other trade agreement to which the United States is a party with respect to a formal trade dispute by or against the United States.

(e) DEFINITIONS.—In this section:

(1) WTO.—The term “WTO” means the World Trade Organization.

(2) WTO AGREEMENT.—The term “WTO Agreement” has the meaning given that term in section 2(9) of the Uruguay Round Agreements Act (19 U.S.C. 3501(9)).

(3) WTO AGREEMENTS.—The term “WTO Agreements” means the WTO Agreement and agreements annexed to that Agreement.

[19 U.S.C. 2420]

## TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT RECEIVING NON-DISCRIMINATORY TREATMENT

### CHAPTER 1—TRADE RELATIONS WITH CERTAIN COUNTRIES

#### SEC. 401. EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS.

Except as otherwise provided in this title, the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

[19 U.S.C. 2431]

#### SEC. 402. FREEDOM OF EMIGRATION IN EAST-WEST TRADE.

(a) To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after the date of the enactment of this Act products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment (normal trade relations), such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to emigrate;

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) products of a nonmarket economy country may be eligible to receive non-discriminatory treatment (normal trade relations), (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c)(1) During the 18-month period beginning on the date of the enactment of this Act, the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(2) During any period subsequent to the 18-month period referred to in paragraph (1), the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if the waiver authority granted by this subsection continues to apply to such country pursuant to subsection (d), and if he reports to the Congress that—

(A) he has determined that such waiver will substantially promote the objectives of this section; and

(B) he has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this section.

(3) A waiver with respect to any country shall terminate on the day after the waiver authority granted by this subsection ceases to be effective with respect to such country pursuant to subsection (d). The President may, at any time, terminate by Executive order any waiver granted under this subsection.

(d)(1) If the President determines that the further extension of the waiver authority granted under subsection (c) will substantially promote the objectives of this section, he may recommend further extensions of such authority for successive 12-month periods. Any such recommendations shall—

(A) be made not later than 30 days before the expiration of such authority;

(B) be made in a document transmitted to the House of Representatives and the Senate setting forth his reasons for recommending the extension of such authority; and

(C) include, for each country with respect to which a waiver granted under subsection (c) is in effect, a determination



that continuation of the waiver applicable to that country will substantially promote the objectives of this section, and a statement setting forth his reasons for such determination.

If the President recommends the further extension of such authority, such authority shall continue in effect until the end of the 12-month period following the end of the previous 12-month extension with respect to any country (except for any country with respect to which such authority has not been extended under this subsection), unless a joint resolution described in section 153(a) is enacted into law pursuant to the provisions of paragraph (2).

(2)(A) The requirements of this paragraph are met if the joint resolution is enacted under the procedures set forth in section 153, and—

(i) the Congress adopts and transmits the joint resolution to the President before the end of the 60-day period beginning on the date the waiver authority would expire but for an extension under paragraph (1), and

(ii) if the President vetoes the joint resolution, each House of Congress votes to override such veto on or before the later of the last day of the 60-day period referred to in clause (i) or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress receives the veto message from the President.

(B) If a joint resolution is enacted into law under the provisions of this paragraph, the waiver authority applicable to any country with respect to which the joint resolution disapproves of the extension of such authority shall cease to be effective as of the day after the 60-day period beginning on the date of the enactment of the joint resolution.

(C) A joint resolution to which this subsection and section 153 apply may be introduced at any time on or after the date the President transmits to the Congress the document described in paragraph (1)(B).

(e) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

[19 U.S.C. 2432]

**SEC. 403. UNITED STATES PERSONNEL MISSING IN ACTION IN SOUTH-EAST ASIA.**

(a) Notwithstanding any other provision of law, if the President determines that a nonmarket economy country is not cooperating with the United States—

(1) to achieve a complete accounting of all United States military and civilian personnel who are missing in action in Southeast Asia,

(2) to repatriate such personnel who are alive, and

(3) to return the remains of such personnel who are dead to the United States,

then, during the period beginning with the date of such determination and ending on the date on which the President determines such country is cooperating with the United States, he may provide that—

(A) the products of such country may not receive non-discriminatory treatment,

(B) such country may not participate, directly or indirectly, in any program under which the United States extends credit, credit guarantees, or investment guarantees, and

(C) no commercial agreement entered into under this title between such country and the United States will take effect.

(b) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of enactment of this Act.

[19 U.S.C. 2433]

**SEC. 404. EXTENSION OF NONDISCRIMINATORY TREATMENT.**

(a) Subject to the provisions of section 405(c), the President may by proclamation extend nondiscriminatory treatment to the products of a foreign country which has entered into a bilateral commercial agreement referred to in section 405.

(b) The application of nondiscriminatory treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement. In addition, in the case of any foreign country receiving nondiscriminatory treatment pursuant to this title which has entered into an agreement with the United States regarding the settlement of lend-lease reciprocal aid and claims, the application of such nondiscriminatory treatment shall be limited to period during which such country is not in arrears on its obligations under such agreement.

(c) The President may at any time suspend or withdraw any extension of nondiscriminatory treatment to any country pursuant to subsection (a) and thereby cause all products of such country to be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States.

[19 U.S.C. 2434]

**SEC. 405. AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS.**

(a) Subject to the provisions of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this Act and are in the national interest.

(b) Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than 3 years from the date the agreement enters into force; except that it may be renewable for additional periods, each not to exceed 3 years; if—

(A) a satisfactory balance of concessions in trade and services has been maintained during the life of such agreement, and

(B) the President determines that actual or foreseeable reductions in United States tariffs and nontariff barriers

to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the bilateral agreement;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests;

(3) include safeguard arrangements (A) providing for prompt consultations whenever either actual or prospective imports cause or threaten to cause, or significantly contribute to, market disruption and (B) authorizing the imposition of such import restrictions as may be appropriate to prevent such market disruption;

(4) if the other party to the bilateral agreement is not a party to the Paris Convention for the Protection of Industrial Property, provide rights for United States nationals with respect to patents and trademarks in such country not less than the rights specified in such convention;

(5) if the other party to the bilateral agreement is not a party to the Universal Copyright Convention, provide rights for United States nationals with respect to copyrights in such country not less than the rights specified in such convention;

(6) in the case of an agreement entered into or renewed after the date of the enactment of the Act, provide arrangements for the protection of industrial rights and processes;

(7) provide arrangements for the settlement of commercial differences and disputes;

(8) in the case of an agreement entered into or renewed after the date of the enactment of this Act, provide arrangements for the promotion of trade, which may include arrangements for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits, and the sending of trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

(9) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party; and

(10) provide such other arrangements of a commercial nature as will promote the purpose of this Act.

(c) An agreement referred to in subsection (a), and a proclamation referred to in section 404(a) implementing such agreement, shall take effect only if a joint resolution described in section 151(b)(3) that approves of the agreement referred to in subsection (a) is enacted into law.

[19 U.S.C. 2435]

#### **SEC. 406. MARKET DISRUPTION.**

(a)(1) Upon the filing of a petition by an entity described in section 202(a), upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International

Trade Commission (hereafter in this section referred to as the "Commission") shall promptly make an investigation to determine, with respect to imports of an article which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(3), (b)(4), and (c)(4) of section 202 shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) With respect to any affirmative determination of the Commission under subsection (a)—

(1) such determination shall be treated as an affirmative determination made under section 201(b) of this Act (as in effect on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

(2) sections 202 and 203 of this Act (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of chapter 1 of title II of this Act as amended by section 1401 of such Act of 1988, shall apply with respect to the taking of subsequent action, if any, by the President in response to such affirmative determination;

except that—

(A) the President may take action under such sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

(B) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

(c) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which

is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under sections 202 and 203 referred to in subsection (b) as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the President under the preceding sentence shall cease to apply (1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or (2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action taken by the President pursuant to such determination becomes effective.

(d)(1) A petition may be filed with the President by an entity described in section 202(a) requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) For purposes of this section—

(1) The term "Communist country" means any country dominated or controlled by communism.

(2)(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

(B) For purposes of subparagraph (A):

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) The term "significant cause" refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(C) The Commission, in determining whether market disruption exists, shall consider, among other factors—

(i) the volume of imports of the merchandise which is the subject of the investigation;

(ii) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

[19 U.S.C. 2436]

**SEC. 407. PROCEDURE FOR CONGRESSIONAL APPROVAL OR DISAPPROVAL OF EXTENSION OF NONDISCRIMINATORY TREATMENT AND PRESIDENTIAL REPORTS.**

(a) Whenever the President issues a proclamation under section 404 extending nondiscriminatory treatment to the products of any foreign country, he shall promptly transmit to the House of Representatives and to the Senate a document setting forth the proclamation and the agreement the proclamation proposes to implement, together with his reasons therefor.

(b) The President shall transmit to the House of Representatives and the Senate a document containing the initial report submitted by him under section 402(b) or 409(b) with respect to a nonmarket economy country. On or before December 31 of each year, the President shall transmit to the House of Representatives and the Senate, a document containing the report required by section 402(b) or 409(b) as the case may be, to be submitted on or before such December 31.

(c)(1) In the case of a document referred to in subsection (a), the proclamation set forth in the document may become effective and the agreement set forth in the document may enter into force and effect only if a joint resolution described in section 151(b)(3) that approves of the extension of nondiscriminatory treatment to the products of the country concerned is enacted into law.

(2) In the case of a document referred to in subsection (b) which contains a report submitted by the President under section 402(b) or 409(b) with respect to a nonmarket economy country, if, before the close of the 90-day period beginning on the day on which such document is delivered to the House of Representatives and to the Senate, a joint resolution described in section 152(a)(i)(B) is enacted into law that disapproves of the report submitted by the President with respect to such country, then, beginning with the day after the end of the 60-day period beginning with the date of the enactment of such resolution of disapproval, (A) nondiscriminatory treatment shall not be in force with respect to the products of such country, and the products of such country shall be dutiable at the rates set forth in rate column numbered 2 of the Harmonized Tariff Schedule of the United States, (B) such country may not participate in any program of the Government of the United States which extends credit or credit guarantees or investment guarantees, and (C) no commercial agreement may thereafter be concluded with such country under this title. If the President vetoes the joint resolution, the joint resolution shall be treated as enacted into law before the end of the 90-day period under this paragraph if both Houses of Congress vote to override such veto on or before the later of the last day of such 90-day period or the last day of the 15-day period (excluding any day described in section 154(b)) beginning on the date the Congress receives the veto message from the President.

[19 U.S.C. 2437]

**SEC. 408. PAYMENT BY CZECHOSLOVAKIA OF AMOUNTS OWED UNITED STATES CITIZENS AND NATIONALS.**

(a) The arrangement initialed on July 5, 1974, with respect to the settlement of the claims of citizens and nationals of the United States against the Government of Czechoslovakia shall be renegotiated and shall be submitted to the Congress as part of any agreement entered into under this title with Czechoslovakia.

(b) The United States shall not release any gold belonging to Czechoslovakia and controlled directly or indirectly by the United States pursuant to the provisions of the Paris Reparations Agreement of January 24, 1946, or otherwise, until such agreement has been approved by the Congress.

[19 U.S.C. 2438]

**SEC. 409. FREEDOM TO EMIGRATE TO JOIN A VERY CLOSE RELATIVE IN THE UNITED STATES.**

(a) To assure the continued dedication of the United States to the fundamental human rights and welfare of its own citizens, and notwithstanding any other provision of law, on or after the date of the enactment of this Act, no nonmarket economy country shall participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country—

(1) denies its citizens the right or opportunity to join permanently through emigration, a very close relative in the United States, such as a spouse, parent, child, brother, or sister;

(2) imposes more than a nominal tax on the visas or other documents required for emigration described in paragraph (1); or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate as described in paragraph (1),

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) a nonmarket economy country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (B) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of its laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate to the United States to join close relatives. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter, so long as such credits or guarantees are extended or such agreement is in effect.

(c) This section shall not apply to any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of enactment of this Act.

(d) During any period that a waiver is in effect with respect to any nonmarket economy country under section 402(c), the provisions of subsections (a) and (b) shall not apply with respect to such country.

[19 U.S.C. 2439]

[SEC. 410 Repealed by Public Law 104–295, section 17, 110 Stat. 3524.]

[SEC. 411 Repealed by Public Law 105–362, section 1401(b)(2), 112 Stat. 3294.]

## **CHAPTER 2—RELIEF FROM MARKET DISRUPTION TO INDUSTRIES AND DIVERSION OF TRADE TO THE UNITED STATES MARKET**

### **SEC. 421. ACTION TO ADDRESS MARKET DISRUPTION.**

(a) **PRESIDENTIAL ACTION.**—If a product of the People’s Republic of China is being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of a like or directly competitive product, the President shall, in accordance with the provisions of this section, proclaim increased duties or other import restrictions with respect to such product, to the extent and for such period as the President considers necessary to prevent or remedy the market disruption.

(b) **INITIATION OF AN INVESTIGATION.**—(1) Upon the filing of a petition by an entity described in section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)), upon the request of the President or the United States Trade Representative (in this chapter referred to as the “Trade Representative”), upon resolution of either the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate (in this chapter referred to as the “Committees”) or on its own motion, the United States International Trade Commission (in this chapter referred to as the “Commission”) shall promptly make an investigation to determine whether products of the People’s Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

(2) The limitations on investigations set forth in section 202(h)(1) of the Trade Act of 1974 (19 U.S.C. 2252(h)(1)) shall apply to investigations conducted under this section.

(3) The provisions of subsections (a)(8) and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. 2252(a)(8) and (i)), relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(4) Whenever a petition is filed, or a request or resolution is received, under this subsection, the Commission shall transmit a copy thereof to the President, the Trade Representative, the Com-



mittee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, except that in the case of confidential business information, the copy may include only nonconfidential summaries of such information.

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

(c) MARKET DISRUPTION.—(1) For purposes of this section, market disruption exists whenever imports of an article like or directly competitive with an article produced by a domestic industry are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

(2) For purposes of paragraph (1), the term “significant cause” refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(d) FACTORS IN DETERMINATION.—In determining whether market disruption exists, the Commission shall consider objective factors, including—

(1) the volume of imports of the product which is the subject of the investigation;

(2) the effect of imports of such product on prices in the United States for like or directly competitive articles; and

(3) the effect of imports of such product on the domestic industry producing like or directly competitive articles.

The presence or absence of any factor under paragraph (1), (2), or (3) is not necessarily dispositive of whether market disruption exists.

(e) TIME FOR COMMISSION DETERMINATIONS.—The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b)(1) at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting relief under subsection (i)) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b). If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(f) RECOMMENDATIONS OF COMMISSION ON PROPOSED REMEDIES.—If the Commission makes an affirmative determination under subsection (b), or a determination which the President or the Trade Representative may consider as affirmative under subsection (e), the Commission shall propose the amount of increase in, or imposition of, any duty or other import restrictions necessary to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the proposed action to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determination may submit, in the re-

port required under subsection (g), separate views regarding what action, if any, should be taken to prevent or remedy market disruption.

(g) REPORT BY COMMISSION.—(1) Not later than 20 days after a determination under subsection (b) is made, the Commission shall submit a report to the President and the Trade Representative.

(2) The Commission shall include in the report required under paragraph (1) the following:

(A) The determination made under subsection (b) and an explanation of the basis for the determination.

(B) If the determination under subsection (b) is affirmative, or may be considered by the President or the Trade Representative as affirmative under subsection (e), the recommendations of the Commission on proposed remedies under subsection (f) and an explanation of the basis for each recommendation.

(C) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in subparagraphs (A) and (B).

(D) A description of—

(i) the short- and long-term effects that implementation of the action recommended under subsection (f) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(ii) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

(3) The Commission, after submitting a report to the President under paragraph (1), shall promptly make it available to the public (but shall not include confidential business information) and cause a summary thereof to be published in the Federal Register.

(h) OPPORTUNITY TO PRESENT VIEWS AND EVIDENCE ON PROPOSED MEASURE AND RECOMMENDATION TO THE PRESIDENT.—(1) Within 20 days after receipt of the Commission's report under subsection (g) (or 15 days in the case of an affirmative preliminary determination under subsection (i)(1)(B)), the Trade Representative shall publish in the Federal Register notice of any measure proposed by the Trade Representative to be taken pursuant to subsection (a) and of the opportunity, including a public hearing, if requested, for importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest.

(2) Within 55 days after receipt of the report under subsection (g) (or 35 days in the case of an affirmative preliminary determination under subsection (i)(1)(B)), the Trade Representative, taking into account the views and evidence received under paragraph (1) on the measure proposed by the Trade Representative, shall make a recommendation to the President concerning what action, if any, to take to prevent or remedy the market disruption.

(i) CRITICAL CIRCUMSTANCES.—(1) When a petition filed under subsection (b) alleges that critical circumstances exist and requests

that provisional relief be provided under this subsection with respect to the product identified in the petition, the Commission shall, not later than 45 days after the petition containing the request is filed—

(A) determine whether delay in taking action under this section would cause damage to the relevant domestic industry which would be difficult to repair; and

(B) if the determination under subparagraph (A) is affirmative, make a preliminary determination of whether imports of the product which is the subject of the investigation have caused or threatened to cause market disruption.

If the Commissioners voting are equally divided with respect to either of its determinations, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) On the date on which the Commission completes its determinations under paragraph (1), the Commission shall transmit a report on the determinations to the President and the Trade Representative, including the reasons for its determinations. If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Commission shall include in its report its recommendations on proposed provisional measures to be taken to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determinations under paragraph (1) are eligible to vote on the proposed provisional measures to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determinations may submit, in the report, dissenting or separate views regarding the determination and any recommendation of provisional measures referred to in this paragraph.

(3) If the determinations under paragraph (1) are affirmative, or may be considered by the President or the Trade Representative as affirmative under paragraph (1), the Trade Representative shall, within 10 days after receipt of the Commission's report, determine the amount or extent of provisional relief that is necessary to prevent or remedy the market disruption and shall provide a recommendation to the President on what provisional measures, if any, to take.

(4)(A) The President shall determine whether to provide provisional relief and proclaim such relief, if any, within 10 days after receipt of the recommendation from the Trade Representative.

(B) Such relief may take the form of—

- (i) the imposition of or increase in any duty;
- (ii) any modification, or imposition of any quantitative restriction on the importation of an article into the United States; or
- (iii) any combination of actions under clauses (i) and (ii).

(C) Any provisional action proclaimed by the President pursuant to a determination of critical circumstances shall remain in effect not more than 200 days.

(D) Provisional relief shall cease to apply upon the effective date of relief proclaimed under subsection (a), upon a decision by

the President not to provide such relief, or upon a negative determination by the Commission under subsection (b).

(j) AGREEMENTS WITH THE PEOPLE'S REPUBLIC OF CHINA.—(1) The Trade Representative is authorized to enter into agreements for the People's Republic of China to take such action as necessary to prevent or remedy market disruption, and should seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO, which shall commence not later than 5 days after the Trade Representative receives an affirmative determination provided for in subsection (e) or a determination which the Trade Representative considers to be an affirmative determination pursuant to subsection (e).

(2) If no agreement is reached with the People's Republic of China pursuant to consultations under paragraph (1), or if the President determines that an agreement reached pursuant to such consultations is not preventing or remedying the market disruption at issue, the President shall provide import relief in accordance with subsection (a).

(k) STANDARD FOR PRESIDENTIAL ACTION.—(1) Within 15 days after receipt of a recommendation from the Trade Representative under subsection (h) on the appropriate action, if any, to take to prevent or remedy the market disruption, the President shall provide import relief for such industry pursuant to subsection (a), unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action pursuant to subsection (a) would cause serious harm to the national security of the United States.

(2) The President may determine under paragraph (1) that providing import relief is not in the national economic interest of the United States only if the President finds that the taking of such action would have an adverse impact on the United States economy clearly greater than the benefits of such action.

(l) PUBLICATION OF DECISION AND REPORTS.—(1) The President's decision, including the reasons therefor and the scope and duration of any action taken, shall be published in the Federal Register.

(2) The Commission shall promptly make public any report transmitted under this section, but shall not make public any information which the Commission determines to be confidential, and shall publish notice of such report in the Federal Register.

(m) EFFECTIVE DATE OF RELIEF.—Import relief under this section shall take effect not later than 15 days after the President's determination to provide such relief.

(n) MODIFICATIONS OF RELIEF.—(1) At any time after the end of the 6-month period beginning on the date on which relief under subsection (m) first takes effect, the President may request that the Commission provide a report on the probable effect of the modification, reduction, or termination of the relief provided on the relevant industry. The Commission shall transmit such report to the President within 60 days of the request.

(2) The President may, after receiving a report from the Commission under paragraph (1), take such action to modify, reduce, or terminate relief that the President determines is necessary to continue to prevent or remedy the market disruption at issue.

(3) Upon the granting of relief under subsection (k), the Commission shall collect such data as is necessary to allow it to respond rapidly to a request by the President under paragraph (1).

(o) EXTENSION OF ACTION.—(1) Upon request of the President, or upon petition on behalf of the industry concerned filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any relief provided under subsection (k) is to terminate, the Commission shall investigate to determine whether action under this section continues to be necessary to prevent or remedy market disruption.

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

(3) The Commission shall transmit to the President a report on its investigation and determination under this subsection not later than 60 days before the action under subsection (m) is to terminate.

(4) The President, after receiving an affirmative determination from the Commission under paragraph (3), may extend the effective period of any action under this section if the President determines that the action continues to be necessary to prevent or remedy the market disruption.

[19 U.S.C. 2451]

#### SEC. 422. ACTION IN RESPONSE TO TRADE DIVERSION.

(a) MONITORING BY CUSTOMS SERVICE.—In any case in which a WTO member other than the United States requests consultations with the People's Republic of China under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the World Trade Organization, the Trade Representative shall inform the United States Customs Service, which shall monitor imports into the United States of those products of Chinese origin that are the subject of the consultation request. Data from such monitoring shall promptly be made available to the Commission upon request by the Commission.

(b) INITIATION OF INVESTIGATION.—(1) Upon the filing of a petition by an entity described in section 202(a) of the Trade Act of 1974, upon the request of the President or the Trade Representative, upon resolution of either of the Committees, or on its own motion, the Commission shall promptly make an investigation to determine whether an action described in subsection (c) has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States.

(2) The Commission shall publish notice of the commencement of any proceeding under this subsection in the Federal Register and shall, within a reasonable time thereafter, hold public hearings at

which the Commission shall afford interested parties an opportunity to be present, to present evidence, to respond to the presentations of other parties, and otherwise to be heard.

(3) The provisions of subsections (a)(8) and (i) of section 202 of the Trade Act of 1974 (19 U.S.C. 2252(a)(8) and (i)), relating to treatment of confidential business information, shall apply to investigations conducted under this section.

(c) ACTIONS DESCRIBED.—An action is described in this subsection if it is an action—

(1) by the People's Republic of China to prevent or remedy market disruption in a WTO member other than the United States;

(2) by a WTO member other than the United States to withdraw concessions under the WTO Agreement or otherwise to limit imports to prevent or remedy market disruption;

(3) by a WTO member other than the United States to apply a provisional safeguard within the meaning of the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO; or

(4) any combination of actions described in paragraphs (1) through (3).

(d) BASIS FOR DETERMINATION OF SIGNIFICANT DIVERSION.—(1) In determining whether significant diversion or the threat thereof exists for purposes of this section, the Commission shall take into account, to the extent such evidence is reasonably available—

(A) the monitoring conducted under subsection (a);

(B) the actual or imminent increase in United States market share held by such imports from the People's Republic of China;

(C) the actual or imminent increase in volume of such imports into the United States;

(D) the nature and extent of the action taken or proposed by the WTO member concerned;

(E) the extent of exports from the People's Republic of China to that WTO member and to the United States;

(F) the actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(G) the actual or imminent diversion of exports from the People's Republic of China to countries other than the United States;

(H) cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(I) conditions of demand and supply in the United States market for the products at issue.

The presence or absence of any factor under any of subparagraphs (A) through (I) is not necessarily dispositive of whether a significant diversion of trade or the threat thereof exists.

(2) For purposes of making its determination, the Commission shall examine changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in subsection (a).

(3) If more than one action by a WTO member or WTO members against a particular product is identified in the petition, re-

quest, or resolution under subsection (b) or during the investigation, the Commission may cumulatively assess the actual or likely effects of such actions jointly in determining whether a significant diversion of trade or threat thereof exists.

(e) COMMISSION DETERMINATION; AGREEMENT AUTHORITY.—(1) The Commission shall make and transmit to the President and the Trade Representative its determination under subsection (b) at the earliest practicable time, but in no case later than 45 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, under subsection (b). If the Commissioners voting are equally divided with respect to its determination, then the determination agreed upon by either group of Commissioners may be considered by the President and the Trade Representative as the determination of the Commission.

(2) The Trade Representative is authorized to enter into agreements with the People's Republic of China or the other WTO members concerned to take such action as necessary to prevent or remedy significant trade diversion or threat thereof into the domestic market of the United States, and should seek to conclude such agreements before the expiration of the 60-day consultation period provided for under the product-specific safeguard provision of the Protocol of Accession of the People's Republic of China to the WTO, which shall commence not later than 5 days after the Trade Representative receives an affirmative determination provided for in paragraph (1) or a determination which the Trade Representative considers to be an affirmative determination pursuant to paragraph (1).

(3) REPORT BY COMMISSION.—

(A) Not later than 10 days after a determination under subsection (b), is made, the Commission shall transmit a report to the President and the Trade Representative.

(B) The Commission shall include in the report required under subparagraph (A) the following:

(i) The determination made under subsection (b) and an explanation of the basis for the determination.

(ii) If the determination under subsection (b) is affirmative, or may be considered by the President or the Trade Representative as affirmative under subsection (e)(1), the recommendations of the Commission on increased tariffs or other import restrictions to be imposed to prevent or remedy the trade diversion or threat thereof, and explanations of the bases for such recommendations. Only those members of the Commission who agreed to the affirmative determination under subsection (b) are eligible to vote on the proposed action to prevent or remedy the trade diversion or threat thereof.

(iii) Any dissenting or separate views by members of the Commission regarding the determination and any recommendation referred to in clauses (i) and (ii).

(iv) A description of—

(I) the short- and long-term effects that implementation of the action recommended under clause (ii) is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(II) the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and the communities where production facilities of such industry are located, and on other domestic industries.

(C) The Commission, after submitting a report to the President under subparagraph (A), shall promptly make it available to the public (with the exception of confidential business information) and cause a summary thereof to be published in the Federal Register.

(f) PUBLIC COMMENT.—If consultations fail to lead to an agreement with the People’s Republic of China or the WTO member concerned within 60 days, the Trade Representative shall promptly publish notice in the Federal Register of any proposed action to prevent or remedy the trade diversion, and provide an opportunity for interested persons to present views and evidence on whether the proposed action is in the public interest.

(g) RECOMMENDATION TO THE PRESIDENT.—Within 20 days after the end of consultations pursuant to subsection (e), the Trade Representative shall make a recommendation to the President on what action, if any, should be taken to prevent or remedy the trade diversion or threat thereof.

(h) PRESIDENTIAL ACTION.—Within 20 days after receipt of the recommendation from the Trade Representative, the President shall determine what action to take to prevent or remedy the trade diversion or threat thereof.

(i) DURATION OF ACTION.—Action taken under subsection (h) shall be terminated not later than 30 days after expiration of the action taken by the WTO member or members involved against imports from the People’s Republic of China.

(j) REVIEW OF CIRCUMSTANCES.—The Commission shall review the continued need for action taken under subsection (h) if the WTO member or members involved notify the Committee on Safeguards of the WTO of any modification in the action taken by them against the People’s Republic of China pursuant to consultation referred to in subsection (a). The Commission shall, not later than 60 days after such notification, determine whether a significant diversion of trade continues to exist and report its determination to the President. The President shall determine, within 15 days after receiving the Commission’s report, whether to modify, withdraw, or keep in place the action taken under subsection (h).

【19 U.S.C. 2451a】

#### SEC. 423. REGULATIONS; TERMINATION OF PROVISION.

(a) TO CARRY OUT RESTRICTIONS AND MONITORING.—The President shall by regulation provide for the efficient and fair administration of any restriction proclaimed pursuant to the subtitle and to provide for effective monitoring of imports under section 422(a).

(b) TO CARRY OUT AGREEMENTS.—To carry out an agreement concluded pursuant to consultations under section 421(j) or 422(e)(2), the President is authorized to prescribe regulations governing the entry or withdrawal from warehouse of articles covered by such agreement.



(c) **TERMINATION DATE.**—This subtitle and any regulations issued under this subtitle shall cease to be effective 12 years after the date of entry into force of the Protocol of Accession of the People's Republic of China to the WTO.

[19 U.S.C. 2451b]

## **TITLE V—GENERALIZED SYSTEM OF PREFERENCES**

### **SEC. 501. AUTHORITY TO EXTEND PREFERENCES.**

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for—

- (1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;
- (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
- (3) the anticipated impact of such action on United States producers of like or directly competitive products; and
- (4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

[19 U.S.C. 2461]

### **SEC. 502. DESIGNATION OF BENEFICIARY DEVELOPING COUNTRIES.**

(a) **AUTHORITY TO DESIGNATE COUNTRIES.**—

(1) **BENEFICIARY DEVELOPING COUNTRIES.**—The President is authorized to designate countries as beneficiary developing countries for purposes of this title.

(2) **LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.**—The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this title, based on the considerations in section 501 and subsection (c) of this section.

(b) **COUNTRIES INELIGIBLE FOR DESIGNATION.**—

(1) **SPECIFIC COUNTRIES.**—The following countries may not be designated as beneficiary developing countries for purposes of this title:

- (A) Australia.
- (B) Canada.
- (C) European Union member states.
- (D) Iceland.
- (E) Japan.
- (F) Monaco.
- (G) New Zealand.
- (H) Norway.
- (I) Switzerland.

(2) OTHER BASES FOR INELIGIBILITY.—The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

(A) Such country is a Communist country, unless—

(i) the products of such country receive non-discriminatory treatment,

(ii) such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and

(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

(ii) to cause serious disruption of the world economy.

(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

(D)(i) Such country—

(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property,

unless clause (ii) applies.

(ii) This clause applies if the President determines that—

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the

country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum,

and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 6(j)(1)(A) of the Export Administration Act of 1979 or such country has not taken steps to support the efforts of the United States to combat terrorism.

(G) Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.

Subparagraphs (D), (E), (F), (G), and (H) (to the extent described in section 507(6)(D)) shall not prevent the designation of any country as a beneficiary developing country under this title if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) FACTORS AFFECTING COUNTRY DESIGNATION.—In determining whether to designate any country as a beneficiary developing country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

(3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective protection of intellectual property rights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services;

and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(d) WITHDRAWAL, SUSPENSION, OR LIMITATION OF COUNTRY DESIGNATION.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 501 and subsection (c) of this section.

(2) CHANGED CIRCUMSTANCES.—The President shall, after complying with the requirements of subsection (f)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this title.

(3) ADVICE TO CONGRESS.—The President shall, as necessary, advise the Congress on the application of section 501 and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in subsection (c).

(e) MANDATORY GRADUATION OF BENEFICIARY DEVELOPING COUNTRIES.—If the President determines that a beneficiary developing country has become a “high income” country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this title, effective on January 1 of the second year following the year in which such determination is made.

(f) CONGRESSIONAL NOTIFICATION.—

(1) NOTIFICATION OF DESIGNATION.—

(A) IN GENERAL.—Before the President designates any country as a beneficiary developing country under this

title, the President shall notify the Congress of the President's intention to make such designation, together with the considerations entering into such decision.

(B) DESIGNATION AS LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President's intention to make such designation.

(2) NOTIFICATION OF TERMINATION.—If the President has designated any country as a beneficiary developing country under this title, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President's intention to terminate such designation, together with the considerations entering into such decision.

[19 U.S.C. 2462]

**SEC. 503. DESIGNATION OF ELIGIBLE ARTICLES.**

(a) ELIGIBLE ARTICLES.—

(1) DESIGNATION.—

(A) IN GENERAL.—Except as provided in subsection (b), the President is authorized to designate articles as eligible articles from all beneficiary developing countries for purposes of this title by Executive order or Presidential proclamation after receiving the advice of the International Trade Commission in accordance with subsection (e).

(B) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES.—Except for articles described in subparagraphs (A), (B), and (E) of subsection (b)(1) and articles described in paragraphs (2) and (3) of subsection (b), the President may, in carrying out section 502(d)(1) and subsection (c)(1) of this section, designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) if, after receiving the advice of the International Trade Commission in accordance with subsection (e) of this section, the President determines that such articles are not import-sensitive in the context of imports from least-developed beneficiary developing countries.

(C) THREE-YEAR RULE.—If, after receiving the advice of the International Trade Commission under subsection (e), an article has been formally considered for designation as an eligible article under this title and denied such designation, such article may not be reconsidered for such designation for a period of 3 years after such denial.

(2) RULE OF ORIGIN.—

(A) GENERAL RULE.—The duty-free treatment provided under this title shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—

(i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and

(ii) the sum of—

(I) the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 507(2), plus

(II) the direct costs of processing operations performed in such beneficiary developing country or such member countries,

is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) EXCLUSIONS.—An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

(i) simple combining or packaging operations, or

(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3) REGULATIONS.—The Secretary of the Treasury, after consulting with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out paragraph (2), including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this title, an article—

(A) must be wholly the growth, product, or manufacture of a beneficiary developing country, or

(B) must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country.

(b) ARTICLES THAT MAY NOT BE DESIGNATED AS ELIGIBLE ARTICLES.—

(1) IMPORT SENSITIVE ARTICLES.—The President may not designate any article as an eligible article under subsection (a) if such article is within one of the following categories of import-sensitive articles:

(A) Except as provided in paragraphs (4) and (5), textile and apparel articles which were not eligible articles for purposes of this title on January 1, 1994, as this title was in effect on such date.

(B) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions.

(C) Import-sensitive electronic articles.

(D) Import-sensitive steel articles.

(E) Except as provided in paragraph (5), footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for pur-

poses of this title on January 1, 1995, as this title was in effect on such date.

(F) Import-sensitive semimanufactured and manufactured glass products.

(G) Any other articles which the President determines to be import-sensitive in the context of the Generalized System of Preferences.

(2) ARTICLES AGAINST WHICH OTHER ACTIONS TAKEN.—An article shall not be an eligible article for purposes of this title for any period during which such article is the subject of any action proclaimed pursuant to section 203 of this Act (19 U.S.C. 2253) or section 232 or 351 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, 1981).

(3) AGRICULTURAL PRODUCTS.—No quantity of an agricultural product subject to a tariff-rate quota that exceeds the in-quota quantity shall be eligible for duty-free treatment under this title.

(4) CERTAIN HAND-KNOTTED OR HAND-WOVEN CARPETS.—Notwithstanding paragraph (1)(A), the President may designate as an eligible article or articles under subsection (a) carpets or rugs which are hand-loomed, hand-woven, hand-hooked, hand-tufted, or hand-knotted, and classifiable under subheading 5701.10.16, 5701.10.40, 5701.90.10, 5701.90.20, 5702.10.90, 5702.42.20, 5702.49.10, 5702.51.20, 5702.91.30, 5702.92.00, 5702.99.10, 5703.10.00, 5703.20.10, or 5703.30.00 of the Harmonized Tariff Schedule of the United States.

(5)<sup>20</sup> CERTAIN COTTON ARTICLES.—Notwithstanding paragraph (3), the President may designate as an eligible article or articles under subsection (a)(1)(B) only for countries designated as least-developed beneficiary developing countries under section 502(a)(2) cotton articles classifiable under subheading 5201.00.18, 5201.00.28, 5201.00.38, 5202.99.30, or 5203.00.30 of the Harmonized Tariff Schedule of the United States.

(5)<sup>20</sup> CERTAIN LUGGAGE AND TRAVEL ARTICLES.—Notwithstanding subparagraph (A) or (E) of paragraph (1), the President may designate the following as eligible articles under subsection (a):

(A) Articles classifiable under subheading 4202.11.00, 4202.12.40, 4202.21.60, 4202.21.90, 4202.22.15, 4202.22.45, 4202.31.60, 4202.32.40, 4202.32.80, 4202.92.15, 4202.92.20, 4202.92.45, or 4202.99.90 of the Harmonized Tariff Schedule of the United States.

(B) Articles classifiable under statistical reporting number 4202.12.2020, 4202.12.2050, 4202.12.8030, 4202.12.8070, 4202.22.8050, 4202.32.9550, 4202.32.9560, 4202.91.0030, 4202.91.0090, 4202.92.3020, 4202.92.3031, 4202.92.3091, 4202.92.9026, or 4202.92.9060 of the Harmonized Tariff Schedule of the United States, as such sta-

<sup>20</sup>Two paragraph (5)s' so in law. See amendments made by sections 202 and 204(3) of Public Law 114-27 (129 Stat. 372). Also, the amendment made by section 204(3) of such Public Law provides to insert this new paragraph (5) (relating to certain luggage and travel articles) at the end of subsection (b)(1). Such new paragraph was inserted at the end of subsection (b) rather than at the end of paragraph (1) in order to reflect the probable intent of Congress.

tistical reporting numbers are in effect on the date of the enactment of the Trade Preferences Extension Act of 2015.

(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF DUTY-FREE TREATMENT; COMPETITIVE NEED LIMITATION.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any article, except that no rate of duty may be established with respect to any article pursuant to this subsection other than the rate which would apply but for this title. In taking any action under this subsection, the President shall consider the factors set forth in sections 501 and 502(c).

(2) COMPETITIVE NEED LIMITATION.—

(A) BASIS FOR WITHDRAWAL OF DUTY-FREE TREATMENT.—

(i) IN GENERAL.—Except as provided in clause (ii) and subject to subsection (d), whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31, 1995—

(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

(II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of the total imports of that article into the United States during any calendar year,

the President shall, not later than November 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country.

(ii) ANNUAL ADJUSTMENT OF APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

(I) for 1996, \$75,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus \$5,000,000.

(B) COUNTRY DEFINED.—For purposes of this paragraph, the term “country” does not include an association of countries which is treated as one country under section 507(2), but does include a country which is a member of any such association.

(C) REDESIGNATIONS.—A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of subparagraph (A) may, subject to the considerations set forth in sections 501 and 502, be redesignated a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in subparagraph (A) during the preceding calendar year.

(D) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRIES AND BENEFICIARY SUB-SAHARAN AFRICAN COUN-



TRIES.—Subparagraph (A) shall not apply to any least-developed beneficiary developing country or any beneficiary sub-Saharan African country.

(E) ARTICLES NOT PRODUCED IN THE UNITED STATES EXCLUDED.—Subparagraph (A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States in any of the preceding 3 calendar years.

(F) DE MINIMIS WAIVERS.—

(i) IN GENERAL.—The President may disregard subparagraph (A)(i)(II) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of such article into the United States during the preceding calendar year does not exceed the applicable amount for such preceding calendar year.

(ii) APPLICABLE AMOUNT.—For purposes of applying clause (i), the applicable amount is—

(I) for calendar year 1996, \$13,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus \$500,000.

(d) WAIVER OF COMPETITIVE NEED LIMITATION.—

(1) IN GENERAL.—The President may waive the application of subsection (c)(2) with respect to any eligible article of any beneficiary developing country if, before November 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2)(A) was made with respect to such eligible article, the President—

(A) receives the advice of the International Trade Commission under section 332 of the Tariff Act of 1930 on whether any industry in the United States is likely to be adversely affected by such waiver,

(B) determines, based on the considerations described in sections 501 and 502(c) and the advice described in subparagraph (A), that such waiver is in the national economic interest of the United States, and

(C) publishes the determination described in subparagraph (B) in the Federal Register.

(2) CONSIDERATIONS BY THE PRESIDENT.—In making any determination under paragraph (1), the President shall give great weight to—

(A) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(B) the extent to which such country provides adequate and effective protection of intellectual property rights.

(3) OTHER BASES FOR WAIVER.—The President may waive the application of subsection (c)(2) if, before November 1 of the calendar year beginning after the calendar year for which a determination described in subsection (c)(2) was made with re-

spect to a beneficiary developing country, the President determines that—

(A) there has been a historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce,

and the President publishes that determination in the Federal Register.

(4) LIMITATIONS ON WAIVERS.—

(A) IN GENERAL.—The President may not exercise the waiver authority under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which equals or exceeds 30 percent of the aggregate appraised value of all articles that entered duty-free under this title during the preceding calendar year.

(B) OTHER WAIVER LIMITS.—(i) The President may not exercise the waiver authority provided under this subsection with respect to a quantity of an eligible article entered during any calendar year beginning after 1995, the aggregate appraised value of which exceeds 15 percent of the aggregate appraised value of all articles that have entered duty-free under this title during the preceding calendar year from those beneficiary developing countries which for the preceding calendar year—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the International Bank for Reconstruction and Development) of \$5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this title that had an aggregate appraised value of more than 10 percent of the aggregate appraised value of all articles that entered duty-free under this title during that year.

(ii) Not later than November 1 of each year, the President should revoke any waiver that has then been in effect with respect to an article for 5 years or more if the beneficiary developing country has exported to the United States (directly or indirectly) during the preceding calendar year a quantity of the article—

(I) having an appraised value in excess of 1.5 times the applicable amount set forth in subsection (c)(2)(A)(ii) for that calendar year; or

(II) exceeding 75 percent of the appraised value of the total imports of that article into the United States during that calendar year.

(C) CALCULATION OF LIMITATIONS.—There shall be counted against the limitations imposed under subpara-

graphs (A) and (B) for any calendar year only that value of any eligible article of any country that—

(i) entered duty-free under this title during such calendar year; and

(ii) is in excess of the value of that article that would have been so entered during such calendar year if the limitations under subsection (c)(2)(A) applied.

(5) **EFFECTIVE PERIOD OF WAIVER.**—Any waiver granted under this subsection shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(e) **INTERNATIONAL TRADE COMMISSION ADVICE.**—Before designating articles as eligible articles under subsection (a)(1), the President shall publish and furnish the International Trade Commission with lists of articles which may be considered for designation as eligible articles for purposes of this title. The provisions of sections 131, 132, 133, and 134 shall be complied with as though action under section 501 and this section were action under section 123 to carry out a trade agreement entered into under section 123.

(f) **SPECIAL RULE CONCERNING PUERTO RICO.**—No action under this title may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 on coffee imported into Puerto Rico.

[19 U.S.C. 2463]

#### **SEC. 504. REVIEW AND REPORT TO CONGRESS.**

The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country, including the findings of the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.

[19 U.S.C. 2464]

#### **SEC. 505. DATE OF TERMINATION.**

No duty-free treatment provided under this title shall remain in effect after December 31, 2020.

[19 U.S.C. 2465]

#### **SEC. 506. AGRICULTURAL EXPORTS OF BENEFICIARY DEVELOPING COUNTRIES.**

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

[19 U.S.C. 2466]

#### **SEC. 506A. DESIGNATION OF SUB-SAHARAN AFRICAN COUNTRIES FOR CERTAIN BENEFITS.**

(a) **AUTHORITY TO DESIGNATE.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, the President is authorized to designate a country listed

in section 107 of the African Growth and Opportunity Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b)—

(A) if the President determines that the country meets the eligibility requirements set forth in section 104 of that Act, as such requirements are in effect on the date of the enactment of that Act; and

(B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 502, if the country otherwise meets the eligibility criteria set forth in section 502.

(2) MONITORING AND REVIEW OF CERTAIN COUNTRIES.—The President shall monitor, review, and report to Congress annually on the progress of each country listed in section 107 of the African Growth and Opportunity Act in meeting the requirements described in paragraph (1) in order to determine the current or potential eligibility of each country to be designated as a beneficiary sub-Saharan African country for purposes of this section. The President's determinations, and explanations of such determinations, with specific analysis of the eligibility requirements described in paragraph (1)(A), shall be included in the annual report required by section 106 of the African Growth and Opportunity Act.

(3) CONTINUING COMPLIANCE.—

(A) IN GENERAL.—If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements described in paragraph (1), the President shall terminate the designation of that country as a beneficiary sub-Saharan African country for purposes of this section, effective on January 1 of the year following the year in which such determination is made.

(B) NOTIFICATION.—The President may not terminate the designation of a country as a beneficiary sub-Saharan African country under subparagraph (A) unless, at least 60 days before the termination of such designation, the President notifies Congress and notifies the country of the President's intention to terminate such designation, together with the considerations entering into the decision to terminate such designation.

(b) PREFERENTIAL TARIFF TREATMENT FOR CERTAIN ARTICLES.—

(1) IN GENERAL.—The President may provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) that is the growth, product, or manufacture of a beneficiary sub-Saharan African country described in subsection (a), if, after receiving the advice of the International Trade Commission in accordance with section 503(e), the President determines that such article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries.

(2) RULES OF ORIGIN.—The duty-free treatment provided under paragraph (1) shall apply to any article described in that

paragraph that meets the requirements of section 503(a)(2), except that—

(A) if the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2);

(B) the cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries shall be applied in determining such percentage; and

(C) the direct costs of processing operations performed in one or more such beneficiary sub-Saharan African countries or former beneficiary sub-Saharan African countries shall be applied in determining such percentage.

(3) RULES OF ORIGIN UNDER THIS TITLE.—The exceptions set forth in subparagraphs (A), (B), and (C) of paragraph (2) shall also apply to any article described in section 503(a)(1) that is the growth, product, or manufacture of a beneficiary sub-Saharan African country for purposes of any determination to provide duty-free treatment with respect to such article.

(c) WITHDRAWAL, SUSPENSION, OR LIMITATION OF PREFERENTIAL TARIFF TREATMENT.—

(1) IN GENERAL.—The President may withdraw, suspend, or limit the application of duty-free treatment provided for any article described in subsection (b)(1) of this section or section 112 of the African Growth and Opportunity Act with respect to a beneficiary sub-Saharan African country if the President determines that withdrawing, suspending, or limiting such duty-free treatment would be more effective in promoting compliance by the country with the requirements described in subsection (a)(1) than terminating the designation of the country as a beneficiary sub-Saharan African country for purposes of this section.

(2) NOTIFICATION.—The President may not withdraw, suspend, or limit the application of duty-free treatment under paragraph (1) unless, at least 60 days before such withdrawal, suspension, or limitation, the President notifies Congress and notifies the country of the President's intention to withdraw, suspend, or limit such duty-free treatment, together with the considerations entering into the decision to terminate such designation.

(d) REVIEW AND PUBLIC COMMENTS ON ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—In carrying out subsection (a)(2), the President shall publish annually in the Federal Register a notice of review and request for public comments on whether beneficiary sub-Saharan African countries are meeting the eligibility requirements set forth in section 104 of the African Growth and Opportunity Act and the eligibility criteria set forth in section 502 of this Act.

(2) PUBLIC HEARING.—The United States Trade Representative shall, not later than 30 days after the date on which the President publishes the notice of review and request for public comments under paragraph (1)—

(A) hold a public hearing on such review and request for public comments; and

(B) publish in the Federal Register, before such hearing is held, notice of—

(i) the time and place of such hearing; and

(ii) the time and place at which such public comments will be accepted.

(3) PETITION PROCESS.—

(A) IN GENERAL.—Not later than 60 days after the date of the enactment of this subsection, the President shall establish a process to allow any interested person, at any time, to file a petition with the Office of the United States Trade Representative with respect to the compliance of any country listed in section 107 of the African Growth and Opportunity Act with the eligibility requirements set forth in section 104 of such Act and the eligibility criteria set forth in section 502 of this Act.

(B) USE OF PETITIONS.—The President shall take into account all petitions filed pursuant to subparagraph (A) in making determinations of compliance under subsections (a)(3)(A) and (c) and in preparing any reports required by this title as such reports apply with respect to beneficiary sub-Saharan African countries.

(4) OUT-OF-CYCLE REVIEWS.—

(A) IN GENERAL.—The President may, at any time, initiate an out-of-cycle review of whether a beneficiary sub-Saharan African country is making continual progress in meeting the requirements described in paragraph (1). The President shall give due consideration to petitions received under paragraph (3) in determining whether to initiate an out-of-cycle review under this subparagraph.

(B) CONGRESSIONAL NOTIFICATION.—Before initiating an out-of-cycle review under subparagraph (A), the President shall notify and consult with Congress.

(C) CONSEQUENCES OF REVIEW.—If, pursuant to an out-of-cycle review conducted under subparagraph (A), the President determines that a beneficiary sub-Saharan African country does not meet the requirements set forth in section 104(a) of the African Growth and Opportunity Act (19 U.S.C. 3703(a)), the President shall, subject to the requirements of subsections (a)(3)(B) and (c)(2), terminate the designation of the country as a beneficiary sub-Saharan African country or withdraw, suspend, or limit the application of duty-free treatment with respect to articles from the country.

(D) REPORTS.—After each out-of-cycle review conducted under subparagraph (A) with respect to a country, the President shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the review and any

determination of the President to terminate the designation of the country as a beneficiary sub-Saharan African country or withdraw, suspend, or limit the application of duty-free treatment with respect to articles from the country under subparagraph (C).

(E) INITIATION OF OUT-OF-CYCLE REVIEWS FOR CERTAIN COUNTRIES.—Recognizing that concerns have been raised about the compliance with section 104(a) of the African Growth and Opportunity Act (19 U.S.C. 3703(a)) of some beneficiary sub-Saharan African countries, the President shall initiate an out-of-cycle review under subparagraph (A) with respect to South Africa, the most developed of the beneficiary sub-Saharan African countries, and other beneficiary countries as appropriate, not later than 30 days after the date of the enactment of the Trade Preferences Extension Act of 2015.

(e) BENEFICIARY SUB-SAHARAN AFRICAN COUNTRIES, ETC.—For purposes of this title—

(1) the terms “beneficiary sub-Saharan African country” and “beneficiary sub-Saharan African countries” mean a country or countries listed in section 107 of the African Growth and Opportunity Act that the President has determined is eligible under subsection (a) of this section.

(2) the term “former beneficiary sub-Saharan African country” means a country that, after being designated as a beneficiary sub-Saharan African country under the African Growth and Opportunity Act, ceased to be designated as such a country by reason of its entering into a free trade agreement with the United States.

[19 U.S.C. 2466a]

#### **SEC. 506B. TERMINATION OF BENEFITS FOR SUB-SAHARAN AFRICAN COUNTRIES.**

In the case of a beneficiary sub-Saharan African country, as defined in section 506A(c), duty-free treatment provided under this title shall remain in effect through September 30, 2025.

[19 U.S.C. 2466b]

#### **SEC. 507. DEFINITIONS.**

For purposes of this title:

(1) BENEFICIARY DEVELOPING COUNTRY.—The term “beneficiary developing country” means any country with respect to which there is in effect an Executive order or Presidential proclamation by the President designating such country as a beneficiary developing country for purposes of this title.

(2) COUNTRY.—The term “country” means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union, or which is contributing to comprehensive regional economic integration among its members through appropriate means, including, but not limited to, the reduction of duties, the President may by Executive order or Presidential proclamation provide that all

members of such association other than members which are barred from designation under section 502(b) shall be treated as one country for purposes of this title.

(3) ENTERED.—The term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(4) INTERNATIONALLY RECOGNIZED WORKER RIGHTS.—The term “internationally recognized worker rights” includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(5) LEAST-DEVELOPED BENEFICIARY DEVELOPING COUNTRY.—The term “least-developed beneficiary developing country” means a beneficiary developing country that is designated as a least-developed beneficiary developing country under section 502(a)(2).

(6) WORST FORMS OF CHILD LABOR.—The term “worst forms of child labor” means—

(A) all forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and

(D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved.

[19 U.S.C. 2467]

## TITLE VI—GENERAL PROVISIONS

### SEC. 601. DEFINITIONS.

For purposes of this Act—

(1) The term “duty” includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

(2) The term “other import restriction” includes a limitation, prohibition, charge, or exaction other than duty, imposed



on importation or imposed for the regulation of importation. The term does not include any orderly marketing agreement.

(3) The term “ad valorem” includes ad valorem equivalent. Whenever any limitation on the amount by which or to which any rate of duty may be decreased or increased pursuant to a trade agreement is expressed in terms of an ad valorem percentage, the ad valorem amount taken into account for purposes of such limitation shall be determined by the President on the basis of the value of imports of the articles concerned during the most recent representative period.

(4) The term “ad valorem equivalent” means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during the most recent representative period. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards as valuation contained in section 402 or 402a of the Tariff Act of 1930 (as in effect before the effective date of the amendments made by title II of the Trade Agreements Act of 1979) or in section 402 of such Act of 1930 (as in effect on the effective date of such title II amendments) whichever is applicable to the article concerned during such representative period.

(5) An imported article is “directly competitive with” a domestic article at an earlier or later stage of processing, and a domestic article is “directly competitive with” an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

(6) The term “modification”, as applied to any duty or other import restriction, includes the elimination of any duty or other import restriction.

(7) The term “existing” means (A) when used, without the specification of any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action authorized by this Act, existing on the day on which such trade agreement is entered into or such other action is taken; and (B) when used with respect to a rate of duty, the nonpreferential rate of duty (however established, and even through temporarily suspended by Act of Congress or otherwise) set forth in rate column numbered 1 of schedules 1 through 7 of the Tariff Schedules of chapters 1 through 97 of the Harmonized Tariff Schedule of the United States on the date specified or (if no date is specified) on the day referred to in clause (A).

(8) A product of a country or area is an article which is the growth, produce, or manufacture of such country or area.

(9) The term “nondiscriminatory treatment” means trade treatment based on normal trade relations (known under international law as most-favored-nation treatment).

(10) The term “commerce” includes services associated with international trade.

【19 U.S.C. 2481】

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**SEC. 603. INTERNATIONAL TRADE COMMISSION.**

(a) In order to expedite the performance of its functions under this Act, the International Trade Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

(b) In performing its functions under this Act, the Commission may exercise any authority granted to it under any other Act.

(c) The Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.

【19 U.S.C. 2482】

**SEC. 604. CONSEQUENTIAL CHANGES IN THE TARIFF SCHEDULES.**

The President shall from time to time, as appropriate, embody in the Harmonized Tariff Schedule of the United States the substance of the relevant provisions of this Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

【19 U.S.C. 2483】

**SEC. 605. SEPARABILITY.**

If any provision of this Act or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of this Act, and of the application of such provision to other circumstances or persons, shall not be affected thereby.

【19 U.S.C. 2101 note】

**SEC. 606. INTERNATIONAL DRUG CONTROL.**

The President shall submit a report to Congress at least once each calendar year listing those foreign countries in which narcotic drugs and other controlled substances (as listed under section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812)) are produced, processed, or transported for unlawful entry into the United States. Such report shall include a description of the measures such countries are taking to prevent such production, processing, or transport.

【19 U.S.C. 2484】

**SEC. 607. VOLUNTARY LIMITATIONS ON EXPORTS OF STEEL TO THE UNITED STATES.**

No person shall be liable for damages, penalties, or other sanctions under the Federal Trade Commission Act (15 U.S.C. 41–77) or the Antitrust Acts (as defined in section 4 of the Federal Trade

Commission Act (15 U.S.C. 44)), or under any similar State law, on account of his negotiating, entering into, participating in, or implementing an arrangement providing for the voluntary limitation on exports of steel and steel products to the United States, or any modification or renewal of such an arrangement, if such arrangement or such modification or renewal—

(1) was undertaken prior to the date of the enactment of this Act at the request of the Secretary of State or his delegate, and

(2) ceases to be effective not later than January 1, 1975.

[19 U.S.C. 2485]

**SEC. 608. UNIFORM STATISTICAL DATA ON IMPORTS, EXPORTS, AND PRODUCTION.**

(a)

(b) In carrying out the responsibilities under section 484(e), Tariff Act of 1930 and other pertinent statutes, the Secretary of Commerce and the United States International Trade Commission shall conduct jointly a study of existing commodity classification systems with a view to identifying the appropriate principles and concepts which should guide the organization and development of an enumeration of articles which would result in comparability of United States import, production, and export data. The Secretary and the United States International Trade Commission shall submit a report to both Houses of Congress and to the President with respect to such study not later than August 1, 1975.

(c) In further connection with its responsibilities pursuant to subsections (a) and (b), the United States International Trade Commission shall undertake an investigation under section 332(g) of the Tariff Act of 1930 which would provide the basis for—

(1) a report on the appropriate concepts and principles which should underlie the formulation of an international commodity code adaptable for modernized tariff nomenclature purposes and for recording, handling, and reporting of transactions in national and international trade, taking into account how such a code could meet the needs of sound customs and trade reporting practices reflecting the interests of United States and other countries, such report to be submitted to both Houses of Congress and to the President as soon as feasible, but in any event, no later than June 1, 1975; and

(2) full and immediate participation by the United States International Trade Commission in the United States contribution to technical work of the Harmonized Systems Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specification and modern producing methods and trading practices.

and, in carrying out such responsibilities, the Commission shall report to both Houses of Congress and to the President, as it deems appropriate.

(d) The President is requested to direct the appropriate agencies to cooperate fully with the Secretary of Commerce and the

United States International Trade Commission in carrying out their responsibilities under subsections (a), (b), and (c).

(e) The amendment made by subsection (a) insofar as it relates to export declarations shall take effect on January 1, 1976.

【19 U.S.C. 1484 notes】

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**SEC. 611. REVIEW OF PROTESTS IN IMPORT SURCHARGE CASES.**

Notwithstanding the provisions of section 515(a) of the Tariff Act of 1930 (19 U.S.C. 1515(a)), in the case of any protest under section 514 of such Act involving the imposition of an import surcharge in the form of a supplemental duty pursuant to Presidential Proclamation 4074, dated August 17, 1971, the time for review and allowing or denying the protest shall not expire until five years from the date the protest was filed in accordance with such section 514.

【19 U.S.C. 1515 note】

**SEC. 612. TRADE RELATIONS WITH NORTH AMERICAN COUNTRIES.**

(a) It is the sense of the Congress that the United States should enter into a trade agreement with Canada which will guarantee continued stability to the economies of the United States and Canada. In order to promote such economic stability, the President may initiate negotiations for a trade agreement with Canada to establish a free trade area covering the United States and Canada. Nothing in this section shall be construed as prior approval of any legislation which may be necessary to implement such a trade agreement.

(b) The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after the date of enactment of this Act. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, energy, and other appropriate sectors.

【19 U.S.C. 2486】

【Section 613 (19 U.S.C. 2487) repealed by Public Law 102-266, sec. 102, 106 Stat 95.】

**TITLE VIII—TARIFF TREATMENT OF PRODUCTS OF, AND OTHER SANCTIONS AGAINST, UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES**

**SEC. 801. SHORT TITLE.**

This title may be cited as the “Narcotics Control Trade Act”.

【19 U.S.C. 2491】

**SEC. 802. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES.**

(a) **REQUIRED ACTION BY PRESIDENT.**—Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purposes of this title—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment.

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent a valorem;

(4) take the steps described in subsection (d)(1) or (d)(2), or both, to curtail air transportation between the United States and that country;

(5) withdraw the personnel and resources of the United States from participation in any arrangement with that country for the pre-clearance of customs by visitors between the United States and that country; or

(6) take any combination of the actions described in paragraphs (1) through (5).

(b)(1)(A) Subject to paragraph (3), subsection (a) shall not apply with respect to a country if the President determines and certifies to the Congress, at the time of the submission of the report required by section 489 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h), that—

(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own—

(I) in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States (as described in paragraph (B)) or a multilateral agreement which achieves the objectives of paragraph (B),

(II) in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States,

(III) in preventing and punishing the laundering in that country of drug-related profits or drug-related monies, and

(IV) in preventing and punishing bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts; or

(ii) for a country that would not otherwise qualify for certification under clause (i), the vital national interests of the United States require that subsection (a) not be applied with respect to that country.

(B) A bilateral narcotics agreement referred to in subparagraph (A)(i)(I) is an agreement between the United States and a foreign country in which the foreign country agrees to take specific activities, including, where applicable, efforts to—

(i) reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution;

(ii) increase drug interdiction and enforcement;

(iii) increase drug education and treatment programs;

(iv) increase the identification of and elimination of illicit drug laboratories;

(v) increase the identification and elimination of the trafficking of essential precursor chemicals for the use in production of illegal drugs;

(vi) increase cooperation with United States drug enforcement officials; and

(vii) where applicable, increase participation in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.

(C) A country which in the previous year was designated as a major drug producing country or a major drug-transit country may not be determined to be cooperating fully under subparagraph (A)(i) unless it has in place a bilateral narcotics agreement with the United States or a multilateral agreement which achieves the objectives of subparagraph (B).

(D) If the President makes a certification with respect to a country pursuant to subparagraph (A)(ii), he shall include in such certification—

(i) a full and complete description of the vital national interests placed at risk if action is taken pursuant to subsection (a) with respect to that country; and

(ii) a statement weighing the risk described in clause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

(E) The President may make a certification under subparagraph (A)(i) with respect to a major drug producing country or drug-transit country which is also a producer of licit opium only if the President determines that such country has taken steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production.

(2) In determining whether to make the certification required by paragraph (1) with respect to a country, the President shall consider the following:

(A) Have the actions of the government of that country resulted in the maximum reductions in illicit drug production

which were determined to be achievable pursuant to section 481(e)(4) of the Foreign Assistance Act of 1961? In the case of a major drug producing country, the President shall give foremost consideration, in determining whether to make the certification required by paragraph (1), to whether the government of that country has taken actions which have resulted in such reductions.

(B) Has that government taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacturing of and trafficking in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States?

(C) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related moneys, as evidenced by—

(i) the enactment and enforcement by that government of laws prohibiting such conduct,

(ii) that government entering into, and cooperating under the terms of, mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which that government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts?

(D) Has that government taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, bribery and other forms of public corruption which facilitate the illicit production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or which discourage the investigation and prosecution of such acts, as evidenced by the enactment and enforcement of laws prohibiting such conduct?

(E) Has that government, as a matter of government policy, encouraged or facilitated the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(F) Does any senior official of that government engage in, encourage, or facilitate the production or distribution of illicit narcotic and psychotropic drugs and other controlled substances?

(G) Has that government investigated aggressively all cases in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has been the victim of acts or threats of violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof, and has energetically sought to bring the perpetrators of such offense or offenses to justice?

(H) Having been requested to do so by the United States Government, does that government fail to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country?

(I) Has that government made necessary changes in legal codes in order to enable law enforcement officials to move more effectively against narcotics traffickers, such as new conspiracy laws and new asset seizure laws?

(J) Has that government expeditiously processed United States extradition requests relating to narcotics trafficking?

(K) Has that government refused to protect or give haven to any known drug traffickers, and has it expeditiously processed extradition requests relating to narcotics trafficking made by other countries?

(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, within 45 days of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a), that action shall remain in effect until—

(A) the President makes the certification under paragraph (1), a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 45 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving the determination contained in that certification.

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

(c) DURATION OF ACTION.—The action taken by the President under paragraph (1), (2), or (3) of subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

(d) PRESIDENTIAL ACTION REGARDING AVIATION.—

(1)(A) The President is authorized to notify the government of a country against which is imposed the sanction described in subsection (a)(4) of his intention to suspend the authority of foreign air carriers owned or controlled by the gov-



ernment or nationals of that country to engage in foreign air transportation to or from the United States.

(B) Within 10 days after the date of notification of a government under subparagraph (A), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(C) The President may also direct the Secretary of Transportation to take such steps as may be necessary to suspend the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(2)(A) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country against which the sanction described in subsection (a)(4) is imposed in accordance with the provisions of that agreement.

(B) Upon termination of an agreement under this paragraph, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(C) Upon termination of an agreement under this paragraph, the Secretary of Transportation may also revoke the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(3) The Secretary of Transportation may provide for such exceptions from paragraphs (1) and (2) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

(4) For purposes of this subsection, the terms "air transportation", "air carrier", "foreign air carrier" and "foreign air transportation" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

(e) For each calendar year, the Secretary of State, after consultation with the appropriate committees of the Congress, shall establish numerical standards and other guidelines for determining which countries will be considered to be major drug-transit countries under section 805(3)(A) and (B).

【19 U.S.C. 2492】

#### **SEC. 803. SUGAR QUOTA.**

Notwithstanding any other provision of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 802(b) as determined by the President.

【19 U.S.C. 2493】

**SEC. 804. PROGRESS REPORTS.**

The President shall include as a part of the annual report required under section 489 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h) an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 802(b).

[19 U.S.C. 2494]

**SEC. 805. DEFINITIONS.**

For purposes of this title—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term “major drug producing country” means a country that illicitly produces during a fiscal year 5 metric tons or more of opium or opium derivative, 500 metric tons or more of coca, or 500 metric tons or more of marijuana;

(3) the term “major drug-transit country” means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term “narcotic and psychotropic drugs and other controlled substances” has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.

[19 U.S.C. 2495]

## **TITLE IX—SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE**

**SEC. 901. SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE.**

(a) DEFINITIONS.—In this section:

(1) ACTUAL PRODUCTION HISTORY YIELD.—The term “actual production history yield” means the weighted average of the actual production history for each insurable commodity or non-insurable commodity, as calculated under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) or the noninsured crop disaster assistance program, respectively.

(2) ACTUAL PRODUCTION ON THE FARM.—The term “actual production on the farm” means the sum of the value of all crops produced on the farm, as determined under subsection (b)(6)(B).

(3) ADJUSTED ACTUAL PRODUCTION HISTORY YIELD.—The term “adjusted actual production history yield” means—

(A) in the case of an eligible producer on a farm that has at least 4 years of actual production history yields for an insurable commodity that are established other than pursuant to section 508(g)(4)(B) of the Federal Crop Insurance Act (7 U.S.C. 1508(g)(4)(B)), the actual production history for the eligible producer without regard to any yields established under that section;

(B) in the case of an eligible producer on a farm that has less than 4 years of actual production history yields for an insurable commodity, of which 1 or more were established pursuant to section 508(g)(4)(B) of that Act, the actual production history for the eligible producer as calculated without including the lowest of the yields established pursuant to section 508(g)(4)(B) of that Act; and

(C) in all other cases, the actual production history of the eligible producer on a farm.

(4) ADJUSTED NONINSURED CROP DISASTER ASSISTANCE PROGRAM YIELD.—The term “adjusted noninsured crop disaster assistance program yield” means—

(A) in the case of an eligible producer on a farm that has at least 4 years of production history under the noninsured crop disaster assistance program that are not replacement yields, the noninsured crop disaster assistance program yield without regard to any replacement yields;

(B) in the case of an eligible producer on a farm that has less than 4 years of production history under the noninsured crop disaster assistance program that are not replacement yields, the noninsured crop disaster assistance program yield as calculated without including the lowest of the replacement yields; and

(C) in all other cases, the production history of the eligible producer on the farm under the noninsured crop disaster assistance program.

(5) COUNTER-CYCLICAL PROGRAM PAYMENT YIELD.—The term “counter-cyclical program payment yield” means the weighted average payment yield established under—

(i)<sup>21</sup> section 1102 or 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7912, 7952);

(ii)<sup>21</sup> section 1102 or 1301(6) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8712, 8751(6)); or

(iii)<sup>21</sup> a successor section.

(6) CROP OF ECONOMIC SIGNIFICANCE.—The term “crop of economic significance” shall have the uniform meaning given the term by the Secretary for purposes of subsections (b)(1)(B) and (g)(6).

(7) DISASTER COUNTY.—

(A) IN GENERAL.—The term “disaster county” means a county included in the geographic area covered by a qualifying natural disaster declaration.

<sup>21</sup>Margins so in law.

(B) INCLUSION.—The term “disaster county” includes—  
(i) a county contiguous to a county described in subparagraph (A); and  
(ii) any farm in which, during a calendar year the actual production on the farm is less than 50 percent of the normal production on the farm.

(8) ELIGIBLE PRODUCER ON A FARM.—

(A) IN GENERAL.—The term “eligible producer on a farm” means an individual or entity described in subparagraph (B) that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock.

(B) DESCRIPTION.—An individual or entity referred to in subparagraph (A) is—

- (i) a citizen of the United States;
- (ii) a resident alien;
- (iii) a partnership of citizens of the United States;

or

(iv) a corporation, limited liability corporation, or other farm organizational structure organized under State law.

(9) FARM.—

(A) IN GENERAL.—The term “farm” means, in relation to an eligible producer on a farm, the sum of all crop acreage in all counties that is planted or intended to be planted for harvest for sale or on-farm livestock feeding (including native grassland intended for haying) by the eligible producer.

(B) AQUACULTURE.—In the case of aquaculture, the term “farm” means, in relation to an eligible producer on a farm, all fish being produced in all counties that are intended to be harvested for sale by the eligible producer.

(C) HONEY.—In the case of honey, the term “farm” means, in relation to an eligible producer on a farm, all bees and beehives in all counties that are intended to be harvested for a honey crop for sale by the eligible producer.

(10) FARM-RAISED FISH.—The term “farm-raised fish” means any aquatic species that is propagated and reared in a controlled environment.

(11) INSURABLE COMMODITY.—The term “insurable commodity” means an agricultural commodity (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(12) LIVESTOCK.—The term “livestock” includes—

- (A) cattle (including dairy cattle);
- (B) bison;
- (C) poultry;
- (D) sheep;
- (E) swine;
- (F) horses; and
- (G) other livestock, as determined by the Secretary.

(13) **NONINSURABLE COMMODITY.**—The term “noninsurable commodity” means a crop for which the eligible producers on a farm are eligible to obtain assistance under the noninsured crop assistance program.

(14) **NONINSURED CROP ASSISTANCE PROGRAM.**—The term “noninsured crop assistance program” means the program carried out under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

(15) **NORMAL PRODUCTION ON THE FARM.**—The term “normal production on the farm” means the sum of the expected revenue for all crops on the farm, as determined under subsection (b)(6)(A).

(16) **QUALIFYING NATURAL DISASTER DECLARATION.**—The term “qualifying natural disaster declaration” means a natural disaster declared by the Secretary for production losses under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)).

(17) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

(18) **SOCIALLY DISADVANTAGED FARMER OR RANCHER.**—The term “socially disadvantaged farmer or rancher” has the meaning given the term in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)).

(19) **STATE.**—The term “State” means—

- (A) a State;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico; and
- (D) any other territory or possession of the United States.

(20) **TRUST FUND.**—The term “Trust Fund” means the Agricultural Disaster Relief Trust Fund established under section 902.

(21) **UNITED STATES.**—The term “United States” when used in a geographical sense, means all of the States.

(b) **SUPPLEMENTAL REVENUE ASSISTANCE PAYMENTS.**—

(1) **PAYMENTS.**—

(A) **IN GENERAL.**—The Secretary shall use such sums as are necessary from the Trust Fund to make crop disaster assistance payments to eligible producers on farms in disaster counties that have incurred crop production losses or crop quality losses, or both, during the crop year.

(B) **CROP LOSS.**—To be eligible for crop loss assistance under this subsection, the actual production on the farm for at least 1 crop of economic significance shall be reduced by at least 10 percent due to disaster, adverse weather, or disaster-related conditions.

(2) **AMOUNT.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), the Secretary shall provide crop disaster assistance payments under this section to an eligible producer on a farm in an amount equal to 60 percent of the difference between—

- (i) the disaster assistance program guarantee, as described in paragraph (3); and

(ii) the total farm revenue for a farm, as described in paragraph (4).

(B) LIMITATION.—The disaster assistance program guarantee for a crop used to calculate the payments for a farm under subparagraph (A)(i) may not be greater than 90 percent of the sum of the expected revenue, as described in paragraph (5) for each of the crops on a farm, as determined by the Secretary.

(C) EXCLUSION OF SUBSEQUENTLY PLANTED CROPS.—In calculating the disaster assistance program guarantee under paragraph (3) and the total farm revenue under paragraph (4), the Secretary shall not consider the value of any crop that—

(i) is produced on land that is not eligible for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) or assistance under the noninsured crop assistance program; or

(ii) is subsequently planted on the same land during the same crop year as the crop for which disaster assistance is provided under this subsection, except in areas in which double-cropping is a normal practice, as determined by the Secretary.

(3) SUPPLEMENTAL REVENUE ASSISTANCE PROGRAM GUARANTEE.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the supplemental assistance program guarantee shall be the sum obtained by adding—

(i) for each insurable commodity on the farm, 115 percent of the product obtained by multiplying—

(I) a payment rate for the commodity that is equal to the price election for the commodity elected by the eligible producer;

(II) the payment acres for the commodity that is equal to the number of acres planted, or prevented from being planted, to the commodity;

(III) the payment yield for the commodity that is equal to the percentage of the crop insurance yield elected by the producer of the higher of—

(aa) the adjusted actual production history yield; or

(bb) the counter-cyclical program payment yield for each crop; and

(ii) for each noninsurable commodity on a farm, 120 percent of the product obtained by multiplying—

(I) a payment rate for the commodity that is equal to 100 percent of the noninsured crop assistance program established price for the commodity;

(II) the payment acres for the commodity that is equal to the number of acres planted, or prevented from being planted, to the commodity; and

(III) the payment yield for the commodity that is equal to 50 percent of the higher of—

(aa) the adjusted noninsured crop assistance program yield; or

(bb) the counter-cyclical program payment yield for each crop.

(B) ADJUSTMENT INSURANCE GUARANTEE.—Notwithstanding subparagraph (A), in the case of an insurable commodity for which a plan of insurance provides for an adjustment in the guarantee, such as in the case of prevented planting, the adjusted insurance guarantee shall be the basis for determining the disaster assistance program guarantee for the insurable commodity.

(C) ADJUSTED ASSISTANCE LEVEL.—Notwithstanding subparagraph (A), in the case of a noninsurable commodity for which the noninsured crop assistance program provides for an adjustment in the level of assistance, such as in the case of unharvested crops, the adjusted assistance level shall be the basis for determining the disaster assistance program guarantee for the noninsurable commodity.

(D) EQUITABLE TREATMENT FOR NON-YIELD BASED POLICIES.—The Secretary shall establish equitable treatment for non-yield based policies and plans of insurance, such as the Adjusted Gross Revenue Lite insurance program.

(4) FARM REVENUE.—

(A) IN GENERAL.—For purposes of this subsection, the total farm revenue for a farm, shall equal the sum obtained by adding—

(i) the estimated actual value for each crop produced on a farm by using the product obtained by multiplying—

(I) the actual production by crop on a farm for purposes of determining losses under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) or the noninsured crop assistance program; and

(II) subject to subparagraphs (B) and (C), to the extent practicable, the national average market price received for the marketing year, as determined by the Secretary;

(ii) 15 percent of amount of any direct payments made to the producer under sections 1103 and 1303 of the Food, Conservation, and Energy Act of 2008 or successor sections;

(iii) the total amount of any counter-cyclical payments made to the producer under sections 1104 and 1304 of the Food, Conservation, and Energy Act of 2008 or successor sections or of any average crop revenue election payments made to the producer under section 1105 of that Act;

(iv) the total amount of any loan deficiency payments, marketing loan gains, and marketing certificate gains made to the producer under subtitles B and C of the Food, Conservation, and Energy Act of 2008 or successor subtitles;

(v) the amount of payments for prevented planting on a farm;

(vi) the amount of crop insurance indemnities received by an eligible producer on a farm for each crop on a farm;

(vii) the amount of payments an eligible producer on a farm received under the noninsured crop assistance program for each crop on a farm; and

(viii) the value of any other natural disaster assistance payments provided by the Federal Government to an eligible producer on a farm for each crop on a farm for the same loss for which the eligible producer is seeking assistance.

(B) ADJUSTMENT.—The Secretary shall adjust the average market price received by the eligible producer on a farm—

(i) to reflect the average quality discounts applied to the local or regional market price of a crop or mechanically harvested forage due to a reduction in the intrinsic characteristics of the production resulting from adverse weather, as determined annually by the State office of the Farm Service Agency;

(ii) to account for a crop the value of which is reduced due to excess moisture resulting from a disaster-related condition; and

(iii) as the Secretary determines appropriate, to reflect regional variations in a manner consistent with the operation of the Federal crop insurance program under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and the noninsured crop assistance program.

(C) MAXIMUM AMOUNT FOR CERTAIN CROPS.—With respect to a crop for which an eligible producer on a farm receives assistance under the noninsured crop assistance program, the national average market price received during the marketing year shall be an amount not more than 100 percent of the price of the crop established under the noninsured crop assistance program.

(5) EXPECTED REVENUE.—The expected revenue for each crop on a farm shall equal—

(A) for each insurable commodity, the product obtained by multiplying—

(i) the greater of—

(I) the adjusted actual production history yield of the eligible producer on a farm; and

(II) the counter-cyclical program payment yield;

(ii) the acreage planted or prevented from being planted for each crop; and

(iii) 100 percent of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and

(B) for each noninsurable crop, the product obtained by multiplying—

(i) 100 percent of the adjusted noninsured crop assistance program yield;



(ii) the acreage planted or prevented from being planted for each crop; and

(iii) 100 percent of the noninsured crop assistance program price for each of the crops on a farm.

(6) PRODUCTION ON THE FARM.—

(A) NORMAL PRODUCTION ON THE FARM.—The normal production on the farm shall equal the sum of the expected revenue for each crop on a farm as determined under paragraph (5).

(B) ACTUAL PRODUCTION ON THE FARM.—The actual production on the farm shall equal the sum obtained by adding—

(i) for each insurable commodity on the farm, the product obtained by multiplying—

(I) 100 percent of the price election for the commodity used to calculate an indemnity for an applicable policy of insurance if an indemnity is triggered; and

(II) the quantity of the commodity produced on the farm, adjusted for quality losses; and

(ii) for each noninsurable commodity on a farm, the product obtained by multiplying—

(I) 100 percent of the noninsured crop assistance program established price for the commodity; and

(II) the quantity of the commodity produced on the farm, adjusted for quality losses.

(c) LIVESTOCK INDEMNITY PAYMENTS.—

(1) PAYMENTS.—The Secretary shall use such sums as are necessary from the Trust Fund to make livestock indemnity payments to eligible producers on farms that have incurred livestock death losses in excess of the normal mortality due to adverse weather, as determined by the Secretary, during the calendar year, including losses due to hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold.

(2) PAYMENT RATES.—Indemnity payments to an eligible producer on a farm under paragraph (1) shall be made at a rate of 75 percent of the market value of the applicable livestock on the day before the date of death of the livestock, as determined by the Secretary.

(d) LIVESTOCK FORAGE DISASTER PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) COVERED LIVESTOCK.—

(i) IN GENERAL.—The term “covered livestock” means livestock of an eligible livestock producer that, during the 60 days prior to the beginning date of a qualifying drought or fire condition, as determined by the Secretary, the eligible livestock producer—

(I) owned;

(II) leased;

(III) purchased;

(IV) entered into a contract to purchase;

(V) is a contract grower; or

(VI) sold or otherwise disposed of due to qualifying drought conditions during—

(aa) the current production year; or

(bb) subject to paragraph (3)(B)(ii), 1 or both of the 2 production years immediately preceding the current production year.

(ii) EXCLUSION.—The term “covered livestock” does not include livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire condition, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary.

(B) DROUGHT MONITOR.—The term “drought monitor” means a system for classifying drought severity according to a range of abnormally dry to exceptional drought, as defined by the Secretary.

(C) ELIGIBLE LIVESTOCK PRODUCER.—

(i) IN GENERAL.—The term “eligible livestock producer” means an eligible producer on a farm that—

(I) is an owner, cash or share lessee, or contract grower of covered livestock that provides the pastureland or grazing land, including cash-leased pastureland or grazing land, for the livestock;

(II) provides the pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land that is physically located in a county affected by drought;

(III) certifies grazing loss; and

(IV) meets all other eligibility requirements established under this subsection.

(ii) EXCLUSION.—The term “eligible livestock producer” does not include an owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis.

(D) NORMAL CARRYING CAPACITY.—The term “normal carrying capacity”, with respect to each type of grazing land or pastureland in a county, means the normal carrying capacity, as determined under paragraph (3)(D)(i), that would be expected from the grazing land or pastureland for livestock during the normal grazing period, in the absence of a drought or fire that diminishes the production of the grazing land or pastureland.

(E) NORMAL GRAZING PERIOD.—The term “normal grazing period”, with respect to a county, means the normal grazing period during the calendar year for the county, as determined under paragraph (3)(D)(i).

(2) PROGRAM.—The Secretary shall use such sums as are necessary from the Trust Fund to provide compensation for losses to eligible livestock producers due to grazing losses for covered livestock due to—

(A) a drought condition, as described in paragraph (3);

or

(B) fire, as described in paragraph (4).

(3) ASSISTANCE FOR LOSSES DUE TO DROUGHT CONDITIONS.—

(A) ELIGIBLE LOSSES.—An eligible livestock producer may receive assistance under this subsection only for grazing losses for covered livestock that occur on land that—

(i) is native or improved pastureland with permanent vegetative cover; or

(i) is planted to a crop planted specifically for the purpose of providing grazing for covered livestock.

(B) MONTHLY PAYMENT RATE.—

(i) IN GENERAL.—Except as provided in clause (ii), the payment rate for assistance under this paragraph for 1 month shall, in the case of drought, be equal to 60 percent of the lesser of—

(I) the monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as determined under subparagraph (C); or

(II) the monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer.

(ii) PARTIAL COMPENSATION.—In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to drought conditions in 1 or both of the 2 production years immediately preceding the current production year, as determined by the Secretary, the payment rate shall be 80 percent of the payment rate otherwise calculated in accordance with clause (i).

(C) MONTHLY FEED COST.—

(i) IN GENERAL.—The monthly feed cost shall equal the product obtained by multiplying—

(I) 30 days;

(II) a payment quantity that is equal to the feed grain equivalent, as determined under clause (ii); and

(III) a payment rate that is equal to the corn price per pound, as determined under clause (iii).

(ii) FEED GRAIN EQUIVALENT.—For purposes of clause (i)(I), the feed grain equivalent shall equal—

(I) in the case of an adult beef cow, 15.7 pounds of corn per day; or

(II) in the case of any other type of weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed the livestock.

(iii) CORN PRICE PER POUND.—For purposes of clause (i)(II), the corn price per pound shall equal the quotient obtained by dividing—

(I) the higher of—

(aa) the national average corn price per bushel for the 12-month period immediately preceding March 1 of the year for which the disaster assistance is calculated; or

(bb) the national average corn price per bushel for the 24-month period immediately preceding that March 1; by

(II) 56.

(D) NORMAL GRAZING PERIOD AND DROUGHT MONITOR INTENSITY.—

(i) FSA COUNTY COMMITTEE DETERMINATIONS.—

(I) IN GENERAL.—The Secretary shall determine the normal carrying capacity and normal grazing period for each type of grazing land or pastureland in the county served by the applicable committee.

(II) CHANGES.—No change to the normal carrying capacity or normal grazing period established for a county under subclause (I) shall be made unless the change is requested by the appropriate State and county Farm Service Agency committees.

(ii) DROUGHT INTENSITY.—

(I) D2.—An eligible livestock producer that owns or leases grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having a D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the county, as determined by the Secretary, shall be eligible to receive assistance under this paragraph in an amount equal to 1 monthly payment using the monthly payment rate determined under subparagraph (B).

(II) D3.—An eligible livestock producer that owns or leases grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the county, as determined by the Secretary, shall be eligible to receive assistance under this paragraph—

(aa) in an amount equal to 2 monthly payments using the monthly payment rate determined under subparagraph (B); or

(bb) if the county is rated as having a D3 (extreme drought) intensity in any area of the county for at least 4 weeks during the normal grazing period for the county, or is rated as having a D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period, in an amount equal to 3 monthly payments using the monthly payment rate determined under subparagraph (B).

(4) ASSISTANCE FOR LOSSES DUE TO FIRE ON PUBLIC MANAGED LAND.—

(A) IN GENERAL.—An eligible livestock producer may receive assistance under this paragraph only if—

- (i) the grazing losses occur on rangeland that is managed by a Federal agency; and
- (ii) the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

(B) PAYMENT RATE.—The payment rate for assistance under this paragraph shall be equal to 50 percent of the monthly feed cost for the total number of livestock covered by the Federal lease of the eligible livestock producer, as determined under paragraph (3)(C).

(C) PAYMENT DURATION.—

(i) IN GENERAL.—Subject to clause (ii), an eligible livestock producer shall be eligible to receive assistance under this paragraph for the period—

(I) beginning on the date on which the Federal agency excludes the eligible livestock producer from using the managed rangeland for grazing; and

(II) ending on the last day of the Federal lease of the eligible livestock producer.

(ii) LIMITATION.—An eligible livestock producer may only receive assistance under this paragraph for losses that occur on not more than 180 days per year.

(5) MINIMUM RISK MANAGEMENT PURCHASE REQUIREMENTS.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, a livestock producer shall only be eligible for assistance under this subsection if the livestock producer—

(i) obtained a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) for the grazing land incurring the losses for which assistance is being requested; or

(ii) filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the grazing land incurring the losses for which assistance is being requested.

(B) WAIVER FOR SOCIALLY DISADVANTAGED, LIMITED RESOURCE, OR BEGINNING FARMER OR RANCHER.—In the case of an eligible livestock producer that is a socially disadvantaged farmer or rancher or limited resource or beginning farmer or rancher, as determined by the Secretary, the Secretary may—

(i) waive subparagraph (A); and

(ii) provide disaster assistance under this subsection at a level that the Secretary determines to be equitable and appropriate.

(C) WAIVER FOR 2008 CALENDAR YEAR.—In the case of an eligible livestock producer that suffered losses on grazing land during the 2008 calendar year but does not meet the requirements of subparagraph (A), the Secretary shall waive subparagraph (A) if the eligible livestock producer

pays a fee in an amount equal to the applicable non-insured crop assistance program fee or catastrophic risk protection plan fee required under subparagraph (A) to the Secretary not later than 90 days after the date of enactment of this subtitle.

(D) **EQUITABLE RELIEF.**—

(i) **IN GENERAL.**—The Secretary may provide equitable relief to an eligible livestock producer that is otherwise ineligible or unintentionally fails to meet the requirements of subparagraph (A) for the grazing land incurring the loss on a case-by-case basis, as determined by the Secretary.

(ii) **2008 CALENDAR YEAR.**—In the case of an eligible livestock producer that suffered losses on grazing land during the 2008 calendar year, the Secretary shall take special consideration to provide equitable relief in cases in which the eligible livestock producer failed to meet the requirements of subparagraph (A) due to the enactment of this title after the closing date of sales periods for crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and the noninsured crop assistance program.

(6) **NO DUPLICATIVE PAYMENTS.**—

(A) **IN GENERAL.**—An eligible livestock producer may elect to receive assistance for grazing or pasture feed losses due to drought conditions under paragraph (3) or fire under paragraph (4), but not both for the same loss, as determined by the Secretary.

(B) **RELATIONSHIP TO SUPPLEMENTAL REVENUE ASSISTANCE.**—An eligible livestock producer that receives assistance under this subsection may not also receive assistance for losses to crops on the same land with the same intended use under subsection (b).

(e) **EMERGENCY ASSISTANCE FOR LIVESTOCK, HONEY BEES, AND FARM-RAISED FISH.**—

(1) **IN GENERAL.**—The Secretary shall use up to \$50,000,000 per year from the Trust Fund to provide emergency relief to eligible producers of livestock, honey bees, and farm-raised fish to aid in the reduction of losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires, as determined by the Secretary, that are not covered under subsection (b), (c), or (d).

(2) **USE OF FUNDS.**—Funds made available under this subsection shall be used to reduce losses caused by feed or water shortages, disease, or other factors as determined by the Secretary.

(3) **AVAILABILITY OF FUNDS.**—Any funds made available under this subsection shall remain available until expended.

(f) **TREE ASSISTANCE PROGRAM.**—

(1) **DEFINITIONS.**—In this subsection:

(A) **ELIGIBLE ORCHARDIST.**—The term “eligible orchardist” means a person that produces annual crops from trees for commercial purposes.

(B) **NATURAL DISASTER.**—The term “natural disaster” means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence, as determined by the Secretary.

(C) **NURSERY TREE GROWER.**—The term “nursery tree grower” means a person who produces nursery, ornamental, fruit, nut, or Christmas trees for commercial sale, as determined by the Secretary.

(D) **TREE.**—The term “tree” includes a tree, bush, and vine.

(2) **ELIGIBILITY.**—

(A) **LOSS.**—Subject to subparagraph (B), the Secretary shall use such sums as are necessary from the Trust Fund to provide assistance—

(i) under paragraph (3) to eligible orchardists and nursery tree growers that planted trees for commercial purposes but lost the trees as a result of a natural disaster, as determined by the Secretary; and

(ii) under paragraph (3)(B) to eligible orchardists and nursery tree growers that have a production history for commercial purposes on planted or existing trees but lost the trees as a result of a natural disaster, as determined by the Secretary.

(B) **LIMITATION.**—An eligible orchardist or nursery tree grower shall qualify for assistance under subparagraph (A) only if the tree mortality of the eligible orchardist or nursery tree grower, as a result of damaging weather or related condition, exceeds 15 percent (adjusted for normal mortality).

(3) **ASSISTANCE.**—Subject to paragraph (4), the assistance provided by the Secretary to eligible orchardists and nursery tree growers for losses described in paragraph (2) shall consist of—

(A)(i) reimbursement of 70 percent of the cost of replanting trees lost due to a natural disaster, as determined by the Secretary, in excess of 15 percent mortality (adjusted for normal mortality); or

(ii) at the option of the Secretary, sufficient seedlings to reestablish a stand; and

(B) reimbursement of 50 percent of the cost of pruning, removal, and other costs incurred by an eligible orchardist or nursery tree grower to salvage existing trees or, in the case of tree mortality, to prepare the land to replant trees as a result of damage or tree mortality due to a natural disaster, as determined by the Secretary, in excess of 15 percent damage or mortality (adjusted for normal tree damage and mortality).

(4) **LIMITATIONS ON ASSISTANCE.**—

(A) **DEFINITIONS OF LEGAL ENTITY AND PERSON.**—In this paragraph, the terms “legal entity” and “person” have the meaning given those terms in section 1001(a) of the Food Security Act of 1985 (7 U.S.C. 1308(a) (as amended by section 1603 of the Food, Conservation, and Energy Act of 2008)).

(B) AMOUNT.—The total amount of payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) under this subsection may not exceed \$100,000 for any crop year, or an equivalent value in tree seedlings.

(C) ACRES.—The total quantity of acres planted to trees or tree seedlings for which a person or legal entity shall be entitled to receive payments under this subsection may not exceed 500 acres.

(g) RISK MANAGEMENT PURCHASE REQUIREMENT.—

(1) IN GENERAL.—Except as otherwise provided in this section, the eligible producers on a farm shall not be eligible for assistance under this section (other than subsections (c) and (d)) if the eligible producers on the farm—

(A) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, did not obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (excluding a crop insurance pilot program under that Act); or

(B) in the case of each noninsurable commodity of the eligible producers on the farm, did not file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program.

(2) MINIMUM.—To be considered to have obtained insurance under paragraph (1)(A), an eligible producer on a farm shall have obtained a policy or plan of insurance with not less than 50 percent yield coverage at 55 percent of the insurable price for each crop planted or intended to be planted for harvest on a whole farm.

(3) WAIVER FOR SOCIALLY DISADVANTAGED, LIMITED RESOURCE, OR BEGINNING FARMER OR RANCHER.—With respect to eligible producers that are socially disadvantaged farmers or ranchers or limited resource or beginning farmers or ranchers, as determined by the Secretary, the Secretary may—

(A) waive paragraph (1); and

(B) provide disaster assistance under this section at a level that the Secretary determines to be equitable and appropriate.

(4) WAIVERS FOR CERTAIN CROP YEARS.—

(A) 2008 CROP YEAR.—In the case of an eligible producer that suffered losses in an insurable commodity or noninsurable commodity during the 2008 crop year but does not meet the requirements of paragraph (1), the Secretary shall waive paragraph (1) if the eligible producer pays a fee in an amount equal to the applicable noninsured crop assistance program fee or catastrophic risk protection plan fee required under paragraph (1) to the Secretary not later than 90 days after the date of enactment of this subtitle.

(B) 2009 CROP YEAR.—In the case of an insurable commodity or noninsurable commodity for the 2009 crop year that does not meet the requirements of paragraph (1) and the relevant crop insurance program sales closing date or



noninsured crop assistance program fee payment date was prior to August 14, 2008, the Secretary shall waive paragraph (1) if the eligible producer of the insurable commodity or noninsurable commodity pays a fee in an amount equal to the applicable noninsured crop assistance program fee or catastrophic risk protection plan fee required under paragraph (1) to the Secretary not later than 90 days after the date of enactment of this subparagraph.

(5) **EQUITABLE RELIEF.**—

(A) **IN GENERAL.**—The Secretary may provide equitable relief to eligible producers on a farm that are otherwise ineligible or unintentionally fail to meet the requirements of paragraph (1) for 1 or more crops on a farm on a case-by-case basis, as determined by the Secretary.

(B) **2008 CROP YEAR.**—In the case of eligible producers on a farm that suffered losses in an insurable commodity or noninsurable commodity during the 2008 crop year, the Secretary shall take special consideration to provide equitable relief in cases in which the eligible producers failed to meet the requirements of paragraph (1) due to the enactment of this title after the closing date of sales periods for crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and the noninsured crop assistance program.

(6) **DE MINIMIS EXCEPTION.**—

(A) **IN GENERAL.**—For purposes of assistance under subsection (b), at the option of an eligible producer on a farm, the Secretary shall waive paragraph (1)—

(i) in the case of a portion of the total acreage of a farm of the eligible producer that is not of economic significance on the farm, as established by the Secretary; or

(ii) in the case of a crop for which the administrative fee required for the purchase of noninsured crop disaster assistance coverage exceeds 10 percent of the value of that coverage.

(B) **TREATMENT OF ACREAGE.**—The Secretary shall not consider the value of any crop exempted under subparagraph (A) in calculating the supplemental revenue assistance program guarantee under subsection (b)(3) and the total farm revenue under subsection (b)(4).

(7) **2008 TRANSITION ASSISTANCE.**—

(A) **IN GENERAL.**—Eligible producers on a farm described in subparagraph (A) of paragraph (4) that failed to timely pay the appropriate fee described in that subparagraph shall be eligible for assistance under this section in accordance with subparagraph (B) if the eligible producers on the farm—

(i) pay the appropriate fee described in paragraph (4)(A) not later than 90 days after the date of enactment of this paragraph; and

(ii)(I) in the case of each insurable commodity of the eligible producers on the farm, excluding grazing land, agree to obtain a policy or plan of insurance

under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (excluding a crop insurance pilot program under that Act) for the next insurance year for which crop insurance is available to the eligible producers on the farm at a level of coverage equal to 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

(II) in the case of each noninsurable commodity of the eligible producers on the farm, agree to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the next year for which a policy is available.

(B) AMOUNT OF ASSISTANCE.—Eligible producers on a farm that meet the requirements of subparagraph (A) shall be eligible to receive assistance under this section as if the eligible producers on the farm—

(i) in the case of each insurable commodity of the eligible producers on the farm, had obtained a policy or plan of insurance for the 2008 crop year at a level of coverage not to exceed 70 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage; and

(ii) in the case of each noninsurable commodity of the eligible producers on the farm, had filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop assistance program for the 2008 crop year, except that in determining the level of coverage, the Secretary shall use 70 percent of the applicable yield.

(C) EQUITABLE RELIEF.—Except as provided in subparagraph (D), eligible producers on a farm that met the requirements of paragraph (1) before the deadline described in paragraph (4)(A) and are eligible to receive, a disaster assistance payment under this section for a production loss during the 2008 crop year shall be eligible to receive an amount equal to the greater of—

(i) the amount that would have been calculated under subparagraph (B) if the eligible producers on the farm had paid the appropriate fee under that subparagraph; or

(ii) the amount that would have been calculated under subparagraph (A) of subsection (b)(3) if—

(I) in clause (i) of that subparagraph, “120 percent” is substituted for “115 percent”; and

(II) in clause (ii) of that subparagraph, “125” is substituted for “120 percent”.

(D) LIMITATION.—For amounts made available under this paragraph, the Secretary may make such adjustments as are necessary to ensure that no producer receives a payment under this paragraph for an amount in excess of the assistance received by a similarly situated producer that

had purchased the same or higher level of crop insurance prior to the date of enactment of this paragraph.

(E) **AUTHORITY OF THE SECRETARY.**—The Secretary may provide such additional assistance as the Secretary considers appropriate to provide equitable treatment for eligible producers on a farm that suffered production losses in the 2008 crop year that result in multiyear production losses, as determined by the Secretary.

(F) **LACK OF ACCESS.**—Notwithstanding any other provision of this section, the Secretary may provide assistance (including multiyear assistance) under this section to eligible producers on a farm that—

(i) suffered a production loss or multiyear production losses due to a natural cause during the 2008 crop year; and

(ii) as determined by the Secretary—

(I)(aa) except as provided in item (bb), lack access to a policy or plan of insurance under subtitle A; or

(bb) do not qualify for a written agreement because 1 or more farming practices, which the Secretary has determined are good farming practices, of the eligible producers on the farm differ significantly from the farming practices used by producers of the same crop in other regions of the United States; and

(II) are not eligible for the noninsured crop disaster assistance program established by section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

(h) **PAYMENT LIMITATIONS.**—

(1) **DEFINITIONS OF LEGAL ENTITY AND PERSON.**—In this subsection, the terms “legal entity” and “person” have the meaning given those terms in section 1001(a) of the Food Security Act of 1985 (7 U.S.C. 1308(a) (as amended by section 1603 of the Food, Conservation, and Energy Act of 2008)).

(2) **AMOUNT.**—The total amount of disaster assistance payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) under this section (excluding payments received under subsection (f)) may not exceed \$100,000 for any crop year.

(3) **AGI LIMITATION.**—Section 1001D of the Food Security Act of 1985 (7 U.S.C. 1308–3a) or any successor provision shall apply with respect to assistance provided under this section.

(4) **DIRECT ATTRIBUTION.**—Subsections (e) and (f) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) or any successor provisions relating to direct attribution shall apply with respect to assistance provided under this section.

(5) **TRANSITION RULE.**—Sections 1001, 1001A, 1001B, and 1001D of the Food Security Act of 1985 (7 U.S.C. 1308 et seq.) as in effect on September 30, 2007, shall continue to apply with respect to 2008 crops.

(i) **PERIOD OF EFFECTIVENESS.**—This section shall be effective only for losses that are incurred as the result of a disaster, adverse

weather, or other environmental condition that occurs on or before September 30, 2011, as determined by the Secretary.

(j) **NO DUPLICATIVE PAYMENTS.**—In implementing any other program which makes disaster assistance payments (except for indemnities made under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.)) and section 196 of the Federal Agriculture Improvement and Reform Act of 1996), the Secretary shall prevent duplicative payments with respect to the same loss for which a person receives a payment under subsections (b), (c), (d), (e), or (f).

[19 U.S.C. 2497]

**SEC. 902. AGRICULTURAL DISASTER RELIEF TRUST FUND.**

(a) **CREATION OF TRUST FUND.**—There is established in the Treasury of the United States a trust fund to be known as the “Agricultural Disaster Relief Trust Fund”, consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section.

(b) **TRANSFER TO TRUST FUND.**—

(1) **IN GENERAL.**—There are appropriated to the Agricultural Disaster Relief Trust Fund amounts equivalent to 3.08 percent of the amounts received in the general fund of the Treasury of the United States during fiscal years 2008 through 2011 attributable to the duties collected on articles entered, or withdrawn from warehouse, for consumption under the Harmonized Tariff Schedule of the United States.

(2) **AMOUNTS BASED ON ESTIMATES.**—The amounts appropriated under this section shall be transferred at least monthly from the general fund of the Treasury of the United States to the Agricultural Disaster Relief Trust Fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(3) **LIMITATION ON TRANSFERS TO AGRICULTURAL DISASTER RELIEF TRUST FUND.**—No amount may be appropriated to the Agricultural Disaster Relief Trust Fund on and after the date of any expenditure from the Agricultural Disaster Relief Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

(c) **ADMINISTRATION.**—

(1) **REPORTS.**—The Secretary of the Treasury shall be the trustee of the Agricultural Disaster Relief Trust Fund and shall submit an annual report to Congress each year on the financial condition and the results of the operations of such Trust Fund during the preceding fiscal year and on its expected condition and operations during the 4 fiscal years succeeding such fiscal year. Such report shall be printed as a

House document of the session of Congress to which the report is made.

(2) INVESTMENT.—

(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Agricultural Disaster Relief Trust Fund as is not in his judgment required to meet current withdrawals. Such investments may be made only in interest bearing obligations of the United States. For such purpose, such obligations may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) SALE OF OBLIGATIONS.—Any obligation acquired by the Agricultural Disaster Relief Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Agricultural Disaster Relief Trust Fund shall be credited to and form a part of such Trust Fund.

(d) EXPENDITURES FROM TRUST FUND.—Amounts in the Agricultural Disaster Relief Trust Fund shall be available for the purposes of making expenditures to meet those obligations of the United States incurred under section 901 or section 531 of the Federal Crop Insurance Act (as such sections are in effect on the date of the enactment of the Food, Conservation, and Energy Act of 2008).

(e) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated, and are appropriated, to the Agricultural Disaster Relief Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

(2) REPAYMENT OF ADVANCES.—

(A) IN GENERAL.—Advances made to the Agricultural Disaster Relief Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in such Trust Fund.

(B) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be—

(i) at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding, and

(ii) compounded annually.

**[19 U.S.C. 2497a]**

**SEC. 903. JURISDICTION.**

Legislation in the Senate of the United States amending section 901 or 902 shall be referred to the Committee on Finance of the Senate.

**[19 U.S.C. 2497b]**