

103D CONGRESS
1ST SESSION

H. R. 3450

To implement the North American Free Trade Agreement.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 1993

Mr. ROSTENKOWSKI (as designee of the Majority Leader) (for himself and Mr. ARCHER) (as designee of the Minority Leader) (by request) introduced the following bill; which was referred jointly to the following committees for a period ending not later than November 15, 1993: Ways and Means, Agriculture, Banking, Finance and Urban Affairs, Energy and Commerce, Foreign Affairs, Government Operations, the Judiciary, and Public Works and Transportation

A BILL

To implement the North American Free Trade Agreement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “North American Free Trade Agreement Implementation
6 Act”.

7 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title and table of contents.
- Sec. 2. Definitions.

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- Sec. 105. United States section of the NAFTA secretariat.
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- Sec. 211. Monitoring of television and picture tube imports.
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- Sec. 332. Rental rights in sound recordings.
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- Sec. 631. National Customs Automation Program.
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1 SEC. 2. DEFINITIONS.

2 For purposes of this Act:

3 (1) AGREEMENT.—The term “Agreement”
4 means the North American Free Trade Agreement
5 approved by the Congress under section 101(a).

6 (2) HTS.—The term “HTS” means the Har-
7 monized Tariff Schedule of the United States.

8 (3) MEXICO.—Any reference to Mexico shall be
9 considered to be a reference to the United Mexican
10 States.

(4) NAFTA COUNTRY.—Except as provided in section 202, the term “NAFTA country” means—

(A) Canada for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and

(B) Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico.

(5) INTERNATIONAL TRADE COMMISSION.—The term “International Trade Commission” means the United States International Trade Commission.

(6) TRADE REPRESENTATIVE.—The term “Trade Representative” means the United States Trade Representative.

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

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

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19

1 U.S.C. 2903) and section 151 of the Trade Act of 1974
2 (19 U.S.C. 2191), the Congress approves—

3 (1) the North American Free Trade Agreement
4 entered into on December 17, 1992, with the Gov-
5 ernments of Canada and Mexico and submitted to
6 the Congress on November 4, 1993; and

7 (2) the statement of administrative action pro-
8 posed to implement the Agreement that was submit-
9 ted to the Congress on November 4, 1993.

10 (b) CONDITIONS FOR ENTRY INTO FORCE OF THE
11 AGREEMENT.—The President is authorized to exchange
12 notes with the Government of Canada or Mexico providing
13 for the entry into force, on or after January 1, 1994, of
14 the Agreement for the United States with respect to such
15 country at such time as—

16 (1) the President—

17 (A) determines that such country has im-
18 plemented the statutory changes necessary to
19 bring that country into compliance with its obli-
20 gations under the Agreement and has made
21 provision to implement the Uniform Regula-
22 tions provided for under article 511 of the
23 Agreement regarding the interpretation, appli-
24 cation, and administration of the rules of ori-
25 gin, and

(B) transmits a report to the House of Representatives and the Senate setting forth the determination under subparagraph (A) and including, in the case of Mexico, a description of the specific measures taken by that country to—

(i) bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement, and

(ii) otherwise ensure the effective implementation of the binational panel review process under chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations; and

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

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

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

1 (1) UNITED STATES LAW TO PREVAIL IN CON-
2 FLICT.—No provision of the Agreement, nor the ap-
3 plication of any such provision to any person or cir-
4 cumstance, which is inconsistent with any law of the
5 United States shall have effect.

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

8 (A) to amend or modify any law of the
9 United States, including any law regarding—

10 (i) the protection of human, animal,
11 or plant life or health,

12 (ii) the protection of the environment,
13 or

14 (iii) motor carrier or worker safety; or

15 (B) to limit any authority conferred under
16 any law of the United States, including section
17 301 of the Trade Act of 1974;

18 unless specifically provided for in this Act.

19 (b) RELATIONSHIP OF AGREEMENT TO STATE
20 LAW.—

21 (1) FEDERAL-STATE CONSULTATION.—

22 (A) IN GENERAL.—Upon the enactment of
23 this Act, the President shall, through the inter-
24 governmental policy advisory committees on
25 trade established under section 306(c)(2)(A) of

1 the Trade and Tariff Act of 1984, consult with
2 the States for the purpose of achieving con-
3 formity of State laws and practices with the
4 Agreement.

5 (B) FEDERAL-STATE CONSULTATION
6 PROCESS.—The Trade Representative shall es-
7 tablish within the Office of the United States
8 Trade Representative a Federal-State consulta-
9 tion process for addressing issues relating to
10 the Agreement that directly relate to, or will po-
11 tentially have a direct impact on, the States.
12 The Federal-State consultation process shall in-
13 clude procedures under which—

14 (i) the Trade Representative will as-
15 sist the States in identifying those State
16 laws that may not conform with the Agree-
17 ment but may be maintained under the
18 Agreement by reason of being in effect be-
19 fore the Agreement entered into force;

20 (ii) the States will be informed on a
21 continuing basis of matters under the
22 Agreement that directly relate to, or will
23 potentially have a direct impact on, the
24 States;

1 (iii) the States will be provided oppor-
2 tunity to submit, on a continuing basis, to
3 the Trade Representative information and
4 advice with respect to matters referred to
5 in clause (ii);

6 (iv) the Trade Representative will
7 take into account the information and ad-
8 vice received from the States under clause
9 (iii) when formulating United States posi-
10 tions regarding matters referred to in
11 clause (ii); and

12 (v) the States will be involved (includ-
13 ing involvement through the inclusion of
14 appropriate representatives of the States)
15 to the greatest extent practicable at each
16 stage of the development of United States
17 positions regarding matters referred to in
18 clause (ii) that will be addressed by com-
19 mittees, subcommittees, or working groups
20 established under the Agreement or
21 through dispute settlement processes pro-
22 vided for under the Agreement.

23 The Federal Advisory Committee Act (5 U.S.C.
24 App.) shall not apply to the Federal-State consulta-
25 tion process established by this paragraph.

1 (2) LEGAL CHALLENGE.—No State law, or the
2 application thereof, may be declared invalid as to
3 any person or circumstance on the ground that the
4 provision or application is inconsistent with the
5 Agreement, except in an action brought by the Unit-
6 ed States for the purpose of declaring such law or
7 application invalid.

8 (3) DEFINITION OF STATE LAW.—For purposes
9 of this subsection, the term “State law” includes—

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

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

14 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-
15 VATE REMEDIES.—No person other than the United
16 States—

17 (1) shall have any cause of action or defense
18 under—

19 (A) the Agreement or by virtue of Congres-
20 sional approval thereof, or

21 (B) the North American Agreement on
22 Environmental Cooperation or the North Amer-
23 ican Agreement on Labor Cooperation; or

24 (2) may challenge, in any action brought under
25 any provision of law, any action or inaction by any

1 department, agency, or other instrumentality of the
2 United States, any State, or any political subdivision
3 of a State on the ground that such action or inaction
4 is inconsistent with the Agreement, the North Amer-
5 ican Agreement on Environmental Cooperation, or
6 the North American Agreement on Labor Coopera-
7 tion.

8 **SEC. 103. CONSULTATION AND LAYOVER REQUIREMENTS**
9 **FOR, AND EFFECTIVE DATE OF, PROCLAIMED**
10 **ACTIONS.**

11 (a) CONSULTATION AND LAYOVER REQUIRE-
12 MENTS.—If a provision of this Act provides that the imple-
13 mentation of an action by the President by proclamation
14 is subject to the consultation and layover requirements of
15 this section, such action may be proclaimed only if—

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

18 (A) the appropriate advisory committees
19 established under section 135 of the Trade Act
20 of 1974, and

21 (B) the International Trade Commission;

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

1 (A) the action proposed to be proclaimed
2 and the reasons therefor, and

3 (B) the advice obtained under paragraph
4 (1);

5 (3) a period of 60 calendar days, beginning
6 with the first day on which the President has met
7 the requirements of paragraphs (1) and (2) with re-
8 spect to such action, has expired; and

9 (4) the President has consulted with such Com-
10 mittees regarding the proposed action during the pe-
11 riod referred to in paragraph (3).

12 (b) EFFECTIVE DATE OF CERTAIN PROCLAIMED AC-
13 TIONS.—Any action proclaimed by the President under the
14 authority of this Act that is not subject to the consultation
15 and layover requirements under subsection (a) may not
16 take effect before the 15th day after the date on which
17 the text of the proclamation is published in the Federal
18 Register.

19 **SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF**
20 **ENTRY INTO FORCE AND INITIAL REGULA-**
21 **TIONS.**

22 (a) IMPLEMENTING ACTIONS.—After the date of the
23 enactment of this Act—

24 (1) the President may proclaim such actions;
25 and

1 (2) other appropriate officers of the United
2 States Government may issue such regulations;
3 as may be necessary to ensure that any provision of this
4 Act, or amendment made by this Act, that takes effect
5 on the date the Agreement enters into force is appro-
6 priately implemented on such date, but no such proclama-
7 tion or regulation may have an effective date earlier than
8 the date of entry into force. The 15-day restriction in sec-
9 tion 103(b) on the taking effect of proclaimed actions is
10 waived to the extent that the application of such restric-
11 tion would prevent the taking effect on the date the Agree-
12 ment enters into force of any action proclaimed under this
13 section.

14 (b) INITIAL REGULATIONS.—Initial regulations nec-
15 essary or appropriate to carry out the actions proposed
16 in the statement of administrative action submitted under
17 section 101(a)(2) to implement the Agreement shall, to
18 the maximum extent feasible, be issued within 1 year after
19 the date of entry into force of the Agreement; except that
20 interim or initial regulations to implement those Uniform
21 Regulations regarding rules of origin provided for under
22 article 511 of the Agreement shall be issued no later than
23 the date of entry into force of the Agreement. In the case
24 of any implementing action that takes effect on a date
25 after the date of entry into force of the Agreement, initial

1 regulations to carry out that action shall, to the maximum
2 extent feasible, be issued within 1 year after such effective
3 date.

4 **SEC. 105. UNITED STATES SECTION OF THE NAFTA SEC-**
5 **RETARIAT.**

6 (a) ESTABLISHMENT OF THE UNITED STATES SEC-
7 TION.—The President is authorized to establish within
8 any department or agency of the United States Govern-
9 ment a United States Section of the Secretariat estab-
10 lished under chapter 20 of the Agreement. The United
11 States Section, subject to the oversight of the interagency
12 group established under section 402, shall carry out its
13 functions within the Secretariat to facilitate the operation
14 of the Agreement, including the operation of chapters 19
15 and 20 of the Agreement and the work of the panels, ex-
16 traordinary challenge committees, special committees, and
17 scientific review boards convened under those chapters.
18 The United States Section may not be considered to be
19 an agency for purposes of section 552 of title 5, United
20 States Code.

21 (b) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated for each fiscal year after
23 fiscal year 1993 to the department or agency within which
24 the United States Section is established the lesser of—

25 (1) such sums as may be necessary; or

1 (2) \$2,000,000;
2 for the establishment and operations of the United States
3 Section and for the payment of the United States share
4 of the expenses of binational panels and extraordinary
5 challenge committees convened under chapter 19, and of
6 the expenses incurred in dispute settlement proceedings
7 under chapter 20, of the Agreement.

8 (c) REIMBURSEMENT OF CERTAIN EXPENSES.—If,
9 in accordance with Annex 2002.2 of the Agreement, the
10 Canadian Section or the Mexican Section of the Secretar-
11 iat provides funds to the United States Section during any
12 fiscal year, as reimbursement for expenses by the Cana-
13 dian Section or the Mexican Section in connection with
14 settlement proceedings under chapter 19 or 20 of the
15 Agreement, the United States Section may retain and use
16 such funds to carry out the functions described in sub-
17 section (a).

18 **SEC. 106. APPOINTMENTS TO CHAPTER 20 PANEL PRO-**
19 **CEEDINGS.**

20 (a) CONSULTATION.—The Trade Representative shall
21 consult with the Committee on Ways and Means of the
22 House of Representatives and the Committee on Finance
23 of the Senate regarding the selection and appointment of
24 candidates for the rosters described in article 2009 of the
25 Agreement.

1 (b) SELECTION OF INDIVIDUALS WITH ENVIRON-
 2 MENTAL EXPERTISE.—The United States shall, to the
 3 maximum extent practicable, encourage the selection of in-
 4 dividuals who have expertise and experience in environ-
 5 mental issues for service in panel proceedings under chap-
 6 ter 20 of the Agreement to hear any challenge to a United
 7 States or State environmental law.

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

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

13 “(c) TERMINATION OR SUSPENSION OF AGREE-
 14 MENT.—

15 “(1) TERMINATION OF AGREEMENT.—On the
 16 date the Agreement ceases to be in force, the provi-
 17 sions of this Act (other than this paragraph and sec-
 18 tion 410(b)), and the amendments made by this Act,
 19 shall cease to have effect.

20 “(2) EFFECT OF AGREEMENT SUSPENSION.—
 21 An agreement by the United States and Canada to
 22 suspend the operation of the Agreement shall not be
 23 deemed to cause the Agreement to cease to be in
 24 force within the meaning of paragraph (1).

1 “(3) SUSPENSION RESULTING FROM NAFTA.—

2 On the date the United States and Canada agree to
3 suspend the operation of the Agreement by reason of
4 the entry into force between them of the North
5 American Free Trade Agreement, the following pro-
6 visions of this Act are suspended and shall remain
7 suspended until such time as the suspension of the
8 Agreement may be terminated:

9 “(A) Sections 204(a) and (b) and 205(a).

10 “(B) Sections 302 and 304(f).

11 “(C) Sections 404, 409, and 410(b).”.

12 **SEC. 108. CONGRESSIONAL INTENT REGARDING FUTURE**
13 **ACCESSIONS.**

14 (a) IN GENERAL.—Section 101(a) may not be con-
15 strued as conferring Congressional approval of the entry
16 into force of the Agreement for the United States with
17 respect to countries other than Canada and Mexico.

18 (b) FUTURE FREE TRADE AREA NEGOTIATIONS.—

19 (1) FINDINGS.—The Congress makes the fol-
20 lowing findings:

21 (A) Efforts by the United States to obtain
22 greater market opening through multilateral ne-
23 gotiations have not produced agreements that
24 fully satisfy the trade negotiating objectives of
25 the United States.

1 (B) United States trade policy should pro-
2 vide for additional mechanisms with which to
3 pursue greater market access for United States
4 exports of goods and services and opportunities
5 for export-related investment by United States
6 persons.

7 (C) Among the additional mechanisms
8 should be a system of bilateral and multilateral
9 trade agreements that provide greater market
10 access for United States exports and opportuni-
11 ties for export-related investment by United
12 States persons.

13 (D) The system of trade agreements can
14 and should be structured to be consistent with,
15 and complementary to, existing international
16 obligations of the United States and ongoing
17 multilateral efforts to open markets.

18 (2) REPORT ON SIGNIFICANT MARKET OPEN-
19 ING.—No later than May 1, 1994, and May 1, 1997,
20 the Trade Representative shall submit to the Presi-
21 dent, and to the Committee on Finance of the Sen-
22 ate and the Committee on Ways and Means of the
23 House of Representatives (hereafter in this section
24 referred to as the “appropriate Congressional com-

1 mittees’”), a report which lists those foreign coun-
2 tries—

3 (A) that—

4 (i) currently provide fair and equitable
5 market access for United States exports of
6 goods and services and opportunities for
7 export-related investment by United States
8 persons, beyond what is required by exist-
9 ing multilateral trade agreements or obli-
10 gations; or

11 (ii) have made significant progress in
12 opening their markets to United States ex-
13 ports of goods and services and export-re-
14 lated investment by United States persons;
15 and

16 (B) the further opening of whose markets
17 has the greatest potential to increase United
18 States exports of goods and services and export-
19 related investment by United States persons, ei-
20 ther directly or through the establishment of a
21 beneficial precedent.

22 (3) PRESIDENTIAL DETERMINATION.—The
23 President, on the basis of the report submitted by
24 the Trade Representative under paragraph (2), shall
25 determine with which foreign country or countries, if

1 any, the United States should seek to negotiate a
2 free trade area agreement or agreements.

3 (4) RECOMMENDATIONS ON FUTURE FREE
4 TRADE AREA NEGOTIATIONS.—No later than July 1,
5 1994, and July 1, 1997, the President shall submit
6 to the appropriate Congressional committees a writ-
7 ten report that contains—

8 (A) recommendations for free trade area
9 negotiations with each foreign country selected
10 under paragraph (3);

11 (B) with respect to each country selected,
12 the specific negotiating objectives that are nec-
13 essary to meet the objectives of the United
14 States under this section; and

15 (C) legislative proposals to ensure ade-
16 quate consultation with the Congress and the
17 private sector during the negotiations, advance
18 Congressional approval of the negotiations rec-
19 ommended by the President, and Congressional
20 approval of any trade agreement entered into
21 by the President as a result of the negotiations.

22 (5) GENERAL NEGOTIATING OBJECTIVES.—The
23 general negotiating objectives of the United States
24 under this section are to obtain—

1 (A) preferential treatment for United
2 States goods;

3 (B) national treatment and, where appro-
4 priate, equivalent competitive opportunity for
5 United States services and foreign direct invest-
6 ment by United States persons;

7 (C) the elimination of barriers to trade in
8 goods and services by United States persons
9 through standards, testing, labeling, and certifi-
10 cation requirements;

11 (D) nondiscriminatory government pro-
12 curement policies and practices with respect to
13 United States goods and services;

14 (E) the elimination of other barriers to
15 market access for United States goods and
16 services, and the elimination of barriers to for-
17 eign direct investment by United States per-
18 sons;

19 (F) the elimination of acts, policies, and
20 practices which deny fair and equitable market
21 opportunities, including foreign government tol-
22 eration of anticompetitive business practices by
23 private firms or among private firms that have
24 the effect of restricting, on a basis that is in-
25 consistent with commercial considerations, pur-

1 chasing by such firms of United States goods
2 and services;

3 (G) adequate and effective protection of in-
4 tellectual property rights of United States per-
5 sons, and fair and equitable market access for
6 United States persons that rely upon intellec-
7 tual property protection;

8 (H) the elimination of foreign export and
9 domestic subsidies that distort international
10 trade in United States goods and services or
11 cause material injury to United States indus-
12 tries;

13 (I) the elimination of all export taxes;

14 (J) the elimination of acts, policies, and
15 practices which constitute export targeting; and

16 (K) monitoring and effective dispute settle-
17 ment mechanisms to facilitate compliance with
18 the matters described in subparagraphs (A)
19 through (J).

20 **SEC. 109. EFFECTIVE DATES; EFFECT OF TERMINATION OF**
21 **NAFTA STATUS.**

22 (a) EFFECTIVE DATES.—

23 (1) IN GENERAL.—This title (other than the
24 amendment made by section 107) takes effect on the
25 date of the enactment of this Act.

1 (2) SECTION 107 AMENDMENT.—The amend-
2 ment made by section 107 takes effect on the date
3 the Agreement enters into force between the United
4 States and Canada.

5 (b) TERMINATION OF NAFTA STATUS.—During any
6 period in which a country ceases to be a NAFTA country,
7 sections 101 through 106 shall cease to have effect with
8 respect to such country.

9 **TITLE II—CUSTOMS PROVISIONS**

10 **SEC. 201. TARIFF MODIFICATIONS.**

11 (a) TARIFF MODIFICATIONS PROVIDED FOR IN THE
12 AGREEMENT.—

13 (1) PROCLAMATION AUTHORITY.—The Presi-
14 dent may proclaim—

15 (A) such modifications or continuation of
16 any duty,

17 (B) such continuation of duty-free or ex-
18 cise treatment, or

19 (C) such additional duties,

20 as the President determines to be necessary or ap-
21 propriate to carry out or apply articles 302, 305,
22 307, 308, and 703 and Annexes 302.2, 307.1,
23 308.1, 308.2, 300-B, 703.2, and 703.3 of the Agree-
24 ment.

1 (2) EFFECT ON MEXICAN GSP STATUS.—Not-
2 withstanding section 502(a)(2) of the Trade Act of
3 1974 (19 U.S.C. 2462(a)(2)), the President shall
4 terminate the designation of Mexico as a beneficiary
5 developing country for purposes of title V of the
6 Trade Act of 1974 on the date of entry into force
7 of the Agreement between the United States and
8 Mexico.

9 (b) OTHER TARIFF MODIFICATIONS.—

10 (1) IN GENERAL.—Subject to paragraph (2)
11 and the consultation and layover requirements of
12 section 103(a), the President may proclaim—

13 (A) such modifications or continuation of
14 any duty,

15 (B) such modifications as the United
16 States may agree to with Mexico or Canada re-
17 garding the staging of any duty treatment set
18 forth in Annex 302.2 of the Agreement,

19 (C) such continuation of duty-free or excise
20 treatment, or

21 (D) such additional duties,

22 as the President determines to be necessary or ap-
23 propriate to maintain the general level of reciprocal
24 and mutually advantageous concessions with respect
25 to Canada or Mexico provided for by the Agreement.

1 (2) SPECIAL RULE FOR ARTICLES WITH TARIFF
2 PHASEOUT PERIODS OF MORE THAN 10 YEARS.—The
3 President may not consider a request to accelerate
4 the staging of duty reductions for an article for
5 which the United States tariff phaseout period is
6 more than 10 years if a request for acceleration with
7 respect to such article has been denied in the preced-
8 ing 3 calendar years.

9 (c) CONVERSION TO AD VALOREM RATES FOR CER-
10 TAIN TEXTILES.—For purposes of subsections (a) and
11 (b), with respect to an article covered by Annex 300–B
12 of the Agreement imported from Mexico for which the base
13 rate in the Schedule of the United States in Annex 300–
14 B is a specific or compound rate of duty, the President
15 may substitute for the base rate an ad valorem rate that
16 the President determines to be equivalent to the base rate.

17 **SEC. 202. RULES OF ORIGIN.**

18 (a) ORIGINATING GOODS.—

19 (1) IN GENERAL.—For purposes of implement-
20 ing the tariff treatment and quantitative restrictions
21 provided for under the Agreement, except as other-
22 wise provided in this section, a good originates in
23 the territory of a NAFTA country if—

1 (A) the good is wholly obtained or pro-
2 duced entirely in the territory of one or more of
3 the NAFTA countries;

4 (B)(i) each nonoriginating material used in
5 the production of the good—

6 (I) undergoes an applicable change in
7 tariff classification set out in Annex 401 of
8 the Agreement as a result of production
9 occurring entirely in the territory of one or
10 more of the NAFTA countries; or

11 (II) where no change in tariff classi-
12 fication is required, the good otherwise sat-
13 isfies the applicable requirements of such
14 Annex; and

15 (ii) the good satisfies all other applicable
16 requirements of this section;

17 (C) the good is produced entirely in the
18 territory of one or more of the NAFTA coun-
19 tries exclusively from originating materials; or

20 (D) except for a good provided for in chap-
21 ters 61 through 63 of the HTS, the good is
22 produced entirely in the territory of one or
23 more of the NAFTA countries, but one or more
24 of the nonoriginating materials, that are pro-
25 vided for as parts under the HTS and are used

1 in the production of the good, does not undergo
2 a change in tariff classification because—

3 (i) the good was imported into the ter-
4 ritory of a NAFTA country in an unassem-
5 bled or a disassembled form but was classi-
6 fied as an assembled good pursuant to
7 General Rule of Interpretation 2(a) of the
8 HTS; or

9 (ii)(I) the heading for the good pro-
10 vides for and specifically describes both the
11 good itself and its parts and is not further
12 subdivided into subheadings; or

13 (II) the subheading for the good pro-
14 vides for and specifically describes both the
15 good itself and its parts.

16 (2) SPECIAL RULES.—

17 (A) FOREIGN-TRADE ZONES.—Subpara-
18 graph (B) of paragraph (1) shall not apply to
19 a good produced in a foreign-trade zone or
20 subzone (established pursuant to the Act of
21 June 18, 1934, commonly known as the For-
22 eign Trade Zones Act) that is entered for con-
23 sumption in the customs territory of the United
24 States.

1 (B) REGIONAL VALUE-CONTENT REQUIRE-
2 MENT.—For purposes of subparagraph (D) of
3 paragraph (1), a good shall be treated as origi-
4 nating in a NAFTA country if the regional
5 value-content of the good, determined in accord-
6 ance with subsection (b), is not less than 60
7 percent where the transaction value method is
8 used, or not less than 50 percent where the net
9 cost method is used, and the good satisfies all
10 other applicable requirements of this section.

11 (b) REGIONAL VALUE-CONTENT.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (5), the regional value-content of a good shall
14 be calculated, at the choice of the exporter or pro-
15 ducer of the good, on the basis of—

16 (A) the transaction value method described
17 in paragraph (2); or

18 (B) the net cost method described in para-
19 graph (3).

20 (2) TRANSACTION VALUE METHOD.—

21 (A) IN GENERAL.—An exporter or pro-
22 ducer may calculate the regional value-content
23 of a good on the basis of the following trans-
24 action value method:

TV-VNM

$$\text{RVC} = \frac{\text{TV}}{\text{TV}} \times 100$$

(B) DEFINITIONS.—For purposes of subparagraph (A):

(i) The term “RVC” means the regional value-content, expressed as a percentage.

(ii) The term “TV” means the transaction value of the good adjusted to a F.O.B. basis.

(iii) The term “VNM” means the value of nonoriginating materials used by the producer in the production of the good.

(3) NET COST METHOD.—

(A) IN GENERAL.—An exporter or producer may calculate the regional value-content of a good on the basis of the following net cost method:

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

(B) DEFINITIONS.—For purposes of subparagraph (A):

(i) The term “RVC” means the regional value-content, expressed as a percentage.

1 (ii) The term “NC” means the net
2 cost of the good.

3 (iii) The term “VNM” means the
4 value of nonoriginating materials used by
5 the producer in the production of the good.

6 (4) VALUE OF NONORIGINATING MATERIALS
7 USED IN ORIGINATING MATERIALS.—Except as pro-
8 vided in subsection (c)(1), and for a motor vehicle
9 identified in subsection (c)(2) or a component identi-
10 fied in Annex 403.2 of the Agreement, the value of
11 nonoriginating materials used by the producer in the
12 production of a good shall not, for purposes of cal-
13 culating the regional value-content of the good under
14 paragraph (2) or (3), include the value of
15 nonoriginating materials used to produce originating
16 materials that are subsequently used in the produc-
17 tion of the good.

18 (5) NET COST METHOD MUST BE USED IN CER-
19 TAIN CASES.—An exporter or producer shall cal-
20 culate the regional value-content of a good solely on
21 the basis of the net cost method described in para-
22 graph (3), if—

23 (A) there is no transaction value for the
24 good;

1 (B) the transaction value of the good is
2 unacceptable under Article 1 of the Customs
3 Valuation Code;

4 (C) the good is sold by the producer to a
5 related person and the volume, by units of
6 quantity, of sales of identical or similar goods
7 to related persons during the six-month period
8 immediately preceding the month in which the
9 good is sold exceeds 85 percent of the produc-
10 er's total sales of such goods during that pe-
11 riod;

12 (D) the good is—

13 (i) a motor vehicle provided for in
14 heading 8701 or 8702, subheadings
15 8703.21 through 8703.90, or heading
16 8704, 8705, or 8706;

17 (ii) identified in Annex 403.1 or 403.2
18 of the Agreement and is for use in a motor
19 vehicle provided for in heading 8701 or
20 8702, subheadings 8703.21 through
21 8703.90, or heading 8704, 8705, or 8706;

22 (iii) provided for in subheadings
23 6401.10 through 6406.10; or

24 (iv) a word processing machine pro-
25 vided for in subheading 8469.10.00;

1 (E) the exporter or producer chooses to ac-
2 cumulate the regional value-content of the good
3 in accordance with subsection (d); or

4 (F) the good is designated as an intermedi-
5 ate material under paragraph (10) and is sub-
6 ject to a regional value-content requirement.

7 (6) NET COST METHOD ALLOWED FOR ADJUST-
8 MENTS.—If an exporter or producer of a good cal-
9 culates the regional value-content of the good on the
10 basis of the transaction value method and a NAFTA
11 country subsequently notifies the exporter or pro-
12 ducer, during the course of a verification conducted
13 in accordance with chapter 5 of the Agreement, that
14 the transaction value of the good or the value of any
15 material used in the production of the good must be
16 adjusted or is unacceptable under Article 1 of the
17 Customs Valuation Code, the exporter or producer
18 may calculate the regional value-content of the good
19 on the basis of the net cost method.

20 (7) REVIEW OF ADJUSTMENT.—Nothing in
21 paragraph (6) shall be construed to prevent any re-
22 view or appeal available in accordance with article
23 510 of the Agreement with respect to an adjustment
24 to or a rejection of—

25 (A) the transaction value of a good; or

1 (B) the value of any material used in the
2 production of a good.

3 (8) CALCULATING NET COST.—The producer
4 may, consistent with regulations implementing this
5 section, calculate the net cost of a good under para-
6 graph (3), by—

7 (A) calculating the total cost incurred with
8 respect to all goods produced by that producer,
9 subtracting any sales promotion, marketing and
10 after-sales service costs, royalties, shipping and
11 packing costs, and nonallowable interest costs
12 that are included in the total cost of all such
13 goods, and reasonably allocating the resulting
14 net cost of those goods to the good;

15 (B) calculating the total cost incurred with
16 respect to all goods produced by that producer,
17 reasonably allocating the total cost to the good,
18 and subtracting any sales promotion, marketing
19 and after-sales service costs, royalties, shipping
20 and packing costs, and nonallowable interest
21 costs that are included in the portion of the
22 total cost allocated to the good; or

23 (C) reasonably allocating each cost that is
24 part of the total cost incurred with respect to
25 the good so that the aggregate of these costs

1 does not include any sales promotion, market-
2 ing and after-sales service costs, royalties, ship-
3 ping and packing costs, or nonallowable interest
4 costs.

5 (9) VALUE OF MATERIAL USED IN PRODUC-
6 TION.—Except as provided in paragraph (11), the
7 value of a material used in the production of a
8 good—

9 (A) shall—

10 (i) be the transaction value of the ma-
11 terial determined in accordance with Arti-
12 cle 1 of the Customs Valuation Code; or

13 (ii) in the event that there is no trans-
14 action value or the transaction value of the
15 material is unacceptable under Article 1 of
16 the Customs Valuation Code, be deter-
17 mined in accordance with Articles 2
18 through 7 of the Customs Valuation Code;
19 and

20 (B) if not included under clause (i) or (ii)
21 of subparagraph (A), shall include—

22 (i) freight, insurance, packing, and all
23 other costs incurred in transporting the
24 material to the location of the producer;

1 (ii) duties, taxes, and customs broker-
2 age fees paid on the material in the terri-
3 tory of one or more of the NAFTA coun-
4 tries; and

5 (iii) the cost of waste and spoilage re-
6 sulting from the use of the material in the
7 production of the good, less the value of
8 renewable scrap or by-product.

9 (10) INTERMEDIATE MATERIAL.—Except for
10 goods described in subsection (c)(1), any self-pro-
11 duced material, other than a component identified in
12 Annex 403.2 of the Agreement, that is used in the
13 production of a good may be designated by the pro-
14 ducer of the good as an intermediate material for
15 the purpose of calculating the regional value-content
16 of the good under paragraph (2) or (3); provided
17 that if the intermediate material is subject to a re-
18 gional value-content requirement, no other self-pro-
19 duced material that is subject to a regional value-
20 content requirement and is used in the production of
21 the intermediate material may be designated by the
22 producer as an intermediate material.

23 (11) VALUE OF INTERMEDIATE MATERIAL.—
24 The value of an intermediate material shall be—

1 (A) the total cost incurred with respect to
2 all goods produced by the producer of the good
3 that can be reasonably allocated to the inter-
4 mediate material; or

5 (B) the aggregate of each cost that is part
6 of the total cost incurred with respect to the in-
7 termediate material that can be reasonably allo-
8 cated to that intermediate material.

9 (12) INDIRECT MATERIAL.—The value of an in-
10 direct material shall be based on the Generally Ac-
11 cepted Accounting Principles applicable in the terri-
12 tory of the NAFTA country in which the good is
13 produced.

14 (c) AUTOMOTIVE GOODS.—

15 (1) PASSENGER VEHICLES AND LIGHT TRUCKS,
16 AND THEIR AUTOMOTIVE PARTS.—For purposes of
17 calculating the regional value-content under the net
18 cost method for—

19 (A) a good that is a motor vehicle for the
20 transport of 15 or fewer persons provided for in
21 subheading 8702.10.00 or 8702.90.00, or a
22 motor vehicle provided for in subheadings
23 8703.21 through 8703.90, or subheading
24 8704.21 or 8704.31, or

1 (B) a good provided for in the tariff provi-
2 sions listed in Annex 403.1 of the Agreement,
3 that is subject to a regional value-content re-
4 quirement and is for use as original equipment
5 in the production of a motor vehicle for the
6 transport of 15 or fewer persons provided for in
7 subheading 8702.10.00 or 8702.90.00, or a
8 motor vehicle provided for in subheadings
9 8703.21 through 8703.90, or subheading
10 8704.21 or 8704.31,

11 the value of nonoriginating materials used by the
12 producer in the production of the good shall be the
13 sum of the values of all nonoriginating materials, de-
14 termined in accordance with subsection (b)(9) at the
15 time the nonoriginating materials are received by the
16 first person in the territory of a NAFTA country
17 who takes title to them, that are imported from out-
18 side the territories of the NAFTA countries under
19 the tariff provisions listed in Annex 403.1 of the
20 Agreement and are used in the production of the
21 good or that are used in the production of any mate-
22 rial used in the production of the good.

23 (2) OTHER VEHICLES AND THEIR AUTOMOTIVE
24 PARTS.—For purposes of calculating the regional
25 value-content under the net cost method for a good

1 that is a motor vehicle provided for in heading 8701,
2 subheading 8704.10, 8704.22, 8704.23, 8704.32, or
3 8704.90, or heading 8705 or 8706, a motor vehicle
4 for the transport of 16 or more persons provided for
5 in subheading 8702.10.00 or 8702.90.00, or a com-
6 ponent identified in Annex 403.2 of the Agreement
7 for use as original equipment in the production of
8 the motor vehicle, the value of nonoriginating mate-
9 rials used by the producer in the production of the
10 good shall be the sum of—

11 (A) for each material used by the producer
12 listed in Annex 403.2 of the Agreement, wheth-
13 er or not produced by the producer, at the
14 choice of the producer and determined in ac-
15 cordance with subsection (b), either—

16 (i) the value of such material that is
17 nonoriginating, or

18 (ii) the value of nonoriginating mate-
19 rials used in the production of such mate-
20 rial; and

21 (B) the value of any other nonoriginating
22 material used by the producer that is not listed
23 in Annex 403.2 of the Agreement determined in
24 accordance with subsection (b).

25 (3) AVERAGING PERMITTED.—

1 (A) IN GENERAL.—For purposes of cal-
2 culating the regional value-content of a motor
3 vehicle described in paragraph (1) or (2), the
4 producer may average its calculation over its
5 fiscal year, using any of the categories de-
6 scribed in subparagraph (B), on the basis of ei-
7 ther all motor vehicles in the category or on the
8 basis of only the motor vehicles in the category
9 that are exported to the territory of one or
10 more of the other NAFTA countries.

11 (B) CATEGORY DESCRIBED.—A category is
12 described in this subparagraph if it is—

13 (i) the same model line of motor vehi-
14 cles in the same class of vehicles produced
15 in the same plant in the territory of a
16 NAFTA country;

17 (ii) the same class of motor vehicles
18 produced in the same plant in the territory
19 of a NAFTA country;

20 (iii) the same model line of motor ve-
21 hicles produced in the territory of a
22 NAFTA country; or

23 (iv) if applicable, the basis set out in
24 Annex 403.3 of the Agreement.

1 (4) ANNEX 403.1 AND ANNEX 403.2.—For pur-
2 poses of calculating the regional value-content for
3 any or all goods provided for in a tariff provision
4 listed in Annex 403.1 of the Agreement, or a compo-
5 nent or material identified in Annex 403.2 of the
6 Agreement, produced in the same plant, the pro-
7 ducer of the good may—

8 (A) average its calculation—

9 (i) over the fiscal year of the motor
10 vehicle producer to whom the good is sold;

11 (ii) over any quarter or month; or

12 (iii) over its fiscal year, if the good is
13 sold as an aftermarket part;

14 (B) calculate the average referred to in
15 subparagraph (A) separately for any or all
16 goods sold to one or more motor vehicle produc-
17 ers; or

18 (C) with respect to any calculation under
19 this paragraph, make a separate calculation for
20 goods that are exported to the territory of one
21 or more NAFTA countries.

22 (5) PHASE-IN OF REGIONAL VALUE-CONTENT
23 REQUIREMENT.—Notwithstanding Annex 401 of the
24 Agreement, and except as provided in paragraph (6),
25 the regional value-content requirement shall be—

1 (A) for a producer's fiscal year beginning
2 on the day closest to January 1, 1998, and
3 thereafter, 56 percent calculated under the net
4 cost method, and for a producer's fiscal year
5 beginning on the day closest to January 1,
6 2002, and thereafter, 62.5 percent calculated
7 under the net cost method, for—

8 (i) a good that is a motor vehicle for
9 the transport of 15 or fewer persons pro-
10 vided for in subheading 8702.10.00 or
11 8702.90.00, or a motor vehicle provided
12 for in subheadings 8703.21 through
13 8703.90, or subheading 8704.21 or
14 8704.31; and

15 (ii) a good provided for in heading
16 8407 or 8408, or subheading 8708.40,
17 that is for use in a motor vehicle identified
18 in clause (i); and

19 (B) for a producer's fiscal year beginning
20 on the day closest to January 1, 1998, and
21 thereafter, 55 percent calculated under the net
22 cost method, and for a producer's fiscal year
23 beginning on the day closest to January 1,
24 2002, and thereafter, 60 percent calculated
25 under the net cost method, for—

1 (i) a good that is a motor vehicle pro-
2 vided for in heading 8701, subheading
3 8704.10, 8704.22, 8704.23, 8704.32, or
4 8704.90, or heading 8705 or 8706, or a
5 motor vehicle for the transport of 16 or
6 more persons provided for in subheading
7 8702.10.00 or 8702.90.00;

8 (ii) a good provided for in heading
9 8407 or 8408, or subheading 8708.40 that
10 is for use in a motor vehicle identified in
11 clause (i); and

12 (iii) except for a good identified in
13 subparagraph (A)(ii) or a good provided
14 for in subheadings 8482.10 through
15 8482.80, or subheading 8483.20 or
16 8483.30, a good identified in Annex 403.1
17 of the Agreement that is subject to a re-
18 gional value-content requirement and is for
19 use in a motor vehicle identified in sub-
20 paragraph (A)(i) or (B)(i).

21 (6) NEW AND REFITTED PLANTS.—The re-
22 gional value-content requirement for a motor vehicle
23 identified in paragraph (1) or (2) shall be—

24 (A) 50 percent for 5 years after the date
25 on which the first motor vehicle prototype is

1 produced in a plant by a motor vehicle assem-
2 bler, if—

3 (i) it is a motor vehicle of a class, or
4 marque, or, except for a motor vehicle
5 identified in paragraph (2), size category
6 and underbody, not previously produced by
7 the motor vehicle assembler in the territory
8 of any of the NAFTA countries;

9 (ii) the plant consists of a new build-
10 ing in which the motor vehicle is assem-
11 bled; and

12 (iii) the plant contains substantially
13 all new machinery that is used in the as-
14 sembly of the motor vehicle; or

15 (B) 50 percent for 2 years after the date
16 on which the first motor vehicle prototype is
17 produced at a plant following a refit, if it is a
18 motor vehicle of a class, or marque, or, except
19 for a motor vehicle identified in paragraph (2),
20 size category and underbody, different from
21 that assembled by the motor vehicle assembler
22 in the plant before the refit.

23 (7) ELECTION FOR CERTAIN VEHICLES FROM
24 CANADA.—In the case of goods provided for in sub-
25 headings 8703.21 through 8703.90, or subheading

1 8704.21 or 8704.31, exported from Canada directly
2 to the United States, and entered on or after Janu-
3 ary 1, 1989, and before the date of entry into force
4 of the Agreement between the United States and
5 Canada, an importer may elect to use the rules of
6 origin set out in this section in lieu of the rules of
7 origin contained in section 202 of the United States-
8 Canada Free-Trade Agreement Implementation Act
9 of 1988 (19 U.S.C. 2112 note) and may elect to use
10 the method for calculating the value of
11 nonoriginating materials established in article
12 403(2) of the Agreement in lieu of the method es-
13 tablished in article 403(1) of the Agreement for pur-
14 poses of determining eligibility for preferential duty
15 treatment under the United States-Canada Free-
16 Trade Agreement. Any election under this paragraph
17 shall be made in writing to the Customs Service not
18 later than the date that is 180 days after the date
19 of entry into force of the Agreement between the
20 United States and Canada. Any such election may
21 be made only if the liquidation of such entry has not
22 become final. For purposes of averaging the calcula-
23 tion of regional value-content for the goods covered
24 by such entry, where the producer's 1989–1990 fis-
25 cal year began after January 1, 1989, the producer

1 may include the period between January 1, 1989,
2 and the beginning of its first fiscal year after Janu-
3 ary 1, 1989, as part of fiscal year 1989–1990.

4 (d) ACCUMULATION.—

5 (1) DETERMINATION OF ORIGINATING GOOD.—

6 For purposes of determining whether a good is an
7 originating good, the production of the good in the
8 territory of one or more of the NAFTA countries by
9 one or more producers shall, at the choice of the ex-
10 porter or producer of the good, be considered to
11 have been performed in the territory of any of the
12 NAFTA countries by that exporter or producer, if—

13 (A) all nonoriginating materials used in
14 the production of the good undergo an applica-
15 ble tariff classification change set out in Annex
16 401 of the Agreement;

17 (B) the good satisfies any applicable re-
18 gional value-content requirement; and

19 (C) the good satisfies all other applicable
20 requirements of this section.

21 The requirements of subparagraphs (A) and (B)
22 must be satisfied entirely in the territory of one or
23 more of the NAFTA countries.

24 (2) TREATMENT AS SINGLE PRODUCER.—For
25 purposes of subsection (b)(10), the production of a

1 producer that chooses to accumulate its production
2 with that of other producers under paragraph (1)
3 shall be treated as the production of a single pro-
4 ducer.

5 (e) DE MINIMIS AMOUNTS OF NONORIGINATING MA-
6 TERIALS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graphs (3), (4), (5), and (6), a good shall be consid-
9 ered to be an originating good if—

10 (A) the value of all nonoriginating mate-
11 rials used in the production of the good that do
12 not undergo an applicable change in tariff clas-
13 sification (set out in Annex 401 of the Agree-
14 ment) is not more than 7 percent of the trans-
15 action value of the good, adjusted to a F.O.B.
16 basis, or

17 (B) where the transaction value of the
18 good is unacceptable under Article 1 of the
19 Customs Valuation Code, the value of all such
20 nonoriginating materials is not more than 7
21 percent of the total cost of the good,

22 provided that the good satisfies all other applicable
23 requirements of this section and, if the good is sub-
24 ject to a regional value-content requirement, the
25 value of such nonoriginating materials is taken into

1 account in calculating the regional value-content of
2 the good.

3 (2) GOODS NOT SUBJECT TO REGIONAL VALUE-
4 CONTENT REQUIREMENT.—A good that is otherwise
5 subject to a regional value-content requirement shall
6 not be required to satisfy such requirement if—

7 (A)(i) the value of all nonoriginating mate-
8 rials used in the production of the good is not
9 more than 7 percent of the transaction value of
10 the good, adjusted to a F.O.B. basis; or

11 (ii) where the transaction value of the good
12 is unacceptable under Article 1 of the Customs
13 Valuation Code, the value of all nonoriginating
14 materials is not more than 7 percent of the
15 total cost of the good; and

16 (B) the good satisfies all other applicable
17 requirements of this section.

18 (3) DAIRY PRODUCTS, ETC.—Paragraph (1)
19 does not apply to—

20 (A) a nonoriginating material provided for
21 in chapter 4 of the HTS or a dairy preparation
22 containing over 10 percent by weight of milk
23 solids provided for in subheading 1901.90.30,
24 1901.90.40, or 1901.90.80 that is used in the

1 production of a good provided for in chapter 4
2 of the HTS;

3 (B) a nonoriginating material provided for
4 in chapter 4 of the HTS or a dairy preparation
5 containing over 10 percent by weight of milk
6 solids provided for in subheading 1901.90.30,
7 1901.90.40, or 1901.90.80 that is used in the
8 production of—

9 (i) preparations for infants containing
10 over 10 percent by weight of milk solids
11 provided for in subheading 1901.10.00;

12 (ii) mixes and doughs, containing over
13 25 percent by weight of butterfat, not put
14 up for retail sale, provided for in sub-
15 heading 1901.20.00;

16 (iii) a dairy preparation containing
17 over 10 percent by weight of milk solids
18 provided for in subheading 1901.90.30,
19 1901.90.40, or 1901.90.80;

20 (iv) a good provided for in heading
21 2105 or subheading 2106.90.05, or prep-
22 arations containing over 10 percent by
23 weight of milk solids provided for in sub-
24 heading 2106.90.15, 2106.90.40,
25 2106.90.50, or 2106.90.65;

1 (v) a good provided for in subheading
2 2202.90.10 or 2202.90.20; or

3 (vi) animal feeds containing over 10
4 percent by weight of milk solids provided
5 for in subheading 2309.90.30;

6 (C) a nonoriginating material provided for
7 in heading 0805 or subheadings 2009.11
8 through 2009.30 that is used in the production
9 of—

10 (i) a good provided for in subheadings
11 2009.11 through 2009.30, or subheading
12 2106.90.16, or concentrated fruit or vege-
13 table juice of any single fruit or vegetable,
14 fortified with minerals or vitamins, pro-
15 vided for in subheading 2106.90.19; or

16 (ii) a good provided for in subheading
17 2202.90.30 or 2202.90.35, or fruit or veg-
18 etable juice of any single fruit or vegetable,
19 fortified with minerals or vitamins, pro-
20 vided for in subheading 2202.90.36;

21 (D) a nonoriginating material provided for
22 in chapter 9 of the HTS that is used in the
23 production of instant coffee, not flavored, pro-
24 vided for in subheading 2101.10.20;

1 (E) a nonoriginating material provided for
2 in chapter 15 of the HTS that is used in the
3 production of a good provided for in headings
4 1501 through 1508, or heading 1512, 1514, or
5 1515;

6 (F) a nonoriginating material provided for
7 in heading 1701 that is used in the production
8 of a good provided for in headings 1701
9 through 1703;

10 (G) a nonoriginating material provided for
11 in chapter 17 of the HTS or heading 1805 that
12 is used in the production of a good provided for
13 in subheading 1806.10;

14 (H) a nonoriginating material provided for
15 in headings 2203 through 2208 that is used in
16 the production of a good provided for in head-
17 ings 2207 through 2208;

18 (I) a nonoriginating material used in the
19 production of—

20 (i) a good provided for in subheading
21 7321.11.30;

22 (ii) a good provided for in subheading
23 8415.10, subheadings 8415.81 through
24 8415.83, subheadings 8418.10 through
25 8418.21, subheadings 8418.29 through

1 8418.40, subheading 8421.12 or 8422.11,
2 subheadings 8450.11 through 8450.20, or
3 subheadings 8451.21 through 8451.29;

4 (iii) trash compactors provided for in
5 subheading 8479.89.60; or

6 (iv) a good provided for in subheading
7 8516.60.40; and

8 (J) a printed circuit assembly that is a
9 nonoriginating material used in the production
10 of a good where the applicable change in tariff
11 classification for the good, as set out in Annex
12 401 of the Agreement, places restrictions on the
13 use of such nonoriginating material.

14 (4) CERTAIN FRUIT JUICES.—Paragraph (1)
15 does not apply to a nonoriginating single juice ingre-
16 dient provided for in heading 2009 that is used in
17 the production of—

18 (A) a good provided for in subheading
19 2009.90, or concentrated mixtures of fruit or
20 vegetable juice, fortified with minerals or vita-
21 mins, provided for in subheading 2106.90.19;
22 or

23 (B) mixtures of fruit or vegetable juices,
24 fortified with minerals or vitamins, provided for
25 in subheading 2202.90.39.

1 (5) GOODS PROVIDED FOR IN CHAPTERS 1
2 THROUGH 27 OF THE HTS.—Paragraph (1) does not
3 apply to a nonoriginating material used in the pro-
4 duction of a good provided for in chapters 1 through
5 27 of the HTS unless the nonoriginating material is
6 provided for in a different subheading than the good
7 for which origin is being determined under this sec-
8 tion.

9 (6) GOODS PROVIDED FOR IN CHAPTERS 50
10 THROUGH 63 OF THE HTS.—A good provided for in
11 chapters 50 through 63 of the HTS, that does not
12 originate because certain fibers or yarns used in the
13 production of the component of the good that deter-
14 mines the tariff classification of the good do not un-
15 dergo an applicable change in tariff classification set
16 out in Annex 401 of the Agreement, shall be consid-
17 ered to be a good that originates if the total weight
18 of all such fibers or yarns in that component is not
19 more than 7 percent of the total weight of that com-
20 ponent.

21 (f) FUNGIBLE GOODS AND MATERIALS.—For pur-
22 poses of determining whether a good is an originating
23 good—

24 (1) if originating and nonoriginating fungible
25 materials are used in the production of the good, the

determination of whether the materials are originating need not be made through the identification of any specific fungible material, but may be determined on the basis of any of the inventory management methods set out in regulations implementing this section; and

(2) if originating and nonoriginating fungible goods are commingled and exported in the same form, the determination may be made on the basis of any of the inventory management methods set out in regulations implementing this section.

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

(1) IN GENERAL.—Except as provided in paragraph (2), accessories, spare parts, or tools delivered with the good that form part of the good's standard accessories, spare parts, or tools shall—

(A) be considered as originating goods if the good is an originating good, and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 401 of the Agreement.

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

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

3 (B) the quantities and value of the acces-
4 sories, spare parts, or tools are customary for
5 the good; and

6 (C) in any case in which the good is sub-
7 ject to a regional value-content requirement, the
8 value of the accessories, spare parts, or tools
9 are taken into account as originating or
10 nonoriginating materials, as the case may be, in
11 calculating the regional value-content of the
12 good.

13 (h) INDIRECT MATERIALS.—An indirect material
14 shall be considered to be an originating material without
15 regard to where it is produced.

16 (i) PACKAGING MATERIALS AND CONTAINERS FOR
17 RETAIL SALE.—Packaging materials and containers in
18 which a good is packaged for retail sale, if classified with
19 the good, shall be disregarded in determining whether all
20 the nonoriginating materials used in the production of the
21 good undergo an applicable change in tariff classification
22 set out in Annex 401 of the Agreement. If the good is
23 subject to a regional value-content requirement, the value
24 of such packaging materials and containers shall be taken
25 into account as originating or nonoriginating materials, as

1 the case may be, in calculating the regional value-content
2 of the good.

3 (j) PACKING MATERIALS AND CONTAINERS FOR
4 SHIPMENT.—Packing materials and containers in which
5 a good is packed for shipment shall be disregarded—

6 (1) in determining whether the nonoriginating
7 materials used in the production of the good under-
8 go an applicable change in tariff classification set
9 out in Annex 401 of the Agreement; and

10 (2) in determining whether the good satisfies a
11 regional value-content requirement.

12 (k) TRANSSHIPMENT.—A good shall not be consid-
13 ered to be an originating good by reason of having under-
14 gone production that satisfies the requirements of sub-
15 section (a) if, subsequent to that production, the good un-
16 dergoes further production or any other operation outside
17 the territories of the NAFTA countries, other than un-
18 loading, reloading, or any other operation necessary to
19 preserve it in good condition or to transport the good to
20 the territory of a NAFTA country.

21 (l) NONQUALIFYING OPERATIONS.—A good shall not
22 be considered to be an originating good merely by reason
23 of—

1 (1) mere dilution with water or another sub-
2 stance that does not materially alter the characteris-
3 tics of the good; or

4 (2) any production or pricing practice with re-
5 spect to which it may be demonstrated, by a prepon-
6 derance of evidence, that the object was to cir-
7 cumvent this section.

8 (m) INTERPRETATION AND APPLICATION.—For pur-
9 poses of this section:

10 (1) The basis for any tariff classification is the
11 HTS.

12 (2) Except as otherwise expressly provided,
13 whenever in this section there is a reference to a
14 heading or subheading such reference shall be a ref-
15 erence to a heading or subheading of the HTS.

16 (3) In applying subsection (a)(4), the deter-
17 mination of whether a heading or subheading under
18 the HTS provides for and specifically describes both
19 a good and its parts shall be made on the basis of
20 the nomenclature of the heading or subheading, the
21 rules of interpretation, or notes of the HTS.

22 (4) In applying the Customs Valuation Code—

23 (A) the principles of the Customs Valu-
24 ation Code shall apply to domestic transactions,
25 with such modifications as may be required by

1 the circumstances, as would apply to inter-
2 national transactions;

3 (B) the provisions of this section shall take
4 precedence over the Customs Valuation Code to
5 the extent of any difference; and

6 (C) the definitions in subsection (o) shall
7 take precedence over the definitions in the Cus-
8 toms Valuation Code to the extent of any dif-
9 ference.

10 (5) All costs referred to in this section shall be
11 recorded and maintained in accordance with the
12 Generally Accepted Accounting Principles applicable
13 in the territory of the NAFTA country in which the
14 good is produced.

15 (n) ORIGIN OF AUTOMATIC DATA PROCESSING
16 GOODS.—Notwithstanding any other provision of this sec-
17 tion, when the NAFTA countries apply the most-favored-
18 nation rate of duty described in paragraph 1 of section
19 A of Annex 308.1 of the Agreement to a good provided
20 for under the tariff provisions set out in Table 308.1.1
21 of such Annex, the good shall, upon importation from a
22 NAFTA country, be deemed to originate in the territory
23 of a NAFTA country for purposes of this section.

24 (o) SPECIAL RULE FOR CERTAIN AGRICULTURAL
25 PRODUCTS.—Notwithstanding any other provision of this

1 section, for purposes of applying a rate of duty to a good
2 provided for in—

3 (1) heading 1202 that is exported from the ter-
4 ritory of Mexico, if the good is not wholly obtained
5 in the territory of Mexico,

6 (2) subheading 2008.11 that is exported from
7 the territory of Mexico, if any material provided for
8 in heading 1202 used in the production of that good
9 is not wholly obtained in the territory of Mexico, or

10 (3) subheading 1806.10.42 or 2106.90.12 that
11 is exported from the territory of Mexico, if any ma-
12 terial provided for in subheading 1701.99 used in
13 the production of that good is not a qualifying good,
14 such good shall be treated as a nonoriginating good and,
15 for purposes of this subsection, the terms “qualifying
16 good” and “wholly obtained in the territory of” have the
17 meaning given such terms in paragraph 26 of section A
18 of Annex 703.2 of the Agreement.

19 (p) DEFINITIONS.—For purposes of this section—

20 (1) CLASS OF MOTOR VEHICLES.—The term
21 “class of motor vehicles” means any one of the fol-
22 lowing categories of motor vehicles:

23 (A) Motor vehicles provided for in sub-
24 heading 8701.20, subheading 8704.10,
25 8704.22, 8704.23, 8704.32, or 8704.90, or

1 heading 8705 or 8706, or motor vehicles de-
2 signed for the transport of 16 or more persons
3 provided for in subheading 8702.10.00 or
4 8702.90.00.

5 (B) Motor vehicles provided for in sub-
6 heading 8701.10, or subheadings 8701.30
7 through 8701.90.

8 (C) Motor vehicles for the transport of 15
9 or fewer persons provided for in subheading
10 8702.10.00 or 8702.90.00, or motor vehicles
11 provided for in subheading 8704.21 or 8704.31.

12 (D) Motor vehicles provided for in sub-
13 headings 8703.21 through 8703.90.

14 (2) CUSTOMS VALUATION CODE.—The term
15 “Customs Valuation Code” means the Agreement on
16 Implementation of Article VII of the General Agree-
17 ment on Tariffs and Trade, including its interpreta-
18 tive notes.

19 (3) F.O.B.—The term “F.O.B.” means free on
20 board, regardless of the mode of transportation, at
21 the point of direct shipment by the seller to the
22 buyer.

23 (4) FUNGIBLE GOODS AND FUNGIBLE MATE-
24 RIALS.—The terms “fungible goods” and “fungible
25 materials” mean goods or materials that are inter-

1 changeable for commercial purposes and whose prop-
2 erties are essentially identical.

3 (5) GENERALLY ACCEPTED ACCOUNTING PRIN-
4 CIPLES.—The term “Generally Accepted Accounting
5 Principles” means the recognized consensus or sub-
6 stantial authoritative support in the territory of a
7 NAFTA country with respect to the recording of
8 revenues, expenses, costs, assets and liabilities, dis-
9 closure of information, and preparation of financial
10 statements. These standards may be broad guide-
11 lines of general application as well as detailed stand-
12 ards, practices, or procedures.

13 (6) GOODS WHOLLY OBTAINED OR PRODUCED
14 ENTIRELY IN THE TERRITORY OF ONE OR MORE OF
15 THE NAFTA COUNTRIES.—The term “goods wholly
16 obtained or produced entirely in the territory of one
17 or more of the NAFTA countries” means—

18 (A) mineral goods extracted in the terri-
19 tory of one or more of the NAFTA countries;

20 (B) vegetable goods harvested in the terri-
21 tory of one or more of the NAFTA countries;

22 (C) live animals born and raised in the ter-
23 ritory of one or more of the NAFTA countries;

1 (D) goods obtained from hunting, trap-
2 ping, or fishing in the territory of one or more
3 of the NAFTA countries;

4 (E) goods (such as fish, shellfish, and
5 other marine life) taken from the sea by vessels
6 registered or recorded with a NAFTA country
7 and flying its flag;

8 (F) goods produced on board factory ships
9 from the goods referred to in subparagraph
10 (E), if such factory ships are registered or re-
11 corded with that NAFTA country and fly its
12 flag;

13 (G) goods taken by a NAFTA country or
14 a person of a NAFTA country from the seabed
15 or beneath the seabed outside territorial waters,
16 provided that a NAFTA country has rights to
17 exploit such seabed;

18 (H) goods taken from outer space, if the
19 goods are obtained by a NAFTA country or a
20 person of a NAFTA country and not processed
21 in a country other than a NAFTA country;

22 (I) waste and scrap derived from—

23 (i) production in the territory of one
24 or more of the NAFTA countries; or

1 (ii) used goods collected in the terri-
2 tory of one or more of the NAFTA coun-
3 tries, if such goods are fit only for the re-
4 covery of raw materials; and

5 (J) goods produced in the territory of one
6 or more of the NAFTA countries exclusively
7 from goods referred to in subparagraphs (A)
8 through (I), or from their derivatives, at any
9 stage of production.

10 (7) IDENTICAL OR SIMILAR GOODS.—The term
11 “identical or similar goods” means “identical goods”
12 and “similar goods”, respectively, as defined in the
13 Customs Valuation Code.

14 (8) INDIRECT MATERIAL.—

15 (A) The term “indirect material” means a
16 good—

17 (i) used in the production, testing, or
18 inspection of a good but not physically in-
19 corporated into the good, or

20 (ii) used in the maintenance of build-
21 ings or the operation of equipment associ-
22 ated with the production of a good,
23 in the territory of one or more of the NAFTA
24 countries.

1 (B) When used for a purpose described in
2 subparagraph (A), the following materials are
3 among those considered to be indirect mate-
4 rials:

5 (i) Fuel and energy.

6 (ii) Tools, dies, and molds.

7 (iii) Spare parts and materials used in
8 the maintenance of equipment and build-
9 ings.

10 (iv) Lubricants, greases, compounding
11 materials, and other materials used in pro-
12 duction or used to operate equipment and
13 buildings.

14 (v) Gloves, glasses, footwear, clothing,
15 safety equipment, and supplies.

16 (vi) Equipment, devices, and supplies
17 used for testing or inspecting the goods.

18 (vii) Catalysts and solvents.

19 (viii) Any other goods that are not in-
20 corporated into the good, if the use of such
21 goods in the production of the good can
22 reasonably be demonstrated to be a part of
23 that production.

24 (9) INTERMEDIATE MATERIAL.—The term “in-
25 termediate material” means a material that is self-

1 produced, used in the production of a good, and des-
2 ignated pursuant to subsection (b)(10).

3 (10) MARQUE.—The term “marque” means the
4 trade name used by a separate marketing division of
5 a motor vehicle assembler.

6 (11) MATERIAL.—The term “material” means
7 a good that is used in the production of another
8 good and includes a part or an ingredient.

9 (12) MODEL LINE.—The term “model line”
10 means a group of motor vehicles having the same
11 platform or model name.

12 (13) MOTOR VEHICLE ASSEMBLER.—The term
13 “motor vehicle assembler” means a producer of
14 motor vehicles and any related persons or joint ven-
15 tures in which the producer participates.

16 (14) NAFTA COUNTRY.—The term “NAFTA
17 country” means the United States, Canada or Mex-
18 ico for such time as the Agreement is in force with
19 respect to Canada or Mexico, and the United States
20 applies the Agreement to Canada or Mexico.

21 (15) NEW BUILDING.—The term “new build-
22 ing” means a new construction, including at least
23 the pouring or construction of new foundation and
24 floor, the erection of a new structure and roof, and
25 installation of new plumbing, electrical, and other

1 utilities to house a complete vehicle assembly proc-
2 ess.

3 (16) NET COST.—The term “net cost” means
4 total cost less sales promotion, marketing and after-
5 sales service costs, royalties, shipping and packing
6 costs, and nonallowable interest costs that are in-
7 cluded in the total cost.

8 (17) NET COST OF A GOOD.—The term “net
9 cost of a good” means the net cost that can be rea-
10 sonably allocated to a good using one of the methods
11 set out in subsection (b)(8).

12 (18) NONALLOWABLE INTEREST COSTS.—The
13 term “nonallowable interest costs” means interest
14 costs incurred by a producer as a result of an inter-
15 est rate that exceeds the applicable federal govern-
16 ment interest rate for comparable maturities by
17 more than 700 basis points, determined pursuant to
18 regulations implementing this section.

19 (19) NONORIGINATING GOOD; NONORIGINATING
20 MATERIAL.—The term “nonoriginating good” or
21 “nonoriginating material” means a good or material
22 that does not qualify as an originating good or mate-
23 rial under the rules of origin set out in this section.

1 (20) ORIGINATING.—The term “originating”
2 means qualifying under the rules of origin set out in
3 this section.

4 (21) PRODUCER.—The term “producer” means
5 a person who grows, mines, harvests, fishes, traps,
6 hunts, manufactures, processes, or assembles a good.

7 (22) PRODUCTION.—The term “production”
8 means growing, mining, harvesting, fishing, trap-
9 ping, hunting, manufacturing, processing, or assem-
10 bling a good.

11 (23) REASONABLY ALLOCATE.—The term “rea-
12 sonably allocate” means to apportion in a manner
13 appropriate to the circumstances.

14 (24) REFIT.—The term “refit” means a plant
15 closure, for purposes of plant conversion or retool-
16 ing, that lasts at least 3 months.

17 (25) RELATED PERSONS.—The term “related
18 persons” means persons specified in any of the fol-
19 lowing subparagraphs:

20 (A) Persons who are officers or directors
21 of one another’s businesses.

22 (B) Persons who are legally recognized
23 partners in business.

24 (C) Persons who are employer and em-
25 ployee.

1 (D) Persons one of whom owns, controls,
2 or holds 25 percent or more of the outstanding
3 voting stock or shares of the other.

4 (E) Persons if 25 percent or more of the
5 outstanding voting stock or shares of each of
6 them is directly or indirectly owned, controlled,
7 or held by a third person.

8 (F) Persons one of whom is directly or in-
9 directly controlled by the other.

10 (G) Persons who are directly or indirectly
11 controlled by a third person.

12 (H) Persons who are members of the same
13 family.

14 For purposes of this paragraph, the term “members
15 of the same family” means natural or adoptive chil-
16 dren, brothers, sisters, parents, grandparents, or
17 spouses.

18 (26) ROYALTIES.—The term “royalties” means
19 payments of any kind, including payments under
20 technical assistance or similar agreements, made as
21 consideration for the use or right to use any copy-
22 right, literary, artistic, or scientific work, patent,
23 trademark, design, model, plan, secret formula, or
24 process. It does not include payments under tech-

1 nical assistance or similar agreements that can be
2 related to specific services such as—

3 (A) personnel training, without regard to
4 where performed; and

5 (B) if performed in the territory of one or
6 more of the NAFTA countries, engineering,
7 tooling, die-setting, software design and similar
8 computer services, or other services.

9 (27) SALES PROMOTION, MARKETING, AND
10 AFTER-SALES SERVICE COSTS.—The term “sales
11 promotion, marketing, and after-sales service costs”
12 means the costs related to sales promotion, market-
13 ing, and after-sales service for the following:

14 (A) Sales and marketing promotion, media
15 advertising, advertising and market research,
16 promotional and demonstration materials, ex-
17 hibits, sales conferences, trade shows, conven-
18 tions, banners, marketing displays, free sam-
19 ples, sales, marketing and after-sales service lit-
20 erature (product brochures, catalogs, technical
21 literature, price lists, service manuals, sales aid
22 information), establishment and protection of
23 logos and trademarks, sponsorships, wholesale
24 and retail restocking charges, and entertain-
25 ment.

1 (B) Sales and marketing incentives,
2 consumer, retailer, or wholesaler rebates, and
3 merchandise incentives.

4 (C) Salaries and wages, sales commissions,
5 bonuses, benefits (such as medical, insurance,
6 and pension), traveling and living expenses, and
7 membership and professional fees for sales pro-
8 motion, marketing, and after-sales service per-
9 sonnel.

10 (D) Recruiting and training of sales pro-
11 motion, marketing, and after-sales service per-
12 sonnel, and after-sales training of customers'
13 employees, where such costs are identified sepa-
14 rately for sales promotion, marketing, and
15 after-sales service of goods on the financial
16 statements or cost accounts of the producer.

17 (E) Product liability insurance.

18 (F) Office supplies for sales promotion,
19 marketing, and after-sales service of goods,
20 where such costs are identified separately for
21 sales promotion, marketing, and after-sales
22 service of goods on the financial statements or
23 cost accounts of the producer.

24 (G) Telephone, mail, and other commu-
25 nications, where such costs are identified sepa-

1 rately for sales promotion, marketing, and
2 after-sales service of goods on the financial
3 statements or cost accounts of the producer.

4 (H) Rent and depreciation of sales pro-
5 motion, marketing, and after-sales service of-
6 fices and distribution centers.

7 (I) Property insurance, taxes, utilities, and
8 repair and maintenance of sales promotion,
9 marketing, and after-sales service offices and
10 distribution centers, where such costs are iden-
11 tified separately for sales promotion, marketing,
12 and after-sales service of goods on the financial
13 statements or cost accounts of the producer.

14 (J) Payments by the producer to other
15 persons for warranty repairs.

16 (28) SELF-PRODUCED MATERIAL.—The term
17 “self-produced material” means a material that is
18 produced by the producer of a good and used in the
19 production of that good.

20 (29) SHIPPING AND PACKING COSTS.—The
21 term “shipping and packing costs” means the costs
22 incurred in packing a good for shipment and ship-
23 ping the good from the point of direct shipment to
24 the buyer, but does not include the costs of prepar-
25 ing and packaging the good for retail sale.

1 (30) SIZE CATEGORY.—The term “size cat-
2 egory” means with respect to a motor vehicle identi-
3 fied in subsection (c)(1)(A)—

4 (A) 85 cubic feet or less of passenger and
5 luggage interior volume;

6 (B) more than 85 cubic feet, but less than
7 100 cubic feet, of passenger and luggage inte-
8 rior volume;

9 (C) at least 100 cubic feet, but not more
10 than 110 cubic feet, of passenger and luggage
11 interior volume;

12 (D) more than 110 cubic feet, but less
13 than 120 cubic feet, of passenger and luggage
14 interior volume; and

15 (E) 120 cubic feet or more of passenger
16 and luggage interior volume.

17 (31) TERRITORY.—The term “territory” means
18 a territory described in Annex 201.1 of the Agree-
19 ment.

20 (32) TOTAL COST.—The term “total cost”
21 means all product costs, period costs, and other
22 costs incurred in the territory of one or more of the
23 NAFTA countries.

24 (33) TRANSACTION VALUE.—Except as pro-
25 vided in subsection (c)(1) or (c)(2)(A), the term

1 “transaction value” means the price actually paid or
2 payable for a good or material with respect to a
3 transaction of the producer of the good, adjusted in
4 accordance with the principles of paragraphs 1, 3,
5 and 4 of Article 8 of the Customs Valuation Code
6 and determined without regard to whether the good
7 or material is sold for export.

8 (34) UNDERBODY.—The term “underbody”
9 means the floor pan of a motor vehicle.

10 (35) USED.—The term “used” means used or
11 consumed in the production of goods.

12 (q) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

15 (A) the provisions set out in Appendix 6.A
16 of Annex 300–B, Annex 401, Annex 403.1,
17 Annex 403.2, and Annex 403.3, of the Agree-
18 ment, and

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

22 (2) MODIFICATIONS.—Subject to the consulta-
23 tion and layover requirements of section 103, the
24 President may proclaim—

1 (A) modifications to the provisions pro-
2 claimed under the authority of paragraph
3 (1)(A), other than the provisions of paragraph
4 A of Appendix 6 of Annex 300-B and section
5 XI of part B of Annex 401 of the Agreement;
6 and

7 (B) a modified version of the definition of
8 any term set out in subsection (p) (and such
9 modified version of the definition shall super-
10 sede the version in subsection (p)), but only if
11 the modified version reflects solely those modi-
12 fications to the same term in article 415 of the
13 Agreement that are agreed to by the NAFTA
14 countries before the 1st anniversary of the date
15 of the enactment of this Act.

16 (3) SPECIAL RULES FOR TEXTILES.—Notwith-
17 standing the provisions of paragraph (2)(A), and
18 subject to the consultation and layover requirements
19 of section 103, the President may proclaim—

20 (A) modifications to the provisions pro-
21 claimed under the authority of paragraph
22 (1)(A) as are necessary to implement an agree-
23 ment with one or more of the NAFTA countries
24 pursuant to paragraph 2 of section 7 of Annex
25 300-B of the Agreement, and

1 (B) before the 1st anniversary of the date
2 of the enactment of this Act, modifications to
3 correct any typographical, clerical, or other
4 nonsubstantive technical error regarding the
5 provisions of Appendix 6.A of Annex 300–B
6 and section XI of part B of Annex 401 of the
7 Agreement.

8 **SEC. 203. DRAWBACK.**

9 (a) DEFINITION OF A GOOD SUBJECT TO NAFTA
10 DRAWBACK.—For purposes of this Act and the amend-
11 ments made by subsection (b), the term “good subject to
12 NAFTA drawback” means any imported good other than
13 the following:

14 (1) A good entered under bond for transpor-
15 tation and exportation to a NAFTA country.

16 (2) A good exported to a NAFTA country in
17 the same condition as when imported into the Unit-
18 ed States. For purposes of this paragraph—

19 (A) processes such as testing, cleaning, re-
20 packing, or inspecting a good, or preserving it
21 in its same condition, shall not be considered to
22 change the condition of the good, and

23 (B) except for a good referred to in para-
24 graph 12 of section A of Annex 703.2 of the
25 Agreement that is exported to Mexico, if a good

described in the first sentence of this paragraph is commingled with fungible goods and exported in the same condition, the origin of the good may be determined on the basis of the inventory methods provided for in the regulations implementing this title.

(3) A good—

(A) that is—

(i) deemed to be exported from the United States,

(ii) used as a material in the production of another good that is deemed to be exported to a NAFTA country, or

(iii) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is deemed to be exported to a NAFTA country, and

(B) that is delivered—

(i) to a duty-free shop,

(ii) for ship's stores or supplies for ships or aircraft, or

(iii) for use in a project undertaken jointly by the United States and a NAFTA

1 country and destined to become the prop-
2 erty of the United States.

3 (4) A good exported to a NAFTA country for
4 which a refund of customs duties is granted by rea-
5 son of—

6 (A) the failure of the good to conform to
7 sample or specification, or

8 (B) the shipment of the good without the
9 consent of the consignee.

10 (5) A good that qualifies under the rules of ori-
11 gin set out in section 202 that is—

12 (A) exported to a NAFTA country,

13 (B) used as a material in the production of
14 another good that is exported to a NAFTA
15 country, or

16 (C) substituted for by a good of the same
17 kind and quality that is used as a material in
18 the production of another good that is exported
19 to a NAFTA country.

20 (6) A good provided for in subheading
21 1701.11.02 of the HTS that is—

22 (A) used as a material, or

23 (B) substituted for by a good of the same
24 kind and quality that is used as a material,

1 in the production of a good provided for in existing
2 Canadian tariff item 1701.99.00 or existing Mexican
3 tariff item 1701.99.01 or 1701.99.99 (relating to re-
4 fined sugar).

5 (7) A citrus product that is exported to Can-
6 ada.

7 (8) A good used as a material, or substituted
8 for by a good of the same kind and quality that is
9 used as a material, in the production of—

10 (A) apparel, or

11 (B) a good provided for in subheading
12 6307.90.99 (insofar as it relates to furniture
13 moving pads), 5811.00.20, or 5811.00.30 of the
14 HTS,

15 that is exported to Canada and that is subject to
16 Canada's most-favored-nation rate of duty upon im-
17 portation into Canada.

18 Where in paragraph (6) a good referred to by an item
19 is described in parentheses following the item, the descrip-
20 tion is provided for purposes of reference only.

21 (b) CONSEQUENTIAL AMENDMENTS WITH DELAYED
22 EFFECT.—

23 (1) BONDED MANUFACTURING WAREHOUSES.—

24 The last paragraph of section 311 of the Tariff Act

1 of 1930 (19 U.S.C. 1311) is amended to read as fol-
2 lows:

3 “No article manufactured in a bonded warehouse
4 from materials that are goods subject to NAFTA draw-
5 back, as defined in section 203(a) of the North American
6 Free Trade Agreement Implementation Act, may be with-
7 drawn from warehouse for exportation to a NAFTA coun-
8 try, as defined in section 2(4) of that Act, without assess-
9 ment of a duty on the materials in their condition and
10 quantity, and at their weight, at the time of importation
11 into the United States. The duty shall be paid before the
12 61st day after the date of exportation, except that upon
13 the presentation, before such 61st day, of satisfactory evi-
14 dence of the amount of any customs duties paid to the
15 NAFTA country on the article, the customs duty may be
16 waived or reduced (subject to section 508(b)(2)(B)) in an
17 amount that does not exceed the lesser of—

18 “(1) the total amount of customs duties paid or
19 owed on the materials on importation into the Unit-
20 ed States, or

21 “(2) the total amount of customs duties paid on
22 the article to the NAFTA country.

23 If Canada ceases to be a NAFTA country and the suspen-
24 sion of the operation of the United States-Canada Free-
25 Trade Agreement thereafter terminates, no article manu-

1 factured in a bonded warehouse, except to the extent that
2 such article is made from an article that is a drawback
3 eligible good under section 204(a) of the United States-
4 Canada Free-Trade Agreement Implementation Act of
5 1988, may be withdrawn from such warehouse for expor-
6 tation to Canada during the period such Agreement is in
7 operation without payment of a duty on such imported
8 merchandise in its condition, and at the rate of duty in
9 effect, at the time of importation.”.

10 (2) BONDED SMELTING AND REFINING WARE-
11 HOUSES.—Section 312 of the Tariff Act of 1930 (19
12 U.S.C. 1312) is amended—

13 (A) in paragraphs (1) and (4) of sub-
14 section (b), by striking out the parenthetical
15 matter and the final “, or” and by adding at
16 the end the following:

17 “; except that in the case of a withdrawal for expor-
18 tation of such a product to a NAFTA country, as
19 defined in section 2(4) of the North American Free
20 Trade Agreement Implementation Act, if any of the
21 imported metal-bearing materials are goods subject
22 to NAFTA drawback, as defined in section 203(a)
23 of that Act, the duties on the materials shall be
24 paid, and the charges against the bond canceled, be-
25 fore the 61st day after the date of exportation; but

1 upon the presentation, before such 61st day, of sat-
2 isfactory evidence of the amount of any customs du-
3 ties paid to the NAFTA country on the product, the
4 duties on the materials may be waived or reduced
5 (subject to section 508(b)(2)(B)) in an amount that
6 does not exceed the lesser of—

7 “(A) the total amount of customs duties
8 owed on the materials on importation into the
9 United States, or

10 “(B) the total amount of customs duties
11 paid to the NAFTA country on the product,
12 or”;

13 (B) by adding at the end of subsection (b)
14 the following new flush sentence.

15 “If Canada ceases to be a NAFTA country and the sus-
16 pension of the operation of the United States-Canada
17 Free-Trade Agreement thereafter terminates, no charges
18 against such bond may be canceled in whole or part upon
19 an exportation to Canada under paragraph (1) or (4) dur-
20 ing the period such Agreement is in operation except to
21 the extent that the metal-bearing materials were of Cana-
22 dian origin as determined in accordance with section 202
23 of the United States-Canada Free-Trade Agreement Im-
24 plementation Act of 1988.”; and

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

4 “; except that in the case of a withdrawal for exportation
5 to a NAFTA country, as defined in section 2(4) of the
6 North American Free Trade Agreement Implementation
7 Act, if any of the imported metal-bearing materials are
8 goods subject to NAFTA drawback, as defined in section
9 203(a) of that Act, charges against the bond shall be paid
10 before the 61st day after the date of exportation; but upon
11 the presentation, before such 61st day, of satisfactory evi-
12 dence of the amount of any customs duties paid to the
13 NAFTA country on the product, the bond shall be credited
14 (subject to section 508(b)(2)(B)) in an amount not to ex-
15 ceed the lesser of—

16 “(1) the total amount of customs duties paid or
17 owed on the materials on importation into the Unit-
18 ed States, or

19 “(2) the total amount of customs duties paid to
20 the NAFTA country on the product.

21 If Canada ceases to be a NAFTA country and the suspen-
22 sion of the operation of the United States-Canada Free-
23 Trade Agreement thereafter terminates, no bond shall be
24 credited under this subsection with respect to an expor-
25 tation of a product to Canada during the period such

1 Agreement is in operation except to the extent that the
2 product is a drawback eligible good under section 204(a)
3 of the United States-Canada Free Trade Agreement Im-
4 plementation Act of 1988’.

5 (3) DRAWBACK.—Subsections (n) and (o) of
6 section 313 of the Tariff Act of 1930 (19 U.S.C.
7 1313(n) and (o)) are amended to read as follows:

8 “(n)(1) For purposes of this subsection and sub-
9 section (o)—

10 “(A) the term ‘NAFTA Act’ means the North
11 American Free Trade Agreement Implementation
12 Act;

13 “(B) the terms ‘NAFTA country’ and ‘good
14 subject to NAFTA drawback’ have the same respec-
15 tive meanings that are given such terms in sections
16 2(4) and 203(a) of the NAFTA Act; and

17 “(C) a refund, waiver, or reduction of duty
18 under paragraph (2) of this subsection or paragraph
19 (1) of subsection (o) is subject to section
20 508(b)(2)(B).

21 “(2) For purposes of subsections (a), (b), (f), (h), (p),
22 and (q), if an article that is exported to a NAFTA country
23 is a good subject to NAFTA drawback, no customs duties
24 on the good may be refunded, waived, or reduced in an
25 amount that exceeds the lesser of—

1 “(A) the total amount of customs duties paid or
2 owed on the good on importation into the United
3 States, or

4 “(B) the total amount of customs duties paid
5 on the good to the NAFTA country.

6 “(3) If Canada ceases to be a NAFTA country and
7 the suspension of the operation of the United States-Can-
8 ada Free-Trade Agreement thereafter terminates, then for
9 purposes of subsections (a), (b), (f), (h), (j)(2), and (q),
10 the shipment to Canada during the period such Agreement
11 is in operation of an article made from or substituted for,
12 as appropriate, a drawback eligible good under section
13 204(a) of the United States-Canada Free-Trade Imple-
14 mentation Act of 1988 does not constitute an exportation.

15 “(o)(1) For purposes of subsection (g), if—

16 “(A) a vessel is built for the account and own-
17 ership of a resident of a NAFTA country or the gov-
18 ernment of a NAFTA country, and

19 “(B) imported materials that are used in the
20 construction and equipment of the vessel are goods
21 subject to NAFTA drawback,

22 the amount of customs duties refunded, waived, or re-
23 duced on such materials may not exceed the lesser of the
24 total amount of customs duties paid or owed on the mate-
25 rials on importation into the United States or the total

1 amount of customs duties paid on the vessel to the
2 NAFTA country.

3 “(2) If Canada ceases to be a NAFTA country and
4 the suspension of the operation of the United States-Can-
5 ada Free-Trade Agreement thereafter terminates, then for
6 purposes of subsection (g), vessels built for Canadian ac-
7 count and ownership, or for the Government of Canada,
8 may not be considered to be built for any foreign account
9 and ownership, or for the government of any foreign coun-
10 try, except to the extent that the materials in such vessels
11 are drawback eligible goods under section 204(a) of the
12 United States-Canada Free-Trade Implementation Act of
13 1988.”.

14 (4) MANIPULATION IN WAREHOUSE.—Section
15 562 of the Tariff Act of 1930 (19 U.S.C. 1562) is
16 amended—

17 (A) in the second sentence by striking out
18 “without payment of duties—” and inserting a
19 dash;

20 (B) by striking out paragraphs (1), (2),
21 and (3) and inserting the following:

22 “(1) without payment of duties for exportation
23 to a NAFTA country, as defined in section 2(4) of
24 the North American Free Trade Agreement Imple-
25 mentation Act, if the merchandise is of a kind de-

1 scribed in any of paragraphs (1) through (8) of sec-
2 tion 203(a) of that Act;

3 “(2) for exportation to a NAFTA country if the
4 merchandise consists of goods subject to NAFTA
5 drawback, as defined in section 203(a) of that Act,
6 except that—

7 “(A) the merchandise may not be with-
8 drawn from warehouse without assessment of a
9 duty on the merchandise in its condition and
10 quantity, and at its weight, at the time of with-
11 drawal from the warehouse with such additions
12 to or deductions from the final appraised value
13 as may be necessary by reason of change in
14 condition, and

15 “(B) duty shall be paid on the merchan-
16 dise before the 61st day after the date of expor-
17 tation, but upon the presentation, before such
18 61st day, of satisfactory evidence of the amount
19 of any customs duties paid to the NAFTA
20 country on the merchandise, the customs duty
21 may be waived or reduced (subject to section
22 508(b)(2)(B)) in an amount that does not ex-
23 ceed the lesser of—

1 “(i) the total amount of customs du-
2 ties paid or owed on the merchandise on
3 importation into the United States, or

4 “(ii) the total amount of customs du-
5 ties paid on the merchandise to the
6 NAFTA country;

7 “(3) without payment of duties for exportation
8 to any foreign country other than to a NAFTA
9 country or to Canada when exports to that country
10 are subject to paragraph (4);

11 “(4) without payment of duties for exportation
12 to Canada (if that country ceases to be a NAFTA
13 country and the suspension of the operation of the
14 United States-Canada Free-Trade Agreement there-
15 after terminates), but the exemption from the pay-
16 ment of duties under this paragraph applies only in
17 the case of an exportation during the period such
18 Agreement is in operation of merchandise that—

19 “(A) is only cleaned, sorted, or repacked in
20 a bonded warehouse, or

21 “(B) is a drawback eligible good under sec-
22 tion 204(a) of the United States-Canada Free-
23 Trade Agreement Implementation Act of 1988;
24 and

1 “(5) without payment of duties for shipment to
2 the Virgin Islands, American Samoa, Wake Island,
3 Midway Island, Kingman Reef, Johnston Island or
4 the island of Guam.”; and

5 (B) in the third sentence by striking out
6 “paragraph (1) of the preceding sentence” and
7 inserting “paragraph (4) of the preceding sen-
8 tence”.

9 (5) FOREIGN TRADE ZONES.—Section 3(a) of
10 the Act of June 18, 1934 (commonly known as the
11 “Foreign Trade Zones Act”; 19 U.S.C. 81c(a)) is
12 amended—

13 (A) in the last proviso—

14 (i) by inserting after “That” the fol-
15 lowing: “, if Canada ceases to be a
16 NAFTA country and the suspension of the
17 operation of the United States-Canada
18 Free-Trade Agreement thereafter termi-
19 nates,”; and

20 (ii) by striking out “on or after Janu-
21 ary 1, 1994, or such later date as may be
22 proclaimed by the President under section
23 204(b)(2)(B) of such Act of 1988,” and
24 inserting “during the period such Agree-
25 ment is in operation”; and

1 (B) by inserting before such last proviso
2 the following new proviso: “: *Provided, further,*
3 That no merchandise that consists of goods
4 subject to NAFTA drawback, as defined in sec-
5 tion 203(a) of the North American Free Trade
6 Agreement Implementation Act, that is manu-
7 factured or otherwise changed in condition shall
8 be exported to a NAFTA country, as defined in
9 section 2(4) of that Act, without an assessment
10 of a duty on the merchandise in its condition
11 and quantity, and at its weight, at the time of
12 its exportation (or if the privilege in the first
13 proviso to this subsection was requested, an as-
14 sessment of a duty on the merchandise in its
15 condition and quantity, and at its weight, at the
16 time of its admission into the zone) and the
17 payment of the assessed duty before the 61st
18 day after the date of exportation of the article,
19 except that upon the presentation, before such
20 61st day, of satisfactory evidence of the amount
21 of any customs duties paid or owed to the
22 NAFTA country on the article, the customs
23 duty may be waived or reduced (subject to sec-
24 tion 508(b)(2)(B) of the Tariff Act of 1930) in
25 an amount that does not exceed the lesser of

1 (1) the total amount of customs duties paid or
2 owed on the merchandise on importation into
3 the United States, or (2) the total amount of
4 customs duties paid on the article to the
5 NAFTA country.”.

6 (c) CONSEQUENTIAL AMENDMENT WITH IMMEDIATE
7 EFFECT.—Section 313(j) of the Tariff Act of 1930 (19
8 U.S.C. 1313(j)) is amended—

9 (1) by striking out “If” in paragraph (2) and
10 inserting “Subject to paragraph (4), if”; and

11 (2) by adding at the end the following new
12 paragraph:

13 “(4) Effective upon the entry into force of the
14 North American Free Trade Agreement, the expor-
15 tation to a NAFTA country, as defined in section
16 2(4) of the North American Free Trade Agreement
17 Implementation Act, of merchandise that is fungible
18 with and substituted for imported merchandise,
19 other than merchandise described in paragraphs (1)
20 through (8) of section 203(a) of that Act, shall not
21 constitute an exportation for purposes of paragraph
22 (2).”.

23 (d) ELIMINATION OF DRAWBACK FOR SECTION 22
24 FEES.—Notwithstanding any other provision of law, the
25 Secretary of the Treasury may not, on condition of export,

1 refund or reduce a fee applied pursuant to section 22 of
2 the Agricultural Adjustment Act (7 U.S.C. 624) with re-
3 spect to goods included under subsection (a) that are ex-
4 ported to—

5 (1) Canada after December 31, 1995, for so
6 long as it is a NAFTA country; or

7 (2) Mexico after December 31, 2000, for so
8 long as it is a NAFTA country.

9 (e) INAPPLICABILITY TO COUNTERVAILING AND
10 ANTIDUMPING DUTIES.—Nothing in this section or the
11 amendments made by it shall be considered to authorize
12 the refund, waiver, or reduction of countervailing duties
13 or antidumping duties imposed on an imported good.

14 **SEC. 204. CUSTOMS USER FEES.**

15 Paragraph (10) of section 13031(b) of the Consoli-
16 dated Omnibus Budget Reconciliation Act of 1985 (19
17 U.S.C. 58c(b)(10)) is amended to read as follows:

18 “(10)(A) The fee charged under subsection (a)(9) or
19 (10) with respect to goods of Canadian origin (as deter-
20 mined under section 202 of the United States-Canada
21 Free-Trade Agreement) when the United States-Canada
22 Free-Trade Agreement is in force shall be in accordance
23 with section 403 of that Agreement.

24 “(B) For goods qualifying under the rules of origin
25 set out in section 202 of the North American Free Trade

1 Agreement Implementation Act, the fee under subsection
2 (a)(9) or (10)—

3 “(i) may not be charged with respect to goods
4 that qualify to be marked as goods of Canada pursu-
5 ant to Annex 311 of the North American Free
6 Trade Agreement, for such time as Canada is a
7 NAFTA country, as defined in section 2(4) of such
8 Implementation Act; and

9 “(ii) may not be increased after December 31,
10 1993, and may not be charged after June 29, 1999,
11 with respect to goods that qualify to be marked as
12 goods of Mexico pursuant to such Annex 311, for
13 such time as Mexico is a NAFTA country.

14 Any service for which an exemption from such fee is pro-
15 vided by reason of this paragraph may not be funded with
16 money contained in the Customs User Fee Account.”.

17 **SEC. 205. ENFORCEMENT.**

18 (a) RECORDKEEPING REQUIREMENTS.—Section 508
19 of the Tariff Act of 1930 (19 U.S.C. 1508) is amended
20 as follows:

21 (1) Subsection (b) is amended to read as fol-
22 lows:

23 “(b) EXPORTATIONS TO FREE TRADE COUNTRIES.—

24 “(1) DEFINITIONS.—As used in this sub-
25 section—

1 “(A) The term ‘associated records’ means,
2 in regard to an exported good under paragraph
3 (2), records associated with—

4 “(i) the purchase of, cost of, value of,
5 and payment for, the good;

6 “(ii) the purchase of, cost of, value of,
7 and payment for, all material, including in-
8 direct materials, used in the production of
9 the good; and

10 “(iii) the production of the good.

11 For purposes of this subparagraph, the terms
12 ‘indirect material,’ ‘material,’ ‘preferential tariff
13 treatment,’ ‘used,’ and ‘value’ have the respec-
14 tive meanings given them in articles 415 and
15 514 of the North American Free Trade Agree-
16 ment.

17 “(B) The term ‘NAFTA Certificate of Ori-
18 gin’ means the certification, established under
19 article 501 of the North American Free Trade
20 Agreement, that a good qualifies as an originat-
21 ing good under such Agreement.

22 “(2) EXPORTS TO NAFTA COUNTRIES.—

23 “(A) IN GENERAL.—Any person who com-
24 pletes and signs a NAFTA Certificate of Origin
25 for a good for which preferential treatment

1 under the North American Free Trade Agree-
2 ment is claimed shall make, keep, and render
3 for examination and inspection all records relat-
4 ing to the origin of the good (including the Cer-
5 tificate or copies thereof) and the associated
6 records.

7 “(B) CLAIMS FOR CERTAIN WAIVERS, RE-
8 Ductions, OR REFUNDS OF DUTIES OR FOR
9 CREDIT AGAINST BONDS.—

10 “(i) IN GENERAL.—Any person that
11 claims with respect to an article—

12 “(I) a waiver or reduction of
13 duty under the last paragraph of sec-
14 tion 311, section 312(b)(1) or (4),
15 section 562(2), or the last proviso to
16 section 3(a) of the Foreign Trade
17 Zones Act;

18 “(II) a credit against a bond
19 under section 312(d); or

20 “(III) a refund, waiver, or reduc-
21 tion of duty under section 313(n)(2)
22 or (o)(1);

23 must disclose to the Customs Service the
24 information described in clause (ii).

1 “(ii) INFORMATION REQUIRED.—

2 Within 30 days after making a claim de-
3 scribed in clause (i) with respect to an ar-
4 ticle, the person making the claim must
5 disclose to the Customs Service whether
6 that person has prepared, or has knowl-
7 edge that another person has prepared, a
8 NAFTA Certificate of Origin for the arti-
9 cle. If after such 30-day period the person
10 making the claim either—

11 “(I) prepares a NAFTA Certifi-
12 cate of Origin for the article; or

13 “(II) learns of the existence of
14 such a Certificate for the article;
15 that person, within 30 days after the oc-
16 currence described in subclause (I) or (II),
17 must disclose the occurrence to the Cus-
18 toms Service.

19 “(iii) ACTION ON CLAIM.—If the Cus-
20 toms Service determines that a NAFTA
21 Certificate of Origin has been prepared
22 with respect to an article for which a claim
23 described in clause (i) is made, the Cus-
24 toms Service may make such adjustments

1 regarding the previous customs treatment
2 of the article as may be warranted.

3 “(3) EXPORTS UNDER THE CANADIAN AGREE-
4 MENT.—Any person who exports, or who knowingly
5 causes to be exported, any merchandise to Canada
6 during such time as the United States-Canada Free-
7 Trade Agreement is in force with respect to, and the
8 United States applies that Agreement to, Canada
9 shall make, keep, and render for examination and
10 inspection such records (including certifications of
11 origin or copies thereof) which pertain to the expor-
12 tations.”.

13 (2) Subsection (c) is amended to read as fol-
14 lows:

15 “(c) PERIOD OF TIME.—The records required by sub-
16 sections (a) and (b) shall be kept for such periods of time
17 as the Secretary shall prescribe; except that—

18 “(1) no period of time for the retention of the
19 records required under subsection (a) or (b)(3) may
20 exceed 5 years from the date of entry or exportation,
21 as appropriate;

22 “(2) the period of time for the retention of the
23 records required under subsection (b)(2) shall be at
24 least 5 years from the date of signature of the
25 NAFTA Certificate of Origin; and

1 “(3) records for any drawback claim shall be
2 kept until the 3rd anniversary of the date of pay-
3 ment of the claim.”.

4 (3) Subsection (e) is amended to read as fol-
5 lows:

6 “(e) SUBSECTION (b) PENALTIES.—

7 “(1) RELATING TO NAFTA EXPORTS.—Any per-
8 son who fails to retain records required by para-
9 graph (2) of subsection (b) or the regulations issued
10 to implement that paragraph shall be liable for—

11 “(A) a civil penalty not to exceed \$10,000;

12 or

13 “(B) the general recordkeeping penalty

14 that applies under the customs laws;

15 whichever penalty is higher.

16 “(2) RELATING TO CANADIAN AGREEMENT EX-
17 PORTS.—Any person who fails to retain the records
18 required by paragraph (3) of subsection (b) or the
19 regulations issued to implement that paragraph shall
20 be liable for a civil penalty not to exceed \$10,000.”.

21 (b) CONFORMING AMENDMENT.—Section
22 509(a)(2)(A)(ii) of the Tariff Act of 1930 (19 U.S.C.
23 1509(a)(2)(A)(ii)) is amended to read as follows:

24 “(ii) exported merchandise, or know-
25 ingly caused merchandise to be exported,

1 to a NAFTA country (as defined in section
2 2(4) of the North American Free Trade
3 Agreement Implementation Act) or to Can-
4 ada during such time as the United States-
5 Canada Free-Trade Agreement is in force
6 with respect to, and the United States ap-
7 plies that Agreement to, Canada,”.

8 (c) DISCLOSURE OF INCORRECT INFORMATION.—

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

11 (1) in subsection (c)—

12 (A) by redesignating paragraph (5) as
13 paragraph (6); and

14 (B) by inserting after paragraph (4) the
15 following new paragraph:

16 “(5) PRIOR DISCLOSURE REGARDING NAFTA
17 CLAIMS.—An importer shall not be subject to pen-
18 alties under subsection (a) for making an incorrect
19 claim for preferential tariff treatment under section
20 202 of the North American Free Trade Agreement
21 Implementation Act if the importer—

22 “(A) has reason to believe that the
23 NAFTA Certificate of Origin (as defined in sec-
24 tion 508(b)(1)) on which the claim was based
25 contains incorrect information; and

1 “(B) in accordance with regulations issued
2 by the Secretary, voluntarily and promptly
3 makes a corrected declaration and pays any du-
4 ties owing.”; and

5 (2) by adding at the end the following new sub-
6 section:

7 “(f) FALSE CERTIFICATIONS REGARDING EXPORTS
8 TO NAFTA COUNTRIES.—

9 “(1) IN GENERAL.—Subject to paragraph (3),
10 it is unlawful for any person to certify falsely, by
11 fraud, gross negligence, or negligence, in a NAFTA
12 Certificate of Origin (as defined in section
13 508(b)(1)) that a good to be exported to a NAFTA
14 country (as defined in section 2(4) of the North
15 American Free Trade Agreement Implementation
16 Act) qualifies under the rules of origin set out in
17 section 202 of that Act.

18 “(2) APPLICABLE PROVISIONS.—The proce-
19 dures and penalties of this section that apply to a
20 violation of subsection (a) also apply to a violation
21 of paragraph (1), except that—

22 “(A) subsection (d) does not apply, and

23 “(B) subsection (c)(5) applies only if the
24 person voluntarily and promptly provides, to all
25 persons to whom the person provided the

1 NAFTA Certificate of Origin, written notice of
2 the falsity of the Certificate.

3 “(3) EXCEPTION.—A person may not be consid-
4 ered to have violated paragraph (1) if—

5 “(A) the information was correct at the
6 time it was provided in a NAFTA Certificate of
7 Origin but was later rendered incorrect due to
8 a change in circumstances; and

9 “(B) the person voluntarily and promptly
10 provides written notice of the change to all per-
11 sons to whom the person provided the Certifi-
12 cate of Origin.”.

13 **SEC. 206. RELIQUIDATION OF ENTRIES FOR NAFTA-ORIGIN**
14 **GOODS.**

15 Section 520 of the Tariff Act of 1930 (19 U.S.C.
16 1520) is amended by adding at the end the following new
17 subsection:

18 “(d) Notwithstanding the fact that a valid protest
19 was not filed, the Customs Service may, in accordance
20 with regulations prescribed by the Secretary, reliquidate
21 an entry to refund any excess duties paid on a good quali-
22 fying under the rules of origin set out in section 202 of
23 the North American Free Trade Agreement Implementa-
24 tion Act for which no claim for preferential tariff treat-
25 ment was made at the time of importation if the importer,

1 within 1 year after the date of importation, files, in ac-
 2 cordance with those regulations, a claim that includes—

3 “(1) a written declaration that the good quali-
 4 fied under those rules at the time of importation;

5 “(2) copies of all applicable NAFTA Certifi-
 6 cates of Origin (as defined in section 508(b)(1));
 7 and

8 “(3) such other documentation relating to the
 9 importation of the goods as the Customs Service
 10 may require.”.

11 **SEC. 207. COUNTRY OF ORIGIN MARKING OF NAFTA GOODS.**

12 (a) AMENDMENTS TO TARIFF ACT OF 1930.—Sec-
 13 tion 304 of the Tariff Act of 1930 (19 U.S.C. 1304) is
 14 amended—

15 (1) in subsection (c)(1), by striking “or engrav-
 16 ing” and inserting “engraving, or continuous paint
 17 stenciling”;

18 (2) in subsection (c)(2)—

19 (A) by striking “four” and inserting
 20 “five”; and

21 (B) by striking “such as paint stenciling”;

22 (3) in subsection (e), by striking “or engraving”
 23 and inserting “engraving, or an equally permanent
 24 method of marking”;

1 (4) by redesignating subsection (h) as sub-
2 section (i); and

3 (5) by inserting after subsection (g) the follow-
4 ing new subsection:

5 “(h) TREATMENT OF GOODS OF A NAFTA COUN-
6 TRY.—

7 “(1) APPLICATION OF SECTION.—In applying
8 this section to an article that qualifies as a good of
9 a NAFTA country (as defined in section 2(4) of the
10 North American Free Trade Agreement Implemen-
11 tation Act) under the regulations issued by the Sec-
12 retary to implement Annex 311 of the North Amer-
13 ican Free Trade Agreement—

14 “(A) the exemption under subsection
15 (a)(3)(H) shall be applied by substituting ‘rea-
16 sonably know’ for ‘necessarily know’;

17 “(B) the Secretary shall exempt the good
18 from the requirements for marking under sub-
19 section (a) if the good—

20 “(i) is an original work of art, or

21 “(ii) is provided for under subheading
22 6904.10, heading 8541, or heading 8542
23 of the Harmonized Tariff Schedule of the
24 United States; and

1 “(C) subsection (b) does not apply to the
2 usual container of any good described in sub-
3 section (a)(3)(E) or (I) or subparagraph (B)(i)
4 or (ii) of this paragraph.

5 “(2) PETITION RIGHTS OF NAFTA EXPORTERS
6 AND PRODUCERS REGARDING MARKING DETERMINA-
7 TIONS.—

8 “(A) DEFINITIONS.—For purposes of this
9 paragraph:

10 “(i) The term ‘adverse marking deci-
11 sion’ means a determination by the Cus-
12 toms Service which an exporter or pro-
13 ducer of merchandise believes to be con-
14 trary to Annex 311 of the North American
15 Free Trade Agreement.

16 “(ii) A person may not be treated as
17 the exporter or producer of merchandise
18 regarding which an adverse marking deci-
19 sion was made unless such person—

20 “(I) if claiming to be the ex-
21 porter, is located in a NAFTA coun-
22 try and is required to maintain
23 records in that country regarding ex-
24 portations to NAFTA countries; or

1 “(II) if claiming to be the pro-
2 ducer, grows, mines, harvests, fishes,
3 traps, hunts, manufactures, processes,
4 or assembles such merchandise in a
5 NAFTA country.

6 “(B) INTERVENTION OR PETITION RE-
7 GARDING ADVERSE MARKING DECISIONS.—If
8 the Customs Service makes an adverse marking
9 decision regarding any merchandise, the Cus-
10 toms Service shall, upon written request by the
11 exporter or producer of the merchandise, pro-
12 vide to the exporter or producer a statement of
13 the basis for the decision. If the exporter or
14 producer believes that the decision is not cor-
15 rect, it may intervene in any protest proceeding
16 initiated by the importer of the merchandise. If
17 the importer does not file a protest with regard
18 to the decision, the exporter or producer may
19 file a petition with the Customs Service setting
20 forth—

21 “(i) a description of the merchandise;
22 and

23 “(ii) the basis for its claim that the
24 merchandise should be marked as a good
25 of a NAFTA country.

1 “(C) EFFECT OF DETERMINATION RE-
2 GARDING DECISION.—If, after receipt and con-
3 sideration of a petition filed by an exporter or
4 producer under subparagraph (B), the Customs
5 Service determines that the adverse marking
6 decision—

7 “(i) is not correct, the Customs Serv-
8 ice shall notify the petitioner of the deter-
9 mination and all merchandise entered, or
10 withdrawn from warehouse for consump-
11 tion, more than 30 days after the date that
12 notice of the determination under this
13 clause is published in the weekly Custom
14 Bulletin shall be marked in conformity
15 with the determination; or

16 “(ii) is correct, the Customs Service
17 shall notify the petitioner that the petition
18 is denied.

19 “(D) JUDICIAL REVIEW.—For purposes of
20 judicial review, the denial of a petition under
21 subparagraph (C)(ii) shall be treated as if it
22 were a denial of a petition of an interested
23 party under section 516 regarding an issue
24 arising under any of the preceding provisions of
25 this section.”.

1 (b) COORDINATION WITH 1988 ACT REGARDING
2 CERTAIN ARTICLES.—Articles that qualify as goods of a
3 NAFTA country under regulations issued by the Secretary
4 in accordance with Annex 311 of the Agreement are ex-
5 empt from the marking requirements promulgated by the
6 Secretary of the Treasury under section 1907(c) of the
7 Omnibus Trade and Competitiveness Act of 1988 (Public
8 Law 100–418), but are subject to the requirements of sec-
9 tion 304 of the Tariff Act of 1930 (19 U.S.C. 1304).

10 **SEC. 208. PROTESTS AGAINST ADVERSE ORIGIN DETER-**
11 **MINATIONS.**

12 Section 514 of the Tariff Act of 1930 (19 U.S.C.
13 1514) is amended—

14 (1) in subsection (c)(1) by inserting “, or with
15 respect to a determination of origin under section
16 202 of the North American Free Trade Agreement
17 Implementation Act,” after “with respect to any one
18 category of merchandise” in the fourth sentence;

19 (2) in subsection (c)(2)—

20 (A) by striking out “or” at the end of sub-
21 paragraph (D);

22 (B) by redesignating subparagraph (E) as
23 subparagraph (F);

24 (C) by inserting after subparagraph (D)
25 the following new subparagraph:

1 “(E) with respect to a determination of or-
2 igin under section 202 of the North American
3 Free Trade Agreement Implementation Act,
4 any exporter or producer of the merchandise
5 subject to that determination, if the exporter or
6 producer completed and signed a NAFTA Cer-
7 tificate of Origin covering the merchandise; or”;
8 and

9 (D) by striking “clauses (A) through (D)”
10 in subparagraph (F) (as redesignated by sub-
11 paragraph (B)), and inserting “clauses (A)
12 through (E)”;

13 (3) by adding at the end the following new sub-
14 sections:

15 “(e) ADVANCE NOTICE OF CERTAIN DETERMINA-
16 TIONS.—Except as provided in subsection (f), an exporter
17 or producer referred to in subsection (c)(2)(E) shall be
18 provided notice in advance of an adverse determination of
19 origin under section 202 of the North American Free
20 Trade Agreement Implementation Act. The Secretary
21 may, by regulations, prescribe the time period in which
22 such advance notice shall be issued and authorize the Cus-
23 toms Service to provide in the notice the entry number
24 and any other entry information considered necessary to

1 allow the exporter or producer to exercise the rights pro-
2 vided by this section.

3 “(f) DENIAL OF PREFERENTIAL TREATMENT.—If
4 the Customs Service finds indications of a pattern of con-
5 duct by an exporter or producer of false or unsupported
6 representations that goods qualify under the rules of ori-
7 gin set out in section 202 of the North American Free
8 Trade Agreement Implementation Act—

9 “(1) the Customs Service, in accordance with
10 regulations issued by the Secretary, may deny pref-
11 erential tariff treatment to entries of identical goods
12 exported or produced by that person; and

13 “(2) the advance notice requirement in sub-
14 section (e) shall not apply to that person;
15 until the person establishes to the satisfaction of the Cus-
16 toms Service that its representations are in conformity
17 with section 202.”.

18 **SEC. 209. EXCHANGE OF INFORMATION.**

19 Section 628 of the Tariff Act of 1930 (19 U.S.C.
20 1628) is amended by adding at the end the following new
21 subsection:

22 “(c) The Secretary may authorize the Customs Serv-
23 ice to exchange information with any government agency
24 of a NAFTA country, as defined in section 2(4) of the

1 North American Free Trade Agreement Implementation
2 Act, if the Secretary—

3 “(1) reasonably believes the exchange of infor-
4 mation is necessary to implement chapter 3, 4, or 5
5 of the North American Free Trade Agreement, and

6 “(2) obtains assurances from such country that
7 the information will be held in confidence and used
8 only for governmental purposes.”.

9 **SEC. 210. PROHIBITION ON DRAWBACK FOR TELEVISION**

10 **PICTURE TUBES.**

11 Notwithstanding any other provision of law, no cus-
12 toms duties may be refunded, waived, or reduced on color
13 cathode-ray television picture tubes, including video mon-
14 itor cathode-ray tubes (provided for in subheading
15 8540.11.00 of the HTS), that are nonoriginating goods
16 under section 202(p)(19) and are—

17 (A) exported to a NAFTA country;

18 (B) used as a material in the production of
19 other goods that are exported to a NAFTA country;
20 or

21 (C) substituted for by goods of the same kind
22 and quality used as a material in the production of
23 other goods that are exported to a NAFTA country.

1 **SEC. 211. MONITORING OF TELEVISION AND PICTURE TUBE**
2 **IMPORTS.**

3 (a) MONITORING.—Beginning on the date the Agree-
4 ment enters into force with respect to the United States,
5 the United States Customs Service shall, for a period of
6 5 years, monitor imports into the United States of articles
7 described in subheading 8528.10 of the HTS from
8 NAFTA countries and shall take action to exercise all
9 rights of the United States under chapter 5 of the Agree-
10 ment with respect to such imports. The United States
11 Customs Service shall take appropriate action under chap-
12 ter 5 of the Agreement with respect to such imports, in-
13 cluding verifications to ensure that the rules of origin
14 under the Agreement are fully complied with and that the
15 duty drawback obligations contained in article 303 and
16 Annex 303.8 of the Agreement are fully implemented and
17 duties are correctly assessed.

18 (b) REPORT TO TRADE REPRESENTATIVE.—The
19 United States Customs Service shall make the results of
20 the monitoring and verification required by subsection (a)
21 available to the President and the Trade Representative.
22 If, based on such information, the President has reason
23 to believe that articles described in subheading 8540.11
24 of the HTS, intended for ultimate consumption in the
25 United States, are entering the territory of a NAFTA
26 country inconsistent with the provisions of the Agreement,

1 or have been undervalued in a manner that may raise con-
2 cerns under United States trade laws, the President shall
3 promptly take such action as may be appropriate under
4 all relevant provisions of the Agreement, including article
5 317 and chapter 20, and under applicable United States
6 trade statutes.

7 **SEC. 212. TITLE VI AMENDMENTS.**

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

11 **SEC. 213. EFFECTIVE DATES.**

12 (a) PROVISIONS EFFECTIVE ON DATE OF ENACT-
13 MENT.—Section 212 and this section take effect on the
14 date of the enactment of this Act.

15 (b) PROVISIONS EFFECTIVE WHEN AGREEMENT EN-
16 TERS INTO FORCE.—Section 201, section 202, section
17 203(a), (d), and (e), section 210 and section 211, the
18 amendment made by section 203(c), and the amendments
19 made by sections 204 through 209 take effect on the date
20 the Agreement enters into force with respect to the United
21 States.

22 (c) PROVISIONS WITH DELAYED EFFECTIVE
23 DATES.—The amendments made by section 203(b)
24 apply—

1 (1) with respect to exports from the United
2 States to Canada—

3 (A) on January 1, 1996, if Canada is a
4 NAFTA country on that date, and

5 (B) after such date for so long as Canada
6 continues to be a NAFTA country; and

7 (2) with respect to exports from the United
8 States to Mexico—

9 (A) on January 1, 2001, if Mexico is a
10 NAFTA country on that date; and

11 (B) after such date for so long as Mexico
12 continues to be a NAFTA country.

13 **TITLE III—APPLICATION OF**
14 **AGREEMENT TO SECTORS**
15 **AND SERVICES**

16 **Subtitle A—Safeguards**

17 **PART 1—RELIEF FROM IMPORTS BENEFITING**
18 **FROM THE AGREEMENT**

19 **SEC. 301. DEFINITIONS.**

20 As used in this part:

21 (1) CANADIAN ARTICLE.—The term “Canadian
22 article” means an article that—

23 (A) is an originating good under chapter 4
24 of the Agreement; and

1 (B) qualifies under the Agreement to be
2 marked as a good of Canada.

3 (2) MEXICAN ARTICLE.—The term “Mexican
4 article” means an article that—

5 (A) is an originating good under chapter 4
6 of the Agreement; and

7 (B) qualifies under the Agreement to be
8 marked as a good of Mexico.

9 **SEC. 302. COMMENCING OF ACTION FOR RELIEF.**

10 (a) FILING OF PETITION.—

11 (1) IN GENERAL.—A petition requesting action
12 under this part for the purpose of adjusting to the
13 obligations of the United States under the Agree-
14 ment may be filed with the International Trade
15 Commission by an entity, including a trade associa-
16 tion, firm, certified or recognized union, or group of
17 workers, that is representative of an industry. The
18 International Trade Commission shall transmit a
19 copy of any petition filed under this subsection to
20 the Trade Representative.

21 (2) PROVISIONAL RELIEF.—An entity filing a
22 petition under this subsection may request that pro-
23 visional relief be provided as if the petition had been
24 filed under section 202(a) of the Trade Act of 1974.

1 (3) CRITICAL CIRCUMSTANCES.—An allegation
2 that critical circumstances exist must be included in
3 the petition or made on or before the 90th day after
4 the date on which the investigation is initiated under
5 subsection (b).

6 (b) INVESTIGATION AND DETERMINATION.—Upon
7 the filing of a petition under subsection (a), the Inter-
8 national Trade Commission, unless subsection (d) applies,
9 shall promptly initiate an investigation to determine
10 whether, as a result of the reduction or elimination of a
11 duty provided for under the Agreement, a Canadian article
12 or a Mexican article, as the case may be, is being imported
13 into the United States in such increased quantities (in ab-
14 solute terms) and under such conditions so that imports
15 of the article, alone, constitute a substantial cause of—

16 (1) serious injury; or

17 (2) except in the case of a Canadian article, a
18 threat of serious injury;

19 to the domestic industry producing an article that is like,
20 or directly competitive with, the imported article.

21 (c) APPLICABLE PROVISIONS.—The provisions of—

22 (1) paragraphs (1)(B), (3) (except subpara-
23 graph (A)), and (4) of subsection (b);

24 (2) subsection (c); and

25 (3) subsection (d),

1 of section 202 of the Trade Act of 1974 (19 U.S.C. 2252)
2 apply with respect to any investigation initiated under
3 subsection (b).

4 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No
5 investigation may be initiated under this section with re-
6 spect to—

7 (1) any Canadian article or Mexican article if
8 import relief has been provided under this part with
9 respect to that article; or

10 (2) any textile or apparel article set out in Ap-
11 pendix 1.1 of Annex 300–B of the Agreement.

12 **SEC. 303. INTERNATIONAL TRADE COMMISSION ACTION ON**
13 **PETITION.**

14 (a) DETERMINATION.—By no later than 120 days
15 after the date on which an investigation is initiated under
16 section 302(b) with respect to a petition, the International
17 Trade Commission shall—

18 (1) make the determination required under that
19 section; and

20 (2) if the determination referred to in para-
21 graph (1) is affirmative and an allegation regarding
22 critical circumstances was made under section
23 302(a), make a determination regarding that allega-
24 tion.

1 (b) ADDITIONAL FINDING AND RECOMMENDATION IF
2 DETERMINATION AFFIRMATIVE.—If the determination
3 made by the International Trade Commission under sub-
4 section (a) with respect to imports of an article is affirma-
5 tive, the International Trade Commission shall find, and
6 recommend to the President in the report required under
7 subsection (c), the amount of import relief that is nec-
8 essary to remedy or, except in the case of imports of a
9 Canadian article, prevent the injury found by the Inter-
10 national Trade Commission in the determination. The im-
11 port relief recommended by the International Trade Com-
12 mission under this subsection shall be limited to that de-
13 scribed in section 304(c).

14 (c) REPORT TO PRESIDENT.—No later than the date
15 that is 30 days after the date on which a determination
16 is made under subsection (a) with respect to an investiga-
17 tion, the International Trade Commission shall submit to
18 the President a report that shall include—

19 (1) a statement of the basis for the determina-
20 tion;

21 (2) dissenting and separate views; and

22 (3) any finding made under subsection (b) re-
23 garding import relief.

24 (d) PUBLIC NOTICE.—Upon submitting a report to
25 the President under subsection (c), the International

1 Trade Commission shall promptly make public such report
2 (with the exception of information which the International
3 Trade Commission determines to be confidential) and
4 shall cause a summary thereof to be published in the Fed-
5 eral Register.

6 (e) APPLICABLE PROVISIONS.—For purposes of this
7 part, the provisions of paragraphs (1), (2), and (3) of sec-
8 tion 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d))
9 shall be applied with respect to determinations and find-
10 ings made under this section as if such determinations and
11 findings were made under section 202 of the Trade Act
12 of 1974 (19 U.S.C. 2252).

13 **SEC. 304. PROVISION OF RELIEF.**

14 (a) IN GENERAL.—No later than the date that is 30
15 days after the date on which the President receives the
16 report of the International Trade Commission containing
17 an affirmative determination of the International Trade
18 Commission under section 303(a), the President, subject
19 to subsection (b), shall provide relief from imports of the
20 article that is the subject of such determination to the ex-
21 tent that the President determines necessary to remedy
22 or, except in the case of imports of a Canadian article,
23 prevent the injury found by the International Trade
24 Commission.

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

5 (c) NATURE OF RELIEF.—The import relief (includ-
6 ing provisional relief) that the President is authorized to
7 provide under this part is as follows:

8 (1) In the case of imports of a Canadian arti-
9 cle—

10 (A) the suspension of any further reduc-
11 tion provided for under Annex 401.2 of the
12 United States-Canada Free-Trade Agreement
13 in the duty imposed on such article;

14 (B) an increase in the rate of duty im-
15 posed on such article to a level that does not
16 exceed the lesser of—

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

20 (ii) the column 1 general rate of duty
21 imposed on like articles on December 31,
22 1988; or

23 (C) in the case of a duty applied on a sea-
24 sonal basis to such article, an increase in the
25 rate of duty imposed on the article to a level

1 that does not exceed the column 1 general rate
2 of duty imposed on the article for the cor-
3 responding season occurring immediately before
4 January 1, 1989.

5 (2) In the case of imports of a Mexican arti-
6 cle—

7 (A) the suspension of any further reduc-
8 tion provided for under the United States
9 Schedule to Annex 302.2 of the Agreement in
10 the duty imposed on such article;

11 (B) an increase in the rate of duty im-
12 posed on such article to a level that does not
13 exceed the lesser of—

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

17 (ii) the column 1 general rate of duty
18 imposed under the HTS on like articles on
19 the day before the date on which the
20 Agreement enters into force; or

21 (C) in the case of a duty applied on a sea-
22 sonal basis to such article, an increase in the
23 rate of duty imposed on the article to a level
24 that does not exceed the column 1 general rate
25 of duty imposed under the HTS on the article

1 for the corresponding season immediately occur-
2 ring before the date on which the Agreement
3 enters into force.

4 (d) PERIOD OF RELIEF.—The import relief that the
5 President is authorized to provide under this section may
6 not exceed 3 years, except that, if a Canadian article or
7 Mexican article which is the subject of the action—

8 (1) is provided for in an item for which the
9 transition period of tariff elimination set out in the
10 United States Schedule to Annex 302.2 of the
11 Agreement is greater than 10 years; and

12 (2) the President determines that the affected
13 industry has undertaken adjustment and requires an
14 extension of the period of the import relief;

15 the President, after obtaining the advice of the Inter-
16 national Trade Commission, may extend the period of the
17 import relief for not more than 1 year, if the duty applied
18 during the initial period of the relief is substantially re-
19 duced at the beginning of the extension period.

20 (e) RATE ON MEXICAN ARTICLES AFTER TERMI-
21 NATION OF IMPORT RELIEF.—When import relief under
22 this part is terminated with respect to a Mexican article—

23 (1) the rate of duty on that article after such
24 termination and on or before December 31 of the
25 year in which termination occurs shall be the rate

1 that, according to the United States Schedule to
2 Annex 302.2 of the Agreement for the staged elimi-
3 nation of the tariff, would have been in effect 1 year
4 after the initiation of the import relief action under
5 section 302; and

6 (2) the tariff treatment for that article after
7 December 31 of the year in which termination oc-
8 curs shall be, at the discretion of the President, ei-
9 ther—

10 (A) the rate of duty conforming to the ap-
11 plicable rate set out in the United States
12 Schedule to Annex 302.2; or

13 (B) the rate of duty resulting from the
14 elimination of the tariff in equal annual stages
15 ending on the date set out in the United States
16 Schedule to Annex 302.2 for the elimination of
17 the tariff.

18 **SEC. 305. TERMINATION OF RELIEF AUTHORITY.**

19 (a) GENERAL RULE.—Except as provided in sub-
20 section (b), no import relief may be provided under this
21 part—

22 (1) in the case of a Canadian article, after De-
23 cember 31, 1998; or

1 (2) in the case of a Mexican article, after the
2 date that is 10 years after the date on which the
3 Agreement enters into force;
4 unless the article against which the action is taken is an
5 item for which the transition period for tariff elimination
6 set out in the United States Schedule to Annex 302.2 of
7 the Agreement is greater than 10 years, in which case the
8 period during which relief may be granted shall be the pe-
9 riod of staged tariff elimination for that article.

10 (b) EXCEPTION.—Import relief may be provided
11 under this part in the case of a Canadian article or Mexi-
12 can article after the date on which such relief would, but
13 for this subsection, terminate under subsection (a), but
14 only if the Government of Canada or Mexico, as the case
15 may be, consents to such provision.

16 **SEC. 306. COMPENSATION AUTHORITY.**

17 For purposes of section 123 of the Trade Act of 1974
18 (19 U.S.C. 2133), any import relief provided by the Presi-
19 dent under section 304 shall be treated as action taken
20 under chapter I of title II of such Act.

21 **SEC. 307. SUBMISSION OF PETITIONS.**

22 A petition for import relief may be submitted to the
23 International Trade Commission under—

24 (1) this part;

1 (2) chapter 1 of title II of the Trade Act of
2 1974; or

3 (3) under both this part and such chapter 1 at
4 the same time, in which case the International
5 Trade Commission shall consider such petitions
6 jointly.

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

9 (a) IN GENERAL.—Section 301(a) of the United
10 States-Canada Free-Trade Agreement Implementation
11 Act (19 U.S.C. 2112 note) is amended—

12 (1) in paragraph (1), by striking “promptly” in
13 the flush sentence at the end thereof and inserting
14 “immediately”,

15 (2) by redesignating paragraphs (2) through
16 (9) as paragraphs (3) through (10), respectively,

17 (3) by inserting after paragraph (1) the follow-
18 ing new paragraph:

19 “(2) No later than 6 days after publication in
20 the Federal Register of the notice described in para-
21 graph (1), the Secretary shall decide whether to rec-
22 ommend the imposition of a temporary duty to the
23 President, and if the Secretary decides to make such
24 a recommendation, the recommendation shall be for-
25 warded immediately to the President.”,

1 (4) in paragraph (5), as redesignated by para-
2 graph (2), by striking “paragraph (3)” and inserting
3 “paragraph (4)”,

4 (5) by amending paragraph (9), as redesignated
5 by paragraph (2), to read as follows:

6 “(9) For purposes of assisting the Secretary in
7 carrying out this subsection—

8 “(A) the Commissioner of Customs and
9 the Director of the Bureau of Census shall co-
10 operate in providing the Secretary with timely
11 information and data relating to the importa-
12 tion of Canadian fresh fruits and vegetables,
13 and

14 “(B) importers shall report such informa-
15 tion relating to Canadian fresh fruits and vege-
16 tables to the Commissioner of Customs at such
17 time and in such manner as the Commissioner
18 requires.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) take effect on the date of the enactment
21 of this Act.

22 **SEC. 309. PRICE-BASED SNAPBACK FOR FROZEN CON-**
23 **CENTRATED ORANGE JUICE.**

24 (a) TRIGGER PRICE DETERMINATION.—

1 (1) IN GENERAL.—The Secretary shall deter-
2 mine—

3 (A) each period of 5 consecutive business
4 days in which the daily price for frozen con-
5 centrated orange juice is less than the trigger
6 price; and

7 (B) for each period determined under sub-
8 paragraph (A), the first period occurring there-
9 after of 5 consecutive business days in which
10 the daily price for frozen concentrated orange
11 juice is greater than the trigger price.

12 (2) NOTICE OF DETERMINATIONS.—The Sec-
13 retary shall immediately notify the Commissioner of
14 Customs and publish notice in the Federal Register
15 of any determination under paragraph (1), and the
16 date of such publication shall be the determination
17 date for that determination.

18 (b) IMPORTS OF MEXICAN ARTICLES.—Whenever
19 after any determination date for a determination under
20 subsection (a)(1)(A), the quantity of Mexican articles of
21 frozen concentrated orange juice that is entered exceeds—

22 (1) 264,978,000 liters (single strength equiva-
23 lent) in any of calendar years 1994 through 2002;
24 or

1 (2) 340,560,000 liters (single strength equivalent)
2 lent) in any of calendar years 2003 through 2007;
3 the rate of duty on Mexican articles of frozen concentrated
4 orange juice that are entered after the date on which the
5 applicable limitation in paragraph (1) or (2) is reached
6 and before the determination date for the related determination
7 under subsection (a)(1)(B) shall be the rate of
8 duty specified in subsection (c).

9 (c) RATE OF DUTY.—The rate of duty specified for
10 purposes of subsection (b) for articles entered on any day
11 is the rate in the HTS that is the lower of—

12 (1) the column 1–General rate of duty in effect
13 for such articles on July 1, 1991; or

14 (2) the column 1–General rate of duty in effect
15 on that day.

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

17 (1) The term “daily price” means the daily
18 closing price of the New York Cotton Exchange, or
19 any successor as determined by the Secretary, for
20 the closest month in which contracts for frozen concentrated
21 orange juice are being traded on the Exchange.
22 change.

23 (2) The term “business day” means a day in
24 which contracts for frozen concentrated orange juice

1 are being traded on the New York Cotton Exchange,
2 or any successor as determined by the Secretary.

3 (3) The term “entered” means entered or with-
4 drawn from warehouse for consumption, in the cus-
5 toms territory of the United States.

6 (4) The term “frozen concentrated orange
7 juice” means all products classifiable under sub-
8 heading 2009.11.00 of the HTS.

9 (5) The term “Secretary” means the Secretary
10 of Agriculture.

11 (6) The term “trigger price” means the average
12 daily closing price of the New York Cotton Ex-
13 change, or any successor as determined by the Sec-
14 retary, for the corresponding month during the pre-
15 vious 5-year period, excluding the year with the
16 highest average price for the corresponding month
17 and the year with the lowest average price for the
18 corresponding month.

19 **PART 2—RELIEF FROM IMPORTS FROM ALL**
20 **COUNTRIES**

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

23 (a) IN GENERAL.—If, in any investigation initiated
24 under chapter 1 of title II of the Trade Act of 1974, the
25 International Trade Commission makes an affirmative de-

1 termination (or a determination which the President may
2 treat as an affirmative determination under such chapter
3 by reason of section 330(d) of the Tariff Act of 1930),
4 the International Trade Commission shall also find (and
5 report to the President at the time such injury determina-
6 tion is submitted to the President) whether—

7 (1) imports of the article from a NAFTA coun-
8 try, considered individually, account for a substan-
9 tial share of total imports; and

10 (2) imports of the article from a NAFTA coun-
11 try, considered individually or, in exceptional cir-
12 cumstances, imports from NAFTA countries consid-
13 ered collectively, contribute importantly to the seri-
14 ous injury, or threat thereof, caused by imports.

15 (b) FACTORS.—

16 (1) SUBSTANTIAL IMPORT SHARE.—In deter-
17 mining whether imports from a NAFTA country,
18 considered individually, account for a substantial
19 share of total imports, such imports normally shall
20 not be considered to account for a substantial share
21 of total imports if that country is not among the top
22 5 suppliers of the article subject to the investigation,
23 measured in terms of import share during the most
24 recent 3-year period.

1 (2) APPLICATION OF “CONTRIBUTE IMPOR-
2 TANTLY” STANDARD.—In determining whether im-
3 ports from a NAFTA country or countries contrib-
4 ute importantly to the serious injury, or threat
5 thereof, the International Trade Commission shall
6 consider such factors as the change in the import
7 share of the NAFTA country or countries, and the
8 level and change in the level of imports of such
9 country or countries. In applying the preceding sen-
10 tence, imports from a NAFTA country or countries
11 normally shall not be considered to contribute impor-
12 tantly to serious injury, or the threat thereof, if the
13 growth rate of imports from such country or coun-
14 tries during the period in which an injurious in-
15 crease in imports occurred is appreciably lower than
16 the growth rate of total imports from all sources
17 over the same period.

18 (c) DEFINITION.—For purposes of this section and
19 section 312(a), the term “contribute importantly” refers
20 to an important cause, but not necessarily the most impor-
21 tant cause.

22 **SEC. 312. PRESIDENTIAL ACTION REGARDING NAFTA IM-**
23 **PORTS.**

24 (a) IN GENERAL.—In determining whether to take
25 action under chapter 1 of title II of the Trade Act of 1974

1 with respect to imports from a NAFTA country, the Presi-
2 dent shall determine whether—

3 (1) imports from such country, considered indi-
4 vidually, account for a substantial share of total im-
5 ports; or

6 (2) imports from a NAFTA country, considered
7 individually, or in exceptional circumstances imports
8 from NAFTA countries considered collectively, con-
9 tribute importantly to the serious injury, or threat
10 thereof, found by the International Trade Commis-
11 sion.

12 (b) EXCLUSION OF NAFTA IMPORTS.—In determin-
13 ing the nature and extent of action to be taken under
14 chapter 1 of title II of the Trade Act of 1974, the Presi-
15 dent shall exclude from such action imports from a
16 NAFTA country if the President makes a negative deter-
17 mination under subsection (a)(1) or (2) with respect to
18 imports from such country.

19 (c) ACTION AFTER EXCLUSION OF NAFTA COUN-
20 TRY IMPORTS.—

21 (1) IN GENERAL.—If the President, under sub-
22 section (b), excludes imports from a NAFTA coun-
23 try or countries from action under chapter 1 of title
24 II of the Trade Act of 1974 but thereafter deter-
25 mines that a surge in imports from that country or

1 countries is undermining the effectiveness of the ac-
2 tion—

3 (A) the President may take appropriate ac-
4 tion under such chapter 1 to include those im-
5 ports in the action; and

6 (B) any entity that is representative of an
7 industry for which such action is being taken
8 may request the International Trade Commis-
9 sion to conduct an investigation of the surge in
10 such imports.

11 (2) INVESTIGATION.—Upon receiving a request
12 under paragraph (1)(B), the International Trade
13 Commission shall conduct an investigation to deter-
14 mine whether a surge in such imports undermines
15 the effectiveness of the action. The International
16 Trade Commission shall submit the findings of its
17 investigation to the President no later than 30 days
18 after the request is received by the International
19 Trade Commission.

20 (3) DEFINITION.—For purposes of this sub-
21 section, the term “surge” means a significant in-
22 crease in imports over the trend for a recent rep-
23 resentative base period.

24 (d) CONDITION APPLICABLE TO QUANTITATIVE RE-
25 STRICTIONS.—Any action taken under this section pro-

1 claiming a quantitative restriction shall permit the impor-
2 tation of a quantity or value of the article which is not
3 less than the quantity or value of such article imported
4 into the United States during the most recent period that
5 is representative of imports of such article, with allowance
6 for reasonable growth.

7 **PART 3—GENERAL PROVISIONS**

8 **SEC. 315. PROVISIONAL RELIEF.**

9 Section 202(d) of the Trade Act of 1974 (19 U.S.C.
10 2252(d)) is amended—

11 (1) in paragraph (1)(A) by inserting “or citrus
12 product” after “agricultural product” each place it
13 appears;

14 (2) in the text of paragraph (1)(C) that appears
15 before subclauses (I) and (II)—

16 (A) by inserting “or citrus product” after
17 “agricultural product” each place it appears,
18 and

19 (B) by inserting “or citrus product” after
20 “perishable product”;

21 (3) by redesignating subparagraphs (A) and
22 (B) of paragraph (5) as subparagraphs (B) and (C);
23 and

24 (4) by inserting a new subparagraph (A) in
25 paragraph (5) to read as follows:

1 “(A) The term ‘citrus product’ means any
2 processed oranges or grapefruit, or any orange
3 or grapefruit juice, including concentrate.”.

4 **SEC. 316. MONITORING.**

5 For purposes of expediting an investigation concern-
6 ing provisional relief under this subtitle or section 202 of
7 the Trade Act of 1974 regarding—

8 (1) fresh or chilled tomatoes provided for in
9 subheading 0702.00.00 of the HTS; and

10 (2) fresh or chilled peppers, other than chili
11 peppers provided for in subheading 0709.60.00 of
12 the HTS;

13 the International Trade Commission, until January 1,
14 2009, shall monitor imports of such goods as if proper
15 requests for such monitoring had been made under sub-
16 section 202(d)(1)(C)(i) of such section 202. At the request
17 of the International Trade Commission, the Secretary of
18 Agriculture and the Commissioner of Customs shall pro-
19 vide to the International Trade Commission information
20 relevant to the monitoring carried out under this section.

21 **SEC. 317. PROCEDURES CONCERNING THE CONDUCT OF**
22 **INTERNATIONAL TRADE COMMISSION INVES-**
23 **TIGATIONS.**

24 (a) PROCEDURES AND RULES.—The International
25 Trade Commission shall adopt such procedures and rules

1 and regulations as are necessary to bring its procedures
2 into conformity with chapter 8 of the Agreement.

3 (b) CONFORMING AMENDMENT.—Section 202(a) of
4 the Trade Act of 1974 is amended by adding at the end
5 thereof the following:

6 “(8) The procedures concerning the release of
7 confidential business information set forth in section
8 332(g) of the Tariff Act of 1930 shall apply with re-
9 spect to information received by the Commission in
10 the course of investigations conducted under this
11 chapter and part 1 of title III of the North Amer-
12 ican Free Trade Agreement Implementation Act.”.

13 **SEC. 318. EFFECTIVE DATE.**

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

17 **Subtitle B—Agriculture**

18 **SEC. 321. AGRICULTURE.**

19 (a) MEAT IMPORT ACT OF 1979.—The Meat Import
20 Act of 1979 (19 U.S.C. 2253 note) is amended—

21 (1) in subsection (b)—

22 (A) by striking the last sentence in para-
23 graph (2),

1 (B) by redesignating paragraph (3) as
2 paragraph (4) and inserting after paragraph
3 (2) the following new paragraph:

4 “(3) The term ‘meat articles’ does not include
5 any article described in paragraph (2) that—

6 “(A) originates in a NAFTA country (as
7 determined in accordance with section 202 of
8 the NAFTA Act), or

9 “(B) originates in Canada (as determined
10 in accordance with section 202 of the United
11 States-Canada Free-Trade Agreement Imple-
12 mentation Act of 1988) during such time as the
13 United States-Canada Free-Trade Agreement is
14 in force with respect to, and the United States
15 applies such Agreement to, Canada.”; and

16 (C) by inserting after paragraph (4) (as
17 redesignated by subparagraph (B) of this para-
18 graph) the following new paragraphs:

19 “(5) The term ‘NAFTA Act’ means the North
20 American Free Trade Agreement Implementation
21 Act.

22 “(6) The term ‘NAFTA country’ has the mean-
23 ing given such term in section 2(4) of the NAFTA
24 Act.”;

1 (2) in subsection (f)(1), by striking the end pe-
2 riod and inserting “, except that the President may
3 exclude any such article originating in a NAFTA
4 country (as determined in accordance with section
5 202 of the NAFTA Act) or, if paragraph (3)(B) ap-
6 plies, any such article originating in Canada as de-
7 termined in accordance with such paragraph
8 (3)(B).”; and

9 (3) in subsection (i), by inserting “and Mexico”
10 after “Canada” each place it appears.

11 (b) SECTION 22 OF THE AGRICULTURAL ADJUST-
12 MENT ACT.—

13 (1) IN GENERAL.—The President may, pursu-
14 ant to article 309 and Annex 703.2 of the Agree-
15 ment, exempt from any quantitative limitation or fee
16 imposed pursuant to section 22 of the Agricultural
17 Adjustment Act (7 U.S.C. 624), reenacted with
18 amendments by the Agricultural Marketing Agree-
19 ment Act of 1937, any article which originates in
20 Mexico, if Mexico is a NAFTA country.

21 (2) QUALIFICATION OF ARTICLES.—The deter-
22 mination of whether an article originates in Mexico
23 shall be made in accordance with section 202, except
24 that operations performed in, or materials obtained
25 from, any country other than the United States or

1 Mexico shall be treated as if performed in or ob-
2 tained from a country other than a NAFTA country.

3 (c) TARIFF RATE QUOTAS.—In implementing the
4 tariff rate quotas set out in the United States Schedule
5 to Annex 302.2 of the Agreement, the President shall take
6 such action as may be necessary to ensure that imports
7 of agricultural goods do not disrupt the orderly marketing
8 of commodities in the United States.

9 (d) PEANUTS.—

10 (1) EFFECT OF THE AGREEMENT.—

11 (A) IN GENERAL.—Nothing in the Agree-
12 ment or this Act reduces or eliminates—

13 (i) any penalty required under section
14 358e(d) of the Agricultural Adjustment
15 Act of 1938 (7 U.S.C. 1359a(d)); or

16 (ii) any requirement under Marketing
17 Agreement No. 146, Regulating the Qual-
18 ity of Domestically Produced Peanuts, on
19 peanuts in the domestic market, pursuant
20 to section 108B(f) of the Agricultural Act
21 of 1949 (7 U.S.C. 1445c-3(f)).

22 (B) REENTRY OF EXPORTED PEANUTS.—
23 Paragraph (6) of section 358e(d) of the Agri-
24 cultural Adjustment Act of 1938 (7 U.S.C.
25 1359a(d)(6)) is amended to read as follows:

1 “(6) REENTRY OF EXPORTED PEANUTS.—

2 “(A) PENALTY.—If any additional peanuts
3 exported by a handler are reentered into the
4 United States in commercial quantities as de-
5 termined by the Secretary, the importer of the
6 peanuts shall be subject to a penalty at a rate
7 equal to 140 percent of the loan level for quota
8 peanuts on the quantity of peanuts reentered.

9 “(B) RECORDS.—Each person, firm, or
10 handler who imports peanuts into the United
11 States shall maintain such records and docu-
12 ments as are required by the Secretary to en-
13 sure compliance with this subsection.”.

14 (2) CONSULTATIONS ON IMPORTS.—It is the
15 sense of Congress that the United States should re-
16 quest consultations in the Working Group on Emer-
17 gency Action, established in the Understanding Be-
18 tween the Parties to the North American Free
19 Trade Agreement Concerning Chapter Eight—
20 Emergency Action, if imports of peanuts exceed the
21 in-quota quantity under a tariff rate quota set out
22 in the United States Schedule to Annex 302.2 of the
23 Agreement concerning whether—

24 (A) the increased imports of peanuts con-
25 stitute a substantial cause of, or contribute im-

1 portantly to, serious injury, or threat of serious
2 injury, to the domestic peanut industry; and

3 (B) recourse under Chapter Eight of the
4 Agreement or Article XIX of the General
5 Agreement on Tariffs and Trade is appropriate.

6 (e) FRESH FRUITS, VEGETABLES, AND CUT FLOW-
7 ERS.—

8 (1) IN GENERAL.—The Secretary of Agriculture
9 shall collect and compile the information specified
10 under paragraph (3), if reasonably available, from
11 appropriate Federal departments and agencies and
12 the relevant counterpart ministries of the Govern-
13 ment of Mexico.

14 (2) DESIGNATION OF AN OFFICE.—The Sec-
15 retary of Agriculture shall designate an office within
16 the United States Department of Agriculture to be
17 responsible for maintaining and disseminating, in a
18 timely manner, the data accumulated for verifying
19 citrus, fruit, vegetable, and cut flower trade between
20 the United States and Mexico. The information shall
21 be made available to the public and the NAFTA Ag-
22 riculture Committee Working Groups.

23 (3) INFORMATION COLLECTED.—The informa-
24 tion to be collected, if reasonably available, in-
25 cludes—

1 (A) monthly fresh fruit, fresh vegetable,
2 fresh citrus, and processed citrus product im-
3 port and export data;

4 (B) monthly citrus juice production and
5 export data;

6 (C) data on inspections of shipments of cit-
7 rus, vegetables, and cut flowers entering the
8 United States from Mexico; and

9 (D) in the case of fruits, vegetables, and
10 cut flowers entering the United States from
11 Mexico, data regarding—

12 (i) planted and harvested acreage; and

13 (ii) wholesale prices, quality, and
14 grades.

15 (f) END-USE CERTIFICATES.—

16 (1) IN GENERAL.—The Secretary of Agriculture
17 (referred to in this subsection as the “Secretary”)
18 shall implement, in coordination with the Commis-
19 sioner of Customs, a program requiring that end-use
20 certificates be included in the documentation cover-
21 ing the entry into, or the withdrawal from a ware-
22 house for consumption in, the customs territory of
23 the United States—

24 (A) of any wheat that is a product of any
25 foreign country or instrumentality that re-

1 quires, as of the effective date of this sub-
2 section, end-use certificates for imports of
3 wheat that is a product of the United States
4 (referred to in this subsection as “United
5 States-produced wheat”); and

6 (B) of any barley that is a product of any
7 foreign country or instrumentality that re-
8 quires, as of the effective date of this sub-
9 section, end-use certificates for imports of bar-
10 ley that is a product of the United States (re-
11 ferred to in this subsection as “United States-
12 produced barley”).

13 (2) REGULATIONS.—The Secretary shall pre-
14 scribe by regulation such requirements regarding the
15 information to be included in end-use certificates as
16 may be necessary and appropriate to carry out this
17 subsection.

18 (3) PRODUCER PROTECTION DETERMINA-
19 TION.—At any time after the effective date of the
20 requirements established under paragraph (1), the
21 Secretary may, subject to paragraph (5), suspend
22 the requirements when making a determination,
23 after consultation with domestic producers, that the
24 program implemented under this subsection has di-
25 rectly resulted in—

1 (A) the reduction of income to the United
2 States producers of agricultural commodities; or

3 (B) the reduction of the competitiveness of
4 United States agricultural commodities in the
5 world export markets.

6 (4) SUSPENSION OF REQUIREMENTS.—

7 (A) WHEAT.—If a foreign country or in-
8 strumentality that requires end-use certificates
9 for imports of United States-produced wheat as
10 of the effective date of the requirement under
11 paragraph (1)(A) eliminates the requirement,
12 the Secretary shall suspend the requirement
13 under paragraph (1)(A) beginning 30 calendar
14 days after suspension by the foreign country or
15 instrumentality.

16 (B) BARLEY.—If a foreign country or in-
17 strumentality that requires end-use certificates
18 for imports of United States-produced barley as
19 of the effective date of the requirement under
20 paragraph (1)(B) eliminates the requirement,
21 the Secretary shall suspend the requirement
22 under paragraph (1)(B) beginning 30 calendar
23 days after suspension by the foreign country or
24 instrumentality.

1 (5) REPORT TO CONGRESS.—The Secretary
2 shall not suspend the requirements established under
3 paragraph (1) under circumstances identified in
4 paragraph (3) before the Secretary submits a report
5 to Congress detailing the determination made under
6 paragraph (3) and the reasons for making the deter-
7 mination.

8 (6) COMPLIANCE.—It shall be a violation of
9 section 1001 of title 18, United States Code, for a
10 person to engage in fraud or knowingly violate this
11 subsection or a regulation implementing this sub-
12 section.

13 (7) EFFECTIVE DATE.—This subsection shall
14 become effective on the date that is 120 days after
15 the date of enactment of this Act.

16 (g) AGRICULTURAL FELLOWSHIP PROGRAM.—Sec-
17 tion 1542(d) of the Food, Agriculture, Conservation, and
18 Trade Act of 1990 (Public Law 101–624; 7 U.S.C. 5622
19 note) is amended by adding at the end the following new
20 paragraph:

21 “(3) AGRICULTURAL FELLOWSHIPS FOR NAFTA
22 COUNTRIES.—

23 “(A) IN GENERAL.—The Secretary shall
24 grant fellowships to individuals from countries
25 that are parties to the North American Free

1 Trade Agreement (referred to in this paragraph
2 as 'NAFTA') to study agriculture in the United
3 States, and to individuals in the United States
4 to study agriculture in other NAFTA countries.

5 “(B) PURPOSE.—The purpose of fellow-
6 ships granted under this paragraph is—

7 “(i) to allow the recipients to expand
8 their knowledge and understanding of agri-
9 cultural systems and practices in other
10 NAFTA countries;

11 “(ii) to facilitate the improvement of
12 agricultural systems in NAFTA countries;
13 and

14 “(iii) to establish and expand agricul-
15 tural trade linkages between the United
16 States and other NAFTA countries.

17 “(C) ELIGIBLE RECIPIENTS.—The Sec-
18 retary may provide fellowships under this para-
19 graph to agricultural producers and consult-
20 ants, government officials, and other individuals
21 from the private and public sectors.

22 “(D) ACCEPTANCE OF GIFTS.—The Sec-
23 retary may accept money, funds, property, and
24 services of every kind by gift, devise, bequest,
25 grant, or otherwise, and may in any manner,

1 dispose of all of the holdings and use the re-
2 cepts generated from the disposition to carry
3 out this paragraph. Receipts under this para-
4 graph shall remain available until expended.”.

5 “(E) AUTHORIZATION OF APPROPRIA-
6 TION.—There are authorized to be appropriated
7 such sums as are necessary to carry out this
8 paragraph.”.

9 (h) ASSISTANCE FOR AFFECTED FARMWORKERS.—
10

11 (1) IN GENERAL.—Subject to paragraph (3), if
12 at any time the Secretary of Agriculture determines
13 that the implementation of the Agreement has
14 caused low-income migrant or seasonal farmworkers
15 to lose income, the Secretary may make available
16 grants, not to exceed \$20,000,000 for any fiscal
17 year, to public agencies or private organizations with
18 tax-exempt status under section 501(c)(3) of the In-
19 ternal Revenue Code of 1986, that have experience
20 in providing emergency services to low-income mi-
21 grant or seasonal farmworkers. Emergency services
22 to be provided with assistance received under this
23 subsection may include such types of assistance as
24 the Secretary determines to be necessary and appro-
25 priate.

1 (2) DEFINITION.—As used in this subsection,
2 the term “low-income migrant or seasonal farm-
3 worker” shall have the same meaning as provided in
4 section 2281(b) of the Food, Agriculture, Conserva-
5 tion, and Trade Act of 1990 (42 U.S.C. 5177a(b)).

6 (3) AUTHORIZATION OF APPROPRIATIONS.—
7 There are authorized to be appropriated
8 \$20,000,000 for each fiscal year to carry out this
9 subsection.

10 (i) BIENNIAL REPORT ON EFFECTS OF THE AGREE-
11 MENT ON AMERICAN AGRICULTURE.—

12 (1) IN GENERAL.—The Secretary of Agriculture
13 shall prepare a biennial report on the effects of the
14 Agreement on United States producers of agricul-
15 tural commodities and on rural communities located
16 in the United States.

17 (2) CONTENTS OF REPORT.—The report re-
18 quired under this subsection shall include—

19 (A) an assessment of the effects of imple-
20 menting the Agreement on the various agricul-
21 tural commodities affected by the Agreement,
22 on a commodity-by-commodity basis;

23 (B) an assessment of the effects of imple-
24 menting the Agreement on investments made in

1 United States agriculture and on rural commu-
2 nities located in the United States;

3 (C) an assessment of the effects of imple-
4 menting the Agreement on employment in Unit-
5 ed States agriculture, including any gains or
6 losses of jobs in businesses directly or indirectly
7 related to United States agriculture; and

8 (D) such other information and data as
9 the Secretary determines appropriate.

10 (3) SUBMISSION OF REPORT.—The Secretary
11 shall furnish the report required under this sub-
12 section to the Committee on Agriculture, Nutrition,
13 and Forestry of the Senate and to the Committee on
14 Agriculture of the House of Representatives. The re-
15 port shall be due every 2 years and shall be submit-
16 ted by March 1 of the year in which the report is
17 due. The first report shall be due by March 1, 1997,
18 and the final report shall be due by March 1, 2011.

19 **Subtitle C—Intellectual Property**

20 **SEC. 331. TREATMENT OF INVENTIVE ACTIVITY.**

21 Section 104 of title 35, United States Code, is
22 amended to read as follows:

23 **“§ 104. Invention made abroad**

24 “(a) IN GENERAL.—In proceedings in the Patent and
25 Trademark Office, in the courts, and before any other

1 competent authority, an applicant for a patent, or a pat-
2 entee, may not establish a date of invention by reference
3 to knowledge or use thereof, or other activity with respect
4 thereto, in a foreign country other than a NAFTA coun-
5 try, except as provided in sections 119 and 365 of this
6 title. Where an invention was made by a person, civil or
7 military, while domiciled in the United States or a
8 NAFTA country and serving in any other country in con-
9 nection with operations by or on behalf of the United
10 States or a NAFTA country, the person shall be entitled
11 to the same rights of priority in the United States with
12 respect to such invention as if such invention had been
13 made in the United States or a NAFTA country. To the
14 extent that any information in a NAFTA country concern-
15 ing knowledge, use, or other activity relevant to proving
16 or disproving a date of invention has not been made avail-
17 able for use in a proceeding in the Office, a court, or any
18 other competent authority to the same extent as such in-
19 formation could be made available in the United States,
20 the Commissioner, court, or such other authority shall
21 draw appropriate inferences, or take other action per-
22 mitted by statute, rule, or regulation, in favor of the party
23 that requested the information in the proceeding.

24 “(b) DEFINITION.—As used in this section, the term
25 ‘NAFTA country’ has the meaning given that term in sec-

1 tion 2(4) of the North American Free Trade Agreement
2 Implementation Act.”.

3 **SEC. 332. RENTAL RIGHTS IN SOUND RECORDINGS.**

4 Section 4 of the Record Rental Amendment of 1984
5 (17 U.S.C. 109 note) is amended by striking out sub-
6 section (c).

7 **SEC. 333. NONREGISTRABILITY OF MISLEADING GEO-**
8 **GRAPHIC INDICATIONS.**

9 (a) MARKS NOT REGISTRABLE ON THE PRINCIPAL
10 REGISTER.—Section 2 of the Act entitled “An Act to pro-
11 vide for the registration and protection of trademarks used
12 in commerce, to carry out the provisions of certain inter-
13 national conventions, and for other purposes”, approved
14 July 5, 1946, commonly referred to as the Trademark Act
15 of 1946 (15 U.S.C. 1052(e)), is amended—

16 (1) by amending subsection (e) to read as fol-
17 lows:

18 “(e) Consists of a mark which (1) when used on or
19 in connection with the goods of the applicant is merely
20 descriptive or deceptively misdescriptive of them, (2) when
21 used on or in connection with the goods of the applicant
22 is primarily geographically descriptive of them, except as
23 indications of regional origin may be registrable under sec-
24 tion 4, (3) when used on or in connection with the goods
25 of the applicant is primarily geographically deceptively

1 misdescriptive of them, or (4) is primarily merely a sur-
2 name.”; and

3 (2) in subsection (f)—

4 (A) by striking out “and (d)” and insert-
5 ing “(d), and (e)(3)”; and

6 (B) by adding at the end the following new
7 sentence: “Nothing in this section shall prevent
8 the registration of a mark which, when used on
9 or in connection with the goods of the appli-
10 cant, is primarily geographically deceptively
11 misdescriptive of them, and which became dis-
12 tinctive of the applicant’s goods in commerce
13 before the date of the enactment of the North
14 American Free Trade Agreement Implementa-
15 tion Act.”.

16 (b) SUPPLEMENTAL REGISTER.—Section 23(a) of
17 the Trademark Act of 1946 (15 U.S.C. 1091(a)) is
18 amended—

19 (1) by striking out “and (d)” and inserting
20 “(d), and (e)(3)”; and

21 (2) by adding at the end the following new sen-
22 tence: “Nothing in this section shall prevent the reg-
23 istration on the supplemental register of a mark, ca-
24 pable of distinguishing the applicant’s goods or serv-
25 ices and not registrable on the principal register

1 under this Act, that is declared to be unregistrable
2 under section 2(e)(3), if such mark has been in law-
3 ful use in commerce by the owner thereof, on or in
4 connection with any goods or services, since before
5 the date of the enactment of the North American
6 Free Trade Agreement Implementation Act.”.

7 **SEC. 334. MOTION PICTURES IN THE PUBLIC DOMAIN.**

8 (a) IN GENERAL.—Chapter 1 of title 17, United
9 States Code, is amended by inserting after section 104 the
10 following new section:

11 **“§ 104A. Copyright in certain motion pictures**

12 “(a) RESTORATION OF COPYRIGHT.—Subject to sub-
13 sections (b) and (c)—

14 “(1) any motion picture that is first fixed or
15 published in the territory of a NAFTA country as
16 defined in section 2(4) of the North American Free
17 Trade Agreement Implementation Act to which
18 Annex 1705.7 of the North American Free Trade
19 Agreement applies, and

20 “(2) any work included in such motion picture
21 that is first fixed in or published with such motion
22 picture,

23 that entered the public domain in the United States be-
24 cause it was first published on or after January 1, 1978,
25 and before March 1, 1989, without the notice required by

1 section 401, 402, or 403 of this title, the absence of which
2 has not been excused by the operation of section 405 of
3 this title, as such sections were in effect during that pe-
4 riod, shall have copyright protection under this title for
5 the remainder of the term of copyright protection to which
6 it would have been entitled in the United States had it
7 been published with such notice.

8 “(b) EFFECTIVE DATE OF PROTECTION.—The pro-
9 tection provided under subsection (a) shall become effec-
10 tive, with respect to any motion picture or work included
11 in such motion picture meeting the criteria of that sub-
12 section, 1 year after the date on which the North Amer-
13 ican Free Trade Agreement enters into force with respect
14 to, and the United States applies the Agreement to, the
15 country in whose territory the motion picture was first
16 fixed or published if, before the end of that 1-year period,
17 the copyright owner in the motion picture or work files
18 with the Copyright Office a statement of intent to have
19 copyright protection restored under subsection (a). The
20 Copyright Office shall publish in the Federal Register
21 promptly after that effective date a list of motion pictures,
22 and works included in such motion pictures, for which pro-
23 tection is provided under subsection (a).

24 “(c) USE OF PREVIOUSLY OWNED COPIES.—A na-
25 tional or domiciliary of the United States who, before the

1 date of the enactment of the North American Free Trade
 2 Agreement Implementation Act, made or acquired copies
 3 of a motion picture, or other work included in such motion
 4 picture, that is subject to protection under subsection (a),
 5 may sell or distribute such copies or continue to perform
 6 publicly such motion picture and other work without liabil-
 7 ity for such sale, distribution, or performance, for a period
 8 of 1 year after the date on which the list of motion pic-
 9 tures, and works included in such motion pictures, that
 10 are subject to protection under subsection (a) is published
 11 in the Federal Register under subsection (b).”.

12 (b) CONFORMING AMENDMENT.—The table of sec-
 13 tions at the beginning of chapter 1 of title 17, United
 14 States Code, is amended by inserting after the item relat-
 15 ing to section 104 the following new item:

“104A. Copyright in certain motion pictures.”.

16 **SEC. 335. EFFECTIVE DATES.**

17 (a) IN GENERAL.—Subject to subsections (b) and (c),
 18 the amendments made by this subtitle take effect on the
 19 date the Agreement enters into force with respect to the
 20 United States.

21 (b) SECTION 331.—The amendments made by sec-
 22 tion 331 shall apply to all patent applications that are
 23 filed on or after the date of the enactment of this Act:
 24 *Provided*, That an applicant for a patent, or a patentee,
 25 may not establish a date of invention by reference to

1 knowledge or use thereof, or other activity with respect
2 thereto, in a NAFTA country, except as provided in sec-
3 tions 119 and 365 of title 35, United States Code, that
4 is earlier than the date of the enactment of this Act.

5 (c) SECTION 333.—The amendments made by section
6 333 shall apply only to trademark applications filed on
7 or after the date of the enactment of this Act.

8 **Subtitle D—Temporary Entry of** 9 **Business Persons**

10 **SEC. 341. TEMPORARY ENTRY.**

11 (a) NONIMMIGRANT TRADERS AND INVESTORS.—
12 Upon a basis of reciprocity secured by the Agreement, an
13 alien who is a citizen of Canada or Mexico, and the spouse
14 and children of any such alien if accompanying or follow-
15 ing to join such alien, may, if otherwise eligible for a visa
16 and if otherwise admissible into the United States under
17 the Immigration and Nationality Act (8 U.S.C. 1101 et
18 seq.), be considered to be classifiable as a nonimmigrant
19 under section 101(a)(15)(E) of such Act (8 U.S.C.
20 1101(a)(15)(E)) if entering solely for a purpose specified
21 in Section B of Annex 1603 of the Agreement, but only
22 if any such purpose shall have been specified in such
23 Annex on the date of entry into force of the Agreement.
24 For purposes of this section, the term “citizen of Mexico”

1 means “citizen” as defined in Annex 1608 of the Agree-
2 ment.

3 (b) NONIMMIGRANT PROFESSIONALS AND ANNUAL
4 NUMERICAL LIMIT.—Section 214 of the Immigration and
5 Nationality Act (8 U.S.C. 1184) is amended by redesi-
6 gnating subsection (e) as paragraph (1) of subsection (e)
7 and adding after such paragraph (1), as redesignated, the
8 following new paragraphs:

9 “(2) An alien who is a citizen of Canada or Mexico,
10 and the spouse and children of any such alien if accom-
11 panying or following to join such alien, who seeks to enter
12 the United States under and pursuant to the provisions
13 of Section D of Annex 1603 of the North American Free
14 Trade Agreement (in this subsection referred to as
15 ‘NAFTA’) to engage in business activities at a profes-
16 sional level as provided for in such Annex, may be admit-
17 ted for such purpose under regulations of the Attorney
18 General promulgated after consultation with the Secretar-
19 ies of State and Labor. For purposes of this Act, including
20 the issuance of entry documents and the application of
21 subsection (b), such alien shall be treated as if seeking
22 classification, or classifiable, as a nonimmigrant under
23 section 101(a)(15). The admission of an alien who is a
24 citizen of Mexico shall be subject to paragraphs (3), (4),
25 and (5). For purposes of this paragraph and paragraphs

1 (3), (4), and (5), the term “citizen of Mexico” means “citi-
2 zen” as defined in Annex 1608 of NAFTA.

3 “(3) The Attorney General shall establish an annual
4 numerical limit on admissions under paragraph (2) of
5 aliens who are citizens of Mexico, as set forth in Appendix
6 1603.D.4 of Annex 1603 of the NAFTA. Subject to para-
7 graph (4), the annual numerical limit—

8 “(A) beginning with the second year that
9 NAFTA is in force, may be increased in accordance
10 with the provisions of paragraph 5(a) of Section D
11 of such Annex, and

12 “(B) shall cease to apply as provided for in
13 paragraph 3 of such Appendix.

14 “(4) The annual numerical limit referred to in para-
15 graph (3) may be increased or shall cease to apply (other
16 than by operation of paragraph 3 of such Appendix) only
17 if—

18 “(A) the President has obtained advice regard-
19 ing the proposed action from the appropriate advi-
20 sory committees established under section 135 of the
21 Trade Act of 1974 (19 U.S.C. 2155);

22 “(B) the President has submitted a report to
23 the Committee on the Judiciary of the Senate and
24 the Committee on the Judiciary of the House of
25 Representatives that sets forth—

1 “(i) the action proposed to be taken and
2 the reasons therefor, and

3 “(ii) the advice obtained under subpara-
4 graph (A);

5 “(C) a period of at least 60 calendar days that
6 begins on the first day on which the President has
7 met the requirements of subparagraphs (A) and (B)
8 with respect to such action has expired; and

9 “(D) the President has consulted with such
10 committees regarding the proposed action during the
11 period referred to in subparagraph (C).

12 “(5) During the period that the provisions of Appen-
13 dix 1603.D.4 of Annex 1603 of the NAFTA apply, the
14 entry of an alien who is a citizen of Mexico under and
15 pursuant to the provisions of Section D of Annex 1603
16 of NAFTA shall be subject to the attestation requirement
17 of section 212(m), in the case of a registered nurse, or
18 the application requirement of section 212(n), in the case
19 of all other professions set out in Appendix 1603.D.1 of
20 Annex 1603 of NAFTA, and the petition requirement of
21 subsection (c), to the extent and in the manner prescribed
22 in regulations promulgated by the Secretary of Labor,
23 with respect to sections 212(m) and 212(n), and the At-
24 torney General, with respect to subsection (c).”.

1 (c) LABOR DISPUTES.—Section 214 of the Immigra-
2 tion and Nationality Act (8 U.S.C. 1184) is amended by
3 adding at the end the following new subsection:

4 “(j) Notwithstanding any other provision of this Act,
5 an alien who is a citizen of Canada or Mexico who seeks
6 to enter the United States under and pursuant to the pro-
7 visions of Section B, Section C, or Section D of Annex
8 1603 of the North American Free Trade Agreement, shall
9 not be classified as a nonimmigrant under such provisions
10 if there is in progress a strike or lockout in the course
11 of a labor dispute in the occupational classification at the
12 place or intended place of employment, unless such alien
13 establishes, pursuant to regulations promulgated by the
14 Attorney General, that the alien’s entry will not affect ad-
15 versely the settlement of the strike or lockout or the em-
16 ployment of any person who is involved in the strike or
17 lockout. Notice of a determination under this subsection
18 shall be given as may be required by paragraph 3 of article
19 1603 of such Agreement. For purposes of this subsection,
20 the term ‘citizen of Mexico’ means ‘citizen’ as defined in
21 Annex 1608 of such Agreement.”.

22 **SEC. 342. EFFECTIVE DATE.**

23 The provisions of this subtitle take effect on the date
24 the Agreement enters into force with respect to the United
25 States.

Subtitle E—Standards

PART 1—STANDARDS AND MEASURES

SEC. 351. STANDARDS AND SANITARY AND PHYTOSANITARY MEASURES.

(a) IN GENERAL.—Title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 et seq.) is amended by inserting at the end the following new subtitle:

“Subtitle E—Standards and Measures Under the North American Free Trade Agreement

“CHAPTER 1—SANITARY AND PHYTOSANITARY MEASURES

“SEC. 461. GENERAL.

“Nothing in this chapter may be construed—

“(1) to prohibit a Federal agency or State agency from engaging in activity related to sanitary or phytosanitary measures to protect human, animal, or plant life or health; or

“(2) to limit the authority of a Federal agency or State agency to determine the level of protection of human, animal, or plant life or health the agency considers appropriate.

“SEC. 462. INQUIRY POINT.

“The standards information center maintained under section 414 shall, in addition to the functions specified

1 therein, make available to the public relevant documents,
2 at such reasonable fees as the Secretary of Commerce may
3 prescribe, and information regarding—

4 “(1) any sanitary or phytosanitary measure of
5 general application, including any control or inspec-
6 tion procedure or approval procedure proposed,
7 adopted, or maintained by a Federal or State agen-
8 cy;

9 “(2) the procedures of a Federal or State agen-
10 cy for risk assessment, and factors the agency con-
11 siders in conducting the assessment and in establish-
12 ing the levels of protection that the agency considers
13 appropriate;

14 “(3) the membership and participation of the
15 Federal Government and State governments in inter-
16 national and regional sanitary and phytosanitary or-
17 ganizations and systems, and in bilateral and multi-
18 lateral arrangements regarding sanitary and
19 phytosanitary measures, and the provisions of those
20 systems and arrangements; and

21 “(4) the location of notices of the type required
22 under article 719 of the NAFTA, or where the infor-
23 mation contained in such notices can be obtained.

1 **“SEC. 463. CHAPTER DEFINITIONS.**

2 “Notwithstanding section 451, for purposes of this
3 chapter—

4 “(1) ANIMAL.—The term ‘animal’ includes fish,
5 bees, and wild fauna.

6 “(2) APPROVAL PROCEDURE.—The term ‘ap-
7 proval procedure’ means any registration, notifica-
8 tion, or other mandatory administrative procedure
9 for—

10 “(A) approving the use of an additive for
11 a stated purpose or under stated conditions, or

12 “(B) establishing a tolerance for a stated
13 purpose or under stated conditions for a con-
14 taminant,

15 in a food, beverage, or feedstuff prior to permitting
16 the use of the additive or the marketing of a food,
17 beverage, or feedstuff containing the additive or con-
18 taminant.

19 “(3) CONTAMINANT.—The term ‘contaminant’
20 includes pesticide and veterinary drug residues and
21 extraneous matter.

22 “(4) CONTROL OR INSPECTION PROCEDURE.—
23 The term ‘control or inspection procedure’ means
24 any procedure used, directly or indirectly, to deter-
25 mine that a sanitary or phytosanitary measure is
26 fulfilled, including sampling, testing, inspection,

1 evaluation, verification, monitoring, auditing, assur-
2 ance of conformity, accreditation, registration, cer-
3 tification, or other procedure involving the physical
4 examination of a good, of the packaging of a good,
5 or of the equipment or facilities directly related to
6 production, marketing, or use of a good, but does
7 not mean an approval procedure.

8 “(5) PLANT.—The term ‘plant’ includes wild
9 flora.

10 “(6) RISK ASSESSMENT.—The term ‘risk as-
11 sessment’ means an evaluation of—

12 “(A) the potential for the introduction, es-
13 tablishment or spread of a pest or disease and
14 associated biological and economic con-
15 sequences; or

16 “(B) the potential for adverse effects on
17 human or animal life or health arising from the
18 presence of an additive, contaminant, toxin or
19 disease-causing organism in a food, beverage, or
20 feedstuff.

21 “(7) SANITARY OR PHYTOSANITARY MEAS-
22 URE.—

23 “(A) IN GENERAL.—The term ‘sanitary or
24 phytosanitary measure’ means a measure to—

1 “(i) protect animal or plant life or
2 health in the United States from risks
3 arising from the introduction, establish-
4 ment, or spread of a pest or disease;

5 “(ii) protect human or animal life or
6 health in the United States from risks
7 arising from the presence of an additive,
8 contaminant, toxin, or disease-causing or-
9 ganism in a food, beverage, or feedstuff;

10 “(iii) protect human life or health in
11 the United States from risks arising from
12 a disease-causing organism or pest carried
13 by an animal or plant, or a product there-
14 of; or

15 “(iv) prevent or limit other damage in
16 the United States arising from the intro-
17 duction, establishment, or spread of a pest.

18 “(B) FORM.—The form of a sanitary or
19 phytosanitary measure includes—

20 “(i) end product criteria;

21 “(ii) a product-related processing or
22 production method;

23 “(iii) a testing, inspection, certifi-
24 cation, or approval procedure;

25 “(iv) a relevant statistical method;

1 “(v) a sampling procedure;

2 “(vi) a method of risk assessment;

3 “(vii) a packaging and labeling re-
4 quirement directly related to food safety;
5 and

6 “(viii) a quarantine treatment, such
7 as a relevant requirement associated with
8 the transportation of animals or plants or
9 with material necessary for their survival
10 during transportation.

11 **“CHAPTER 2—STANDARDS-RELATED**
12 **MEASURES**

13 **“SEC. 471. GENERAL.**

14 “(a) NO BAR TO ENGAGING IN STANDARDS ACTIV-
15 ITY.—Nothing in this chapter shall be construed—

16 “(1) to prohibit a Federal agency from engag-
17 ing in activity related to standards-related measures,
18 including any such measure relating to safety, the
19 protection of human, animal, or plant life or health,
20 the environment or consumers; or

21 “(2) to limit the authority of a Federal agency
22 to determine the level it considers appropriate of
23 safety or of protection of human, animal, or plant
24 life or health, the environment or consumers.

25 “(b) EXCLUSION.—This chapter does not apply to—

1 “(1) technical specifications prepared by a Fed-
2 eral agency for production or consumption require-
3 ments of the agency; or

4 “(2) sanitary or phytosanitary measures under
5 chapter 1.

6 **“SEC. 472. INQUIRY POINT.**

7 “The standards information center maintained under
8 section 414 shall, in addition to the functions specified
9 therein, make available to the public relevant documents,
10 at such reasonable fees as the Secretary of Commerce may
11 prescribe, and information regarding—

12 “(1) the membership and participation of the
13 Federal Government, State governments, and rel-
14 evant nongovernmental bodies in the United States
15 in international and regional standardizing bodies
16 and conformity assessment systems, and in bilateral
17 and multilateral arrangements regarding standards-
18 related measures, and the provisions of those sys-
19 tems and arrangements;

20 “(2) the location of notices of the type required
21 under article 909 of the NAFTA, or where the infor-
22 mation contained in such notice can be obtained;
23 and

24 “(3) the Federal agency procedures for assess-
25 ment of risk, and factors the agency considers in

1 conducting the assessment and establishing the lev-
2 els of protection that the agency considers appro-
3 prium.

4 **“SEC. 473. CHAPTER DEFINITIONS.**

5 “Notwithstanding section 451, for purposes of this
6 chapter—

7 “(1) APPROVAL PROCEDURE.—The term ‘ap-
8 proval procedure’ means any registration, notifica-
9 tion, or other mandatory administrative procedure
10 for granting permission for a good or service to be
11 produced, marketed, or used for a stated purpose or
12 under stated conditions.

13 “(2) CONFORMITY ASSESSMENT PROCEDURE.—
14 The term ‘conformity assessment procedure’ means
15 any procedure used, directly or indirectly, to deter-
16 mine that a technical regulation or standard is ful-
17 filled, including sampling, testing, inspection, evalua-
18 tion, verification, monitoring, auditing, assurance of
19 conformity, accreditation, registration, or approval
20 used for such a purpose, but does not mean an ap-
21 proval procedure.

22 “(3) OBJECTIVE.—The term ‘objective’ in-
23 cludes—

24 “(A) safety,

1 “(B) protection of human, animal, or plant
2 life or health, the environment or consumers,
3 including matters relating to quality and iden-
4 tifiability of goods or services, and

5 “(C) sustainable development,
6 but does not include the protection of domestic pro-
7 duction.

8 “(4) SERVICE.—The term ‘service’ means a
9 land transportation service or a telecommunications
10 service.

11 “(5) STANDARD.—The term ‘standard’
12 means—

13 “(A) characteristics for a good or a service,

14 “(B) characteristics, rules, or guidelines
15 for—

16 “(i) processes or production methods
17 relating to such good, or

18 “(ii) operating methods relating to
19 such service, and

20 “(C) provisions specifying terminology,
21 symbols, packaging, marking, or labelling for—

22 “(i) a good or its related process or
23 production methods, or

24 “(ii) a service or its related operating
25 methods,

1 for common and repeated use, including explan-
2 atory and other related provisions set out in a
3 document approved by a standardizing body,
4 with which compliance is not mandatory.

5 “(6) STANDARDS-RELATED MEASURE.—The
6 term ‘standards-related measure’ means a standard,
7 technical regulation, or conformity assessment proce-
8 dure.

9 “(7) TECHNICAL REGULATION.—The term
10 ‘technical regulation’ means—

11 “(A) characteristics or their related proc-
12 esses and production methods for a good,

13 “(B) characteristics for a service or its re-
14 lated operating methods, or

15 “(C) provisions specifying terminology,
16 symbols, packaging, marking, or labelling for—

17 “(i) a good or its related process or
18 production method, or

19 “(ii) a service or its related operating
20 method,

21 set out in a document, including applicable adminis-
22 trative, explanatory, and other related provisions,
23 with which compliance is mandatory.

24 “(8) TELECOMMUNICATIONS SERVICE.—The
25 term ‘telecommunications service’ means a service

1 provided by means of the transmission and reception
2 of signals by any electromagnetic means, but does
3 not mean the cable, broadcast, or other electro-
4 magnetic distribution of radio or television program-
5 ming to the public generally.

6 **“CHAPTER 3—SUBTITLE DEFINITIONS**

7 **“SEC. 481. DEFINITIONS.**

8 “Notwithstanding section 451, for purposes of this
9 subtitle—

10 “(1) NAFTA.—The term ‘NAFTA’ means the
11 North American Free Trade Agreement.

12 “(2) STATE.—The term ‘State’ means any of
13 the several States, the District of Columbia, and the
14 Commonwealth of Puerto Rico.”.

15 (b) TECHNICAL AMENDMENTS.—

16 (1) DEFINITION OF TRADE REPRESENTA-
17 TIVE.—Section 451(12) of the Trade Agreements
18 Act of 1979 is amended to read as follows:

19 “(12) TRADE REPRESENTATIVE.—The term
20 ‘Trade Representative’ means the United States
21 Trade Representative.”.

22 (2) CONFORMING AMENDMENTS.—Title IV of
23 the Trade Agreement Act of 1979 is further amend-
24 ed—

1 (A) by striking out “Special Representa-
 2 tive” each place it appears and inserting
 3 “Trade Representative”; and

4 (B) in the section heading to section 411,
 5 by striking out “**SPECIAL REPRESENTATIVE**”
 6 and inserting “**TRADE REPRESENTATIVE**”.

7 **SEC. 352. TRANSPORTATION.**

8 No regulation issued by the Secretary of Transpor-
 9 tation implementing a recommendation of the Land
 10 Transportation Standards Subcommittee established
 11 under article 913(5)(a)(i) of the Agreement may take ef-
 12 fect before the date 90 days after the date of issuance.

13 **PART 2—AGRICULTURAL STANDARDS**

14 **SEC. 361. AGRICULTURAL TECHNICAL AND CONFORMING**
 15 **AMENDMENTS.**

16 (a) FEDERAL SEED ACT.—Section 302(e)(1) of the
 17 Federal Seed Act (7 U.S.C. 1582(e)(1)) is amended by
 18 inserting “or Mexico” after “Canada”.

19 (b) IMPORTATION OF ANIMALS.—The first sentence
 20 of section 6 of the Act of August 30, 1890 (26 Stat. 416,
 21 chapter 839; 21 U.S.C. 104), is amended by striking “:
 22 *Provided*” and all that follows through the period at the
 23 end of the sentence and inserting “, except that the Sec-
 24 retary of Agriculture, in accordance with such regulations
 25 as the Secretary may issue, may (1) permit the importa-

1 tion of cattle, sheep, or other ruminants, and swine, from
2 Canada or Mexico, and (2) permit the importation from
3 the British Virgin Islands into the Virgin Islands of the
4 United States, for slaughter only, of cattle that have been
5 infested with or exposed to ticks on being freed from the
6 ticks.”.

7 (c) INSPECTION OF ANIMALS.—Section 10 of the Act
8 of August 30, 1890 (26 Stat. 417, chapter 839; 21 U.S.C.
9 105), is amended—

10 (1) by inserting above “SEC. 10.” the following
11 new section heading:

12 **“SEC. 10. INSPECTION OF ANIMALS.”;**

13 (2) by striking “SEC. 10. That the Secretary of
14 Agriculture shall” and inserting “(a) IN GEN-
15 ERAL.—Except as provided in subsection (b), the
16 Secretary of Agriculture shall”; and

17 (3) by adding at the end the following new sub-
18 section:

19 “(b) EXCEPTION.—The Secretary of Agriculture, in
20 accordance with such regulations as the Secretary may
21 issue, may waive any provision of subsection (a) in the
22 case of shipments between the United States and Canada
23 or Mexico.”.

24 (d) DISEASE-FREE COUNTRIES OR REGIONS.—

1 (1) TARIFF ACT OF 1930.—Section 306 of the
2 Tariff Act of 1930 (19 U.S.C. 1306) is amended—

3 (A) in subsection (a), by striking “RIN-
4 DERPEST AND FOOT-AND-MOUTH DISEASE.—If
5 the Secretary of Agriculture” and inserting “IN
6 GENERAL.—Except as provided in subsection
7 (b), if the Secretary of Agriculture”; and

8 (B) by striking subsection (b) and insert-
9 ing the following new subsection:

10 “(b) EXCEPTION.—The Secretary of Agriculture may
11 permit, subject to such terms and conditions as the Sec-
12 retary determines appropriate, the importation of cattle,
13 sheep, other ruminants, or swine (including embryos of the
14 animals), or the fresh, chilled, or frozen meat of the ani-
15 mals, from a region if the Secretary determines that the
16 region from which the animal or meat originated is, and
17 is likely to remain, free from rinderpest and foot-and-
18 mouth disease.”.

19 (2) HONEYBEE ACT.—The first section of the
20 Act of August 31, 1922 (commonly known as the
21 “Honeybee Act”) (42 Stat. 833, chapter 301; 7
22 U.S.C. 281), is amended—

23 (A) in subsection (a)—

24 (i) by striking “, or” at the end of
25 paragraph (1) and inserting a semicolon;

1 (ii) by striking the period at the end
2 of paragraph (2) and inserting “; or”; and

3 (iii) by adding at the end the follow-
4 ing new paragraph:

5 “(3) from Canada or Mexico, subject to such
6 terms and conditions as the Secretary of Agriculture
7 determines appropriate, if the Secretary determines
8 that the region of Canada or Mexico from which the
9 honeybees originated is, and is likely to remain, free
10 of diseases or parasites harmful to honeybees, and
11 undesirable species or subspecies of honeybees.”; and

12 (B) in subsection (b)—

13 (i) by inserting “(1)” after “imported
14 into the United States only from”; and

15 (ii) by inserting before the period the
16 following: “, or (2) Canada or Mexico, if
17 the Secretary of Agriculture determines
18 that the region of Canada or Mexico from
19 which the imports originate is, and is likely
20 to remain, free of undesirable species or
21 subspecies of honeybees”.

22 (e) POULTRY PRODUCTS INSPECTION ACT.—Section
23 17(d) of the Poultry Products Inspection Act (21 U.S.C.
24 466(d)) is amended—

1 (1) in paragraph (1), by inserting after “Not-
2 withstanding any other provision of law,” the follow-
3 ing: “except as provided in paragraph (2),”;

4 (2) by redesignating paragraphs (2) and (3) as
5 paragraphs (3) and (4), respectively; and

6 (3) by inserting after paragraph (1) the follow-
7 ing new paragraph:

8 “(2)(A) Notwithstanding any other provision of law,
9 all poultry, or parts or products of poultry, capable of use
10 as human food offered for importation into the United
11 States from Canada and Mexico shall—

12 “(i) comply with paragraph (1); or

13 “(ii)(I) be subject to inspection, sanitary, qual-
14 ity, species verification, and residue standards that
15 are equivalent to United States standards; and

16 “(II) have been processed in facilities and
17 under conditions that meet standards that are equiv-
18 alent to United States standards.

19 “(B) The Secretary may treat as equivalent to a
20 United States standard a standard of Canada or Mexico
21 described in subparagraph (A)(ii) if the exporting country
22 provides the Secretary with scientific evidence or other in-
23 formation, in accordance with risk assessment methodolo-
24 gies agreed to by the Secretary and the exporting country,
25 to demonstrate that the standard of the exporting country

1 achieves the level of protection that the Secretary consid-
2 ers appropriate.

3 “(C) The Secretary may—

4 “(i) determine, on a scientific basis, that the
5 standard of the exporting country does not achieve
6 the level of protection that the Secretary considers
7 appropriate; and

8 “(ii) provide the basis for the determination in
9 writing to the exporting country on request.”.

10 (f) FEDERAL MEAT INSPECTION ACT.—Section
11 20(e) of the Federal Meat Inspection Act (21 U.S.C.
12 620(e)) is amended—

13 (1) by striking “not be limited to—” and in-
14 serting “not be limited to the following:”;

15 (2) by striking paragraph (1);

16 (3) by redesignating paragraphs (2) through
17 (6) as paragraphs (3) through (7), respectively;

18 (4) by inserting after “not be limited to the fol-
19 lowing:” (as amended by paragraph (1)) the follow-
20 ing new paragraphs:

21 “(1)(A) Subject to subparagraphs (B) and (C),
22 a certification by the Secretary that foreign plants
23 in Canada and Mexico that export carcasses or meat
24 or meat products referred to in subsection (a) have
25 complied with paragraph (2) or with requirements

1 that are equivalent to United States requirements
2 with regard to all inspection and building construc-
3 tion standards, and all other provisions of this Act
4 and regulations issued under this Act.

5 “(B) Subject to subparagraph (C), the Sec-
6 retary may treat as equivalent to a United States re-
7 quirement a requirement described in subparagraph
8 (A) if the exporting country provides the Secretary
9 with scientific evidence or other information, in ac-
10 cordance with risk assessment methodologies agreed
11 to by the Secretary and the exporting country, to
12 demonstrate that the requirement or standard of the
13 exporting country achieves the level of protection
14 that the Secretary considers appropriate.

15 “(C) The Secretary may—

16 “(i) determine, on a scientific basis, that a
17 requirement of an exporting country does not
18 achieve the level of protection that the Sec-
19 retary considers appropriate; and

20 “(ii) provide the basis for the determina-
21 tion to the exporting country in writing on re-
22 quest.

23 “(2) A certification by the Secretary that, ex-
24 cept as provided in paragraph (1), foreign plants
25 that export carcasses or meat or meat products re-

1 ferred to in subsection (a) have complied with re-
2 quirements that are at least equal to all inspection
3 and building construction standards and all other
4 provisions of this Act and regulations issued under
5 this Act.”;

6 (5) in paragraphs (3) through (7) (as redesign-
7 nated by paragraph (3)), by striking “the” the first
8 place it appears in each paragraph and inserting
9 “The”;

10 (6) in paragraphs (3) through (5) (as so redes-
11 ignated), by striking the semicolon at the end of
12 each paragraph and inserting a period; and

13 (7) in paragraph (6) (as so redesignated), by
14 striking “; and” at the end and inserting a period.

15 (g) PEANUT BUTTER AND PEANUT PASTE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), all peanut butter and peanut paste in the
18 United States domestic market shall be processed
19 from peanuts that meet the quality standards estab-
20 lished for peanuts under Marketing Agreement No.
21 146.

22 (2) IMPORTS.—Peanut butter and peanut paste
23 imported into the United States shall comply with
24 paragraph (1) or with sanitary measures that
25 achieve at least the same level of sanitary protection.

1 (h) ANIMAL HEALTH BIOCONTAINMENT FACILITY.—

2 (1) GRANT FOR CONSTRUCTION.—The Sec-
3 retary of Agriculture shall make a grant to a land
4 grant college or university described in paragraph
5 (2) for the construction of a facility at the college
6 or university for the conduct of research in animal
7 health, disease-transmitting insects, and toxic chemi-
8 cals that requires the use of biocontainment facilities
9 and equipment. The facility to be constructed with
10 the grant shall be known as the “Southwest Re-
11 gional Animal Health Biocontainment Facility”.

12 (2) GRANT RECIPIENT DESCRIBED.—To be eli-
13 gible for the grant under paragraph (1), a land
14 grant college or university must be—

15 (A) located in a State adjacent to the
16 international border with Mexico; and

17 (B) determined by the Secretary of Agri-
18 culture to have an established program in ani-
19 mal health research and education and to have
20 a collaborative relationship with one or more
21 colleges of veterinary medicine or universities
22 located in Mexico.

23 (3) ACTIVITIES OF THE FACILITY.—The facility
24 constructed using the grant made under paragraph

1 (1) shall be used for conducting the following activi-
2 ties:

3 (A) The biocontainment facility shall offer
4 the ability to organize multidisciplinary inter-
5 national teams working on basic and applied re-
6 search on diagnostic method development and
7 disease control strategies, including develop-
8 ment of vaccines.

9 (B) The biocontainment facility shall sup-
10 port research that will improve the scientific
11 basis for regulatory activities, decreasing the
12 need for new regulatory programs and enhanc-
13 ing international trade.

14 (C) The biocontainment facility shall allow
15 academic institutions, governmental agencies,
16 and the private sector to conduct research in
17 basic and applied research biology, epidemiol-
18 ogy, pathogenesis, host response, and diagnostic
19 methods, on disease agents that threaten the
20 livestock industries of the United States and
21 Mexico.

22 (D) The biocontainment facility may be
23 used to support research involving food safety,
24 toxicology, environmental pollutants,
25 radioisotopes, recombinant microorganisms, and

1 selected naturally resistant or transgenic ani-
2 mals.

3 (4) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated for each fis-
5 cal year such sums as are necessary to carry out this
6 subsection.

7 (i) REPORTS ON INSPECTION OF IMPORTED MEAT,
8 POULTRY, OTHER FOODS, ANIMALS, AND PLANTS.—

9 (1) DEFINITIONS.—As used in this subsection:

10 (A) IMPORTS.—The term “imports” means
11 any meat, poultry, other food, animal, or plant
12 that is imported into the United States in com-
13 mercially significant quantities.

14 (B) SECRETARY.—The term “Secretary”
15 means the Secretary of Agriculture.

16 (2) IN GENERAL.—In consultation with rep-
17 resentatives of other appropriate agencies, the Sec-
18 retary shall prepare an annual report on the impact
19 of the Agreement on the inspection of imports.

20 (3) CONTENTS OF REPORTS.—The report re-
21 quired under this subsection shall, to the maximum
22 extent practicable, include a description of—

23 (A) the quantity or, with respect to the
24 Customs Service, the number of shipments, of
25 imports from a NAFTA country that are in-

1 spected at the borders of the United States with
2 Canada and Mexico during the prior year;

3 (B) any change in the level or types of in-
4 spections of imports in each NAFTA country
5 during the prior year;

6 (C) in any case in which the Secretary has
7 determined that the inspection system of an-
8 other NAFTA country is equivalent to the in-
9 spection system of the United States, the rea-
10 sons supporting the determination of the Sec-
11 retary;

12 (D) the incidence of violations of inspec-
13 tion requirements by imports from NAFTA
14 countries during the prior year—

15 (i) at the borders of the United States
16 with Mexico or Canada; or

17 (ii) at the last point of inspection in
18 a NAFTA country prior to shipment to the
19 United States if the agency accepts inspec-
20 tion in that country;

21 (E) the incidence of violations of inspection
22 requirements of imports to the United States
23 from Mexico or Canada prior to the implemen-
24 tation of the Agreement;

1 (F) any additional cost associated with
2 maintaining an adequate inspection system of
3 imports as a result of the implementation of the
4 Agreement;

5 (G) any incidence of transshipment of im-
6 ports—

7 (i) that originate in a country other
8 than a NAFTA country;

9 (ii) that are shipped to the United
10 States through a NAFTA country during
11 the prior year; and

12 (iii) that are incorrectly represented
13 by the importer to qualify for preferential
14 treatment under the Agreement;

15 (H) the quantity and results of any mon-
16 itoring by the United States of equivalent in-
17 spection systems of imports in other NAFTA
18 countries during the prior year;

19 (I) the use by other NAFTA countries of
20 sanitary and phytosanitary measures (as de-
21 fined in the Agreement) to limit exports of
22 United States meat, poultry, other foods, ani-
23 mals, and plants to the countries during the
24 prior year; and

1 (J) any other information the Secretary
2 determines to be appropriate.

3 (4) FREQUENCY OF REPORTS.—The Secretary
4 shall submit—

5 (A) the initial report required under this
6 subsection not later than January 31, 1995;
7 and

8 (B) an annual report required under this
9 subsection not later than 1 year after the date
10 of the submission of the initial report and the
11 end of each 1-year period thereafter through
12 calendar year 2004.

13 (5) REPORT TO CONGRESS.—The Secretary
14 shall prepare and submit the report required under
15 this subsection to the Committee on Agriculture of
16 the House of Representatives and the Committee on
17 Agriculture, Nutrition, and Forestry of the Senate.

18 **Subtitle F—Corporate Average**
19 **Fuel Economy**

20 **SEC. 371. CORPORATE AVERAGE FUEL ECONOMY.**

21 (a) IN GENERAL.—Section 503(b)(2) of the Motor
22 Vehicle Information and Cost Savings Act (15 U.S.C.
23 2003(b)(2)) is amended by adding at the end the following
24 new subparagraph:

1 “(G)(i) In accordance with the schedule set out
2 in clause (ii), an automobile shall be considered do-
3 mestically manufactured in a model year if at least
4 75 percent of the cost to the manufacturer of the
5 automobile is attributable to value added in the
6 United States, Canada, or Mexico, unless the assem-
7 bly of the automobile is completed in Canada or
8 Mexico and the automobile is not imported into the
9 United States prior to the expiration of 30 days fol-
10 lowing the end of that model year.

11 “(ii) Clause (i) shall apply to all automobiles
12 manufactured by a manufacturer and sold in the
13 United States, wherever assembled, in accordance
14 with the following schedule:

15 “(I) With respect to a manufacturer that
16 initiated the assembly of automobiles in Mexico
17 before model year 1992, the manufacturer may
18 elect, at any time between January 1, 1997,
19 and January 1, 2004, to have clause (i) apply
20 to all automobiles it manufactures, beginning
21 with the model year commencing after the date
22 of such election.

23 “(II) With respect to a manufacturer initi-
24 ating the assembly of automobiles in Mexico
25 after model year 1991, clause (i) shall apply to

1 all automobiles it manufactures, beginning with
2 the model year commencing after January 1,
3 1994, or the model year commencing after the
4 date that the manufacturer initiates the assem-
5 bly of automobiles in Mexico, whichever is later.

6 “(III) With respect to a manufacturer not
7 described by subclause (I) or (II) assembling
8 automobiles in the United States or Canada but
9 not in Mexico, the manufacturer may elect, at
10 any time between January 1, 1997, and Janu-
11 ary 1, 2004, to have clause (i) apply to all auto-
12 mobiles it manufactures, beginning with the
13 model year commencing after the date of such
14 election, except that if such manufacturer initi-
15 ates the assembly of automobiles in Mexico be-
16 fore making such election, this subclause shall
17 not apply and the manufacturer shall be subject
18 to clause (II).

19 “(IV) With respect to a manufacturer not
20 assembling automobiles in the United States,
21 Canada, or Mexico, clause (i) shall apply to all
22 automobiles it manufactures, beginning with the
23 model year commencing after January 1, 1994.

24 “(V) With respect to a manufacturer au-
25 thorized to make an election under subclause

1 (I) or (III) which has not made that election
 2 within the specified period, clause (i) shall
 3 apply to all automobiles it manufactures, begin-
 4 ning with the model year commencing after
 5 January 1, 2004.

6 “(iii) The Secretary shall prescribe reasonable
 7 procedures for elections under this subparagraph,
 8 and the EPA Administrator may prescribe rules for
 9 purposes of carrying out this subparagraph.”.

10 (b) CONFORMING AMENDMENTS.—The first sentence
 11 of section 503(b)(2)(E) of the Motor Vehicle Information
 12 and Cost Savings Act (15 U.S.C. 2003(b)(2)(E)) is
 13 amended—

14 (1) by striking “An” and inserting “Except as
 15 provided in subparagraph (G), an”, and

16 (2) in the last sentence, by striking “this sub-
 17 paragraph” and inserting “this subparagraph and
 18 subparagraph (G)”.

19 **Subtitle G—Government** 20 **Procurement**

21 **SEC. 381. GOVERNMENT PROCUREMENT.**

22 (a) IN GENERAL.—Section 301 of the Trade Agree-
 23 ments Act of 1979 (19 U.S.C. 2511) is amended—

1 (1) in subsection (a) by striking “The Presi-
2 dent” and inserting “Subject to subsection (f) of
3 this section, the President”;

4 (2) by inserting “or the North American Free
5 Trade Agreement” after “the Agreement” in para-
6 graph (1) of subsection (b); and

7 (3) by adding at the end the following new sub-
8 sections:

9 “(e) PROCUREMENT PROCEDURES BY CERTAIN FED-
10 ERAL AGENCIES.—Notwithstanding any other provision of
11 law, the President may direct any agency of the United
12 States listed in Annex 1001.1a–2 of the North American
13 Free Trade Agreement to procure eligible products in
14 compliance with the procedural provisions of chapter 10
15 of such Agreement.

16 “(f) SMALL BUSINESS AND MINORITY PREF-
17 ERENCES.—The authority of the President under sub-
18 section (a) of this section to waive any law, regulation,
19 procedure, or practice regarding Government procurement
20 does not authorize the waiver of any small business or mi-
21 nority preference.”.

22 (b) RECIPROCAL COMPETITIVE PROCUREMENT
23 PRACTICES.—Section 302(a) of such Act (19 U.S.C.
24 2512(a)) is amended by striking “would otherwise be eligi-
25 ble products” in paragraph (1) and inserting “are prod-

1 ucts covered under the Agreement for procurement by the
2 United States”.

3 (c) DEFINITION OF ELIGIBLE PRODUCT.—Section
4 308(4)(A) of such Act (19 U.S.C. 2518(4)(A)) is amended
5 to read as follows:

6 “(A) IN GENERAL.—The term ‘eligible
7 product’ means, with respect to any foreign
8 country or instrumentality that is—

9 “(i) a party to the Agreement, a prod-
10 uct or service of that country or instru-
11 mentality which is covered under the
12 Agreement for procurement by the United
13 States; or

14 “(ii) a party to the North American
15 Free Trade Agreement, a product or serv-
16 ice of that country or instrumentality
17 which is covered under the North Amer-
18 ican Free Trade Agreement for procure-
19 ment by the United States.”.

20 (d) CONFORMING AMENDMENTS.—Section 401 of the
21 Rural Electrification Act of 1938 (7 U.S.C. 903 note) is
22 amended by inserting “, Mexico, or Canada” after “the
23 United States” each place it appears.

1 (e) EFFECTIVE DATE.—The provisions of this sub-
2 title take effect on the date the Agreement enters into
3 force with respect to the United States.

4 **TITLE IV—DISPUTE SETTLE-**
5 **MENT IN ANTIDUMPING AND**
6 **COUNTERVAILING DUTY**
7 **CASES**

8 **Subtitle A—Organizational, Admin-**
9 **istrative, and Procedural Provi-**
10 **sions Regarding the Implemen-**
11 **tation of Chapter 19 of the**
12 **Agreement**

13 **SEC. 401. REFERENCES IN SUBTITLE.**

14 Any reference in this subtitle to an Annex, chapter,
15 or article shall be considered to be a reference to the re-
16 spective Annex, chapter, or article of the Agreement.

17 **SEC. 402. ORGANIZATIONAL AND ADMINISTRATIVE PROVI-**
18 **SIONS.**

19 (a) CRITERIA FOR SELECTION OF INDIVIDUALS TO
20 SERVE ON PANELS AND COMMITTEES.—

21 (1) IN GENERAL.—The selection of individuals
22 under this section for—

23 (A) placement on lists prepared by the
24 interagency group under subsection (c)(2)(B)(i)
25 and (ii);

1 (B) placement on preliminary candidate
2 lists under subsection (c)(3)(A);

3 (C) placement on final candidate lists
4 under subsection (c)(4)(A);

5 (D) placement by the Trade Representative
6 on the rosters described in paragraph 1 of
7 Annex 1901.2 and paragraph 1 of Annex
8 1904.13; and

9 (E) appointment by the Trade Representa-
10 tive for service on the panels and committees
11 convened under chapter 19;

12 shall be made on the basis of the criteria provided
13 in paragraph 1 of Annex 1901.2 and paragraph 1 of
14 Annex 1904.13 and shall be made without regard to
15 political affiliation.

16 (2) ADDITIONAL CRITERIA FOR ROSTER PLACE-
17 MENTS AND APPOINTMENTS UNDER PARAGRAPH 1
18 OF ANNEX 1901.2.—Rosters described in paragraph 1
19 of Annex 1901.2 shall include, to the fullest extent
20 practicable, judges and former judges who meet the
21 criteria referred to in paragraph (1). The Trade
22 Representative shall, subject to subsection (b), ap-
23 point judges to binational panels convened under
24 chapter 19, extraordinary challenge committees con-
25 vened under chapter 19, and special committees es-

1 tablished under article 1905, where such judges
2 offer and are available to serve and such service is
3 authorized by the chief judge of the court on which
4 they sit.

5 (b) SELECTION OF CERTAIN JUDGES TO SERVE ON
6 PANELS AND COMMITTEES.—

7 (1) APPLICABILITY.—This subsection applies
8 only with respect to the selection of individuals for
9 binational panels convened under chapter 19, ex-
10 extraordinary challenge committees convened under
11 chapter 19, and special committees established
12 under article 1905, who are judges of courts created
13 under article III of the Constitution of the United
14 States.

15 (2) CONSULTATION WITH CHIEF JUDGES.—The
16 Trade Representative shall consult, from time to
17 time, with the chief judges of the Federal judicial
18 circuits regarding the interest in, and availability
19 for, participation in binational panels, extraordinary
20 challenge committees, and special committees, of
21 judges within their respective circuits. If the chief
22 judge of a Federal judicial circuit determines that it
23 is appropriate for one or more judges within that
24 circuit to be included on a roster described in sub-
25 section (a)(1)(D), the chief judge shall identify all

1 such judges for the Chief Justice of the United
2 States who may, upon his or her approval, submit
3 the names of such judges to the Trade Representa-
4 tive. The Trade Representative shall include the
5 names of such judges on the roster.

6 (3) SUBMISSION OF LISTS TO CONGRESS.—The
7 Trade Representative shall submit to the Committee
8 on the Judiciary and the Committee on Ways and
9 Means of the House of Representatives and to the
10 Committee on Finance and the Committee on the
11 Judiciary of the Senate a list of all judges included
12 on a roster under paragraph (2). Such list shall be
13 submitted at the same time as the final candidate
14 lists are submitted under subsection (c)(4)(A) and
15 the final forms of amendments are submitted under
16 subsection (c)(4)(C)(iv).

17 (4) APPOINTMENT OF JUDGES TO PANELS OR
18 COMMITTEES.—At such time as the Trade Rep-
19 resentative proposes to appoint a judge described in
20 paragraph (1) to a binational panel, an extraor-
21 dinary challenge committee, or a special committee,
22 the Trade Representative shall consult with that
23 judge in order to ascertain whether the judge is
24 available for such appointment.

25 (c) SELECTION OF OTHER CANDIDATES.—

1 (1) APPLICABILITY.—This subsection applies
2 only with respect to the selection of individuals for
3 binational panels convened under chapter 19, ex-
4 traordinary challenge committees convened under
5 chapter 19, and special committees established
6 under article 1905, other than those individuals to
7 whom subsection (b) applies.

8 (2) INTERAGENCY GROUP.—

9 (A) ESTABLISHMENT.—There is estab-
10 lished within the interagency organization es-
11 tablished under section 242 of the Trade Ex-
12 pansion Act of 1962 (19 U.S.C. 1872) an inter-
13 agency group which shall—

14 (i) be chaired by the Trade Represent-
15 ative; and

16 (ii) consist of such officers (or the
17 designees thereof) of the United States
18 Government as the Trade Representative
19 considers appropriate.

20 (B) FUNCTIONS.—The interagency group
21 established under subparagraph (A) shall, in a
22 manner consistent with chapter 19—

23 (i) prepare by January 3 of each cal-
24 endar year—

1 (I) a list of individuals who are
2 qualified to serve as members of bina-
3 tional panels convened under chapter
4 19; and

5 (II) a list of individuals who are
6 qualified to serve on extraordinary
7 challenge committees convened under
8 chapter 19 and special committees es-
9 tablished under article 1905;

10 (ii) if the Trade Representative makes
11 a request under paragraph (4)(C)(i) with
12 respect to a final candidate list during any
13 calendar year, prepare by July 1 of such
14 calendar year a list of those individuals
15 who are qualified to be added to that final
16 candidate list;

17 (iii) exercise oversight of the adminis-
18 tration of the United States Section that is
19 authorized to be established under section
20 105; and

21 (iv) make recommendations to the
22 Trade Representative regarding the con-
23 vening of extraordinary challenge commit-
24 tees and special committees under chapter
25 19.

1 (3) PRELIMINARY CANDIDATE LISTS.—

2 (A) IN GENERAL.—The Trade Representa-
3 tive shall select individuals from the respective
4 lists prepared by the interagency group under
5 paragraph (2)(B)(i) for placement on—

6 (i) a preliminary candidate list of indi-
7 viduals eligible to serve as members of bi-
8 national panels under Annex 1901.2; and

9 (ii) a preliminary candidate list of in-
10 dividuals eligible for selection as members
11 of extraordinary challenge committees
12 under Annex 1904.13 and special commit-
13 tees under article 1905.

14 (B) SUBMISSION OF LISTS TO CONGRES-
15 SIONAL COMMITTEES.—

16 (i) IN GENERAL.—No later than Jan-
17 uary 3 of each calendar year, the Trade
18 Representative shall submit to the Com-
19 mittee on Finance of the Senate and the
20 Committee on Ways and Means of the
21 House of Representatives (hereafter in this
22 section referred to as the “appropriate
23 Congressional Committees”) the prelimi-
24 nary candidate lists of those individuals se-
25 lected by the Trade Representative under

1 subparagraph (A) to be candidates eligible
2 to serve on panels or committees convened
3 pursuant to chapter 19 during the 1-year
4 period beginning on April 1 of such cal-
5 endar year.

6 (ii) ADDITIONAL INFORMATION.—At
7 the time the candidate lists are submitted
8 under clause (i), the Trade Representative
9 shall submit for each individual on the list
10 a statement of professional qualifications.

11 (C) CONSULTATION.—Upon submission of
12 the preliminary candidate lists under subpara-
13 graph (B) to the appropriate Congressional
14 Committees, the Trade Representative shall
15 consult with such Committees with regard to
16 the individuals included on the preliminary can-
17 didate lists.

18 (D) REVISION OF LISTS.—The Trade Rep-
19 resentative may add and delete individuals from
20 the preliminary candidate lists submitted under
21 subparagraph (B) after consultation with the
22 appropriate Congressional Committees regard-
23 ing the additions and deletions. The Trade Rep-
24 resentative shall provide to the appropriate
25 Congressional Committees written notice of any

1 addition or deletion of an individual from the
2 preliminary candidate lists, along with the in-
3 formation described in subparagraph (B)(ii)
4 with respect to any proposed addition.

5 (4) FINAL CANDIDATE LISTS.—

6 (A) SUBMISSION OF LISTS TO CONGRES-
7 SIONAL COMMITTEES.—No later than March 31
8 of each calendar year, the Trade Representative
9 shall submit to the appropriate Congressional
10 Committees the final candidate lists of those in-
11 dividuals selected by the Trade Representative
12 to be candidates eligible to serve on panels and
13 committees convened under chapter 19 during
14 the 1-year period beginning on April 1 of such
15 calendar year. An individual may be included on
16 a final candidate list only if such individual was
17 included in the preliminary candidate list or if
18 written notice of the addition of such individual
19 to the preliminary candidate list was submitted
20 to the appropriate Congressional Committees at
21 least 15 days before the date on which that
22 final candidate list is submitted to such Com-
23 mittees under this subparagraph.

24 (B) FINALITY OF LISTS.—Except as pro-
25 vided in subparagraph (C), no additions may be

1 made to the final candidate lists after the final
2 candidate lists are submitted to the appropriate
3 Congressional Committees under subparagraph
4 (A).

5 (C) AMENDMENT OF LISTS.—

6 (i) IN GENERAL.—If, after the Trade
7 Representative has submitted the final
8 candidate lists to the appropriate Congress-
9 sional Committees under subparagraph (A)
10 for a calendar year and before July 1 of
11 such calendar year, the Trade Representa-
12 tive determines that additional individuals
13 need to be added to a final candidate list,
14 the Trade Representative shall—

15 (I) request the interagency group
16 established under paragraph (2)(A) to
17 prepare a list of individuals who are
18 qualified to be added to such can-
19 didate list;

20 (II) select individuals from the
21 list prepared by the interagency group
22 under paragraph (2)(B)(ii) to be in-
23 cluded in a proposed amendment to
24 such final candidate list; and

1 (III) by no later than July 1 of
2 such calendar year, submit to the ap-
3 propriate Congressional Committees
4 the proposed amendments to such
5 final candidate list developed by the
6 Trade Representative under subclause
7 (II), along with the information de-
8 scribed in paragraph (3)(B)(ii).

9 (ii) CONSULTATION WITH CONGRES-
10 SIONAL COMMITTEES.—Upon submission
11 of a proposed amendment under clause
12 (i)(III) to the appropriate Congressional
13 Committees, the Trade Representative
14 shall consult with the appropriate Congres-
15 sional Committees with regard to the indi-
16 viduals included in the proposed amend-
17 ment.

18 (iii) ADJUSTMENT OF PROPOSED
19 AMENDMENT.—The Trade Representative
20 may add and delete individuals from any
21 proposed amendment submitted under
22 clause (i)(III) after consulting with the ap-
23 propriate Congressional Committees with
24 regard to the additions and deletions. The
25 Trade Representative shall provide to the

1 appropriate Congressional Committees
2 written notice of any addition or deletion
3 of an individual from the proposed amend-
4 ment.

5 (iv) FINAL AMENDMENT.—

6 (I) IN GENERAL.—If the Trade
7 Representative submits under clause
8 (i)(III) in any calendar year a pro-
9 posed amendment to a final candidate
10 list, the Trade Representative shall,
11 no later than September 30 of such
12 calendar year, submit to the appro-
13 priate Congressional Committees the
14 final form of such amendment. On
15 October 1 of such calendar year, such
16 amendment shall take effect and, sub-
17 ject to subclause (II), the individuals
18 included in the final form of such
19 amendment shall be added to the final
20 candidate list.

21 (II) INCLUSION OF INDIVID-
22 UALS.—An individual may be included
23 in the final form of an amendment
24 submitted under subclause (I) only if
25 such individual was included in the

1 proposed form of such amendment or
2 if written notice of the addition of
3 such individual to the proposed form
4 of such amendment was submitted to
5 the appropriate Congressional Com-
6 mittees at least 15 days before the
7 date on which the final form of such
8 amendment is submitted to such Com-
9 mittees under subclause (I).

10 (III) ELIGIBILITY FOR SERV-
11 ICE.—Individuals added to a final
12 candidate list under subclause (I)
13 shall be eligible to serve on panels or
14 committees convened under chapter
15 19 during the 6-month period begin-
16 ning on October 1 of the calendar
17 year in which such addition occurs.

18 (IV) FINALITY OF AMEND-
19 MENT.—No additions may be made to
20 the final form of an amendment de-
21 scribed in subclause (I) after the final
22 form of such amendment is submitted
23 to the appropriate Congressional
24 Committees under subclause (I).

1 (5) TREATMENT OF RESPONSES.—For purposes
2 of applying section 1001 of title 18, United States
3 Code, the written or oral responses of individuals to
4 inquiries of the interagency group established under
5 paragraph (2)(A) or of the Trade Representative re-
6 garding their personal and professional qualifica-
7 tions, and financial and other relevant interests, that
8 bear on their suitability for the placements and ap-
9 pointments described in subsection (a)(1), shall be
10 treated as matters within the jurisdiction of an
11 agency of the United States.

12 (d) SELECTION AND APPOINTMENT.—

13 (1) AUTHORITY OF TRADE REPRESENTATIVE.—
14 The Trade Representative is the only officer of the
15 United States Government authorized to act on be-
16 half of the United States Government in making any
17 selection or appointment of an individual to—

18 (A) the rosters described in paragraph 1 of
19 Annex 1901.2 and paragraph 1 of Annex
20 1904.13; or

21 (B) the panels or committees convened
22 under chapter 19;
23 that is to be made solely or jointly by the United
24 States Government under the terms of the Agree-
25 ment.

1 (2) RESTRICTIONS ON SELECTION AND AP-
2 POINTMENT.—Except as provided in paragraph

3 (3)—

4 (A) the Trade Representative may—

5 (i) select an individual for placement
6 on the rosters described in paragraph 1 of
7 Annex 1901.2 and paragraph 1 of Annex
8 1904.13 during the 1-year period begin-
9 ning on April 1 of any calendar year;

10 (ii) appoint an individual to serve as
11 one of those members of any panel or com-
12 mittee convened under chapter 19 during
13 such 1-year period who, under the terms of
14 the Agreement, are to be appointed solely
15 by the United States Government; or

16 (iii) act to make a joint appointment
17 with the Government of a NAFTA coun-
18 try, under the terms of the Agreement, of
19 any individual who is a citizen or national
20 of the United States to serve as any other
21 member of such a panel or committee;

22 only if such individual is on the appropriate
23 final candidate list that was submitted to the
24 appropriate Congressional Committees under
25 subsection (c)(4)(A) during such calendar year

1 or on such list as it may be amended under
2 subsection (c)(4)(C)(iv)(I), or on the list sub-
3 mitted under subsection (b)(3) to the congres-
4 sional committees referred to in such sub-
5 section; and

6 (B) no individual may—

7 (i) be selected by the United States
8 Government for placement on the rosters
9 described in paragraph 1 of Annex 1901.2
10 and paragraph 1 of Annex 1904.13; or

11 (ii) be appointed solely or jointly by
12 the United States Government to serve as
13 a member of a panel or committee con-
14 vened under chapter 19;

15 during the 1-year period beginning on April 1
16 of any calendar year for which the Trade Rep-
17 resentative has not met the requirements of
18 subsection (a), and of subsection (b) or (c) (as
19 the case may be).

20 (3) EXCEPTIONS.—Notwithstanding subsection
21 (c)(3) (other than subparagraph (B)), (c)(4), or
22 paragraph (2)(A) of this subsection, individuals in-
23 cluded on the preliminary candidate lists submitted
24 to the appropriate Congressional Committees under
25 subsection (c)(3)(B) may—

1 (A) be selected by the Trade Representa-
2 tive for placement on the rosters described in
3 paragraph 1 of Annex 1901.2 and paragraph 1
4 of Annex 1904.13 during the 3-month period
5 beginning on the date on which the Agreement
6 enters into force with respect to the United
7 States; and

8 (B) be appointed solely or jointly by the
9 Trade Representative under the terms of the
10 Agreement to serve as members of panels or
11 committees that are convened under chapter 19
12 during such 3-month period.

13 (e) TRANSITION.—If the Agreement enters into force
14 between the United States and a NAFTA country after
15 January 3, 1994, the provisions of subsection (c) shall be
16 applied with respect to the calendar year in which such
17 entering into force occurs—

18 (1) by substituting “the date that is 30 days
19 after the date on which the Agreement enters into
20 force with respect to the United States” for “Janu-
21 ary 3 of each calendar year” in subsections
22 (c)(2)(B)(i) and (c)(3)(B)(i); and

23 (2) by substituting “the date that is 3 months
24 after the date on which the Agreement enters into

1 force with respect to the United States” for “March
2 31 of each calendar year” in subsection (c)(4)(A).

3 (f) IMMUNITY.—With the exception of acts described
4 in section 777(f)(3) of the Tariff Act of 1930 (19 U.S.C.
5 1677f(f)(3)), individuals serving on panels or committees
6 convened pursuant to chapter 19, and individuals des-
7 ignated to assist the individuals serving on such panels
8 or committees, shall be immune from suit and legal proc-
9 ess relating to acts performed by such individuals in their
10 official capacity and within the scope of their functions
11 as such panelists or committee members or assistants to
12 such panelists or committee members.

13 (g) REGULATIONS.—The administering authority
14 under title VII of the Tariff Act of 1930, the International
15 Trade Commission, and the Trade Representative may
16 promulgate such regulations as are necessary or appro-
17 priate to carry out actions in order to implement their re-
18 spective responsibilities under chapter 19. Initial regula-
19 tions to carry out such functions shall be issued before
20 the date on which the Agreement enters into force with
21 respect to the United States.

22 (h) REPORT TO CONGRESS.—At such time as the
23 final candidate lists are submitted under subsection
24 (c)(4)(A) and the final forms of amendments are submit-
25 ted under subsection (c)(4)(C)(iv), the Trade Representa-

1 tive shall submit to the Committee on the Judiciary and
2 the Committee on Ways and Means of the House of Rep-
3 resentatives, and to the Committee on Finance and the
4 Committee on the Judiciary of the Senate, a report re-
5 garding the efforts made to secure the participation of
6 judges and former judges on binational panels, extraor-
7 dinary challenge committees, and special committees es-
8 tablished under chapter 19.

9 **SEC. 403. TESTIMONY AND PRODUCTION OF PAPERS IN EX-**
10 **TRAORDINARY CHALLENGES.**

11 (a) AUTHORITY OF EXTRAORDINARY CHALLENGE
12 COMMITTEE TO OBTAIN INFORMATION.—If an extraor-
13 dinary challenge committee (hereafter in this section re-
14 ferred to as the “committee”) is convened under para-
15 graph 13 of article 1904, and the allegations before the
16 committee include a matter referred to in paragraph
17 13(a)(i) of article 1904, for the purposes of carrying out
18 its functions and duties under Annex 1904.13, the com-
19 mittee—

20 (1) shall have access to, and the right to copy,
21 any document, paper, or record pertinent to the sub-
22 ject matter under consideration, in the possession of
23 any individual, partnership, corporation, association,
24 organization, or other entity;

1 (2) may summon witnesses, take testimony, and
2 administer oaths;

3 (3) may require any individual, partnership,
4 corporation, association, organization, or other entity
5 to produce documents, books, or records relating to
6 the matter in question; and

7 (4) may require any individual, partnership,
8 corporation, association, organization, or other entity
9 to furnish in writing, in such detail and in such form
10 as the committee may prescribe, information in its
11 possession pertaining to the matter.

12 Any member of the committee may sign subpoenas, and
13 members of the committee, when authorized by the com-
14 mittee, may administer oaths and affirmations, examine
15 witnesses, take testimony, and receive evidence.

16 (b) WITNESSES AND EVIDENCE.—The attendance of
17 witnesses who are authorized to be summoned, and the
18 production of documentary evidence authorized to be or-
19 dered, under subsection (a) may be required from any
20 place in the United States at any designated place of hear-
21 ing. In the case of disobedience to a subpoena authorized
22 under subsection (a), the committee may request the At-
23 torney General of the United States to invoke the aid of
24 any district or territorial court of the United States in
25 requiring the attendance and testimony of witnesses and

1 the production of documentary evidence. Such court, with-
2 in the jurisdiction of which such inquiry is carried on,
3 may, in case of contumacy or refusal to obey a subpoena
4 issued to any individual, partnership, corporation, associa-
5 tion, organization, or other entity, issue an order requiring
6 such individual or entity to appear before the committee,
7 or to produce documentary evidence if so ordered or to
8 give evidence concerning the matter in question. Any fail-
9 ure to obey such order of the court may be punished by
10 such court as a contempt thereof.

11 (c) MANDAMUS.—Any court referred to in subsection
12 (b) shall have jurisdiction to issue writs of mandamus
13 commanding compliance with the provisions of this section
14 or any order of the committee made in pursuance thereof.

15 (d) DEPOSITIONS.—The committee may order testi-
16 mony to be taken by deposition at any stage of the com-
17 mittee review. Such deposition may be taken before any
18 person designated by the committee and having power to
19 administer oaths. Such testimony shall be reduced to writ-
20 ing by the person taking the deposition, or under the di-
21 rection of such person, and shall then be subscribed by
22 the deponent. Any individual, partnership, corporation, as-
23 sociation, organization, or other entity may be compelled
24 to appear and be deposed and to produce documentary evi-
25 dence in the same manner as witnesses may be compelled

1 to appear and testify and produce documentary evidence
2 before the committee, as provided in this section.

3 **SEC. 404. REQUESTS FOR REVIEW OF DETERMINATIONS BY**
4 **COMPETENT INVESTIGATING AUTHORITIES**
5 **OF NAFTA COUNTRIES.**

6 (a) DEFINITIONS.—As used in this section:

7 (1) COMPETENT INVESTIGATING AUTHORITY.—

8 The term “competent investigating authority”
9 means the competent investigating authority, as de-
10 fined in article 1911, of a NAFTA country.

11 (2) UNITED STATES SECRETARY.—The term
12 “United States Secretary” means that officer of the
13 United States referred to in article 1908.

14 (b) REQUESTS FOR REVIEW BY THE UNITED
15 STATES.—In the case of a final determination of a com-
16 petent investigating authority, requests by the United
17 States for binational panel review of such determination
18 under article 1904 shall be made by the United States
19 Secretary.

20 (c) REQUESTS FOR REVIEW BY A PERSON.—In the
21 case of a final determination of a competent investigating
22 authority, a person, within the meaning of paragraph 5
23 of article 1904, may request a binational panel review of
24 such determination by filing such a request with the
25 United States Secretary within the time limit provided for

1 in paragraph 4 of article 1904. The receipt of such request
2 by the United States Secretary shall be deemed to be a
3 request for binational panel review within the meaning of
4 article 1904. The request for such panel review shall be
5 without prejudice to any challenge before a binational
6 panel of the basis for a particular request for review.

7 (d) SERVICE OF REQUEST FOR REVIEW.—Whenever
8 binational panel review of a final determination made by
9 a competent investigating authority is requested under
10 this section, the United States Secretary shall serve a copy
11 of the request on all persons who would otherwise be enti-
12 tled under the law of the importing country to commence
13 proceedings for judicial review of the determination.

14 **SEC. 405. RULES OF PROCEDURE FOR PANELS AND COM-**
15 **MITTEES.**

16 (a) RULES OF PROCEDURE FOR BINATIONAL PAN-
17 ELS.—The administering authority shall prescribe rules,
18 negotiated in accordance with paragraph 14 of article
19 1904, governing, with respect to binational panel re-
20 views—

21 (1) requests for such reviews, complaints, other
22 pleadings, and other papers;

23 (2) the amendment, filing, and service of such
24 pleadings and papers;

1 (3) the joinder, suspension, and termination of
2 such reviews; and

3 (4) other appropriate procedural matters.

4 (b) RULES OF PROCEDURE FOR EXTRAORDINARY
5 CHALLENGE COMMITTEES.—The administering authority
6 shall prescribe rules, negotiated in accordance with para-
7 graph 2 of Annex 1904.13, governing the procedures for
8 reviews by extraordinary challenge committees.

9 (c) RULES OF PROCEDURE FOR SAFEGUARDING THE
10 PANEL REVIEW SYSTEM.—The administering authority
11 shall prescribe rules, negotiated in accordance with Annex
12 1905.6, governing the procedures for special committees
13 described in such Annex.

14 (d) PUBLICATION OF RULES.—The rules prescribed
15 under subsections (a), (b), and (c) shall be published in
16 the Federal Register.

17 (e) ADMINISTERING AUTHORITY.—As used in this
18 section, the term “administering authority” has the mean-
19 ing given such term in section 771(1) of the Tariff Act
20 of 1930 (19 U.S.C. 1677(1)).

21 **SEC. 406. SUBSIDY NEGOTIATIONS.**

22 In the case of any trade agreement which may be en-
23 tered into by the President with a NAFTA country, the
24 negotiating objectives of the United States with respect
25 to subsidies shall include—

1 (1) achievement of increased discipline on do-
2 mestic subsidies provided by a foreign government,
3 including—

4 (A) the provision of capital, loans, or loan
5 guarantees on terms inconsistent with commer-
6 cial considerations;

7 (B) the provision of goods or services at
8 preferential rates;

9 (C) the granting of funds or forgiveness of
10 debt to cover operating losses sustained by a
11 specific industry; and

12 (D) the assumption of any costs or ex-
13 penses of manufacture, production, or distribu-
14 tion;

15 (2) achievement of increased discipline on ex-
16 port subsidies provided by a foreign government,
17 particularly with respect to agricultural products;
18 and

19 (3) maintenance of effective remedies against
20 subsidized imports, including, where appropriate,
21 countervailing duties.

22 **SEC. 407. IDENTIFICATION OF INDUSTRIES FACING SUB-**
23 **SIDIZED IMPORTS.**

24 (a) PETITIONS.—Any entity, including a trade asso-
25 ciation, firm, certified or recognized union, or group of

1 workers, that is representative of a United States industry
2 and has reason to believe—

3 (1) that—

4 (A) as a result of implementation of provi-
5 sions of the Agreement, the industry is likely to
6 face increased competition from subsidized im-
7 ports, from a NAFTA country, with which it di-
8 rectly competes; or

9 (B) the industry is likely to face increased
10 competition from subsidized imports with which
11 it directly competes from any other country des-
12 ignated by the President, following consulta-
13 tions with the Congress, as benefiting from a
14 reduction of tariffs or other trade barriers
15 under a trade agreement that enters into force
16 with respect to the United States after January
17 1, 1994; and

18 (2) that the industry is likely to experience a
19 deterioration of its competitive position before more
20 effective rules and disciplines relating to the use of
21 government subsidies have been developed with re-
22 spect to the country concerned;

23 may file with the Trade Representative a petition that
24 such industry be identified under this section.

1 (b) IDENTIFICATION OF INDUSTRY.—Within 90 days
2 after receipt of a petition under subsection (a), the Trade
3 Representative, in consultation with the Secretary of Com-
4 merce, shall decide whether to identify the industry on the
5 basis that there is a reasonable likelihood that the industry
6 may face both the subsidization described in subsection
7 (a)(1) and the deterioration described in subsection (a)(2).

8 (c) ACTION AFTER IDENTIFICATION.—At the request
9 of an entity that is representative of an industry identified
10 under subsection (b), the Trade Representative shall—

11 (1) compile and make available to the industry
12 information under section 308 of the Trade Act of
13 1974;

14 (2) recommend to the President that an inves-
15 tigation by the International Trade Commission be
16 requested under section 332 of the Tariff Act of
17 1930; or

18 (3) take actions described in both paragraphs
19 (1) and (2).

20 The industry may request the Trade Representative to
21 take appropriate action to update (as often as annually)
22 any information obtained under paragraph (1) or (2), or
23 both, as the case may be, until an agreement on more ef-
24 fective rules and disciplines relating to government sub-

1 sidies is reached between the United States and the
2 NAFTA countries.

3 (d) INITIATION OF ACTION UNDER OTHER LAW.—

4 (1) IN GENERAL.—The Trade Representative
5 and the Secretary of Commerce shall review infor-
6 mation obtained under subsection (c) and consult
7 with the industry identified under subsection (b)
8 with a view to deciding whether any action is appro-
9 priate—

10 (A) under section 301 of the Trade Act of
11 1974, including the initiation of an investiga-
12 tion under section 302(c) of that Act (in the
13 case of the Trade Representative); or

14 (B) under subtitle A of title VII of the
15 Tariff Act of 1930, including the initiation of
16 an investigation under section 702(a) of that
17 Act (in the case of the Secretary of Commerce).

18 (2) CRITERIA FOR INITIATION.—In determining
19 whether to initiate any investigation under section
20 301 of the Trade Act of 1974 or any other trade
21 law, other than title VII of the Tariff Act of 1930,
22 the Trade Representative, after consultation with
23 the Secretary of Commerce—

1 (A) shall seek the advice of the advisory
2 committees established under section 135 of the
3 Trade Act of 1974;

4 (B) shall consult with the Committee on
5 Finance of the Senate and the Committee on
6 Ways and Means of the House of Representa-
7 tives;

8 (C) shall coordinate with the interagency
9 organization established under section 242 of
10 the Trade Expansion Act of 1962; and

11 (D) may ask the President to request ad-
12 vice from the International Trade Commission.

13 (3) TITLE III ACTIONS.—In the event an inves-
14 tigation is initiated under section 302(c) of the
15 Trade Act of 1974 as a result of a review under this
16 subsection and the Trade Representative, following
17 such investigation (including any applicable dispute
18 settlement proceedings under the Agreement or any
19 other trade agreement), determines to take action
20 under section 301(a) of such Act, the Trade Rep-
21 resentative shall give preference to actions that most
22 directly affect the products that benefit from govern-
23 mental subsidies and were the subject of the inves-
24 tigation, unless there are no significant imports of
25 such products or the Trade Representative otherwise

1 determines that application of the action to other
2 products would be more effective.

3 (e) EFFECT OF DECISIONS.—Any decision, whether
4 positive or negative, or any action by the Trade Represent-
5 ative or the Secretary of Commerce under this section
6 shall not in any way—

7 (1) prejudice the right of any industry to file a
8 petition under any trade law;

9 (2) prejudice, affect, or substitute for, any pro-
10 ceeding, investigation, determination, or action by
11 the Secretary of Commerce, the International Trade
12 Commission, or the Trade Representative pursuant
13 to such a petition, or

14 (3) prejudice, affect, substitute for, or obviate
15 any proceeding, investigation, or determination
16 under section 301 of the Trade Act of 1974, title
17 VII of the Tariff Act of 1930, or any other trade
18 law.

19 (f) STANDING.—Nothing in this section may be con-
20 strued to alter in any manner the requirements in effect
21 before the date of the enactment of this Act for standing
22 under any law of the United States or to add any addi-
23 tional requirements for standing under any law of the
24 United States.

1 **SEC. 408. TREATMENT OF AMENDMENTS TO ANTIDUMPING**
2 **AND COUNTERVAILING DUTY LAW.**

3 Any amendment enacted after the Agreement enters
4 into force with respect to the United States that is made
5 to—

6 (1) section 303 or title VII of the Tariff Act of
7 1930, or any successor statute, or

8 (2) any other statute which—

9 (A) provides for judicial review of final de-
10 terminations under such section, title, or suc-
11 cessor statute, or

12 (B) indicates the standard of review to be
13 applied,

14 shall apply to goods from a NAFTA country only to the
15 extent specified in the amendment.

16 **Subtitle B—Conforming**
17 **Amendments and Provisions**

18 **SEC. 411. JUDICIAL REVIEW IN ANTIDUMPING DUTY AND**
19 **COUNTERVAILING DUTY CASES.**

20 Section 516A of the Tariff Act of 1930 (19 U.S.C.
21 1516a) is amended as follows:

22 (1) Subsection (a)(5) (relating to time limits for
23 commencing review) is amended to read as follows:

24 “(5) TIME LIMITS IN CASES INVOLVING MER-
25 CHANDISE FROM FREE TRADE AREA COUNTRIES.—

26 Notwithstanding any other provision of this sub-

1 section, in the case of a determination to which the
2 provisions of subsection (g) apply, an action under
3 this subsection may not be commenced, and the time
4 limits for commencing an action under this sub-
5 section shall not begin to run, until the day specified
6 in whichever of the following subparagraphs applies:

7 “(A) For a determination described in
8 paragraph (1)(B) or clause (i), (ii) or (iii) of
9 paragraph (2)(B), the 31st day after the date
10 on which notice of the determination is pub-
11 lished in the Federal Register.

12 “(B) For a determination described in
13 clause (vi) of paragraph (2)(B), the 31st day
14 after the date on which the government of the
15 relevant FTA country receives notice of the de-
16 termination.

17 “(C) For a determination with respect to
18 which binational panel review has commenced
19 in accordance with subsection (g)(8), the day
20 after the date as of which—

21 “(i) the binational panel has dismissed
22 binational panel review of the determina-
23 tion for lack of jurisdiction, and

24 “(ii) any interested party seeking re-
25 view of the determination under paragraph

1 (1), (2), or (3) of this subsection has pro-
2 vided timely notice under subsection
3 (g)(3)(B).

4 If such an interested party files a summons and
5 complaint under this subsection after dismissal
6 by the binational panel, and if a request for an
7 extraordinary challenge committee is made with
8 respect to the decision by the binational panel
9 to dismiss—

10 “(I) judicial review under this sub-
11 section shall be stayed during consider-
12 ation by the committee of the request, and

13 “(II) the United States Court of
14 International Trade shall dismiss the ac-
15 tion if the committee vacates or remands
16 the binational panel decision to dismiss.

17 “(D) For a determination for which review
18 by the United States Court of International
19 Trade is provided for—

20 “(i) under subsection (g)(12)(B), the
21 day after the date of publication in the
22 Federal Register of notice that article
23 1904 of the NAFTA has been suspended,
24 or

1 “(ii) under subsection (g)(12)(D), the
2 day after the date that notice of settlement
3 is published in the Federal Register.”.

4 (2) Subsection (b)(3) (relating to the standards
5 of review) is amended—

6 (A) by inserting “NAFTA OR” after “DECI-
7 SIONS BY” in the heading; and

8 (B) by inserting “of the NAFTA or” after
9 “article 1904”.

10 (3) Subsection (f) (relating to definitions) is
11 amended—

12 (A) by amending paragraphs (6) and (7)
13 to read as follows:

14 “(6) UNITED STATES SECRETARY.—The term
15 ‘United States Secretary’ means—

16 “(A) the secretary for the United States
17 Section referred to in article 1908 of the
18 NAFTA, and

19 “(B) the secretary of the United States
20 Section provided for in article 1909 of the
21 Agreement.

22 “(7) RELEVANT FTA SECRETARY.—The term
23 ‘relevant FTA Secretary’ means the Secretary—

24 “(A) referred to in article 1908 of the
25 NAFTA, or

1 “(B) provided for in paragraph 5 of article
2 1909 of the Agreement,
3 of the relevant FTA country.”; and

4 (B) by adding at the end the following new
5 paragraphs:

6 “(8) NAFTA.—The term ‘NAFTA’ means the
7 North American Free Trade Agreement.

8 “(9) RELEVANT FTA COUNTRY.—The term ‘rel-
9 evant FTA country’ means the free trade area coun-
10 try to which an antidumping or countervailing duty
11 proceeding pertains.

12 “(10) FREE TRADE AREA COUNTRY.—The term
13 ‘free trade area country’ means the following:

14 “(A) Canada for such time as the NAFTA
15 is in force with respect to, and the United
16 States applies the NAFTA to, Canada.

17 “(B) Mexico for such time as the NAFTA
18 is in force with respect to, and the United
19 States applies the NAFTA to, Mexico.

20 “(C) Canada for such time as—

21 “(i) it is not a free trade area country
22 under subparagraph (A); and

23 “(ii) the Agreement is in force with
24 respect to, and the United States applies
25 the Agreement to, Canada.”.

1 (4) Subsection (g) (relating to review of coun-
2 tervailing and antidumping duty determinations) is
3 amended as follows:

4 (A) The subsection heading is amended by
5 striking out “CANADIAN MERCHANDISE” and
6 inserting “FREE TRADE AREA COUNTRY MER-
7 CHANDISE”.

8 (B) Paragraph (1) is amended by striking
9 out “Canadian merchandise” and inserting
10 “free trade area country merchandise”.

11 (C) Paragraph (2) is amended by inserting
12 “of the NAFTA or” after “article 1904”.

13 (D) Paragraph (3)(A) is amended—

14 (i) by striking out “nor Canada” and
15 inserting “nor the relevant FTA country”
16 in each of clauses (i) and (ii);

17 (ii) by inserting “of the NAFTA or”
18 before “of the Agreement” in each of
19 clauses (i) and (iii);

20 (iii) by striking out “or” at the end of
21 clause (iii);

22 (iv) by amending clause (iv)—

23 (I) by striking out “under para-
24 graph (2)(A)”;

1 (II) by striking out the period
2 and inserting a comma; and

3 (v) by adding at the end of subpara-
4 graph (A) the following:

5 “(v) a determination as to which bina-
6 tional panel review has terminated pursu-
7 ant to paragraph 12 of article 1905 of the
8 NAFTA, or

9 “(vi) a determination as to which ex-
10 traordinary challenge committee review has
11 terminated pursuant to paragraph 12 of
12 article 1905 of the NAFTA.”.

13 (E) The first and second sentences of
14 paragraph (3)(B) are amended to read as fol-
15 lows: “A determination described in subpara-
16 graph (A)(i) or (iv) is reviewable under sub-
17 section (a) only if the party seeking to com-
18 mence review has provided timely notice of its
19 intent to commence such review to—

20 “(i) the United States Secretary and
21 the relevant FTA Secretary;

22 “(ii) all interested parties who were
23 parties to the proceeding in connection
24 with which the matter arises; and

1 “(iii) the administering authority or
2 the Commission, as appropriate.

3 Such notice is timely provided if the notice is
4 delivered no later than the date that is 20 days
5 after the date described in subparagraph (A) or
6 (B) of subsection (a)(5) that is applicable to
7 such determination, except that, if the time for
8 requesting binational panel review is suspended
9 under paragraph (8)(A)(ii) of this subsection,
10 any unexpired time for providing notice of in-
11 tent to commence judicial review shall, during
12 the pendency of any such suspension, also be
13 suspended.”.

14 (F) Paragraph (4)(A) is amended—

15 (i) in the first sentence—

16 (I) by inserting “the North
17 American Free Trade Agreement Im-
18 plementation Act implementing the bi-
19 national dispute settlement system
20 under chapter 19 of the NAFTA, or”
21 after “or amendment made by,”;

22 (II) by inserting a comma before
23 “violates”;

24 (III) by inserting “only” after
25 “may be brought”; and

1 (IV) by inserting “, which shall
2 have jurisdiction of such action” after
3 “Circuit”; and

4 (ii) by striking the last sentence.

5 (G) Paragraph (5) is amended—

6 (i) by inserting “of the NAFTA or”
7 after “article 1904” in each of subpara-
8 graphs (A), (B), and (C)(i);

9 (ii) by striking out “, the Canadian
10 Secretary,” in subparagraph (C)(ii) and in-
11 serting “, the relevant FTA Secretary,”;
12 and

13 (iii) by inserting “of the NAFTA or”
14 after “chapter 19” in subparagraph
15 (C)(iii).

16 (H) Paragraph (6) is amended by inserting
17 “of the NAFTA or” after “article 1904”.

18 (I) Paragraph (7) is amended—

19 (i) by inserting “OF THE NAFTA OR
20 THE AGREEMENT” before the period in the
21 paragraph heading;

22 (ii) by striking out “IN GENERAL.—”
23 in the heading to subparagraph (A) and in-
24 serting “ACTION UPON REMAND.—”; and

1 (iii) by inserting “the NAFTA or” be-
2 fore “the Agreement” in subparagraph
3 (A).

4 (J) Paragraph (8)(A) is amended—

5 (i) by inserting “(i) GENERAL
6 RULE.—” before “An interested party”;

7 (ii) by inserting “of the NAFTA or”
8 after “article 1904(4)”;

9 (iii) by indenting the text so as to
10 align it with new clause (ii) (as added by
11 clause (iv) of this subparagraph); and

12 (iv) by adding at the end the following
13 new clause:

14 “(ii) SUSPENSION OF TIME TO RE-
15 QUEST BINATIONAL PANEL REVIEW UNDER
16 THE NAFTA.—Notwithstanding clause (i),
17 the time for requesting binational panel re-
18 view shall be suspended during the pend-
19 ency of any stay of binational panel review
20 that is issued pursuant to paragraph 11(a)
21 of article 1905 of the NAFTA.”.

22 (K) Paragraph (8)(B)(ii) is amended by
23 striking out “Canadian Secretary,” and insert-
24 ing “relevant FTA Secretary,”.

1 (L) Paragraph (8)(C) is amended by strik-
2 ing out “under article 1904 of the Agreement
3 of a determination” and inserting “of a deter-
4 mination under article 1904 of the NAFTA or
5 the Agreement”.

6 (M) Paragraph (9) is amended by inserting
7 “of the NAFTA or” after “chapter 19”.

8 (N) Paragraph (10) is amended by striking
9 out “Government of Canada” and all that fol-
10 lows thereafter and inserting “Government of
11 the relevant FTA country received notice of the
12 determination under paragraph 4 of article
13 1904 of the NAFTA or the Agreement.”.

14 (O) The following new paragraphs are
15 added at the end:

16 “(11) SUSPENSION AND TERMINATION OF SUS-
17 PENSION OF ARTICLE 1904 OF THE NAFTA.—

18 “(A) SUSPENSION OF ARTICLE 1904.—If a
19 special committee established under article
20 1905 of the NAFTA issues an affirmative find-
21 ing, the Trade Representative may, in accord-
22 ance with paragraph 8(a) or 9, as appropriate,
23 of article 1905 of the NAFTA, suspend the op-
24 eration of article 1904 of the NAFTA.

1 “(B) TERMINATION OF SUSPENSION OF
2 ARTICLE 1904.—If a special committee is recon-
3 vened and makes an affirmative determination
4 described in paragraph 10(b) of article 1905 of
5 the NAFTA, any suspension of the operation of
6 article 1904 of the NAFTA shall terminate.

7 “(12) JUDICIAL REVIEW UPON TERMINATION
8 OF BINATIONAL PANEL OR COMMITTEE REVIEW
9 UNDER THE NAFTA.—

10 “(A) NOTICE OF SUSPENSION OR TERMI-
11 NATION OF SUSPENSION OF ARTICLE 1904.—

12 “(i) Upon notification by the Trade
13 Representative or the Government of a
14 country described in subsection (f)(10)(A)
15 or (B) that the operation of article 1904 of
16 the NAFTA has been suspended in accord-
17 ance with paragraph 8(a) or 9 of article
18 1905 of the NAFTA, the United States
19 Secretary shall publish in the Federal Reg-
20 ister a notice of suspension of article 1904
21 of the NAFTA.

22 “(ii) Upon notification by the Trade
23 Representative or the Government of a
24 country described in subsection (f)(10)(A)
25 or (B) that the suspension of the operation

1 of article 1904 of the NAFTA is termi-
2 nated in accordance with paragraph 10 of
3 article 1905 of the NAFTA, the United
4 States Secretary shall publish in the Fed-
5 eral Register a notice of termination of
6 suspension of article 1904 of the NAFTA.

7 “(B) TRANSFER OF FINAL DETERMINA-
8 TIONS FOR JUDICIAL REVIEW UPON SUSPEN-
9 SION OF ARTICLE 1904.—If the operation of ar-
10 ticle 1904 of the NAFTA is suspended in ac-
11 cordance with paragraph 8(a) or 9 of article
12 1905 of the NAFTA—

13 “(i) upon the request of an authorized
14 person described in subparagraph (C), any
15 final determination that is the subject of a
16 binational panel review or an extraordinary
17 challenge committee review shall be trans-
18 ferred to the United States Court of Inter-
19 national Trade (in accordance with rules
20 issued by the Court) for review under sub-
21 section (a); or

22 “(ii) in a case in which—

23 “(I) a binational panel review
24 was completed fewer than 30 days be-
25 fore the suspension, and

1 “(II) extraordinary challenge
2 committee review has not been re-
3 quested,

4 upon the request of an authorized person
5 described in subparagraph (C) which is
6 made within 60 days after the completion
7 of the binational panel review, the final de-
8 termination that was the subject of the bi-
9 national panel review shall be transferred
10 to the United States Court of International
11 Trade (in accordance with rules issued by
12 the Court) for review under subsection (a).

13 “(C) PERSONS AUTHORIZED TO REQUEST
14 TRANSFER OF FINAL DETERMINATIONS FOR JU-
15 DICIAL REVIEW.—A request that a final deter-
16 mination be transferred to the Court of Inter-
17 national Trade under subparagraph (B) may be
18 made by—

19 “(i) if the United States made an alle-
20 gation under paragraph 1 of article 1905
21 of the NAFTA and the operation of article
22 1904 of the NAFTA was suspended pursu-
23 ant to paragraph 8(a) of article 1905 of
24 the NAFTA—

1 “(I) the government of the rel-
2 evant country described in subsection
3 (f)(10)(A) or (B),

4 “(II) an interested party that
5 was a party to the panel or committee
6 review, or

7 “(III) an interested party that
8 was a party to the proceeding in con-
9 nection with which panel review was
10 requested, but only if the time period
11 for filing notices of appearance in the
12 panel review has not expired, or

13 “(ii) if a country described in sub-
14 section (f)(10)(A) or (B) made an allega-
15 tion under paragraph 1 of article 1905 of
16 the NAFTA and the operation of article
17 1904 of the NAFTA was suspended pursu-
18 ant to paragraph 9 of article 1905 of the
19 NAFTA—

20 “(I) the government of that
21 country,

22 “(II) an interested party that is
23 a person of that country and that was
24 a party to the panel or committee re-
25 view, or

1 “(III) an interested party that is
2 a person of that country and that was
3 a party to the proceeding in connec-
4 tion with which panel review was re-
5 quested, but only if the time period
6 for filing notices of appearance in the
7 panel review has not expired.

8 “(D)(i) TRANSFER FOR JUDICIAL REVIEW
9 UPON SETTLEMENT.—If the Trade Representa-
10 tive achieves a settlement with the government
11 of a country described in subsection (f)(10)(A)
12 or (B) pursuant to paragraph 7 of article 1905
13 of the NAFTA, and referral for judicial review
14 is among the terms of such settlement, any
15 final determination that is the subject of a bi-
16 national panel review or an extraordinary chal-
17 lenge committee review shall, upon a request
18 described in clause (ii), be transferred to the
19 United States Court of International Trade (in
20 accordance with rules issued by the Court) for
21 review under subsection (a).

22 “(ii) A request referred to in clause (i) is
23 a request made by—

24 “(I) the country referred to in clause
25 (i),

1 “(II) an interested party that was a
2 party to the panel or committee review, or
3 “(III) an interested party that was a
4 party to the proceeding in connection with
5 which panel review was requested, but only
6 if the time for filing notices of appearance
7 in the panel review has not expired.”.

8 **SEC. 412. CONFORMING AMENDMENTS TO OTHER PROVI-**
9 **SIONS OF THE TARIFF ACT OF 1930.**

10 (a) REGULATIONS FOR APPRAISEMENT AND CLASSI-
11 FICATION; FINALITY AND DECISION.—Sections 502(b)
12 and 514(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)
13 and 1514(b)) are each amended by inserting “the North
14 American Free Trade Agreement or” before “the United
15 States-Canada Free-Trade Agreement”.

16 (b) DEFINITION.—Section 771 of the Tariff Act of
17 1930 (19 U.S.C. 1677) is amended—

18 (1) by redesignating as paragraph (21) (and
19 placing in numerical sequence) the second paragraph
20 that is designated as paragraph (18) (relating to the
21 definition of the United States-Canada Agreement)
22 in such section; and

23 (2) by inserting after paragraph (21) (as reded-
24 icated by paragraph (1) of this subsection) the fol-
25 lowing new paragraph:

1 “(22) NAFTA.—The term ‘NAFTA’ means the
2 North American Free Trade Agreement.”.

3 (c) DISCLOSURE OF PROPRIETARY INFORMATION IN
4 TITLE VII PROCEEDINGS.—Section 777(f) of the Tariff
5 Act of 1930 (19 U.S.C. 1677f(f)) is amended—

6 (1) by inserting “THE NORTH AMERICAN FREE
7 TRADE AGREEMENT OR” before “THE UNITED
8 STATES-CANADA AGREEMENT” in the heading;

9 (2) by inserting “the NAFTA or” before “the
10 United States-Canada Agreement” each place it ap-
11 pears in paragraph (1)(A);

12 (3) in the second sentence of paragraph
13 (1)(A)—

14 (A) by inserting “or extraordinary chal-
15 lenge committee” after “binational panel”; and

16 (B) by inserting “or committee” after “the
17 panel”;

18 (4) in paragraph (1)(B)—

19 (A) by inserting “the NAFTA or” before
20 “the Agreement” in clauses (iii) and (iv); and

21 (B) by striking out “Government of Can-
22 ada designated by an authorized agency of Can-
23 ada” in clause (iv) and inserting “Government
24 of a free trade area country (as defined in sec-

1 tion 516A(f)(10)) designated by an authorized
2 agency of such country”;

3 (5) in paragraph (2) by inserting “, including
4 any extraordinary challenge,” after “binational panel
5 proceeding”;

6 (6) in paragraph (3)—

7 (A) by inserting “or extraordinary chal-
8 lenge committee” after “binational panel”, and

9 (B) by inserting “the NAFTA or” before
10 “the United States-Canada Agreement”;

11 (7) by striking out “agency of Canada” in each
12 of paragraphs (3) and (4) and inserting “agency of
13 a free trade area country (as defined in section
14 516A(f)(10))”; and

15 (8) in the first sentence of paragraph (4) by in-
16 serting “, except a judge appointed to a binational
17 panel or an extraordinary challenge committee under
18 section 402(b) of the North American Free Trade
19 Agreement Implementation Act,” after “Any per-
20 son”.

21 **SEC. 413. CONSEQUENTIAL AMENDMENT TO FREE-TRADE**

22 **AGREEMENT ACT OF 1988.**

23 Section 410(a) of the United States-Canada Free-
24 Trade Agreement Implementation Act of 1988 (19 U.S.C.
25 2112 note) is amended by adding at the end the following

1 new sentence: “In calculating the 7-year period referred
 2 to in paragraph (1), any time during which Canada is a
 3 NAFTA country (as defined in section 2(4) of the North
 4 American Free Trade Agreement Implementation Act)
 5 shall be disregarded.”.

6 **SEC. 414. CONFORMING AMENDMENTS TO TITLE 28, UNITED**
 7 **STATES CODE.**

8 (a) COURT OF INTERNATIONAL TRADE.—Chapter 95
 9 of title 28, United States Code, is amended—

10 (1) in section 1581(i) by inserting “the North
 11 American Free Trade Agreement or” before “the
 12 United States-Canada Free-Trade Agreement”;

13 (2) in section 1584—

14 (A) by amending the section heading to
 15 read as follows:

16 **“§ 1584. Civil actions under the North American Free**
 17 **Trade Agreement or the United States-**
 18 **Canada Free-Trade Agreement”;** and

19 (B) by striking out “777(d)” and inserting
 20 “777(f)”; and

21 (3) in the table of contents for such chapter by
 22 amending the entry for section 1584 to read as fol-
 23 lows:

“1584. Civil actions under the North American Free Trade Agreement or the
 United States-Canada Free-Trade Agreement.”.

1 (b) PARTICULAR PROCEEDINGS.—Sections 2201(a)
2 and 2643(c)(5) of title 28, United States Code, are each
3 amended by striking out “Canadian merchandise,” and in-
4 serting “merchandise of a free trade area country (as de-
5 fined in section 516A(f)(10) of the Tariff Act of 1930),”.

6 **SEC. 415. EFFECT OF TERMINATION OF NAFTA COUNTRY**
7 **STATUS.**

8 (a) IN GENERAL.—Except as provided in subsection
9 (b), on the date on which a country ceases to be a NAFTA
10 country, the provisions of this title (other than this sec-
11 tion) and the amendments made by this title shall cease
12 to have effect with respect to that country.

13 (b) TRANSITION PROVISIONS.—

14 (1) PROCEEDINGS REGARDING PROTECTIVE OR-
15 DERS AND UNDERTAKINGS.—If on the date on which
16 a country ceases to be a NAFTA country an inves-
17 tigation or enforcement proceeding concerning the
18 violation of a protective order issued under section
19 777(f) of the Tariff Act of 1930 (as amended by
20 this subtitle) or an undertaking of the Government
21 of that country is pending, the investigation or pro-
22 ceeding shall continue, and sanctions may continue
23 to be imposed, in accordance with the provisions of
24 such section 777(f).

1 (2) BINATIONAL PANEL AND EXTRAORDINARY
2 CHALLENGE COMMITTEE REVIEWS.—If on the date
3 on which a country ceases to be a NAFTA coun-
4 try—

5 (A) a binational panel review under article
6 1904 of the Agreement is pending, or has been
7 requested; or

8 (B) an extraordinary challenge committee
9 review under article 1904 of the Agreement is
10 pending, or has been requested;

11 with respect to a determination which involves a
12 class or kind of merchandise and to which section
13 516A(g)(2) of the Tariff Act of 1930 applies, such
14 determination shall be reviewable under section
15 516A(a) of the Tariff Act of 1930. In the case of
16 a determination to which the provisions of this para-
17 graph apply, the time limits for commencing an ac-
18 tion under 516A(a) of the Tariff Act of 1930 shall
19 not begin to run until the date on which the Agree-
20 ment ceases to be in force with respect to that coun-
21 try.

22 **SEC. 416. EFFECTIVE DATE.**

23 The provisions of this title and the amendments made
24 by this title take effect on the date the Agreement enters

1 into force with respect to the United States, but shall not
2 apply—

3 (1) to any final determination described in
4 paragraph (1)(B), or (2)(B)(i), (ii), or (iii), of sec-
5 tion 516A(a) of the Tariff Act of 1930 notice of
6 which is published in the Federal Register before
7 such date, or to a determination described in para-
8 graph (2)(B)(vi) of section 516A(a) of such Act no-
9 tice of which is received by the Government of Can-
10 ada or Mexico before such date; or

11 (2) to any binational panel review under the
12 United States-Canada Free-Trade Agreement, or
13 any extraordinary challenge arising out of any such
14 review, that was commenced before such date.

15 **TITLE V—NAFTA TRANSITIONAL**
16 **ADJUSTMENT ASSISTANCE**
17 **AND OTHER PROVISIONS**

18 **Subtitle A—NAFTA Transitional**
19 **Adjustment Assistance Program**

20 **SEC. 501. SHORT TITLE.**

21 This subtitle may be cited as the “NAFTA Worker
22 Security Act”.

1 **SEC. 502. ESTABLISHMENT OF NAFTA TRANSITIONAL AD-**
2 **JUSTMENT ASSISTANCE PROGRAM.**

3 Chapter 2 of title II of the Trade Act of 1974 (19
4 U.S.C. 2271 et seq.) is amended by adding at the end
5 the following new subchapter:

6 **“Subchapter D—NAFTA Transitional**
7 **Adjustment Assistance Program**

8 **“SEC. 250. ESTABLISHMENT OF TRANSITIONAL PROGRAM.**

9 “(a) GROUP ELIGIBILITY REQUIREMENTS.—

10 “(1) CRITERIA.—A group of workers (including
11 workers in any agricultural firm or subdivision of an
12 agricultural firm) shall be certified as eligible to
13 apply for adjustment assistance under this sub-
14 chapter pursuant to a petition filed under subsection
15 (b) if the Secretary determines that a significant
16 number or proportion of the workers in such work-
17 ers’ firm or an appropriate subdivision of the firm
18 have become totally or partially separated, or are
19 threatened to become totally or partially separated,
20 and either—

21 “(A) that—

22 “(i) the sales or production, or both,
23 of such firm or subdivision have decreased
24 absolutely,

25 “(ii) imports from Mexico or Canada
26 of articles like or directly competitive with

1 articles produced by such firm or subdivi-
2 sion have increased, and

3 “(iii) the increase in imports under
4 clause (ii) contributed importantly to such
5 workers’ separation or threat of separation
6 and to the decline in the sales or produc-
7 tion of such firm or subdivision; or

8 “(B) that there has been a shift in produc-
9 tion by such workers’ firm or subdivision to
10 Mexico or Canada of articles like or directly
11 competitive with articles which are produced by
12 the firm or subdivision.

13 “(2) DEFINITION OF CONTRIBUTED IMPOR-
14 TANTLY.—The term ‘contributed importantly’, as
15 used in paragraph (1)(A)(iii), means a cause which
16 is important but not necessarily more important
17 than any other cause.

18 “(3) REGULATIONS.—The Secretary shall issue
19 regulations relating to the application of the criteria
20 described in paragraph (1) in making preliminary
21 findings under subsection (b) and determinations
22 under subsection (c).

23 “(b) PRELIMINARY FINDINGS AND BASIC ASSIST-
24 ANCE.—

1 “(1) FILING OF PETITIONS.—A petition for cer-
2 tification of eligibility to apply for adjustment assist-
3 ance under this subchapter may be filed by a group
4 of workers (including workers in any agricultural
5 firm or subdivision of an agricultural firm) or by
6 their certified or recognized union or other duly au-
7 thorized representative with the Governor of the
8 State in which such workers’ firm or subdivision
9 thereof is located.

10 “(2) FINDINGS AND ASSISTANCE.—Upon re-
11 ceipt of a petition under paragraph (1), the Gov-
12 ernor shall—

13 “(A) notify the Secretary that the Gov-
14 ernor has received the petition;

15 “(B) within 10 days after receiving the pe-
16 tition—

17 “(i) make a preliminary finding as to
18 whether the petition meets the criteria de-
19 scribed in subsection (a)(1) (and for pur-
20 poses of this clause the criteria described
21 under subparagraph (A)(iii) of such sub-
22 section shall be disregarded), and

23 “(ii) transmit the petition, together
24 with a statement of the finding under

1 clause (i) and reasons therefor, to the Sec-
2 retary for action under subsection (c); and

3 “(C) if the preliminary finding under sub-
4 paragraph (B)(i) is affirmative, ensure that
5 rapid response and basic readjustment services
6 authorized under other Federal law are made
7 available to the workers.

8 “(c) REVIEW OF PETITIONS BY SECRETARY; CER-
9 TIFICATIONS.—

10 “(1) IN GENERAL.—The Secretary, within 30
11 days after receiving a petition under subsection (b),
12 shall determine whether the petition meets the cri-
13 teria described in subsection (a)(1). Upon a deter-
14 mination that the petition meets such criteria, the
15 Secretary shall issue to workers covered by the peti-
16 tion a certification of eligibility to apply for assist-
17 ance described in subsection (d).

18 “(2) DENIAL OF CERTIFICATION.—Upon denial
19 of certification with respect to a petition under para-
20 graph (1), the Secretary shall review the petition in
21 accordance with the requirements of subchapter A to
22 determine if the workers may be certified under such
23 subchapter.

24 “(d) COMPREHENSIVE ASSISTANCE.—Workers cov-
25 ered by certification issued by the Secretary under sub-

1 section (c) shall be provided, in the same manner and to
2 the same extent as workers covered under a certification
3 under subchapter A, the following:

4 “(1) Employment services described in section
5 235.

6 “(2) Training described in section 236, except
7 that notwithstanding the provisions of section
8 236(a)(2)(A), the total amount of payments for
9 training under this subchapter for any fiscal year
10 shall not exceed \$30,000,000.

11 “(3) Trade readjustment allowances described
12 in sections 231 through 234, except that—

13 “(A) the provisions of sections
14 231(a)(5)(C) and 231(c), authorizing the pay-
15 ment of trade readjustment allowances upon a
16 finding that it is not feasible or appropriate to
17 approve a training program for a worker, shall
18 not be applicable to payment of such allowances
19 under this subchapter; and

20 “(B) notwithstanding the provisions of sec-
21 tion 233(b), in order for a worker to qualify for
22 trade readjustment allowances under this sub-
23 chapter, the worker shall be enrolled in a train-
24 ing program approved by the Secretary under
25 section 236(a) by the later of—

1 “(i) the last day of the 16th week of
2 such worker’s initial unemployment com-
3 pensation benefit period, or

4 “(ii) the last day of the 6th week after
5 the week in which the Secretary issues a
6 certification covering such worker.

7 In cases of extenuating circumstances relating to en-
8 rollment in a training program, the Secretary may
9 extend the time for enrollment for a period not to
10 exceed 30 days .

11 “(4) Job search allowances described in section
12 237.

13 “(5) Relocation allowances described in section
14 238.

15 “(e) ADMINISTRATION.—The provisions of sub-
16 chapter C shall apply to the administration of the program
17 under this subchapter in the same manner and to the
18 same extent as such provisions apply to the administration
19 of the program under subchapters A and B, except that
20 the agreement between the Secretary and the States de-
21 scribed in section 239 shall specify the procedures that
22 will be used to carry out the certification process under
23 subsection (c) and the procedures for providing relevant
24 data by the Secretary to assist the States in making pre-
25 liminary findings under subsection (b).”.

1 **SEC. 503. CONFORMING AMENDMENTS.**

2 (a) REFERENCES.—Sections 221(a), 222(a), and
3 223(a) of the Trade Act of 1974 (19 U.S.C. 2271(a),
4 2272(a), and 2273(a)) are each amended by striking out
5 “assistance under this chapter” and inserting “assistance
6 under this subchapter”.

7 (b) BENEFIT INFORMATION.—Section 225(b) of the
8 Trade Act of 1974 (19 U.S.C. 2275(b)) is amended by
9 inserting “or subchapter D” after “subchapter A” each
10 place it appears.

11 (c) NONDUPLICATION OF ASSISTANCE.—Subchapter
12 C of chapter 2 of title II of the Trade Act of 1974 is
13 amended by adding at the end the following new section:

14 **“SEC. 249A. NONDUPLICATION OF ASSISTANCE.**

15 “No worker may receive assistance relating to a sepa-
16 ration pursuant to certifications under both subchapters
17 A and D of this chapter.”.

18 (d) JUDICIAL REVIEW.—Section 284 of the Trade
19 Act of 1974 (19 U.S.C. 2395(a)) is amended by inserting
20 “or section 250(c)” after “section 223”.

21 (e) TABLE OF CONTENTS.—The table of contents for
22 chapter 2 of title II of the Trade Act of 1974 is amend-
23 ed—

24 (1) by inserting after the item relating to sec-
25 tion 249 the following new item:

“Sec. 249A. Nonduplication of assistance.”;

1 and

2 (2) by adding at the end thereof the following
3 new items:

“SUBCHAPTER D—NAFTA TRANSITIONAL ADJUSTMENT ASSISTANCE PROGRAM
“Sec. 250. Establishment of transitional program.”.

4 **SEC. 504. AUTHORIZATION OF APPROPRIATIONS.**

5 Section 245 of the Trade Act of 1974 (19 U.S.C.
6 2317) is amended—

7 (1) by striking “There” and inserting “(a) IN
8 GENERAL.—There”,

9 (2) by inserting “, other than subchapter D”
10 after “chapter”, and

11 (3) by adding at the end the following new sub-
12 section:

13 “(b) SUBCHAPTER D.—There are authorized to be
14 appropriated to the Department of Labor, for each of fis-
15 cal years 1994, 1995, 1996, 1997, and 1998, such sums
16 as may be necessary to carry out the purposes of sub-
17 chapter D of this chapter.”.

18 **SEC. 505. TERMINATION OF TRANSITION PROGRAM.**

19 Subsection (c) of section 285 of the Trade Act of
20 1974 (19 U.S.C. 2271 preceding note) is amended—

21 (1) by striking “No” and inserting “(1) Except
22 as provided in paragraph (2), no”; and

23 (2) by adding at the end the following new
24 paragraph:

1 “(2)(A) Except as provided in subparagraph (B), no
2 assistance, vouchers, allowances, or other payments may
3 be provided under subchapter D of chapter 2 after the
4 day that is the earlier of—

5 “(i) September 30, 1998, or

6 “(ii) the date on which legislation, establishing
7 a program providing dislocated workers with com-
8 prehensive assistance substantially similar to the as-
9 sistance provided by such subchapter D, becomes ef-
10 fective.

11 “(B) Notwithstanding subparagraph (A), if, on or be-
12 fore the day described in subparagraph (A), a worker—

13 “(i) is certified as eligible to apply for assist-
14 ance, under subchapter D of chapter 2; and

15 “(ii) is otherwise eligible to receive assistance in
16 accordance with section 250,

17 such worker shall continue to be eligible to receive such
18 assistance for any week for which the worker meets the
19 eligibility requirements of such section.”.

20 **SEC. 506. EFFECTIVE DATE.**

21 (a) IN GENERAL.—The amendments made by sec-
22 tions 501, 502, 503, 504, and 505 shall take effect on
23 the date the Agreement enters into force with respect to
24 the United States.

25 (b) COVERED WORKERS.—

1 (1) GENERAL RULE.—Except as provided in
2 paragraph (2), no worker shall be certified as eligi-
3 ble to receive assistance under subchapter D of
4 chapter 2 of title II of the Trade Act of 1974 (as
5 added by this subtitle) whose last total or partial
6 separation from a firm (or appropriate subdivision of
7 a firm) occurred before such date of entry into force.

8 (2) REACHBACK.—Notwithstanding paragraph
9 (1), any worker—

10 (A) whose last total or partial separation
11 from a firm (or appropriate subdivision of a
12 firm) occurs—

13 (i) after the date of the enactment of
14 this Act, and

15 (ii) before such date of entry into
16 force, and

17 (B) who would otherwise be eligible to re-
18 ceive assistance under subchapter D of chapter
19 2 of title II of the Trade Act of 1974,
20 shall be eligible to receive such assistance in the
21 same manner as if such separation occurred on or
22 after such date of entry into force.

1 **SEC. 507. TREATMENT OF SELF-EMPLOYMENT ASSISTANCE**
2 **PROGRAMS.**

3 (a) GENERAL RULE.—Section 3306 of the Internal
4 Revenue Code of 1986 is amended by adding at the end
5 the following new subsection:

6 “(t) SELF-EMPLOYMENT ASSISTANCE PROGRAM.—
7 For the purposes of this chapter, the term ‘self-employ-
8 ment assistance program’ means a program under
9 which—

10 “(1) individuals who meet the requirements de-
11 scribed in paragraph (3) are eligible to receive an al-
12 lowance in lieu of regular unemployment compensa-
13 tion under the State law for the purpose of assisting
14 such individuals in establishing a business and be-
15 coming self-employed;

16 “(2) the allowance payable to individuals pursu-
17 ant to paragraph (1) is payable in the same amount,
18 at the same interval, on the same terms, and subject
19 to the same conditions, as regular unemployment
20 compensation under the State law, except that—

21 “(A) State requirements relating to avail-
22 ability for work, active search for work, and re-
23 fusals to accept work are not applicable to such
24 individuals;

25 “(B) State requirements relating to dis-
26 qualifying income are not applicable to income

1 earned from self-employment by such individ-
2 uals; and

3 “(C) such individuals are considered to be
4 unemployed for the purposes of Federal and
5 State laws applicable to unemployment com-
6 pensation,

7 as long as such individuals meet the requirements
8 applicable under this subsection;

9 “(3) individuals may receive the allowance
10 described in paragraph (1) if such individuals—

11 “(A) are eligible to receive regular unem-
12 ployment compensation under the State law, or
13 would be eligible to receive such compensation
14 except for the requirements described in sub-
15 paragraph (A) or (B) of paragraph (2);

16 “(B) are identified pursuant to a State
17 worker profiling system as individuals likely to
18 exhaust regular unemployment compensation;
19 and

20 “(C) are participating in self-employment
21 assistance activities which—

22 “(i) include entrepreneurial training,
23 business counseling, and technical assist-
24 ance; and

1 “(ii) are approved by the State agen-
2 cy; and

3 “(D) are actively engaged on a full-time
4 basis in activities (which may include training)
5 relating to the establishment of a business and
6 becoming self-employed;

7 “(4) the aggregate number of individuals receiv-
8 ing the allowance under the program does not at any
9 time exceed 5 percent of the number of individuals
10 receiving regular unemployment compensation under
11 the State law at such time;

12 “(5) the program does not result in any cost to
13 the Unemployment Trust Fund (established by sec-
14 tion 904(a) of the Social Security Act) in excess of
15 the cost that would be incurred by such State and
16 charged to such Fund if the State had not partici-
17 pated in such program; and

18 “(6) the program meets such other require-
19 ments as the Secretary of Labor determines to be
20 appropriate.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 3304(a)(4) of such Code is amend-
23 ed—

24 (A) in subparagraph (D), by striking “;
25 and” and inserting a semicolon;

1 (B) in subparagraph (E), by striking the
2 semicolon and inserting “; and”; and

3 (C) by adding at the end the following new
4 subparagraph:

5 “(F) amounts may be withdrawn for the
6 payment of allowances under a self-employment
7 assistance program (as defined in section
8 3306(t));”.

9 (2) Section 3306(f) of such Code is amended—

10 (A) in paragraph (3), by striking “; and”
11 and inserting a semicolon;

12 (B) in paragraph (4), by striking the pe-
13 riod and inserting “; and”; and

14 (C) by adding at the end the following new
15 paragraph:

16 “(5) amounts may be withdrawn for the pay-
17 ment of allowances under a self-employment assist-
18 ance program (as defined in subsection (t)).”.

19 (3) Section 303(a)(5) of the Social Security Act
20 (42 U.S.C. 503(a)(5)) is amended by striking “;
21 and” and inserting “: *Provided further*, That
22 amounts may be withdrawn for the payment of al-
23 lowances under a self-employment assistance pro-
24 gram (as defined in section 3306(t) of the Internal
25 Revenue Code of 1986); and”.

1 (c) STATE REPORTS.—Any State operating a self-em-
2 ployment program authorized by the Secretary of Labor
3 under this section shall report annually to the Secretary
4 on the number of individuals who participate in the self-
5 employment assistance program, the number of individ-
6 uals who are able to develop and sustain businesses, the
7 operating costs of the program, compliance with program
8 requirements, and any other relevant aspects of program
9 operations requested by the Secretary.

10 (d) REPORT TO CONGRESS.—Not later than 4 years
11 after the date of the enactment of this Act, the Secretary
12 of Labor shall submit a report to the Congress with re-
13 spect to the operation of the program authorized under
14 this section. Such report shall be based on the reports re-
15 ceived from the States pursuant to subsection (c) and in-
16 clude such other information as the Secretary of Labor
17 determines is appropriate.

18 (e) EFFECTIVE DATE; SUNSET.—

19 (1) EFFECTIVE DATE.—The provisions of this
20 section and the amendments made by this section
21 shall take effect on the date of the enactment of this
22 Act.

23 (2) SUNSET.—The authority provided by this
24 section, and the amendments made by this section,

1 shall terminate 5 years after the date of the enact-
2 ment of this Act.

3 **Subtitle B—Provisions Relating to**
4 **Performance Under the Agreement**

5 **SEC. 511. DISCRIMINATORY TAXES.**

6 It is the sense of the Congress that when a State,
7 province, or other governmental entity of a NAFTA coun-
8 try discriminatorily enforces sales or other taxes so as to
9 afford protection to domestic production or domestic serv-
10 ice providers, such enforcement is in violation of the terms
11 of the Agreement. When such discriminatory enforcement
12 adversely affects United States producers of goods or
13 United States service providers, the Trade Representative
14 should pursue all appropriate remedies to obtain removal
15 of such discriminatory enforcement, including invocation
16 of the provisions of the Agreement.

17 **SEC. 512. REVIEW OF THE OPERATION AND EFFECTS OF**
18 **THE AGREEMENT.**

19 (a) STUDY.—By not later than July 1, 1997, the
20 President shall provide to the Congress a comprehensive
21 study on the operation and effects of the Agreement. The
22 study shall include an assessment of the following factors:

23 (1) The net effect of the Agreement on the
24 economy of the United States, including with respect

1 to the United States gross national product, employ-
2 ment, balance of trade, and current account balance.

3 (2) The industries (including agricultural indus-
4 tries) in the United States that have significantly in-
5 creased exports to Mexico or Canada as a result of
6 the Agreement, or in which imports into the United
7 States from Mexico or Canada have increased sig-
8 nificantly as a result of the Agreement, and the ex-
9 tent of any change in the wages, employment, or
10 productivity in each such industry as a result of the
11 Agreement.

12 (3) The extent to which investment in new or
13 existing production or other operations in the United
14 States has been redirected to Mexico as a result of
15 the Agreement, and the effect on United States em-
16 ployment of such redirection.

17 (4) The extent of any increase in investment,
18 including foreign direct investment and increased in-
19 vestment by United States investors, in new or exist-
20 ing production or other operations in the United
21 States as a result of the Agreement, and the effect
22 on United States employment of such investment.

23 (5) The extent to which the Agreement has con-
24 tributed to—

1 (A) improvement in real wages and work-
2 ing conditions in Mexico,

3 (B) effective enforcement of labor and en-
4 vironmental laws in Mexico, and

5 (C) the reduction or abatement of pollution
6 in the region of the United States-Mexico bor-
7 der.

8 (b) SCOPE.—In assessing the factors listed in sub-
9 section (a), to the extent possible, the study shall distin-
10 guish between the consequences of the Agreement and
11 events that likely would have occurred without the Agree-
12 ment. In addition, the study shall evaluate the effects of
13 the Agreement relative to aggregate economic changes
14 and, to the extent possible, relative to the effects of other
15 factors, including—

16 (1) international competition,

17 (2) reductions in defense spending,

18 (3) the shift from traditional manufacturing to
19 knowledge and information based economic activity,
20 and

21 (4) the Federal debt burden.

22 (c) RECOMMENDATIONS OF THE PRESIDENT.—The
23 study shall include any appropriate recommendations by
24 the President with respect to the operation and effects of

1 the Agreement, including recommendations with respect to
2 the specific factors listed in subsection (a).

3 (d) RECOMMENDATIONS OF CERTAIN COMMIT-
4 TEES.—The President shall provide the study to the Com-
5 mittee on Ways and Means of the House of Representa-
6 tives and the Committee on Finance of the Senate and
7 any other committee that has jurisdiction over any provi-
8 sion of United States law that was either enacted or
9 amended by the North American Free Trade Agreement
10 Implementation Act. Each such committee may hold hear-
11 ings and make recommendations to the President with re-
12 spect to the operation and effects of the Agreement.

13 **SEC. 513. ACTIONS AFFECTING UNITED STATES CULTURAL**
14 **INDUSTRIES.**

15 Section 182 of the Trade Act of 1974 (19 U.S.C.
16 2242) is amended by adding at the end the following new
17 subsection:

18 “(f) SPECIAL RULE FOR ACTIONS AFFECTING UNIT-
19 ED STATES CULTURAL INDUSTRIES.—

20 “(1) IN GENERAL.—By no later than the date
21 that is 30 days after the date on which the annual
22 report is submitted to Congressional committees
23 under section 181(b), the Trade Representative shall
24 identify any act, policy, or practice of Canada
25 which—

1 “(A) affects cultural industries,

2 “(B) is adopted or expanded after Decem-
3 ber 17, 1992, and

4 “(C) is actionable under article 2106 of
5 the North American Free Trade Agreement.

6 “(2) SPECIAL RULES FOR IDENTIFICATIONS.—

7 For purposes of section 302(b)(2)(A), an act, policy,
8 or practice identified under this subsection shall be
9 treated as an act, policy, or practice that is the basis
10 for identification of a country under subsection
11 (a)(2), unless the United States has already taken
12 action pursuant to article 2106 of the North Amer-
13 ican Free Trade Agreement in response to such act,
14 policy, or practice. In deciding whether to identify
15 an act, policy, or practice under paragraph (1), the
16 Trade Representative shall—

17 “(A) consult with and take into account
18 the views of representatives of the relevant do-
19 mestic industries, appropriate committees es-
20 tablished pursuant to section 135, and appro-
21 priate officers of the Federal Government, and

22 “(B) take into account the information
23 from such sources as may be available to the
24 Trade Representative and such information as
25 may be submitted to the Trade Representative

1 by interested persons, including information
2 contained in reports submitted under section
3 181(b).

4 “(3) CULTURAL INDUSTRIES.—For purposes of
5 this subsection, the term ‘cultural industries’ means
6 persons engaged in any of the following activities:

7 “(A) The publication, distribution, or sale
8 of books, magazines, periodicals, or newspapers
9 in print or machine readable form but not in-
10 cluding the sole activity of printing or type-
11 setting any of the foregoing.

12 “(B) The production, distribution, sale, or
13 exhibition of film or video recordings.

14 “(C) The production, distribution, sale, or
15 exhibition of audio or video music recordings.

16 “(D) The publication, distribution, or sale
17 of music in print or machine readable form.

18 “(E) Radio communications in which the
19 transmissions are intended for direct reception
20 by the general public, and all radio, television,
21 and cable broadcasting undertakings and all
22 satellite programming and broadcast network
23 services.”.

1 **SEC. 514. REPORT ON IMPACT OF NAFTA ON MOTOR VEHI-**
2 **CLE EXPORTS TO MEXICO.**

3 (a) FINDINGS.—The Congress makes the following
4 findings:

5 (1) Trade in motor vehicles and motor vehicle
6 parts is one of the most restricted areas of trade be-
7 tween the United States and Mexico.

8 (2) The elimination of Mexico's restrictive bar-
9 riers to trade in motor vehicles and motor vehicle
10 parts over a 10-year period under the Agreement
11 should increase substantially United States exports
12 of such products to Mexico.

13 (3) The Department of Commerce estimates
14 that the Agreement provides the opportunity to in-
15 crease United States exports of motor vehicles and
16 motor vehicle parts by \$1,000,000,000 during the
17 first year of the Agreement's implementation with
18 the potential for additional increases over the 10-
19 year transition period.

20 (4) The United States automotive industry has
21 estimated that United States exports of motor vehi-
22 cles to Mexico should increase to more than 60,000
23 units during the first year of the Agreement's imple-
24 mentation, which is substantially above the current
25 level of 4,000 units.

1 (b) TRADE REPRESENTATIVE REPORT.—No later
2 than July 1, 1995, and annually thereafter through 1999,
3 the Trade Representative shall submit a report to the
4 Committee on Finance of the Senate and the Committee
5 on Ways and Means of the House of Representatives on
6 how effective the provisions of the Agreement are with re-
7 spect to increasing United States exports of motor vehicles
8 and motor vehicle parts to Mexico. Each report shall iden-
9 tify and determine the following:

10 (1) The patterns of trade in motor vehicles and
11 motor vehicle parts between the United States and
12 Mexico during the preceding 12-month period.

13 (2) The level of tariff and nontariff barriers
14 that were in force during the preceding 12-month
15 period.

16 (3) The amount by which United States exports
17 of motor vehicles and motor vehicle parts to Mexico
18 have increased from the preceding 12-month period
19 as a result of the elimination of Mexican tariff and
20 nontariff barriers under the Agreement.

21 (4) Whether any such increase in United States
22 exports meets the levels of new export opportunities
23 anticipated under the Agreement.

24 (5) If the anticipated levels of new United
25 States export opportunities are not reached, what

1 actions the Trade Representative is prepared to take
2 to realize the benefits anticipated under the Agree-
3 ment, including possible initiation of additional ne-
4 gotiations with Mexico for the purpose of seeking
5 modifications of the Agreement.

6 **SEC. 515. CENTER FOR THE STUDY OF WESTERN HEMI-**
7 **SPHERIC TRADE.**

8 (a) AMENDMENT TO THE CBI.—The Caribbean
9 Basin Economic Recovery Act (19 U.S.C. 2701 et seq.)
10 is amended by inserting after section 218 the following
11 new section:

12 **“SEC. 219. CENTER FOR THE STUDY OF WESTERN HEMI-**
13 **SPHERIC TRADE.**

14 “(a) ESTABLISHMENT.—The Commissioner of Cus-
15 toms, after consultation with appropriate officials in the
16 State of Texas, is authorized and directed to make grants
17 to an institution (or a consortium of such institutions) to
18 assist such institution in planning, establishing, and oper-
19 ating a Center for the Study of Western Hemispheric
20 Trade (hereafter in this section referred to as the ‘Cen-
21 ter’). The Commissioner of Customs shall make the first
22 grant not later than December 1, 1994, and the Center
23 shall be established not later than February 1, 1995.

24 “(b) SCOPE OF THE CENTER.—The Center shall be
25 a year-round program operated by an institution located

1 in the State of Texas (or a consortium of such institu-
2 tions), the purpose of which is to promote and study trade
3 between and among Western Hemisphere countries. The
4 Center shall conduct activities designed to examine—

5 “(1) the impact of the NAFTA on the econo-
6 mies in, and trade within, the Western Hemisphere,

7 “(2) the negotiation of any future free trade
8 agreements, including possible accessions to the
9 NAFTA; and

10 “(3) adjusting tariffs, reducing nontariff bar-
11 riers, improving relations among customs officials,
12 and promoting economic relations among countries
13 in the Western Hemisphere.

14 “(c) CONSULTATION; SELECTION CRITERIA.—The
15 Commissioner of Customs shall consult with appropriate
16 officials of the State of Texas and private sector authori-
17 ties with respect to selecting, planning, and establishing
18 the Center. In selecting the appropriate institution, the
19 Commissioner of Customs shall give consideration to—

20 “(1) the institution’s ability to carry out the
21 programs and activities described in this section;
22 and

23 “(2) any resources the institution can provide
24 the Center in addition to Federal funds provided
25 under this program.

1 “(d) PROGRAMS AND ACTIVITIES.—The Center shall
2 conduct the following activities:

3 “(1) Provide forums for international discussion
4 and debate for representatives from countries in the
5 Western Hemisphere regarding issues which affect
6 trade and other economic relations within the hemi-
7 sphere, including the impact of the NAFTA on indi-
8 vidual economies and the desirability and feasibility
9 of possible accessions to the NAFTA by such coun-
10 tries.

11 “(2) Conduct studies and research projects on
12 subjects which affect Western Hemisphere trade, in-
13 cluding tariffs, customs, regional and national eco-
14 nomics, business development and finance, produc-
15 tion and personnel management, manufacturing, ag-
16 riculture, engineering, transportation, immigration,
17 telecommunications, medicine, science, urban stud-
18 ies, border demographics, social anthropology, and
19 population.

20 “(3) Publish materials, disseminate informa-
21 tion, and conduct seminars and conferences to sup-
22 port and educate representatives from countries in
23 the Western Hemisphere who seek to do business
24 with or invest in other Western Hemisphere coun-
25 tries.

1 “(4) Provide grants, fellowships, endowed
2 chairs, and financial assistance to outstanding schol-
3 ars and authorities from Western Hemisphere coun-
4 tries.

5 “(5) Provide grants, fellowships, and other fi-
6 nancial assistance to qualified graduate students,
7 from Western Hemisphere countries, to study at the
8 Center.

9 “(6) Implement academic exchange programs
10 and other cooperative research and instructional
11 agreements with the complementary North/South
12 Center at the University of Miami at Coral Gables.

13 “(e) DEFINITIONS.—For purposes of this section—

14 “(1) NAFTA.—The term ‘NAFTA’ means the
15 North American Free Trade Agreement.

16 “(2) WESTERN HEMISPHERE COUNTRIES.—The
17 terms ‘Western Hemisphere countries’, ‘countries in
18 the Western Hemisphere’, and ‘Western Hemi-
19 sphere’ mean Canada, the United States, Mexico,
20 countries located in South America, beneficiary
21 countries (as defined by section 212), the Common-
22 wealth of Puerto Rico, and the United States Virgin
23 Islands.

24 “(f) FEES FOR SEMINARS AND PUBLICATIONS.—

25 Notwithstanding any other provision of law, a grant made

1 under this section may provide that the Center may charge
2 a reasonable fee for attendance at seminars and con-
3 ferences and for copies of publications, studies, reports,
4 and other documents the Center publishes. The Center
5 may waive such fees in any case in which it determines
6 imposing a fee would impose a financial hardship and the
7 purposes of the Center would be served by granting such
8 a waiver.

9 “(g) DURATION OF GRANT.—The Commissioner of
10 Customs is directed to make grants to any institution or
11 institutions selected as the Center for fiscal years 1994,
12 1995, 1996, and 1997.

13 “(h) REPORT.—The Commissioner of Customs shall,
14 no later than July 1, 1994, and annually thereafter for
15 years for which grants are made, submit a written report
16 to the Committee on Finance of the Senate and the Com-
17 mittee on Ways and Means of the House of Representa-
18 tives. The first report shall include—

19 “(1) a statement identifying the institution or
20 institutions selected as the Center,

21 “(2) the reasons for selecting the institution or
22 institutions as the Center, and

23 “(3) the plan of such institution or institutions
24 for operating the Center.

1 Each subsequent report shall include information with re-
2 spect to the operations of the Center, the collaboration of
3 the Center with, and dissemination of information to, Gov-
4 ernment policymakers and the business community with
5 respect to the study of Western Hemispheric trade by the
6 Center, and the plan and efforts of the Center to continue
7 operations after grants under this section have expired.”.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated \$10,000,000 for fiscal
10 year 1994, and such sums as may be necessary in the 3
11 succeeding fiscal years to carry out the purposes of section
12 219 of the Caribbean Basin Economic Recovery Act (as
13 added by subsection (a)).

14 **SEC. 516. EFFECTIVE DATE.**

15 (a) IN GENERAL.—Except as provided in subsection
16 (b), the provisions of this subtitle shall take effect on the
17 date the Agreement enters into force with respect to the
18 United States.

19 (b) EXCEPTION.—Section 515 shall take effect on the
20 date of the enactment of this Act.

Subtitle C—Funding

PART 1—CUSTOMS USER FEES

SEC. 521. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) IN GENERAL.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended—

(1) by amending paragraph (5) of subsection (a) to read as follows:

“(5)(A) For fiscal years 1994, 1995, 1996, and 1997, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States, \$6.50.

“(B) For fiscal year 1998 and each fiscal year thereafter, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A) of this section), \$5.”

(2) by adding at the end of paragraph (1) of subsection (b), the following flush sentence:

“Subparagraph (A) shall not apply to fiscal years 1994, 1995, 1996, and 1997.”,

(3) in subsection (f)—

1 (A) in paragraph (1), by striking “except”
2 and all that follows through the end period and
3 inserting: “except—

4 “(A) the portion of such fees that is re-
5 quired under paragraph (3) for the direct reim-
6 bursement of appropriations, and

7 “(B) the portion of such fees that is deter-
8 mined by the Secretary to be excess fees under
9 paragraph (5).”,

10 (B) in paragraph (3)(A), by striking the
11 first parenthetical and inserting “(other than
12 the fees under subsection (a) (9) and (10) and
13 the excess fees determined by the Secretary
14 under paragraph (5))”,

15 (C) in paragraph (4), by striking “under
16 subsection (a)” and inserting “under subsection
17 (a) (other than the excess fees determined by
18 the Secretary under paragraph (5))”, and

19 (D) by adding at the end thereof the fol-
20 lowing new paragraph:

21 “(5) At the close of each of fiscal years 1994,
22 1995, 1996, and 1997, the Secretary of the Treas-
23 ury shall determine the amount of the fees collected
24 under paragraph (5)(A) of subsection (a) for that
25 fiscal year that exceeds the amount of such fees that

1 would have been collected for such fiscal year if the
 2 fees that were in effect on the day before the effec-
 3 tive date of this paragraph applied to such fiscal
 4 year. The amount of the excess fees determined
 5 under the preceding sentence shall be deposited in
 6 the Customs User Fee Account and shall be avail-
 7 able for reimbursement of inspectional costs (includ-
 8 ing passenger processing costs) not otherwise reim-
 9 bursed under this section, and shall be available only
 10 to the extent provided in appropriations Acts.”, and
 11 (4) in paragraph (3) of subsection (j), by strik-
 12 ing “September 30, 1998” and inserting “September
 13 30, 2003.”.

14 (b) EFFECTIVE DATE.—The amendments made by
 15 this section shall take effect on the date the Agreement
 16 enters into force with respect to the United States.

17 **PART 2—INTERNAL REVENUE CODE**

18 **AMENDMENTS**

19 **SEC. 522. AUTHORITY TO DISCLOSE CERTAIN TAX INFOR-** 20 **MATION TO THE UNITED STATES CUSTOMS** 21 **SERVICE.**

22 (a) IN GENERAL.—Subsection (l) of section 6103 of
 23 the Internal Revenue Code of 1986 (relating to confiden-
 24 tiality and disclosure of returns and return information)

1 is amended by adding at the end thereof the following new
2 paragraph:

3 “(14) DISCLOSURE OF RETURN INFORMATION
4 TO UNITED STATES CUSTOMS SERVICE.—The Sec-
5 retary may, upon written request from the Commis-
6 sioner of the United States Customs Service, dis-
7 close to officers and employees of the Department of
8 the Treasury such return information with respect
9 to taxes imposed by chapters 1 and 6 as the Sec-
10 retary may prescribe by regulations, solely for the
11 purpose of, and only to the extent necessary in—

12 “(A) ascertaining the correctness of any
13 entry in audits as provided for in section 509
14 of the Tariff Act of 1930 (19 U.S.C. 1509), or

15 “(B) other actions to recover any loss of
16 revenue, or to collect duties, taxes, and fees, de-
17 termined to be due and owing pursuant to such
18 audits.”

19 (b) CONFORMING AMENDMENTS.—Paragraphs
20 (3)(A) and (4) of section 6103(p) of such Code are each
21 amended by striking “or (13)” each place it appears and
22 inserting “(13), or (14)”.

23 (c) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendments made by
25 this section shall take effect on the date the Agree-

1 ment enters into force with respect to the United
2 States.

3 (2) REGULATIONS.—Not later than 90 days
4 after the date of the enactment of this Act, the Sec-
5 retary of the Treasury or his delegate shall issue
6 temporary regulations to carry out section
7 6103(l)(14) of the Internal Revenue Code of 1986,
8 as added by this section.

9 **SEC. 523. USE OF ELECTRONIC FUND TRANSFER SYSTEM**
10 **FOR COLLECTION OF CERTAIN TAXES.**

11 (a) GENERAL RULE.—Section 6302 of the Internal
12 Revenue Code of 1986 (relating to mode or time of collec-
13 tion) is amended by redesignating subsection (h) as sub-
14 section (i) and by inserting after subsection (g) the follow-
15 ing new subsection:

16 “(h) USE OF ELECTRONIC FUND TRANSFER SYSTEM
17 FOR COLLECTION OF CERTAIN TAXES.—

18 “(1) ESTABLISHMENT OF SYSTEM.—

19 “(A) IN GENERAL.—The Secretary shall
20 prescribe such regulations as may be necessary
21 for the development and implementation of an
22 electronic fund transfer system which is re-
23 quired to be used for the collection of deposi-
24 tory taxes. Such system shall be designed in
25 such manner as may be necessary to ensure

1 that such taxes are credited to the general ac-
2 count of the Treasury on the date on which
3 such taxes would otherwise have been required
4 to be deposited under the Federal tax deposit
5 system.

6 “(B) EXEMPTIONS.—The regulations pre-
7 scribed under subparagraph (A) may contain
8 such exemptions as the Secretary may deem
9 appropriate.

10 “(2) PHASE-IN REQUIREMENTS.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the regulations referred to in
13 paragraph (1)—

14 “(i) shall contain appropriate proce-
15 dures to assure that an orderly conversion
16 from the Federal tax deposit system to the
17 electronic fund transfer system is accom-
18 plished, and

19 “(ii) may provide for a phase-in of
20 such electronic fund transfer system by
21 classes of taxpayers based on the aggre-
22 gate undeposited taxes of such taxpayers
23 at the close of specified periods and any
24 other factors the Secretary may deem ap-
25 propriate.

1 “(B) PHASE-IN REQUIREMENTS.—The
2 phase-in of the electronic fund transfer system
3 shall be designed in such manner as may be
4 necessary to ensure that—

5 “(i) during each fiscal year beginning
6 after September 30, 1993, at least the ap-
7 plicable required percentage of the total
8 depository taxes imposed by chapters 21,
9 22, and 24 shall be collected by means of
10 electronic fund transfer, and

11 “(ii) during each fiscal year beginning
12 after September 30, 1993, at least the ap-
13 plicable required percentage of the total
14 other depository taxes shall be collected by
15 means of electronic fund transfer.

16 “(C) APPLICABLE REQUIRED PERCENT-
17 AGE.—

18 “(i) In the case of the depository
19 taxes imposed by chapters 21, 22, and 24,
20 the applicable required percentage is—

21 “(I) 3 percent for fiscal year
22 1994,

23 “(II) 16.9 percent for fiscal year
24 1995,

1 “(III) 20.1 percent for fiscal year
2 1996,

3 “(IV) 58.3 percent for fiscal
4 years 1997 and 1998, and

5 “(V) 94 percent for fiscal year
6 1999 and all fiscal years thereafter.

7 “(ii) In the case of other depository
8 taxes, the applicable required percentage
9 is—

10 “(I) 3 percent for fiscal year
11 1994,

12 “(II) 20 percent for fiscal year
13 1995,

14 “(III) 30 percent for fiscal year
15 1996,

16 “(IV) 60 percent for fiscal years
17 1997 and 1998, and

18 “(V) 94 percent for fiscal year
19 1999 and all fiscal years thereafter.

20 “(3) DEFINITIONS.—For purposes of this sub-
21 section—

22 “(A) DEPOSITORY TAX.—The term ‘depos-
23 itory tax’ means any tax if the Secretary is au-
24 thorized to require deposits of such tax.

1 “(B) ELECTRONIC FUND TRANSFER.—The
2 term ‘electronic fund transfer’ means any trans-
3 fer of funds, other than a transaction originated
4 by check, draft, or similar paper instrument,
5 which is initiated through an electronic termi-
6 nal, telephonic instrument, or computer or mag-
7 netic tape so as to order, instruct, or authorize
8 a financial institution or other financial
9 intermediary to debit or credit an account.

10 “(4) COORDINATION WITH OTHER ELECTRONIC
11 FUND TRANSFER REQUIREMENTS.—

12 “(A) COORDINATION WITH CERTAIN EX-
13 CISE TAXES.—In determining whether the re-
14 quirements of subparagraph (B) of paragraph
15 (2) are met, taxes required to be paid by elec-
16 tronic fund transfer under sections 5061(e) and
17 5703(b) shall be disregarded.

18 “(B) ADDITIONAL REQUIREMENT.—Under
19 regulations, any tax required to be paid by elec-
20 tronic fund transfer under section 5061(e) or
21 5703(b) shall be paid in such a manner as to
22 ensure that the requirements of the second sen-
23 tence of paragraph (1)(A) of this subsection are
24 satisfied.”

25 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall take effect on the date the Agree-
3 ment enters into force with respect to the United
4 States.

5 (2) REGULATIONS.—Not later than 210 days
6 after the date of enactment of this Act, the Sec-
7 retary of the Treasury or his delegate shall prescribe
8 temporary regulations under section 6302(h) of the
9 Internal Revenue Code of 1986 (as added by this
10 section).

11 **Subtitle D—Implementation of**
12 **NAFTA Supplemental Agreements**

13 **PART 1—AGREEMENTS RELATING TO LABOR AND**
14 **ENVIRONMENT**

15 **SEC. 531. AGREEMENT ON LABOR COOPERATION.**

16 (a) COMMISSION FOR LABOR COOPERATION.—

17 (1) MEMBERSHIP.—The United States is au-
18 thorized to participate in the Commission for Labor
19 Cooperation in accordance with the North American
20 Agreement on Labor Cooperation.

21 (2) CONTRIBUTIONS TO BUDGET.—There are
22 authorized to be appropriated to the President (or
23 such agency as the President may designate)
24 \$2,000,000 for each of fiscal years 1994 and 1995
25 for United States contributions to the annual budget

1 of the Commission for Labor Cooperation pursuant
2 to Article 43 of the North American Agreement on
3 Labor Cooperation. Funds authorized to be appro-
4 priated for such contributions by this paragraph are
5 in addition to any funds otherwise available for such
6 contributions. Funds authorized to be appropriated
7 by this paragraph are authorized to be made avail-
8 able until expended.

9 (b) DEFINITIONS.—As used in this section—

10 (1) the term “Commission for Labor Coopera-
11 tion” means the commission established by Part
12 Three of the North American Agreement on Labor
13 Cooperation; and

14 (2) the term “North American Agreement on
15 Labor Cooperation” means the North American
16 Agreement on Labor Cooperation Between the Gov-
17 ernment of the United States of America, the Gov-
18 ernment of Canada, and the Government of the
19 United Mexican States (signed at Mexico City,
20 Washington, and Ottawa on September 8, 9, 12, and
21 14, 1993).

22 **SEC. 532. AGREEMENT ON ENVIRONMENTAL COOPERA-**
23 **TION.**

24 (a) COMMISSION FOR ENVIRONMENTAL COOPERA-
25 TION.—

1 (1) MEMBERSHIP.—The United States is au-
2 thorized to participate in the Commission for Envi-
3 ronmental Cooperation in accordance with the North
4 American Agreement on Environmental Cooperation.

5 (2) CONTRIBUTIONS TO BUDGET.—There are
6 authorized to be appropriated to the President (or
7 such agency as the President may designate)
8 \$5,000,000 for each of fiscal years 1994 and 1995
9 for United States contributions to the annual budget
10 of the Commission for Environmental Cooperation
11 pursuant to Article 43 of the North American
12 Agreement on Environmental Cooperation. Funds
13 authorized to be appropriated for such contributions
14 by this paragraph are in addition to any funds oth-
15 erwise available for such contributions. Funds au-
16 thorized to be appropriated by this paragraph are
17 authorized to be made available until expended.

18 (b) DEFINITIONS.—As used in this section—

19 (1) the term “Commission for Environmental
20 Cooperation” means the commission established by
21 Part Three of the North American Agreement on
22 Environmental Cooperation; and

23 (2) the term “North American Agreement on
24 Environmental Cooperation” means the North
25 American Agreement on Environmental Cooperation

1 Between the Government of the United States of
2 America, the Government of Canada, and the Gov-
3 ernment of the United Mexican States (signed at
4 Mexico City, Washington, and Ottawa on September
5 8, 9, 12, and 14, 1993).

6 **SEC. 533. AGREEMENT ON BORDER ENVIRONMENT CO-**
7 **OPERATION COMMISSION.**

8 (a) BORDER ENVIRONMENT COOPERATION COMMIS-
9 SION.—

10 (1) MEMBERSHIP.—The United States is au-
11 thorized to participate in the Border Environment
12 Cooperation Commission in accordance with the
13 Border Environment Cooperation Agreement.

14 (2) CONTRIBUTIONS TO THE COMMISSION
15 BUDGET.—There are authorized to be appropriated
16 to the President (or such agency as the President
17 may designate) \$5,000,000 for fiscal year 1994 and
18 each fiscal year thereafter for United States con-
19 tributions to the budget of the Border Environment
20 Cooperation Commission pursuant to section 7 of
21 Article III of Chapter I of the Border Environment
22 Cooperation Agreement. Funds authorized to be ap-
23 propriated for such contributions by this paragraph
24 are in addition to any funds otherwise available for
25 such contributions. Funds authorized to be appro-

1 priated by this paragraph are authorized to be made
2 available until expended.

3 (b) CIVIL ACTIONS INVOLVING THE COMMISSION.—

4 For the purpose of any civil action which may be brought
5 within the United States by or against the Border Envi-
6 ronment Cooperation Commission in accordance with the
7 Border Environment Cooperation Agreement (including
8 an action brought to enforce an arbitral award against the
9 Commission), the Commission shall be deemed to be an
10 inhabitant of the Federal judicial district in which its prin-
11 cipal office within the United States, or its agent ap-
12 pointed for the purpose of accepting service or notice of
13 service, is located. Any such action to which the Commis-
14 sion is a party shall be deemed to arise under the laws
15 of the United States, and the district courts of the United
16 States (including the courts enumerated in section 460 of
17 title 28, United States Code) shall have original jurisdic-
18 tion of any such action. When the Commission is a defend-
19 ant in any action in a State court, it may at any time
20 before trial remove the action into the appropriate district
21 court of the United States by following the procedure for
22 removal provided in section 1446 of title 28, United States
23 Code.

24 (c) DEFINITIONS.—As used in this section—

1 (1) the term “Border Environment Cooperation
2 Agreement” means the November 1993 Agreement
3 Between the Government of the United States of
4 America and the Government of the United Mexican
5 States Concerning the Establishment of a Border
6 Environment Cooperation Commission and a North
7 American Development Bank;

8 (2) the terms “Border Environment Coopera-
9 tion Commission” and “Commission” mean the com-
10 mission established pursuant to Chapter I of the
11 Border Environment Cooperation Agreement; and

12 (3) the term “United States” means the United
13 States, its territories and possessions, and the Com-
14 monwealth of Puerto Rico.

15 **PART 2—NORTH AMERICAN DEVELOPMENT**

16 **BANK AND RELATED PROVISIONS**

17 **SEC. 541. NORTH AMERICAN DEVELOPMENT BANK.**

18 (a) ACCEPTANCE OF MEMBERSHIP.—The President
19 is hereby authorized to accept membership for the United
20 States in the North American Development Bank (here-
21 after in this part referred to as the “Bank”) provided for
22 in Chapter II of the Border Environment Cooperation
23 Agreement (hereafter in this part referred to as the “Co-
24 operation Agreement”).

25 (b) SUBSCRIPTION OF STOCK.—

1 (1) SUBSCRIPTION AUTHORITY.—

2 (A) IN GENERAL.—The Secretary of the
3 Treasury may subscribe on behalf of the United
4 States up to 150,000 shares of the capital stock
5 of the Bank.

6 (B) EFFECTIVENESS OF SUBSCRIPTION.—

7 Except as provided in paragraph (3), any such
8 subscription shall be effective only to such ex-
9 tent or in such amounts as are provided in ad-
10 vance in appropriations Acts.

11 (2) LIMITATIONS ON AUTHORIZATION OF AP-
12 PROPRIATIONS.—For payment by the Secretary of
13 the Treasury of the subscription of the United
14 States for shares described in paragraph (1), there
15 are authorized to be appropriated \$1,500,000,000
16 (\$225,000,000 of which may be used for paid-in
17 capital and \$1,275,000,000 of which may be used
18 for callable capital) without fiscal year limitation.

19 (3) FUNDING; LIMITATION ON CALLABLE CAP-
20 ITAL SUBSCRIPTIONS.—

21 (A) FUNDING.—For fiscal year 1995, the
22 Secretary of the Treasury shall pay to the Bank
23 out of any sums in the Treasury not otherwise
24 appropriated the sum of \$56,250,000 for the
25 paid-in portion of the United States share of

1 the capital stock of the Bank, 10 percent of
2 which may be transferred by the Bank to the
3 President pursuant to section 543 to pay for
4 the cost of direct and guaranteed Federal loans.

5 (B) LIMITATION ON CALLABLE CAPITAL
6 SUBSCRIPTIONS.—For fiscal year 1995, the
7 Secretary of the Treasury shall subscribe to the
8 callable capital portion of the United States
9 share of the capital stock of the Bank in an
10 amount not to exceed \$318,750,000.

11 (4) DISPOSITION OF NET INCOME DISTRIBUTED
12 BY THE FACILITY.—Any payment made to the
13 United States by the Bank as a distribution of net
14 income shall be covered into the Treasury as a mis-
15 cellaneous receipt.

16 (c) COMPENSATION OF BOARD MEMBERS.—No per-
17 son shall be entitled to receive any salary or other com-
18 pensation from the Bank or the United States for services
19 as a Board member.

20 (d) APPLICABILITY OF BRETTON WOODS AGREE-
21 MENTS ACT.—The provisions of section 4 of the Bretton
22 Woods Agreements Act shall apply with respect to the
23 Bank to the same extent as with respect to the Inter-
24 national Bank for Reconstruction and Development and
25 the International Monetary Fund.

1 (e) RESTRICTIONS.—Unless authorized by law, nei-
2 ther the President nor any person or agency shall, on be-
3 half of the United States—

4 (1) subscribe to additional shares of stock of
5 the Bank;

6 (2) vote for or agree to any amendment of the
7 Cooperation Agreement which increases the obliga-
8 tions of the United States, or which changes the
9 purpose or functions of the Bank; or

10 (3) make a loan or provide other financing to
11 the Bank.

12 (f) FEDERAL RESERVE BANKS AS DEPOSITORIES.—
13 Any Federal Reserve bank that is requested to do so by
14 the Bank shall act as its depository or as its fiscal agent,
15 and the Board of Governors of the Federal Reserve Sys-
16 tem shall supervise and direct the carrying out of these
17 functions by the Federal Reserve banks.

18 (g) JURISDICTION OF UNITED STATES COURTS AND
19 ENFORCEMENT OF ARBITRAL AWARDS.—For the purpose
20 of any civil action which may be brought within the United
21 States, its territories or possessions, or the Commonwealth
22 of Puerto Rico, by or against the Bank in accordance with
23 the Cooperation Agreement, including an action brought
24 to enforce an arbitral award against the Bank, the Bank
25 shall be deemed to be an inhabitant of the Federal judicial

1 district in which its principal office within the United
2 States or its agency appointed for the purpose of accepting
3 service or notice of service is located, and any such action
4 to which the Bank shall be a party shall be deemed to
5 arise under the laws of the United States, and the district
6 courts of the United States, including the courts enumer-
7 ated in section 460 of title 28, United States Code, shall
8 have original jurisdiction of any such action. When the
9 Bank is a defendant in any action in a State court, it may
10 at any time before trial remove the action into the appro-
11 priate district court of the United States by following the
12 procedure for removal provided in section 1446 of title 28,
13 United States Code.

14 (h) EXEMPTION FROM SECURITIES LAWS FOR CER-
15 TAIN SECURITIES ISSUED BY THE BANK; REPORTS RE-
16 QUIRED.—

17 (1) EXEMPTIONS FROM LIMITATIONS AND RE-
18 STRICTIONS ON THE POWER OF NATIONAL BANKING
19 ASSOCIATIONS TO DEAL IN AND UNDERWRITE IN-
20 VESTMENT SECURITIES OF THE BANK.—The seventh
21 sentence of the seventh undesignated paragraph of
22 section 5136 of the Revised Statutes of the United
23 States (12 U.S.C. 24), is amended by inserting “the
24 North American Development Bank,” after “Inter-
25 American Development Bank,”.

1 (2) EXEMPTION FROM SECURITIES LAWS FOR
2 CERTAIN SECURITIES ISSUED BY THE BANK; RE-
3 PORTS REQUIRED.—Any securities issued by the
4 Bank (including any guarantee by the Bank, wheth-
5 er or not limited in scope) in connection with the
6 raising of funds for inclusion in the Bank’s capital
7 resources as defined in Section 4 of Article II of
8 Chapter II of the Cooperation Agreement, and any
9 securities guaranteed by the Bank as to both the
10 principal and interest to which the commitment in
11 Section 3(d) of Article II of Chapter II of the Co-
12 operation Agreement is expressly applicable, shall be
13 deemed to be exempted securities within the mean-
14 ing of section 3(a)(2) of the Securities Act of 1933
15 (15 U.S.C. 77c), and section 3(a)(12) of the Securi-
16 ties Exchange Act of 1934 (15 U.S.C. 78c). The
17 Bank shall file with the Securities and Exchange
18 Commission such annual and other reports with re-
19 gard to such securities as the Commission shall de-
20 termine to be appropriate in view of the special char-
21 acter of the Bank and its operations and necessary
22 in the public interest or for the protection of inves-
23 tors.

24 (3) AUTHORITY OF SECURITIES AND EXCHANGE
25 COMMISSION TO SUSPEND EXEMPTION; REPORTS TO

1 THE CONGRESS.—The Securities and Exchange
2 Commission, acting in consultation with the Na-
3 tional Advisory Council on International Monetary
4 and Financial Problems, is authorized to suspend
5 the provisions of paragraph (2) at any time as to
6 any or all securities issued or guaranteed by the
7 Bank during the period of such suspension. The
8 Commission shall include in its annual reports to
9 Congress such information as it shall deem advisable
10 with regard to the operations and effect of this sub-
11 section and in connection therewith shall include any
12 views submitted for such purpose by any association
13 of dealers registered with the Commission.

14 **SEC. 542. STATUS, IMMUNITIES, AND PRIVILEGES.**

15 Article VIII of Chapter II of the Cooperation Agree-
16 ment shall have full force and effect in the United States,
17 its territories and possessions, and the Commonwealth of
18 Puerto Rico, upon entry into force of the Cooperation
19 Agreement.

20 **SEC. 543. COMMUNITY ADJUSTMENT AND INVESTMENT**
21 **PROGRAM.**

22 (a) THE PRESIDENT.—(1) The President may enter
23 into an agreement with the Bank that facilitates imple-
24 mentation by the President of a program for community
25 adjustment and investment in support of the Agreement

1 pursuant to chapter II of the Cooperation Agreement
2 (hereafter in this section referred to as the “community
3 adjustment and investment program”).

4 (2) The President may receive from the Bank 10 per-
5 cent of the paid-in capital actually paid to the Bank by
6 the United States for the President to carry out, without
7 further appropriations, through Federal agencies and
8 their loan and loan guarantee programs, the community
9 adjustment and investment program, pursuant to an
10 agreement between the President and the Bank.

11 (3) The President may select one or more Federal
12 agencies that make loans or guarantees the repayment of
13 loans to assist in carrying out the community adjustment
14 and investment program, and may transfer the funds re-
15 ceived from the Bank to such agency or agencies for the
16 purpose of assisting in carrying out the community adjust-
17 ment and investment program.

18 (4)(A) Each Federal agency selected by the President
19 to assist in carrying out the community adjustment and
20 investment program shall use the funds transferred to it
21 by the President from the Bank to pay for the costs of
22 direct and guaranteed loans, as defined in section 502 of
23 the Congressional Budget Act of 1974, and, as appro-
24 priate, other costs associated with such loans, all subject

1 to the restrictions and limitations that apply to such agen-
2 cy's existing loan or loan guarantee program.

3 (B) Funds transferred to an agency under subpara-
4 graph (A) shall be in addition to the amount of funds au-
5 thorized in any appropriations Act to be expended by that
6 agency for its loan or loan guarantee program.

7 (5) The President shall—

8 (A) establish guidelines for the loans and loan
9 guarantees to be made under the community adjust-
10 ment and investment program;

11 (B) endorse the grants made by the Bank for
12 the community adjustment and investment program,
13 as provided in Article I, section 1(b), and Article III,
14 section 11(a), of Chapter II of the Cooperation
15 Agreement; and

16 (C) endorse any loans or guarantees made by
17 the Bank for the community adjustment and invest-
18 ment program, as provided in Article I, section 1(b),
19 and Article III, section 6(a) and (c) of Chapter II
20 of the Cooperation Agreement.

21 (b) ADVISORY COMMITTEE.—

22 (1) ESTABLISHMENT.—The President shall es-
23 tablish an advisory committee to be known as the
24 Community Adjustment and Investment Program
25 Advisory Committee (in this section referred to as

1 the “Advisory Committee”) in accordance with the
2 provisions of the Federal Advisory Committee Act.

3 (2) MEMBERSHIP.—

4 (A) IN GENERAL.—The Advisory Commit-
5 tee shall consist of 9 members of the public, ap-
6 pointed by the President, who, collectively, rep-
7 resent—

8 (i) community groups whose constitu-
9 encies include low-income families;

10 (ii) any scientific, professional, busi-
11 ness, nonprofit, or public interest organiza-
12 tion or association which is neither affili-
13 ated with, nor under the direction of, a
14 government;

15 (iii) for-profit business interests; and

16 (iv) other appropriate entities with
17 relevant expertise.

18 (B) REPRESENTATION.—Each of the cat-
19 egories described in clauses (i) through (iv) of
20 subparagraph (A) shall be represented by no
21 fewer than 1 and no more than 3 members of
22 the Advisory Committee.

23 (3) FUNCTION.—It shall be the function of the
24 Advisory Committee—

1 (A) to provide advice to the President re-
2 garding the implementation of the community
3 adjustment and investment program, including
4 advice on the guidelines to be established by the
5 President for the loans and loan guarantees to
6 be made pursuant to subsection (a)(4), advice
7 on identifying the needs for adjustment assist-
8 ance and investment in support of the goals and
9 objectives of the Agreement, taking into ac-
10 count economic and geographic considerations,
11 and advice on such other matters as may be re-
12 quested by the President; and

13 (B) to review on a regular basis the oper-
14 ation of the community adjustment and invest-
15 ment program and provide the President with
16 the conclusions of its review.

17 (4) TERMS OF MEMBERS.—

18 (A) IN GENERAL.—Each member of the
19 Advisory Committee shall serve at the pleasure
20 of the President.

21 (B) CHAIRPERSON.—The President shall
22 appoint a chairperson from among the members
23 of the Advisory Committee.

24 (C) MEETINGS.—The Advisory Committee
25 shall meet at least annually and at such other

1 times as requested by the President or the
2 chairperson. A majority of the members of the
3 Advisory Committee shall constitute a quorum.

4 (D) REIMBURSEMENT FOR EXPENSES.—

5 The members of the Advisory Committee may
6 receive reimbursement for travel, per diem, and
7 other necessary expenses incurred in the per-
8 formance of their duties, in accordance with the
9 Federal Advisory Committee Act.

10 (E) STAFF AND FACILITIES.—The Advi-

11 sory Committee may utilize the facilities and
12 services of employees of any Federal agency
13 without cost to the Advisory Committee, and
14 any such agency is authorized to provide serv-
15 ices as requested by the Committee.

16 (c) OMBUDSMAN.—The President shall appoint an
17 ombudsman to provide the public with an opportunity to
18 participate in the carrying out of the community adjust-
19 ment and investment program.

20 (1) FUNCTION.—It shall be the function of the
21 ombudsman—

22 (A) to establish procedures for receiving
23 comments from the general public on the oper-
24 ation of the community adjustment and invest-
25 ment program, to receive such comments, and

1 to provide the President with summaries of the
2 public comments; and

3 (B) to perform an independent inspection
4 and programmatic audit of the operation of the
5 community adjustment and investment program
6 and to provide the President with the conclu-
7 sions of its investigation and audit.

8 (2) AUTHORIZATION OF APPROPRIATIONS.—

9 There are authorized to be appropriated to the
10 President, or such agency as the President may des-
11 ignate, \$25,000 for fiscal year 1995 and for each
12 fiscal year thereafter, for the costs of the ombuds-
13 man.

14 (d) REPORTING REQUIREMENT.—The President
15 shall submit to the appropriate congressional committees
16 an annual report on the community adjustment and in-
17 vestment program (if any) that is carried out pursuant
18 to this section. Each report shall state the amount of the
19 loans made or guaranteed during the 12-month period
20 ending on the day before the date of the report.

21 **SEC. 544. DEFINITION.**

22 For purposes of this part, the term “Border Environ-
23 ment Cooperation Agreement” (referred to in this part as
24 the “Cooperation Agreement”) means the November 1993
25 Agreement Between the Government of the United States

1 of America and the Government of the United Mexican
2 States Concerning the Establishment of a Border Envi-
3 ronment Cooperation Commission and a North American
4 Development Bank.

5 **TITLE VI—CUSTOMS** 6 **MODERNIZATION**

7 **SEC. 601. REFERENCE.**

8 Whenever in subtitle A, B, or C an amendment or
9 repeal is expressed in terms of an amendment to, or repeal
10 of, a part, section, subsection, or other provision, the ref-
11 erence shall be considered to be made a part, section, sub-
12 section, or other provision of the Tariff Act of 1930 (19
13 U.S.C. 1202 et seq.).

14 **Subtitle A—Improvements in** 15 **Customs Enforcement**

16 **SEC. 611. PENALTIES FOR VIOLATIONS OF ARRIVAL, RE-** 17 **PORTING, ENTRY, AND CLEARANCE REQUIRE-** 18 **MENTS.**

19 Section 436 (19 U.S.C. 1436) is amended—

20 (1) by amending subsection (a)—

21 (A) by striking out “433” in paragraph (1)
22 and inserting “431, 433, or 434 of this Act or
23 section 4197 of the Revised Statutes of the
24 United States (46 U.S.C. App. 91)”,

1 (B) by amending paragraph (2) to read as
2 follows:

3 “(2) to present or transmit, electronically or
4 otherwise, any forged, altered, or false document,
5 paper, information, data or manifest to the Customs
6 Service under section 431(e), 433(d), or 434 of this
7 Act or section 4197 of the Revised Statutes of the
8 United States (46 U.S.C. App. 91) without revealing
9 the facts; or”, and

10 (C) by amending paragraph (3) to read as
11 follows:

12 “(3) to fail to make entry or to obtain clearance
13 as required by section 434 or 644 of this Act, sec-
14 tion 4197 of the Revised Statutes of the United
15 States (46 U.S.C. App. 91), or section 1109 of the
16 Federal Aviation Act of 1958 (49 U.S.C. App.
17 1509); or”; and

18 (2) by striking out “**AND ENTRY**” in the sec-
19 tion heading and inserting “**ENTRY, AND CLEAR-**
20 **ANCE**”.

21 **SEC. 612. FAILURE TO DECLARE.**

22 Section 497(a) (19 U.S.C. 1497(a)) is amended—

23 (1) by inserting “or transmitted” after “made”
24 in paragraph (1)(A); and

1 (2) by amending paragraph (2)(A) to read as
2 follows:

3 “(A) if the article is a controlled sub-
4 stance, either \$500 or an amount equal to
5 1,000 percent of the value of the article, which-
6 ever amount is greater; and”.

7 **SEC. 613. CUSTOMS TESTING LABORATORIES; DETENTION**
8 **OF MERCHANDISE.**

9 (a) AMENDMENT.—Section 499 (19 U.S.C. 1499) is
10 amended to read as follows:

11 **“SEC. 499. EXAMINATION OF MERCHANDISE.**

12 “(a) ENTRY EXAMINATION.—

13 “(1) IN GENERAL.—Imported merchandise that
14 is required by law or regulation to be inspected, ex-
15 amined, or appraised shall not be delivered from cus-
16 toms custody (except under such bond or other secu-
17 rity as may be prescribed by the Secretary to assure
18 compliance with all applicable laws, regulations, and
19 instructions which the Secretary or the Customs
20 Service is authorized to enforce) until the merchan-
21 dise has been inspected, appraised, or examined and
22 is reported by the Customs Service to have been
23 truly and correctly invoiced and found to comply
24 with the requirements of the laws of the United
25 States.

1 “(2) EXAMINATION.—The Customs Service—

2 “(A) shall designate the packages or quan-
3 tities of merchandise covered by any invoice or
4 entry which are to be opened and examined for
5 the purpose of appraisement or otherwise;

6 “(B) shall order such packages or quan-
7 tities to be sent to such place as is designated
8 by the Secretary by regulation for such pur-
9 pose;

10 “(C) may require such additional packages
11 or quantities as the Secretary considers nec-
12 essary for such purpose; and

13 “(D) shall inspect a sufficient number of
14 shipments, and shall examine a sufficient num-
15 ber of entries, to ensure compliance with the
16 laws enforced by the Customs Service.

17 “(3) UNSPECIFIED ARTICLES.—If any package
18 contains any article not specified in the invoice or
19 entry and, in the opinion of the Customs Service, the
20 article was omitted from the invoice or entry—

21 “(A) with fraudulent intent on the part of
22 the seller, shipper, owner, agent, importer of
23 record, or entry filer, the contents of the entire
24 package in which such article is found shall be
25 subject to seizure; or

1 “(B) without fraudulent intent, the value
2 of the article shall be added to the entry and
3 the duties, fees, and taxes thereon paid accord-
4 ingly.

5 “(4) DEFICIENCY.—If a deficiency is found in
6 quantity, weight, or measure in the examination of
7 any package, the person finding the deficiency shall
8 make a report thereof to the Customs Service. The
9 Customs Service shall make allowance for the defi-
10 ciency in the liquidation of duties.

11 “(5) INFORMATION REQUIRED FOR RELEASE.—
12 If an examination is conducted, any information re-
13 quired for release shall be provided, either electroni-
14 cally or in paper form, to the Customs Service at the
15 port of examination. The absence of such informa-
16 tion does not limit the authority of the Customs
17 Service to conduct an examination.

18 “(b) TESTING LABORATORIES.—

19 “(1) ACCREDITATION OF PRIVATE TESTING
20 LABORATORIES.—The Customs Service shall estab-
21 lish and implement a procedure, under regulations
22 promulgated by the Secretary, for accrediting pri-
23 vate laboratories within the United States which
24 may be used to perform tests (that would otherwise
25 be performed by Customs Service laboratories) to es-

1 tablish the characteristics, quantities, or composition
2 of imported merchandise. Such regulations—

3 “(A) shall establish the conditions required
4 for the laboratories to receive and maintain ac-
5 creditation for purposes of this subsection;

6 “(B) shall establish the conditions regard-
7 ing the suspension and revocation of accredita-
8 tion, which may include the imposition of a
9 monetary penalty not to exceed \$100,000 and
10 such penalty is in addition to the recovery, from
11 a gauger or laboratory accredited under para-
12 graph (1), of any loss of revenue that may have
13 occurred, but the Customs Service—

14 “(i) may seek to recover lost revenue
15 only in cases where the gauger or labora-
16 tory intentionally falsified the analysis or
17 gauging report in collusion with the im-
18 porter; and

19 “(ii) shall neither assess penalties nor
20 seek to recover lost revenue because of a
21 good faith difference of professional opin-
22 ion; and

23 “(C) may provide for the imposition of a
24 reasonable charge for accreditation and periodic
25 reaccreditation.

1 The collection of any charge for accreditation and
2 reaccreditation under this section is not prohibited
3 by section 13031(e)(6) of the Consolidated Omnibus
4 Budget Reconciliation Act of 1985 (19 U.S.C.
5 58c(e)(6)).

6 “(2) APPEAL OF ADVERSE ACCREDITATION DE-
7 CISIONS.—A laboratory applying for accreditation,
8 or that is accredited, under this section may contest
9 any decision or order of the Customs Service deny-
10 ing, suspending, or revoking accreditation, or impos-
11 ing a monetary penalty, by commencing an action in
12 accordance with chapter 169 of title 28, United
13 States Code, in the Court of International Trade
14 within 60 days after issuance of the decision or
15 order.

16 “(3) TESTING BY ACCREDITED LABORA-
17 TORIES.—When requested by an importer of record
18 of merchandise, the Customs Service shall authorize
19 the release to the importer of a representative sam-
20 ple of the merchandise for testing, at the expense of
21 the importer, by a laboratory accredited under para-
22 graph (1). The testing results from a laboratory ac-
23 credited under paragraph (1) that are submitted by
24 an importer of record with respect to merchandise in
25 an entry shall, in the absence of testing results ob-

1 tained from a Customs Service laboratory, be accept-
2 ed by the Customs Service if the importer of record
3 certifies that the sample tested was taken from the
4 merchandise in the entry. Nothing in this subsection
5 shall be construed to limit in any way or preclude
6 the authority of the Customs Service to test or ana-
7 lyze any sample or merchandise independently.

8 “(4) AVAILABILITY OF TESTING PROCEDURE,
9 METHODOLOGIES, AND INFORMATION.—Testing pro-
10 cedures and methodologies used by the Customs
11 Service, and information resulting from any testing
12 conducted by the Customs Service, shall be made
13 available as follows:

14 “(A) Testing procedures and methodologies
15 shall be made available upon request to any
16 person unless the procedures or methodologies
17 are—

18 “(i) proprietary to the holder of a
19 copyright or patent related to such proce-
20 dures or methodologies, or

21 “(ii) developed by the Customs Serv-
22 ice for enforcement purposes.

23 “(B) Information resulting from testing
24 shall be made available upon request to the im-

1 porter of record and any agent thereof unless
2 the information reveals information which is—

3 “(i) proprietary to the holder of a
4 copyright or patent; or

5 “(ii) developed by the Customs Serv-
6 ice for enforcement purposes.

7 “(5) MISCELLANEOUS PROVISIONS.—For pur-
8 poses of this subsection—

9 “(A) any reference to a private laboratory
10 includes a reference to a private gauger; and

11 “(B) accreditation of private laboratories
12 extends only to the performance of functions by
13 such laboratories that are within the scope of
14 those responsibilities for determinations of the
15 elements relating to admissibility, quantity,
16 composition, or characteristics of imported mer-
17 chandise that are vested in, or delegated to, the
18 Customs Service.

19 “(c) DETENTIONS.—Except in the case of merchan-
20 dise with respect to which the determination of admissibil-
21 ity is vested in an agency other than the Customs Service,
22 the following apply:

23 “(1) IN GENERAL.—Within the 5-day period
24 (excluding weekends and holidays) following the date
25 on which merchandise is presented for customs ex-

1 amination, the Customs Service shall decide whether
2 to release or detain the merchandise. Merchandise
3 which is not released within such 5-day period shall
4 be considered to be detained merchandise.

5 “(2) NOTICE OF DETENTION.—The Customs
6 Service shall issue a notice to the importer or other
7 party having an interest in detained merchandise no
8 later than 5 days, excluding weekends and holidays,
9 after the decision to detain the merchandise is made.
10 The notice shall advise the importer or other inter-
11 ested party of—

12 “(A) the initiation of the detention;

13 “(B) the specific reason for the detention;

14 “(C) the anticipated length of the deten-
15 tion;

16 “(D) the nature of the tests or inquiries to
17 be conducted; and

18 “(E) the nature of any information which,
19 if supplied to the Customs Service, may acceler-
20 ate the disposition of the detention.

21 “(3) TESTING RESULTS.—Upon request by the
22 importer or other party having an interest in de-
23 tained merchandise, the Customs Service shall pro-
24 vide the party with copies of the results of any test-
25 ing conducted by the Customs Service on the mer-

1 chandise and a description of the testing procedures
2 and methodologies (unless such procedures or meth-
3 odologies are proprietary to the holder of a copyright
4 or patent or were developed by the Customs Service
5 for enforcement purposes). The results and test de-
6 scription shall be in sufficient detail to permit the
7 duplication and analysis of the testing and the re-
8 sults.

9 “(4) SEIZURE AND FORFEITURE.—If otherwise
10 provided by law, detained merchandise may be seized
11 and forfeited.

12 “(5) EFFECT OF FAILURE TO MAKE DETER-
13 MINATION.—

14 “(A) The failure by the Customs Service to
15 make a final determination with respect to the
16 admissibility of detained merchandise within 30
17 days after the merchandise has been presented
18 for customs examination, or such longer period
19 if specifically authorized by law, shall be treated
20 as a decision of the Customs Service to exclude
21 the merchandise for purposes of section
22 514(a)(4).

23 “(B) For purposes of section 1581 of title
24 28, United States Code, a protest against the
25 decision to exclude the merchandise which has

1 not been allowed or denied in whole or in part
2 before the 30th day after the day on which the
3 protest was filed shall be treated as having been
4 denied on such 30th day.

5 “(C) Notwithstanding section 2639 of title
6 28, United States Code, once an action respect-
7 ing a detention is commenced, unless the Cus-
8 toms Service establishes by a preponderance of
9 the evidence that an admissibility decision has
10 not been reached for good cause, the court shall
11 grant the appropriate relief which may include,
12 but is not limited to, an order to cancel the de-
13 tention and release the merchandise.”.

14 (b) EXISTING LABORATORIES.—Accreditation under
15 section 499(b) of the Tariff Act of 1930 (as added by sub-
16 section (a)) is not required for any private laboratory (in-
17 cluding any gauger) that was accredited or approved by
18 the Customs Service as of the day before the date of the
19 enactment of this Act; but any such laboratory is subject
20 to reaccreditation under the provisions of such section and
21 the regulations promulgated thereunder.

22 **SEC. 614. RECORDKEEPING.**

23 Section 508 (19 U.S.C. 1508) is amended—

24 (1) by amending subsection (a) to read as fol-
25 lows:

1 “(a) REQUIREMENTS.—Any—

2 “(1) owner, importer, consignee, importer of
3 record, entry filer, or other party who—

4 “(A) imports merchandise into the customs
5 territory of the United States, files a drawback
6 claim, or transports or stores merchandise car-
7 ried or held under bond, or

8 “(B) knowingly causes the importation or
9 transportation or storage of merchandise car-
10 ried or held under bond into or from the cus-
11 toms territory of the United States;

12 “(2) agent of any party described in paragraph
13 (1); or

14 “(3) person whose activities require the filing of
15 a declaration or entry, or both;

16 shall make, keep, and render for examination and inspec-
17 tion records (which for purposes of this section include,
18 but are not limited to, statements, declarations, docu-
19 ments and electronically generated or machine readable
20 data) which—

21 “(A) pertain to any such activity, or to the in-
22 formation contained in the records required by this
23 Act in connection with any such activity; and

24 “(B) are normally kept in the ordinary course
25 of business.”; and

1 (2) by amending subsection (c) to read as fol-
2 lows:

3 “(c) PERIOD OF TIME.—The records required by sub-
4 sections (a) and (b) shall be kept for such period of time,
5 not to exceed 5 years from the date of entry or expor-
6 tation, as appropriate, as the Secretary shall prescribe; ex-
7 cept that records for any drawback claim shall be kept
8 until the 3rd anniversary of the date of payment of the
9 claim.”.

10 **SEC. 615. EXAMINATION OF BOOKS AND WITNESSES.**

11 Section 509 (19 U.S.C. 1509) is amended as follows:

12 (1) Subsection (a) is amended—

13 (A) by striking out “and taxes” wherever
14 it appears and inserting “, fees and taxes”;

15 (B) by amending paragraph (1) to read as
16 follows:

17 “(1) examine, or cause to be examined, upon
18 reasonable notice, any record (which for purposes of
19 this section, includes, but is not limited to, any
20 statement, declaration, document, or electronically
21 generated or machine readable data) described in
22 the notice with reasonable specificity, which may be
23 relevant to such investigation or inquiry, except
24 that—

1 “(A) if such record is required by law or
2 regulation for the entry of the merchandise
3 (whether or not the Customs Service required
4 its presentation at the time of entry) it shall be
5 provided to the Customs Service within a rea-
6 sonable time after demand for its production is
7 made, taking into consideration the number,
8 type, and age of the item demanded; and

9 “(B) if a person of whom demand is made
10 under subparagraph (A) fails to comply with
11 the demand, the person may be subject to pen-
12 alty under subsection (g);”;

13 (C) by amending that part of paragraph
14 (2) that precedes subparagraph (D) to read as
15 follows:

16 “(2) summon, upon reasonable notice—

17 “(A) the person who—

18 “(i) imported, or knowingly caused to
19 be imported, merchandise into the customs
20 territory of the United States,

21 “(ii) exported merchandise, or know-
22 ingly caused merchandise to be exported,
23 to Canada,

24 “(iii) transported or stored merchan-
25 dise that was or is carried or held under

1 customs bond, or knowingly caused such
2 transportation or storage, or

3 “(iv) filed a declaration, entry, or
4 drawback claim with the Customs Service;

5 “(B) any officer, employee, or agent of any
6 person described in subparagraph (A);

7 “(C) any person having possession, custody
8 or care of records relating to the importation or
9 other activity described in subparagraph (A);
10 or”; and

11 (D) by striking out the comma at the end
12 of subparagraph (D) and inserting a semicolon.

13 (2) Subsections (b) and (c) are redesignated as
14 subsections (c) and (d), respectively.

15 (3) The following new subsection is inserted
16 after subsection (a):

17 “(b) REGULATORY AUDIT PROCEDURES.—

18 “(1) In conducting a regulatory audit under
19 this section (which does not include a quantity ver-
20 ification for a customs bonded warehouse or general
21 purpose foreign trade zone), the Customs Service
22 auditor shall provide the person being audited, in
23 advance of the audit, with a reasonable estimate of
24 the time to be required for the audit. If in the
25 course of an audit it becomes apparent that addi-

1 tional time will be required, the Customs Service
2 auditor shall immediately provide a further estimate
3 of such additional time.

4 “(2) Before commencing an audit, the Customs
5 Service auditor shall inform the party to be audited
6 of his right to an entry conference at which time the
7 purpose will be explained and an estimated termi-
8 nation date set. Upon completion of on-site audit ac-
9 tivities, the Customs Service auditor shall schedule a
10 closing conference to explain the preliminary results
11 of the audit.

12 “(3) Except as provided in paragraph (5), if the
13 estimated or actual termination date for an audit
14 passes without the Customs Service auditor provid-
15 ing a closing conference to explain the results of the
16 audit, the person being audited may petition in writ-
17 ing for such a conference to the appropriate regional
18 commissioner, who, upon receipt of such a request,
19 shall provide for such a conference to be held within
20 15 days after the date of receipt.

21 “(4) Except as provided in paragraph (5), the
22 Customs Service auditor shall complete the formal
23 written audit report within 90 days following the
24 closing conference unless the appropriate regional
25 commissioner provides written notice to the person

1 being audited of the reason for any delay and the
2 anticipated completion date. After application of any
3 exemption contained in section 552 of title 5, United
4 States Code, a copy of the formal written audit re-
5 port shall be sent to the person audited no later
6 than 30 days following completion of the report.

7 “(5) Paragraphs (3) and (4) shall not apply
8 after the Customs Service commences a formal in-
9 vestigation with respect to the issue involved.”.

10 (4) Subsection (d) (as redesignated by para-
11 graph (2)) is amended—

12 (A) by striking out “statements, declara-
13 tions, or documents” in paragraph (1)(A) and
14 inserting “those”;

15 (B) by inserting “, unless such custom-
16 house broker is the importer of record on an
17 entry” after “broker” in paragraph (1)(C)(i);

18 (C) by striking out “import” in each of
19 paragraphs (2)(B) and (4)(B);

20 (D) by inserting “described in section
21 508” after “transactions” in each of para-
22 graphs (2)(B) and (4)(B); and

23 (E) by inserting “, fees,” after “duties” in
24 paragraph (4)(A).

1 (5) The following new subsections are added at
2 the end thereof:

3 “(e) LIST OF RECORDS AND INFORMATION.—The
4 Customs Service shall identify and publish a list of the
5 records or entry information that is required to be main-
6 tained and produced under subsection (a)(1)(A).

7 “(f) RECORDKEEPING COMPLIANCE PROGRAM.—

8 “(1) IN GENERAL.—After consultation with the
9 importing community, the Customs Service shall by
10 regulation establish a recordkeeping compliance pro-
11 gram which the parties listed in section 508(a) may
12 participate in after being certified by the Customs
13 Service under paragraph (2). Participation in the
14 recordkeeping compliance program by recordkeepers
15 is voluntary.

16 “(2) CERTIFICATION.—A recordkeeper may be
17 certified as a participant in the recordkeeping com-
18 pliance program after meeting the general record-
19 keeping requirements established under the program
20 or after negotiating an alternative program suited to
21 the needs of the recordkeeper and the Customs Serv-
22 ice. Certification requirements shall take into ac-
23 count the size and nature of the importing business
24 and the volume of imports. In order to be certified,

1 the recordkeeper must be able to demonstrate that
2 it—

3 “(A) understands the legal requirements
4 for recordkeeping, including the nature of the
5 records required to be maintained and produced
6 and the time periods involved;

7 “(B) has in place procedures to explain the
8 recordkeeping requirements to those employees
9 who are involved in the preparation, mainte-
10 nance, and production of required records;

11 “(C) has in place procedures regarding the
12 preparation and maintenance of required
13 records, and the production of such records to
14 the Customs Service;

15 “(D) has designated a dependable individ-
16 ual or individuals to be responsible for record-
17 keeping compliance under the program and
18 whose duties include maintaining familiarity
19 with the recordkeeping requirements of the
20 Customs Service;

21 “(E) has a record maintenance procedure
22 approved by the Customs Service for original
23 records, or, if approved by the Customs Service,
24 for alternative records or recordkeeping formats
25 other than the original records; and

1 “(F) has procedures for notifying the Cus-
2 toms Service of occurrences of variances to, and
3 violations of, the requirements of the record-
4 keeping compliance program or the negotiated
5 alternative programs, and for taking corrective
6 action when notified by the Customs Service of
7 violations or problems regarding such program.

8 “(g) PENALTIES.—

9 “(1) DEFINITION.—For purposes of this sub-
10 section, the term ‘information’ means any record,
11 statement, declaration, document, or electronically
12 stored or transmitted information or data referred to
13 in subsection (a)(1)(A).

14 “(2) EFFECTS OF FAILURE TO COMPLY WITH
15 DEMAND.—Except as provided in paragraph (4), if
16 a person fails to comply with a lawful demand for
17 information under subsection (a)(1)(A) the following
18 provisions apply:

19 “(A) If the failure to comply is a result of
20 the willful failure of the person to maintain,
21 store, or retrieve the demanded information,
22 such person shall be subject to a penalty, for
23 each release of merchandise, not to exceed
24 \$100,000, or an amount equal to 75 percent of

1 the appraised value of the merchandise, which-
2 ever amount is less.

3 “(B) If the failure to comply is a result of
4 the negligence of the person in maintaining,
5 storing, or retrieving the demanded informa-
6 tion, such person shall be subject to a penalty,
7 for each release of merchandise, not to exceed
8 \$10,000, or an amount equal to 40 percent of
9 the appraised value of the merchandise, which-
10 ever amount is less.

11 “(C) In addition to any penalty imposed
12 under subparagraph (A) or (B) regarding de-
13 manded information, if such information related
14 to the eligibility of merchandise for a column 1
15 special rate of duty under title I, the entry of
16 such merchandise—

17 “(i) if unliquidated, shall be liquidated
18 at the applicable column 1 general rate of
19 duty; or

20 “(ii) if liquidated within the 2-year
21 period preceding the date of the demand,
22 shall be reliquidated, notwithstanding the
23 time limitation in section 514 or 520, at
24 the applicable column 1 general rate of
25 duty;

1 except that any liquidation or reliquidation
2 under clause (i) or (ii) shall be at the applicable
3 column 2 rate of duty if the Customs Service
4 demonstrates that the merchandise should be
5 dutiable at such rate.

6 “(3) AVOIDANCE OF PENALTY.—No penalty
7 may be assessed under this subsection if the person
8 can show—

9 “(A) that the loss of the demanded infor-
10 mation was the result of an act of God or other
11 natural casualty or disaster beyond the fault of
12 such person or an agent of the person;

13 “(B) on the basis of other evidence satis-
14 factory to the Customs Service, that the de-
15 mand was substantially complied with; or

16 “(C) the information demanded was pre-
17 sented to and retained by the Customs Service
18 at the time of entry or submitted in response to
19 an earlier demand.

20 “(4) PENALTIES NOT EXCLUSIVE.—Any penalty
21 imposed under this subsection shall be in addition to
22 any other penalty provided by law except for—

23 “(A) a penalty imposed under section 592
24 for a material omission of the demanded infor-
25 mation, or

1 “(B) disciplinary action taken under sec-
2 tion 641.

3 “(5) REMISSION OR MITIGATION.—A penalty
4 imposed under this section may be remitted or miti-
5 gated under section 618.

6 “(6) CUSTOMS SUMMONS.—Nothing in this sub-
7 section shall limit or preclude the Customs Service
8 from issuing, or seeking the enforcement of, a cus-
9 toms summons.

10 “(7) ALTERNATIVES TO PENALTIES.—

11 “(A) IN GENERAL.—When a recordkeeper
12 who—

13 “(i) has been certified as a participant
14 in the recordkeeping compliance program
15 under subsection (f); and

16 “(ii) is generally in compliance with
17 the appropriate procedures and require-
18 ments of the program;

19 does not produce a demanded record or infor-
20 mation for a specific release or provide the in-
21 formation by acceptable alternative means, the
22 Customs Service, in the absence of willfulness
23 or repeated violations, shall issue a written no-
24 tice of the violation to the recordkeeper in lieu
25 of a monetary penalty. Repeated violations by

1 the recordkeeper may result in the issuance of
2 penalties and removal of certification under the
3 program until corrective action, satisfactory to
4 the Customs Service, is taken.

5 “(B) CONTENTS OF NOTICE.—A notice of
6 violation issued under subparagraph (A) shall—

7 “(i) state that the recordkeeper has
8 violated the recordkeeping requirements;

9 “(ii) indicate the record or informa-
10 tion which was demanded; and

11 “(iii) warn the recordkeeper that fu-
12 ture failures to produce demanded records
13 or information may result in the imposition
14 of monetary penalties.

15 “(C) RESPONSE TO NOTICE.—Within a
16 reasonable time after receiving written notice
17 under subparagraph (A), the recordkeeper shall
18 notify the Customs Service of the steps it has
19 taken to prevent a recurrence of the violation.

20 “(D) REGULATIONS.—The Secretary shall
21 promulgate regulations to implement this para-
22 graph. Such regulations may specify the time
23 periods for compliance with a demand for infor-
24 mation and provide guidelines which define re-
25 peated violations for purposes of this para-

1 graph. Any penalty issued for a recordkeeping
2 violation shall take into account the degree of
3 compliance compared to the total number of im-
4 portations, the nature of the demanded records
5 and the recordkeeper's cooperation.”.

6 **SEC. 616. JUDICIAL ENFORCEMENT.**

7 The second sentence of section 510(a) (19 U.S.C.
8 1510(a)) is amended by inserting “and such court may
9 assess a monetary penalty” after “as a contempt thereof”.

10 **SEC. 617. REVIEW OF PROTESTS.**

11 Section 515 (19 U.S.C. 1515) is amended by insert-
12 ing at the end the following new subsections:

13 “(c) If a protesting party believes that an application
14 for further review was erroneously or improperly denied
15 or was denied without authority for such action, it may
16 file with the Commissioner of Customs a written request
17 that the denial of the application for further review be set
18 aside. Such request must be filed within 60 days after the
19 date of the notice of the denial. The Commissioner of Cus-
20 toms may review such request and, based solely on the
21 information before the Customs Service at the time the
22 application for further review was denied, may set aside
23 the denial of the application for further review and void
24 the denial of protest, if appropriate. If the Commissioner
25 of Customs fails to act within 60 days after the date of

1 the request, the request shall be considered denied. All de-
2 nials of protests are effective from the date of original de-
3 nial for purposes of section 2636 of title 28, United States
4 Code. If an action is commenced in the Court of Inter-
5 national Trade that arises out of a protest or an applica-
6 tion for further review, all administrative action pertaining
7 to such protest or application shall terminate and any ad-
8 ministrative action taken subsequent to the commence-
9 ment of the action is null and void.

10 “(d) If a protest is timely and properly filed, but is
11 denied contrary to proper instructions, the Customs Serv-
12 ice may on its own initiative, or pursuant to a written re-
13 quest by the protesting party filed with the appropriate
14 district director within 90 days after the date of the pro-
15 test denial, void the denial of the protest.”.

16 **SEC. 618. REPEAL OF PROVISION RELATING TO RELIQUIDA-**
17 **TION ON ACCOUNT OF FRAUD.**

18 Section 521 (19 U.S.C. 1521) is repealed.

19 **SEC. 619. PENALTIES RELATING TO MANIFESTS.**

20 Section 584 (19 U.S.C. 1584) is amended—

21 (1) by amending subsection (a)—

22 (A) by striking out “appropriate customs
23 officer” wherever it appears and inserting
24 “Customs Service”,

1 (B) by striking out “officer demanding the
2 same” in paragraph (1) and inserting “officer
3 (whether of the Customs Service or the Coast
4 Guard) demanding the same”, and

5 (C) by inserting “(electronically or other-
6 wise)” after “submission” in the last sentence
7 of paragraph (1); and
8 (2) by amending subsection (b)—

9 (A) by striking out “the appropriate cus-
10 toms officer”, “he” (except in paragraph
11 (1)(F)), and “such officer” wherever they ap-
12 pear and inserting “the Customs Service”,

13 (B) by striking out “written” wherever it
14 appears (other than paragraph (1)(F)),

15 (C) by inserting “or electronically trans-
16 mit” after “issue” wherever it appears, and

17 (D) by striking out “his intention” in the
18 first sentence of paragraph (1) and inserting
19 “intent”.

20 **SEC. 620. UNLAWFUL UNLADING OR TRANSSHIPMENT.**

21 Section 586 (19 U.S.C. 1586) is amended—

22 (1) by inserting “, or of a hovering vessel which
23 has received or delivered merchandise while outside
24 the territorial sea,” after “from a foreign port or
25 place” wherever it appears; and

1 (2) by amending subsection (f)—

2 (A) by striking out “the appropriate cus-
3 toms officer of the” and “the appropriate cus-
4 toms officer within the” and inserting “the
5 Customs Service at the”; and

6 (B) by striking out “the appropriate cus-
7 toms officer is” and inserting “the Customs
8 Service is”.

9 **SEC. 621. PENALTIES FOR FRAUD, GROSS NEGLIGENCE,**
10 **AND NEGLIGENCE; PRIOR DISCLOSURE.**

11 Section 592 (19 U.S.C. 1592) is amended—

12 (1) by inserting “or electronically transmitted
13 data or information” after “document” in subsection
14 (a)(1)(A)(i);

15 (2) by inserting “The mere nonintentional rep-
16 etition by an electronic system of an initial clerical
17 error does not constitute a pattern of negligent con-
18 duct.” at the end of subsection (a)(2);

19 (3) by amending subsection (b)—

20 (A) by amending the first sentence of
21 paragraph (1)(A)—

22 (i) by striking out “the appropriate
23 customs officer” and inserting “the Cus-
24 toms Service”,

1 (ii) by striking out “he” and inserting
2 “it”, and

3 (iii) by striking out “his” and insert-
4 ing “its”, and

5 (B) by amending paragraph (2)—

6 (i) by striking out “the appropriate
7 customs officer” wherever it appears and
8 inserting “the Customs Service”,

9 (ii) by striking out “such officer”
10 wherever it appears and inserting “the
11 Customs Service”, and

12 (iii) by striking out “he” wherever it
13 appears and inserting “it”;

14 (4) by amending subsection (c)(4)—

15 (A) by striking “time of disclosure or with-
16 in thirty days, or such longer period as the ap-
17 propriate customs officer may provide, after no-
18 tice by the appropriate customs officer of his”
19 in subparagraph (A)(i) and by striking out
20 “time of disclosure in 30 days, or such longer
21 period as the appropriate customs officer may
22 provide, after notice by the appropriate customs
23 officer of his” in subparagraph (B), and insert-
24 ing in each place “time of disclosure, or within
25 30 days (or such longer period as the Customs

1 Service may provide) after notice by the Cus-
2 toms Service of its”; and

3 (B) by inserting after the last sentence the
4 following: “For purposes of this section, a for-
5 mal investigation of a violation is considered to
6 be commenced with regard to the disclosing
7 party and the disclosed information on the date
8 recorded in writing by the Customs Service as
9 the date on which facts and circumstances were
10 discovered or information was received which
11 caused the Customs Service to believe that a
12 possibility of a violation of subsection (a) ex-
13 isted.”; and

14 (5) by amending subsection (d)—

15 (A) by striking out “the appropriate cus-
16 toms officer” and inserting “the Customs Serv-
17 ice”,

18 (B) by striking out “duties” wherever it
19 appears and inserting “duties, taxes, or fees”,
20 and

21 (C) by inserting “, TAXES OR FEES” after
22 “DUTIES” in the sideheading.

23 **SEC. 622. PENALTIES FOR FALSE DRAWBACK CLAIMS.**

24 (a) AMENDMENT.—Part V of title IV is amended by
25 inserting after section 593 the following new section:

1 **“SEC. 593A. PENALTIES FOR FALSE DRAWBACK CLAIMS.**

2 “(a) PROHIBITION.—

3 “(1) GENERAL RULE.—No person, by fraud, or
4 negligence—

5 “(A) may seek, induce or affect, or at-
6 tempt to seek, induce, or affect, the payment or
7 credit to that person or others of any drawback
8 claim by means of—

9 “(i) any document, written or oral
10 statement, or electronically transmitted
11 data or information, or act which is mate-
12 rial and false, or

13 “(ii) any omission which is material;
14 or

15 “(B) may aid or abet any other person to
16 violate subparagraph (A).

17 “(2) EXCEPTION.—Clerical errors or mistakes
18 of fact are not violations of paragraph (1) unless
19 they are part of a pattern of negligent conduct. The
20 mere nonintentional repetition by an electronic sys-
21 tem of an initial clerical error does not constitute a
22 pattern of negligent conduct.

23 “(b) PROCEDURES.—

24 “(1) PREPENALTY NOTICE.—

25 “(A) IN GENERAL.—If the Customs Serv-
26 ice has reasonable cause to believe that there

1 has been a violation of subsection (a) and deter-
2 mines that further proceedings are warranted,
3 the Customs Service shall issue to the person
4 concerned a written notice of intent to issue a
5 claim for a monetary penalty. Such notice
6 shall—

7 “(i) identify the drawback claim;

8 “(ii) set forth the details relating to
9 the seeking, inducing, or affecting, or the
10 attempted seeking, inducing, or affecting,
11 or the aiding or procuring of, the drawback
12 claim;

13 “(iii) specify all laws and regulations
14 allegedly violated;

15 “(iv) disclose all the material facts
16 which establish the alleged violation;

17 “(v) state whether the alleged viola-
18 tion occurred as a result of fraud or neg-
19 ligence;

20 “(vi) state the estimated actual or po-
21 tential loss of revenue due to the drawback
22 claim, and, taking into account all cir-
23 cumstances, the amount of the proposed
24 monetary penalty; and

1 “(vii) inform such person that he shall
2 have a reasonable opportunity to make rep-
3 resentations, both oral and written, as to
4 why a claim for a monetary penalty should
5 not be issued in the amount stated.

6 “(B) EXCEPTIONS.—The Customs Service
7 may not issue a prepenalty notice if the amount
8 of the penalty in the penalty claim issued under
9 paragraph (2) is \$1,000 or less. In such cases,
10 the Customs Service may proceed directly with
11 a penalty claim.

12 “(C) PRIOR APPROVAL.—No prepenalty
13 notice in which the alleged violation occurred as
14 a result of fraud shall be issued without the
15 prior approval of Customs Headquarters.

16 “(2) PENALTY CLAIM.—After considering rep-
17 resentations, if any, made by the person concerned
18 pursuant to the notice issued under paragraph (1),
19 the Customs Service shall determine whether any
20 violation of subsection (a), as alleged in the notice,
21 has occurred. If the Customs Service determines
22 that there was no violation, the Customs Service
23 shall promptly issue a written statement of the de-
24 termination to the person to whom the notice was
25 sent. If the Customs Service determines that there

1 was a violation, Customs shall issue a written pen-
2 alty claim to such person. The written penalty claim
3 shall specify all changes in the information provided
4 under clauses (i) through (vii) of paragraph (1)(A).
5 Such person shall have a reasonable opportunity
6 under section 618 to make representations, both oral
7 and written, seeking remission or mitigation of the
8 monetary penalty. At the conclusion of any proceed-
9 ing under section 618, the Customs Service shall
10 provide to the person concerned a written statement
11 which sets forth the final determination, and the
12 findings of fact and conclusions of law on which
13 such determination is based.

14 “(c) MAXIMUM PENALTIES.—

15 “(1) FRAUD.—A fraudulent violation of sub-
16 section (a) of this section is punishable by a civil
17 penalty in an amount not to exceed 3 times the ac-
18 tual or potential loss of revenue.

19 “(2) NEGLIGENCE.—

20 “(A) IN GENERAL.—A negligent violation
21 of subsection (a) is punishable by a civil penalty
22 in an amount not to exceed 20 percent of the
23 actual or potential loss of revenue for the 1st
24 violation.

1 “(B) REPETITIVE VIOLATIONS.—If the
2 Customs Service determines that a repeat neg-
3 ligent violation occurs relating to the same
4 issue, the penalty amount for the 2d violation
5 shall be in an amount not to exceed 50 percent
6 of the total actual or potential loss of revenue.
7 The penalty amount for each succeeding repet-
8 itive negligent violation shall be in an amount
9 not to exceed the actual or potential loss of rev-
10 enue. If the same party commits a nonrepetitive
11 violation, that violation shall be subject to a
12 penalty not to exceed 20 percent of the actual
13 or potential loss of revenue.

14 “(3) PRIOR DISCLOSURE.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (B), if the person concerned discloses the
17 circumstances of a violation of subsection (a)
18 before, or without knowledge of the commence-
19 ment of, a formal investigation of such viola-
20 tion, the monetary penalty assessed under this
21 subsection may not exceed—

22 “(i) if the violation resulted from
23 fraud, an amount equal to the actual or
24 potential revenue of which the United

1 States is or may be deprived as a result of
2 overpayment of the claim; or

3 “(ii) if the violation resulted from
4 negligence, an amount equal to the interest
5 computed on the basis of the prevailing
6 rate of interest applied under section 6621
7 of the Internal Revenue Code of 1986 on
8 the amount of actual revenue of which the
9 United States is or may be deprived during
10 the period that—

11 “(I) begins on the date of the
12 overpayment of the claim; and

13 “(II) ends on the date on which
14 the person concerned tenders the
15 amount of the overpayment.

16 “(B) CONDITION AFFECTING PENALTY
17 LIMITATIONS.—The limitations in subparagraph
18 (A) on the amount of the monetary penalty to
19 be assessed under subsection (c) apply only if
20 the person concerned tenders the amount of the
21 overpayment made on the claim at the time of
22 disclosure, or within 30 days (or such longer
23 period as the Customs Service may provide),
24 after notice by the Customs Service of its cal-
25 culation of the amount of the overpayment.

1 “(C) BURDEN OF PROOF.—The person as-
2 serting lack of knowledge of the commencement
3 of a formal investigation has the burden of
4 proof in establishing such lack of knowledge.

5 “(4) COMMENCEMENT OF INVESTIGATION.—
6 For purposes of this section, a formal investigation
7 of a violation is considered to be commenced with re-
8 gard to the disclosing party and the disclosed infor-
9 mation on the date recorded in writing by the Cus-
10 toms Service as the date on which facts and cir-
11 cumstances were discovered or information was re-
12 ceived which caused the Customs Service to believe
13 that a possibility of a violation of subsection (a) ex-
14 isted.

15 “(5) EXCLUSIVITY.—Penalty claims under this
16 section shall be the exclusive civil remedy for any
17 drawback related violation of subsection (a).

18 “(d) DEPRIVATION OF LAWFUL REVENUE.—Not-
19 withstanding section 514, if the United States has been
20 deprived of lawful duties and taxes resulting from a viola-
21 tion of subsection (a), the Customs Service shall require
22 that such duties and taxes be restored whether or not a
23 monetary penalty is assessed.

24 “(e) DRAWBACK COMPLIANCE PROGRAM.—

1 “(1) IN GENERAL.—After consultation with the
2 drawback trade community, the Customs Service
3 shall establish a drawback compliance program in
4 which claimants and other parties in interest may
5 participate after being certified by the Customs
6 Service under paragraph (2). Participation in the
7 drawback compliance program is voluntary.

8 “(2) CERTIFICATION.—A party may be certified
9 as a participant in the drawback compliance pro-
10 gram after meeting the general requirements estab-
11 lished under the program or after negotiating an al-
12 ternative program suited to the needs of the party
13 and the Customs Service. Certification requirements
14 shall take into account the size and nature of the
15 party’s drawback program and the volume of claims.
16 In order to be certified, the participant must be able
17 to demonstrate that it—

18 “(A) understands the legal requirements
19 for filing claims, including the nature of the
20 records required to be maintained and produced
21 and the time periods involved;

22 “(B) has in place procedures to explain the
23 Customs Service requirements to those employ-
24 ees that are involved in the preparation of

1 claims, and the maintenance and production of
2 required records;

3 “(C) has in place procedures regarding the
4 preparation of claims and maintenance of re-
5 quired records, and the production of such
6 records to the Customs Service;

7 “(D) has designated a dependable individ-
8 ual or individuals to be responsible for compli-
9 ance under the program and whose duties in-
10 clude maintaining familiarity with the drawback
11 requirements of the Customs Service;

12 “(E) has a record maintenance procedure
13 approved by the Customs Service for original
14 records, or, if approved by the Customs Service,
15 for alternate records or recordkeeping formats
16 other than the original records; and

17 “(F) has procedures for notifying the Cus-
18 toms Service of variances to, and violations of,
19 the requirements of the drawback compliance
20 program or any negotiated alternative pro-
21 grams, and for taking corrective action when
22 notified by the Customs Service for violations or
23 problems regarding such program.

24 “(f) ALTERNATIVES TO PENALTIES.—

25 “(1) IN GENERAL.—When a party that—

1 “(A) has been certified as a participant in
2 the drawback compliance program under sub-
3 section (e); and

4 “(B) is generally in compliance with the
5 appropriate procedures and requirements of the
6 program;

7 commits a violation of subsection (a), the Customs
8 Service, shall, in the absence of fraud or repeated
9 violations, and in lieu of a monetary penalty, issue
10 a written notice of the violation to the party. Re-
11 peated violations by a party may result in the issu-
12 ance of penalties and removal of certification under
13 the program until corrective action, satisfactory to
14 the Customs Service, is taken.

15 “(2) CONTENTS OF NOTICE.—A notice of viola-
16 tion issued under paragraph (1) shall—

17 “(A) state that the party has violated sub-
18 section (a);

19 “(B) explain the nature of the violation;
20 and

21 “(C) warn the party that future violations
22 of subsection (a) may result in the imposition
23 of monetary penalties.

24 “(3) RESPONSE TO NOTICE.—Within a reason-
25 able time after receiving written notice under para-

1 graph (1), the party shall notify the Customs Service
2 of the steps it has taken to prevent a recurrence of
3 the violation.

4 “(g) REPETITIVE VIOLATIONS.—

5 “(1) A party who has been issued a written no-
6 tice under subsection (f)(1) and subsequently com-
7 mits a repeat negligent violation involving the same
8 issue is subject to the following monetary penalties:

9 “(A) 2D VIOLATION.—An amount not to
10 exceed 20 percent of the loss of revenue.

11 “(B) 3RD VIOLATION.—An amount not to
12 exceed 50 percent of the loss of revenue.

13 “(C) 4TH AND SUBSEQUENT VIOLA-
14 TIONS.—An amount not to exceed 100 percent
15 of the loss of revenue.

16 “(2) If a party that has been certified as a par-
17 ticipant in the drawback compliance program under
18 subsection (e) commits an alleged violation which
19 was not repetitive, the party shall be issued a ‘warn-
20 ing letter’, and, for any subsequent violation, shall
21 be subject to the same maximum penalty amounts
22 stated in paragraph (1).

23 “(h) REGULATION.—The Secretary shall promulgate
24 regulations and guidelines to implement this section. Such
25 regulations shall specify that for purposes of subsection

1 (g), a repeat negligent violation involving the same issue
2 shall be treated as a repetitive violation for a maximum
3 period of 3 years.

4 “(i) COURT OF INTERNATIONAL TRADE PROCEED-
5 INGS.—Notwithstanding any other provision of law, in any
6 proceeding commenced by the United States in the Court
7 of International Trade for the recovery of any monetary
8 penalty claimed under this section—

9 “(1) all issues, including the amount of the pen-
10 alty, shall be tried de novo;

11 “(2) if the monetary penalty is based on fraud,
12 the United States shall have the burden of proof to
13 establish the alleged violation by clear and convinc-
14 ing evidence; and

15 “(3) if the monetary penalty is based on neg-
16 ligence, the United States shall have the burden of
17 proof to establish the act or omission constituting
18 the violation, and the alleged violator shall have the
19 burden of providing evidence that the act or omis-
20 sion did not occur as a result of negligence.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) applies to drawback claims filed on and
23 after the nationwide operational implementation of an
24 automated drawback selectivity program by the Customs

1 Service. The Customs Service shall publish notice of this
2 date in the Customs Bulletin.

3 **SEC. 623. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC**
4 **INFORMATION.**

5 Section 625 (19 U.S.C. 1625) is amended to read as
6 follows:

7 **“SEC. 625. INTERPRETIVE RULINGS AND DECISIONS; PUB-**
8 **LIC INFORMATION.**

9 “(a) PUBLICATION.—Within 90 days after the date
10 of issuance of any interpretive ruling (including any ruling
11 letter, or internal advice memorandum) or protest review
12 decision under this chapter with respect to any customs
13 transaction, the Secretary shall have such ruling or deci-
14 sion published in the Customs Bulletin or shall otherwise
15 make such ruling or decision available for public
16 inspection.

17 “(b) APPEALS.—A person may appeal an adverse in-
18 terpretive ruling and any interpretation of any regulation
19 prescribed to implement such ruling to a higher level of
20 authority within the Customs Service for de novo review.
21 Upon a reasonable showing of business necessity, any such
22 appeal shall be considered and decided no later than 60
23 days following the date on which the appeal is filed. The
24 Secretary shall issue regulations to implement this sub-
25 section.

1 “(c) MODIFICATION AND REVOCATION.—A proposed
2 interpretive ruling or decision which would—

3 “(1) modify (other than to correct a clerical
4 error) or revoke a prior interpretive ruling or deci-
5 sion which has been in effect for at least 60 days;
6 or

7 “(2) have the effect of modifying the treatment
8 previously accorded by the Customs Service to sub-
9 stantially identical transactions;

10 shall be published in the Customs Bulletin. The Secretary
11 shall give interested parties an opportunity to submit, dur-
12 ing not less than the 30-day period after the date of such
13 publication, comments on the correctness of the proposed
14 ruling or decision. After consideration of any comments
15 received, the Secretary shall publish a final ruling or deci-
16 sion in the Customs Bulletin within 30 days after the clos-
17 ing of the comment period. The final ruling or decision
18 shall become effective 60 days after the date of its
19 publication.

20 “(d) PUBLICATION OF CUSTOMS DECISIONS THAT
21 LIMIT COURT DECISIONS.—A decision that proposes to
22 limit the application of a court decision shall be published
23 in the Customs Bulletin together with notice of oppor-
24 tunity for public comment thereon prior to a final decision.

1 “(e) PUBLIC INFORMATION.—The Secretary may
2 make available in writing or through electronic media, in
3 an efficient, comprehensive and timely manner, all infor-
4 mation, including directives, memoranda, electronic mes-
5 sages and telexes which contain instructions, require-
6 ments, methods or advice necessary for importers and ex-
7 porters to comply with the Customs laws and regulations.
8 All information which may be made available pursuant to
9 this subsection shall be subject to any exemption from dis-
10 closure provided by section 552 of title 5, United States
11 Code.”.

12 **SEC. 624. SEIZURE AUTHORITY.**

13 Section 596(c) (19 U.S.C. 1595a(c)) is amended to
14 read as follows:

15 “(c) Merchandise which is introduced or attempted
16 to be introduced into the United States contrary to law
17 shall be treated as follows:

18 “(1) The merchandise shall be seized and for-
19 feited if it—

20 “(A) is stolen, smuggled, or clandestinely
21 imported or introduced;

22 “(B) is a controlled substance, as defined
23 in the Controlled Substances Act (21 U.S.C.
24 801 et seq.), and is not imported in accordance
25 with applicable law; or

1 “(C) is a contraband article, as defined in
2 section 1 of the Act of August 9, 1939 (49
3 U.S.C. App. 781).

4 “(2) The merchandise may be seized and for-
5 feited if—

6 “(A) its importation or entry is subject to
7 any restriction or prohibition which is imposed
8 by law relating to health, safety, or conserva-
9 tion and the merchandise is not in compliance
10 with the applicable rule, regulation, or statute;

11 “(B) its importation or entry requires a li-
12 cense, permit or other authorization of an agen-
13 cy of the United States Government and the
14 merchandise is not accompanied by such li-
15 cense, permit, or authorization;

16 “(C) it is merchandise or packaging in
17 which copyright, trademark, or trade name pro-
18 tection violations are involved (including, but
19 not limited to, violations of section 42, 43, or
20 45 of the Act of July 5, 1946 (15 U.S.C. 1124,
21 1125, or 1127), section 506 or 509 of title 17,
22 United States Code, or section 2318 or 2320 of
23 title 18, United States Code);

24 “(D) it is trade dress merchandise involved
25 in the violation of a court order citing section

1 43 of such Act of July 5, 1946 (15 U.S.C.
2 1125);

3 “(E) it is merchandise which is marked in-
4 tentionally in violation of section 304; or

5 “(F) it is merchandise for which the im-
6 porter has received written notices that previous
7 importations of identical merchandise from the
8 same supplier were found to have been marked
9 in violation of section 304.

10 “(3) If the importation or entry of the mer-
11 chandise is subject to quantitative restrictions re-
12 quiring a visa, permit, license, or other similar docu-
13 ment, or stamp from the United States Government
14 or from a foreign government or issuing authority
15 pursuant to a bilateral or multilateral agreement,
16 the merchandise shall be subject to detention in ac-
17 cordance with section 499 unless the appropriate
18 visa, license, permit, or similar document or stamp
19 is presented to the Customs Service; but if the visa,
20 permit, license, or similar document or stamp which
21 is presented in connection with the importation or
22 entry of the merchandise is counterfeit, the mer-
23 chandise may be seized and forfeited.

24 “(4) If the merchandise is imported or intro-
25 duced contrary to a provision of law which governs

the classification or value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 592.

“(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—

“(A) remit the forfeiture under section 618, or

“(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.”.

Subtitle B—National Customs Automation Program

SEC. 631. NATIONAL CUSTOMS AUTOMATION PROGRAM.

Part I of title IV is amended—

(1) by striking out

“PART I—DEFINITIONS

and inserting

“PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

“Subpart A—Definitions”;

and

1 (2) by inserting after section 402 the following:

2 **“Subpart B—National Customs Automation Program**

3 **“SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.**

4 “(a) ESTABLISHMENT.—The Secretary shall estab-
5 lish the National Customs Automation Program (herein-
6 after in this subpart referred to as the ‘Program’) which
7 shall be an automated and electronic system for processing
8 commercial importations and shall include the following
9 existing and planned components:

10 “(1) Existing components:

11 “(A) The electronic entry of merchandise.

12 “(B) The electronic entry summary of re-
13 quired information.

14 “(C) The electronic transmission of invoice
15 information.

16 “(D) The electronic transmission of mani-
17 fest information.

18 “(E) Electronic payments of duties, fees,
19 and taxes.

20 “(F) The electronic status of liquidation
21 and reliquidation.

22 “(G) The electronic selection of high risk
23 entries for examination (cargo selectivity and
24 entry summary selectivity).

25 “(2) Planned components:

1 “(A) The electronic filing and status of
2 protests.

3 “(B) The electronic filing (including re-
4 mote filing under section 414) of entry informa-
5 tion with the Customs Service at any location.

6 “(C) The electronic filing of import activity
7 summary statements and reconciliation.

8 “(D) The electronic filing of bonds.

9 “(E) The electronic penalty process.

10 “(F) The electronic filing of drawback
11 claims, records, or entries.

12 “(G) Any other component initiated by the
13 Customs Service to carry out the goals of this
14 subpart.

15 “(b) PARTICIPATION IN PROGRAM.—The Secretary
16 shall by regulation prescribe the eligibility criteria for par-
17 ticipation in the Program. Participation in the Program
18 is voluntary.

19 **“SEC. 412. PROGRAM GOALS.**

20 “The goals of the Program are to ensure that all reg-
21 ulations and rulings that are administered or enforced by
22 the Customs Service are administered and enforced in a
23 manner that—

24 “(1) is uniform and consistent;

1 “(2) is as minimally intrusive upon the normal
2 flow of business activity as practicable; and

3 “(3) improves compliance.

4 **“SEC. 413. IMPLEMENTATION AND EVALUATION OF PRO-**
5 **GRAM.**

6 “(a) OVERALL PROGRAM PLAN.—

7 “(1) IN GENERAL.—Before the 180th day after
8 the date of the enactment of this Act, the Secretary
9 shall develop and transmit to the Committees an
10 overall plan for the Program. The overall Program
11 plan shall set forth—

12 “(A) a general description of the ultimate
13 configuration of the Program;

14 “(B) a description of each of the existing
15 components of the Program listed in section
16 411(a)(1); and

17 “(C) estimates regarding the stages on
18 which planned components of the Program list-
19 ed in section 411(a)(2) will be brought on-line.

20 “(2) ADDITIONAL INFORMATION.—In addition
21 to the information required under paragraph (1), the
22 overall Program plan shall include a statement re-
23 garding—

24 “(A) the extent to which the existing com-
25 ponents of the Program currently meet, and the

1 planned components will meet, the Program
2 goals set forth in section 412; and

3 “(B) the effects that the existing compo-
4 nents are currently having, and the effects that
5 the planned components will likely have, on—

6 “(i) importers, brokers, and other
7 users of the Program, and

8 “(ii) Customs Service occupations, op-
9 erations, processes, and systems.

10 “(b) IMPLEMENTATION PLAN, TESTING, AND EVAL-
11 UATION.—

12 “(1) IMPLEMENTATION PLAN.—For each of the
13 planned components of the Program listed in section
14 411(a)(2), the Secretary shall—

15 “(A) develop an implementation plan;

16 “(B) test the component in order to assess
17 its viability;

18 “(C) evaluate the component in order to
19 assess its contribution toward achieving the
20 program goals; and

21 “(D) transmit to the Committees the im-
22 plementation plan, the testing results, and an
23 evaluation report.

24 In developing an implementation plan under sub-
25 paragraph (A) and evaluating components under

1 subparagraph (C), the Secretary shall publish a re-
2 quest for comments in the Customs Bulletin and
3 shall consult with the trade community, including
4 importers, brokers, shippers, and other affected
5 parties.

6 “(2) IMPLEMENTATION.—

7 “(A) The Secretary may implement on a
8 permanent basis any Program component re-
9 ferred to in paragraph (1) on or after the date
10 which is 30 days after paragraph (1)(D) is
11 complied with.

12 “(B) For purposes of subparagraph (A),
13 the 30 days shall be computed by excluding—

14 “(i) the days either House is not in
15 session because of an adjournment of more
16 than 3 days to a day certain or an ad-
17 journment of the Congress sine die, and

18 “(ii) any Saturday and Sunday, not
19 excluded under clause (i), when either
20 House is not in session.

21 “(3) EVALUATION AND REPORT.—The Sec-
22 retary shall—

23 “(A) develop a user satisfaction survey of
24 parties participating in the Program;

1 “(B) evaluate the results of the user satis-
2 faction survey on a biennial basis (fiscal years)
3 and transmit a report to the Committees on the
4 evaluation by no later than the 90th day after
5 the close of each 2d fiscal year;

6 “(C) with respect to the existing Program
7 component listed in section 411(a)(1)(G) trans-
8 mit to the Committees—

9 “(i) a written evaluation of such com-
10 ponent before the 180th day after the date
11 of the enactment of this section and before
12 the implementation of the planned Pro-
13 gram components listed in section
14 411(a)(2) (B) and (C), and

15 “(ii) a report on such component for
16 each of the 3 full fiscal years occurring
17 after the date of the enactment of this sec-
18 tion, which report shall be transmitted not
19 later than the 90th day after the close of
20 each such year; and

21 “(D) not later than the 90th day after the
22 close of fiscal year 1994, and annually there-
23 after through fiscal year 2000, transmit to the
24 Committees a written evaluation with respect to
25 the implementation and effect on users of each

1 of the planned Program components listed in
2 section 411(a)(2).

3 In carrying out the provisions of this paragraph, the
4 Secretary shall publish requests for comments in the
5 Customs Bulletin and shall consult with the trade
6 community, including importers, brokers, shippers,
7 and other affected parties.

8 “(c) COMMITTEES.—For purposes of this section, the
9 term ‘Committees’ means the Committee on Ways and
10 Means of the House of Representatives and the Committee
11 on Finance of the Senate.

12 **“SEC. 414. REMOTE LOCATION FILING.**

13 “(a) CORE ENTRY INFORMATION.—

14 “(1) IN GENERAL.—A Program participant
15 may file electronically an entry of merchandise with
16 the Customs Service from a location other than the
17 district designated in the entry for examination
18 (hereafter in this section referred to as a ‘remote lo-
19 cation’) if—

20 “(A) the Customs Service is satisfied that
21 the participant has the capabilities referred to
22 in paragraph (2)(A) regarding such method of
23 filing; and

24 “(B) the participant elects to file from the
25 remote location.

1 “(2) REQUIREMENTS.—

2 “(A) IN GENERAL.—In order to qualify for
3 filing from a remote location, a Program partic-
4 ipant must have the capability to provide, on an
5 entry-by-entry basis, for the following:

6 “(i) The electronic entry of merchan-
7 dise.

8 “(ii) The electronic entry summary of
9 required information.

10 “(iii) The electronic transmission of
11 invoice information (when required by the
12 Customs Service).

13 “(iv) The electronic payment of du-
14 ties, fees, and taxes.

15 “(v) Such other electronic capabilities
16 within the existing or planned components
17 of the Program as the Secretary shall by
18 regulation require.

19 “(B) RESTRICTION ON EXEMPTION FROM
20 REQUIREMENTS.—The Customs Service may
21 not permit any exemption or waiver from the
22 requirements established by this section for par-
23 ticipation in remote entry filing.

24 “(3) CONDITIONS ON FILING UNDER THIS SEC-
25 TION.—The Secretary may prohibit a Program par-

1 participant from participating in remote location filing,
2 and may remove a Program participant from partici-
3 pation in remote location filing, if the participant—

4 “(i) fails to meet all the compliance re-
5 quirements and operational standards of remote
6 location filing; or

7 “(ii) fails to adhere to all applicable laws
8 and regulations.

9 “(4) ALTERNATIVE FILING.—Any Program par-
10 ticipant that is eligible to file entry information elec-
11 tronically from a remote location but chooses not to
12 do so in the case of any entry must file any paper
13 documentation for the entry at the designated loca-
14 tion referred to in subsection (d).

15 “(b) ADDITIONAL ENTRY INFORMATION.—

16 “(1) IN GENERAL.—A Program participant that
17 is eligible under subsection (a) to file entry informa-
18 tion from a remote location may, if the Customs
19 Service is satisfied that the participant meets the re-
20 quirements under paragraph (2), also electronically
21 file from the remote location additional information
22 that is required by the Customs Service to be pre-
23 sented before the acceptance of entry summary in-
24 formation and at the time of acceptance of entry
25 summary information.

1 “(2) REQUIREMENTS.—The Secretary shall
2 publish, and periodically update, a list of those capa-
3 bilities within the existing and planned components
4 of the Program that a Program participant must
5 have for purposes of this subsection.

6 “(3) FILING OF ADDITIONAL INFORMATION.—

7 “(A) IF INFORMATION ELECTRONICALLY
8 ACCEPTABLE.—A Program participant that is
9 eligible under paragraph (1) to file additional
10 information from a remote location shall elec-
11 tronically file all such information that the Cus-
12 toms Service can accept electronically.

13 “(B) ALTERNATIVE FILING.—If the Cus-
14 toms Service cannot accept additional informa-
15 tion electronically, the Program participant
16 shall file the paper documentation with respect
17 to the information at the appropriate filing lo-
18 cation.

19 “(C) APPROPRIATE LOCATION.—For pur-
20 poses of subparagraph (B), the ‘appropriate lo-
21 cation’ is—

22 “(i) before January 1, 1999, a des-
23 ignated location; and

24 “(ii) after December 31, 1998—

1 “(I) if the paper documentation
2 is required for release, a designated
3 location; or

4 “(II) if the paper documentation
5 is not required for release, a remote
6 location designated by the Customs
7 Service or a designated location.

8 “(D) OTHER.—A Program participant that
9 is eligible under paragraph (1) to file additional
10 information electronically from a remote loca-
11 tion but chooses not to do so must file the
12 paper documentation with respect to the infor-
13 mation at a designated location.

14 “(c) POST-ENTRY SUMMARY INFORMATION.—A Pro-
15 gram participant that is eligible to file electronically entry
16 information under subsection (a) and additional informa-
17 tion under subsection (b) from a remote location may file
18 at any remote location designated by the Customs Service
19 any information required by the Customs Service after
20 entry summary.

21 “(d) DEFINITIONS.—As used in this section:

22 “(1) The term ‘designated location’ means a
23 customs office located in the customs district des-
24 ignated by the entry filer for purposes of customs
25 examination of the merchandise.

1 “(2) The term ‘Program participant’ means,
2 with respect to an entry of merchandise, any party
3 entitled to make the entry under section
4 484(a)(2)(B).”.

5 **SEC. 632. DRAWBACK AND REFUNDS.**

6 (a) AMENDMENTS.—Section 313 (19 U.S.C. 1313) is
7 amended as follows:

8 (1) Subsection (a) is amended—

9 (A) by inserting “or destruction under cus-
10 toms supervision” after “Upon the expor-
11 tation”;

12 (B) by inserting “provided that those arti-
13 cles have not been used prior to such expor-
14 tation or destruction,” after “manufactured or
15 produced in the United States with the use of
16 imported merchandise,”;

17 (C) by inserting “or destruction” after “re-
18 funded upon the exportation”; and

19 (D) by striking out “wheat imported after
20 ninety days after the date of the enactment of
21 this Act” and inserting “imported wheat”.

22 (2) Subsection (b) is amended—

23 (A) by striking out “duty-free or domestic
24 merchandise” and inserting “any other mer-
25 chandise (whether imported or domestic)”;

1 (B) by inserting “, or destruction under
2 customs supervision,” after “there shall be al-
3 lowed upon the exportation”;

4 (C) by inserting “or destroyed” after “not-
5 withstanding the fact that none of the imported
6 merchandise may actually have been used in the
7 manufacture or production of the exported”;

8 (D) by inserting “, but only if those arti-
9 cles have not been used prior to such expor-
10 tation or destruction” after “an amount of
11 drawback equal to that which would have been
12 allowable had the merchandise used therein
13 been imported”; and

14 (E) by inserting “or destruction under cus-
15 toms supervision” after “but the total amount
16 of drawback allowed upon the exportation”.

17 (3) Subsection (c) is amended to read as fol-
18 lows:

19 “(c) MERCHANDISE NOT CONFORMING TO SAMPLE
20 OR SPECIFICATIONS.—Upon the exportation, or destruc-
21 tion under the supervision of the Customs Service, of mer-
22 chandise—

23 “(1) not conforming to sample or specifications,
24 shipped without the consent of the consignee, or de-

1 terminated to be defective as of the time of importa-
2 tion;

3 “(2) upon which the duties have been paid;

4 “(3) which has been entered or withdrawn for
5 consumption; and

6 “(4) which, within 3 years after release from
7 the custody of the Customs Service, has been re-
8 turned to the custody of the Customs Service for ex-
9 portation or destruction under the supervision of the
10 Customs Service;

11 the full amount of the duties paid upon such merchandise,
12 less 1 percent, shall be refunded as drawback.”.

13 (4) Subsection (j) is amended to read as fol-
14 lows:

15 “(j) UNUSED MERCHANDISE DRAWBACK.—

16 “(1) If imported merchandise, on which was
17 paid any duty, tax, or fee imposed under Federal
18 law because of its importation—

19 “(A) is, before the close of the 3-year pe-
20 riod beginning on the date of importation—

21 “(i) exported, or

22 “(ii) destroyed under customs super-
23 vision; and

24 “(B) is not used within the United States
25 before such exportation or destruction;

1 then upon such exportation or destruction 99 per-
2 cent of the amount of each duty, tax, or fee so paid
3 shall be refunded as drawback. The exporter (or de-
4 stroyer) has the right to claim drawback under this
5 paragraph, but may endorse such right to the im-
6 porter or any intermediate party.

7 “(2) If there is, with respect to imported mer-
8 chandise on which was paid any duty, tax, or fee im-
9 posed under Federal law because of its importation,
10 any other merchandise (whether imported or domes-
11 tic), that—

12 “(A) is commercially interchangeable with
13 such imported merchandise;

14 “(B) is, before the close of the 3-year pe-
15 riod beginning on the date of importation of the
16 imported merchandise, either exported or de-
17 stroyed under customs supervision; and

18 “(C) before such exportation or destruc-
19 tion—

20 “(i) is not used within the United
21 States, and

22 “(ii) is in the possession of, including
23 ownership while in bailment, in leased fa-
24 cilities, in transit to, or in any other man-
25 ner under the operational control of, the

1 party claiming drawback under this para-
2 graph, if that party—

3 “(I) is the importer of the im-
4 ported merchandise, or

5 “(II) received from the person
6 who imported and paid any duty due
7 on the imported merchandise a certifi-
8 cate of delivery transferring to the
9 party the imported merchandise, com-
10 mercially interchangeable merchan-
11 dise, or any combination of imported
12 and commercially interchangeable
13 merchandise (and any such trans-
14 ferred merchandise, regardless of its
15 origin, will be treated as the imported
16 merchandise and any retained mer-
17 chandise will be treated as domestic
18 merchandise);

19 then upon the exportation or destruction of
20 such other merchandise the amount of each
21 such duty, tax, and fee paid regarding the im-
22 ported merchandise shall be refunded as draw-
23 back, but in no case may the total drawback on
24 the imported merchandise, whether available
25 under this paragraph or any other provision of

1 law or any combination thereof, exceed 99 per-
2 cent of that duty, tax, or fee.

3 “(3) The performing of any operation or com-
4 bination of operations (including, but not limited to,
5 testing, cleaning, repacking, inspecting, sorting, re-
6 furbishing, freezing, blending, repairing, reworking,
7 cutting, slitting, adjusting, replacing components,
8 relabeling, disassembling, and unpacking), not
9 amounting to manufacture or production for draw-
10 back purposes under the preceding provisions of this
11 section on—

12 “(A) the imported merchandise itself in
13 cases to which paragraph (1) applies, or

14 “(B) the commercially interchangeable
15 merchandise in cases to which paragraph (2)
16 applies,

17 shall not be treated as a use of that merchandise for
18 purposes of applying paragraph (1)(B) or (2)(C).”.

19 (5) Subsection (l) is amended by striking out
20 “the fixing of a time limit within which drawback
21 entries or entries for refund under any of the provi-
22 sions of this section or section 309(b) shall be filed
23 and completed,” and inserting “the authority for the
24 electronic submission of drawback entries”.

1 (6) Subsection (p) is amended to read as fol-
2 lows:

3 “(p) SUBSTITUTION OF FINISHED PETROLEUM DE-
4 RIVATIVES.—

5 “(1) IN GENERAL.—Notwithstanding any other
6 provision of this section, if—

7 “(A) an article (hereafter referred to in
8 this subsection as the ‘exported article’) of the
9 same kind and quality as a qualified article is
10 exported;

11 “(B) the requirements set forth in para-
12 graph (2) are met; and

13 “(C) a drawback claim is filed regarding
14 the exported article;
15 the amount of the duties paid on, or attributable to,
16 such qualified article shall be refunded as drawback
17 to the drawback claimant.

18 “(2) REQUIREMENTS.—The requirements re-
19 ferred to in paragraph (1) are as follows:

20 “(A) The exporter of the exported article—

21 “(i) manufactured or produced the
22 qualified article in a quantity equal to or
23 greater than the quantity of the exported
24 article,

1 “(ii) purchased or exchanged, directly
2 or indirectly, the qualified article from a
3 manufacturer or producer described in
4 subsection (a) or (b) in a quantity equal to
5 or greater than the quantity of the ex-
6 ported article,

7 “(iii) imported the qualified article in
8 a quantity equal to or greater than the
9 quantity of the exported article, or

10 “(iv) purchased or exchanged, directly
11 or indirectly, an imported qualified article
12 from an importer in a quantity equal to or
13 greater than the quantity of the exported
14 article.

15 “(B) In the case of the requirement de-
16 scribed in subparagraph (A)(ii), the manufac-
17 turer or producer produced the qualified article
18 in a quantity equal to or greater than the quan-
19 tity of the exported article.

20 “(C) In the case of the requirement of sub-
21 paragraph (A)(i) or (A)(ii), the exported article
22 is exported during the period that the qualified
23 article described in subparagraph (A)(i) or
24 (A)(ii) (whichever is applicable) is manufac-

1 tured or produced, or within 180 days after the
2 close of such period.

3 “(D) In the case of the requirement of
4 subparagraph (A)(i) or (A)(ii), the specific pe-
5 troleum refinery or production facility which
6 made the qualified article concerned is identi-
7 fied.

8 “(E) In the case of the requirement of sub-
9 paragraph (A)(iii) or (A)(iv), the exported arti-
10 cle is exported within 180 days after the date
11 of entry of an imported qualified article de-
12 scribed in subparagraph (A)(iii) or (A)(iv)
13 (whichever is applicable).

14 “(F) Except as otherwise specifically pro-
15 vided in this subsection, the drawback claimant
16 complies with all requirements of this section,
17 including providing certificates which establish
18 the drawback eligibility of articles for which
19 drawback is claimed.

20 “(G) The manufacturer, producer, im-
21 porter, exporter, and drawback claimant of the
22 qualified article and the exported article main-
23 tain all records required by regulation.

24 “(3) DEFINITION OF QUALIFIED ARTICLE,
25 ETC.—For purposes of this subsection—

1 “(A) The term ‘qualified article’ means an
2 article—

3 “(i) described in—

4 “(I) headings 2707, 2708, 2710,
5 2711, 2712, 2713, 2714, 2715, 2901,
6 and 2902 of the Harmonized Tariff
7 Schedule of the United States, or

8 “(II) headings 3901 through
9 3914 of such Schedule (as such head-
10 ings apply to liquids, pastes, powders,
11 granules, and flakes), and

12 “(ii) which is—

13 “(I) manufactured or produced
14 as described in subsection (a) or (b)
15 from crude petroleum or a petroleum
16 derivative, or

17 “(II) imported duty-paid.

18 “(B) An exported article is of the same
19 kind and quality as the qualified article for
20 which it is substituted under this subsection if
21 it is a product that is commercially interchange-
22 able with or referred to under the same eight-
23 digit classification of the Harmonized Tariff
24 Schedule of the United States as the qualified
25 article.

1 “(C) The term ‘drawback claimant’ means
2 the exporter of the exported article or the re-
3 finer, producer, or importer of such article. Any
4 person eligible to file a drawback claim under
5 this subparagraph may designate another per-
6 son to file such claim.

7 “(4) LIMITATION ON DRAWBACK.—The amount
8 of drawback payable under this subsection shall not
9 exceed the amount of drawback that would be attrib-
10 utable to the article—

11 “(A) manufactured or produced under sub-
12 section (a) or (b) by the manufacturer or pro-
13 ducer described in clause (i) or (ii) of para-
14 graph (2)(A), or

15 “(B) imported under clause (iii) or (iv) of
16 paragraph (2)(A).”.

17 (7) The following new subsections are inserted
18 after subsection (p):

19 “(q) PACKAGING MATERIAL.—Packaging material,
20 when used on or for articles or merchandise exported or
21 destroyed under subsection (a), (b), (c), or (j), shall be
22 eligible under such subsection for refund, as drawback, of
23 99 percent of any duty, tax, or fee imposed under Federal
24 law on the importation of such material.

25 “(r) FILING DRAWBACK CLAIMS.—

1 “(1) A drawback entry and all documents nec-
2 essary to complete a drawback claim, including those
3 issued by the Customs Service, shall be filed or ap-
4 plied for, as applicable, within 3 years after the date
5 of exportation or destruction of the articles on which
6 drawback is claimed, except that any landing certifi-
7 cate required by regulation shall be filed within the
8 time limit prescribed in such regulation. Claims not
9 completed within the 3-year period shall be consid-
10 ered abandoned. No extension will be granted unless
11 it is established that the Customs Service was re-
12 sponsible for the untimely filing.

13 “(2) A drawback entry for refund filed pursu-
14 ant to any subsection of this section shall be deemed
15 filed pursuant to any other subsection of this section
16 should it be determined that drawback is not allow-
17 able under the entry as originally filed but is allow-
18 able under such other subsection.

19 “(s) DESIGNATION OF MERCHANDISE BY SUCCESSOR.—
20

21 “(1) For purposes of subsection (b), a draw-
22 back successor may designate imported merchandise
23 used by the predecessor before the date of succession
24 as the basis for drawback on articles manufactured

1 by the drawback successor after the date of succes-
2 sion.

3 “(2) For purposes of subsection (j)(2), a draw-
4 back successor may designate—

5 “(A) imported merchandise which the
6 predecessor, before the date of succession, im-
7 ported; or

8 “(B) imported merchandise, commercially
9 interchangeable merchandise, or any combina-
10 tion of imported and commercially interchange-
11 able merchandise for which the successor re-
12 ceived, before the date of succession, from the
13 person who imported and paid any duty due on
14 the imported merchandise a certificate of deliv-
15 ery transferring to the successor such merchan-
16 dise;

17 as the basis for drawback on merchandise possessed
18 by the drawback successor after the date of succes-
19 sion.

20 “(3) For purposes of this subsection, the term
21 ‘drawback successor’ means an entity to which an-
22 other entity (in this subsection referred to as the
23 ‘predecessor’) has transferred by written agreement,
24 merger, or corporate resolution—

1 “(A) all or substantially all of the rights,
2 privileges, immunities, powers, duties, and li-
3 abilities of the predecessor; or

4 “(B) the assets and other business inter-
5 ests of a division, plant, or other business unit
6 of such predecessor, but only if in such transfer
7 the value of the transferred realty, personalty,
8 and intangibles (other than drawback rights, in-
9 choate or otherwise) exceeds the value of all
10 transferred drawback rights, inchoate or other-
11 wise.

12 “(4) No drawback shall be paid under this sub-
13 section until either the predecessor or the drawback
14 successor (who shall also certify that it has the pred-
15 ecessor’s records) certifies that—

16 “(A) the transferred merchandise was not
17 and will not be claimed by the predecessor, and

18 “(B) the predecessor did not and will not
19 issue any certificate to any other person that
20 would enable that person to claim drawback.

21 “(t) DRAWBACK CERTIFICATES.—Any person who is-
22 sues a certificate which would enable another person to
23 claim drawback shall be subject to the recordkeeping pro-
24 visions of this chapter, with the retention period beginning
25 on the date that such certificate is issued.

1 “(u) ELIGIBILITY OF ENTERED OR WITHDRAWN
2 MERCHANDISE.—Imported merchandise that has not been
3 regularly entered or withdrawn for consumption shall not
4 satisfy any requirement for use, exportation, or destruc-
5 tion under this section.

6 “(v) MULTIPLE DRAWBACK CLAIMS.—Merchandise
7 that is exported or destroyed to satisfy any claim for draw-
8 back shall not be the basis of any other claim for draw-
9 back; except that appropriate credit and deductions for
10 claims covering components or ingredients of such mer-
11 chandise shall be made in computing drawback pay-
12 ments.”.

13 (b) APPLICATION OF AMENDMENT TO FINISHED PE-
14 TROLEUM DERIVATIVES.—Notwithstanding section 514 of
15 the Tariff Act of 1930 (19 U.S.C. 1514) or any other pro-
16 vision of law, the amendment made by paragraph (6) of
17 subsection (a) shall apply to—

18 (1) claims filed or liquidated on or after Janu-
19 ary 1, 1988, and

20 (2) claims that are unliquidated, under protest,
21 or in litigation on the date of the enactment of this
22 Act.

23 **SEC. 633. EFFECTIVE DATE OF RATES OF DUTY.**

24 Section 315 (19 U.S.C. 1315) is amended—

1 (1) by striking out “appropriate customs officer
2 in the form and manner prescribed by regulations of
3 the Secretary of the Treasury,” in the first sentence
4 of subsection (a) and inserting “Customs Service by
5 written, electronic or such other means as the Sec-
6 retary by regulation shall prescribe,”;

7 (2) by striking out “customs custody” in the
8 first sentence of subsection (b) and inserting “cus-
9 tody of the Customs Service”; and

10 (3) by striking out “paragraph 813” in sub-
11 section (c) and inserting “chapter 98 of the Har-
12 monized Tariff Schedule of the United States”.

13 **SEC. 634. DEFINITIONS.**

14 Section 401 (19 U.S.C. 1401) is amended—

15 (1) by amending subsection (k) to read as fol-
16 lows:

17 “(k) The term ‘hovering vessel’ means—

18 “(1) any vessel which is found or kept off the
19 coast of the United States within or without the cus-
20 toms waters, if, from the history, conduct, character,
21 or location of the vessel, it is reasonable to believe
22 that such vessel is being used or may be used to in-
23 troduce or promote or facilitate the introduction or
24 attempted introduction of merchandise into the

1 United States in violation of the laws of the United
2 States; and

3 “(2) any vessel which has visited a vessel de-
4 scribed in paragraph (1).”; and

5 (2) by inserting at the end thereof the following
6 new subsections:

7 “(n) The term ‘electronic transmission’ means the
8 transfer of data or information through an authorized
9 electronic data interchange system consisting of, but not
10 limited to, computer modems and computer networks.

11 “(o) The term ‘electronic entry’ means the electronic
12 transmission to the Customs Service of—

13 “(1) entry information required for the entry of
14 merchandise, and

15 “(2) entry summary information required for
16 the classification and appraisement of the merchan-
17 dise, the verification of statistical information, and
18 the determination of compliance with applicable law.

19 “(p) The term ‘electronic data interchange system’
20 means any established mechanism approved by the Com-
21 missioner of Customs through which information can be
22 transferred electronically.

23 “(q) The term ‘National Customs Automation Pro-
24 gram’ means the program established under section 411.

1 “(r) The term ‘import activity summary statement’
2 refers to data or information transmitted electronically to
3 the Customs Service, in accordance with such regulations
4 as the Secretary prescribes, at the end of a specified pe-
5 riod of time which enables the Customs Service to assess
6 properly the duties, taxes and fees on merchandise im-
7 ported during that period, collect accurate statistics and
8 determine whether any other applicable requirement of law
9 (other than a requirement relating to release from customs
10 custody) is met.

11 “(s) The term ‘reconciliation’ means an electronic
12 process, initiated at the request of an importer, under
13 which the elements of an entry, other than those elements
14 related to the admissibility of the merchandise, that are
15 undetermined at the time of entry summary are provided
16 to the Customs Service at a later time. A reconciliation
17 is treated as an entry for purposes of liquidation, reliqui-
18 dation, and protest.”.

19 **SEC. 635. MANIFESTS.**

20 Section 431 (19 U.S.C. 1431) is amended—

21 (1) by amending subsections (a) and (b) to read
22 as follows:

23 “(a) IN GENERAL.—Every vessel required to make
24 entry under section 434 or obtain clearance under section
25 4197 of the Revised Statutes of the United States (46

1 U.S.C. App. 91) shall have a manifest that complies with
2 the requirements prescribed under subsection (d).

3 “(b) PRODUCTION OF MANIFEST.—Any manifest re-
4 quired by the Customs Service shall be signed, produced,
5 delivered or electronically transmitted by the master or
6 person in charge of the vessel, aircraft, or vehicle, or by
7 any other authorized agent of the owner or operator of
8 the vessel, aircraft, or vehicle in accordance with the re-
9 quirements prescribed under subsection (d). A manifest
10 may be supplemented by bill of lading data supplied by
11 the issuer of such bill. If any irregularity of omission or
12 commission occurs in any way in respect to any manifest
13 or bill of lading data, the owner or operator of the vessel,
14 aircraft or vehicle, or any party responsible for such irreg-
15 ularity, shall be liable for any fine or penalty prescribed
16 by law with respect to such irregularity. The Customs
17 Service may take appropriate action against any of the
18 parties.”; and

19 (2) by inserting after subsection (c) the follow-
20 ing new subsection:

21 “(d) REGULATIONS.—

22 “(1) IN GENERAL.—The Secretary shall by reg-
23 ulation—

1 “(A) specify the form for, and the informa-
2 tion and data that must be contained in, the
3 manifest required by subsection (a);

4 “(B) allow, at the option of the individual
5 producing the manifest and subject to para-
6 graph (2), letters and documents shipments to
7 be accounted for by summary manifesting pro-
8 cedures;

9 “(C) prescribe the manner of production
10 for, and the delivery for electronic transmittal
11 of, the manifest required by subsection (a); and

12 “(D) prescribe the manner for
13 supplementing manifests with bill of lading data
14 under subsection (b).

15 “(2) LETTERS AND DOCUMENTS SHIPMENTS.—
16 For purposes of paragraph (1)(B)—

17 “(A) the Customs Service may require with
18 respect to letters and documents shipments—

19 “(i) that they be segregated by coun-
20 try of origin, and

21 “(ii) additional examination proce-
22 dures that are not necessary for individ-
23 ually manifested shipments;

24 “(B) standard letter envelopes and stand-
25 ard document packs shall be segregated from

larger document shipments for purposes of customs inspections; and

“(C) the term ‘letters and documents’ means—

“(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

“(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and

“(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.”.

SEC. 636. INVOICE CONTENTS.

Section 481 (19 U.S.C. 1481) is amended—

(1) by amending subsection (a)—

(A) by amending the matter preceding paragraph (1) to read as follows: “IN GENERAL.—All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this section shall set forth, in written, elec-

1 tronic, or such other form as the Secretary
2 shall prescribe, the following:”

3 (B) by amending paragraph (3) to read as
4 follows:

5 “(3) A detailed description of the merchandise,
6 including the commercial name by which each item
7 is known, the grade or quality, and the marks, num-
8 bers, or symbols under which sold by the seller or
9 manufacturer in the country of exportation, together
10 with the marks and numbers of the packages in
11 which the merchandise is packed;”, and

12 (C) by amending paragraph (10) to read
13 as follows:

14 “(10) Any other fact that the Secretary may by
15 regulation require as being necessary to a proper ap-
16 praisement, examination and classification of the
17 merchandise.”;

18 (2) by amending subsection (c) to read as
19 follows:

20 “(c) IMPORTER PROVISION OF INFORMATION.—Any
21 information required to be set forth on an invoice may
22 alternatively be provided by any of the parties qualifying
23 as an ‘importer of record’ under section 484(a)(2)(B) by
24 such means, in such form or manner, and within such time
25 as the Secretary shall by regulation prescribe.”; and

1 (3) by inserting before the period at the end of
2 subsection (d) the following: “and may allow for the
3 submission or electronic transmission of partial in-
4 voices, electronic equivalents of invoices, bills, or
5 other documents or parts thereof, required under
6 this section”.

7 **SEC. 637. ENTRY OF MERCHANDISE.**

8 (a) AMENDMENTS TO SECTION 484.—Section 484
9 (19 U.S.C. 1484) is amended to read as follows:

10 **“SEC. 484. ENTRY OF MERCHANDISE.**

11 “(a) REQUIREMENT AND TIME.—

12 “(1) Except as provided in sections 490, 498,
13 552, 553, and 336(j), one of the parties qualifying
14 as ‘importer of record’ under paragraph (2)(B), ei-
15 ther in person or by an agent authorized by the
16 party in writing, shall, using reasonable care—

17 “(A) make entry therefor by filing with the
18 Customs Service—

19 “(i) such documentation or, pursuant
20 to an electronic data interchange system,
21 such information as is necessary to enable
22 the Customs Service to determine whether
23 the merchandise may be released from cus-
24 toms custody, and

1 “(ii) notification whether an import
2 activity summary statement will be filed;
3 and

4 “(B) complete the entry by filing with the
5 Customs Service the declared value, classifica-
6 tion and rate of duty applicable to the merchan-
7 dise, and such other documentation or, pursu-
8 ant to an electronic data interchange system,
9 such other information as is necessary to enable
10 the Customs Service to—

11 “(i) properly assess duties on the mer-
12 chandise,

13 “(ii) collect accurate statistics with re-
14 spect to the merchandise, and

15 “(iii) determine whether any other ap-
16 plicable requirement of law (other than a
17 requirement relating to release from cus-
18 toms custody) is met.

19 “(2)(A) The documentation or information re-
20 quired under paragraph (1) with respect to any im-
21 ported merchandise shall be filed or transmitted in
22 such manner and within such time periods as the
23 Secretary shall by regulation prescribe. Such regula-
24 tions shall provide for the filing of import activity
25 summary statements, covering entries or warehouse

1 withdrawals made during a calendar month, within
2 such time period as is prescribed in regulations but
3 not to exceed the 20th day following such calendar
4 month.

5 “(B) When an entry of merchandise is made
6 under this section, the required documentation or in-
7 formation shall be filed or electronically transmitted
8 either by the owner or purchaser of the merchandise
9 or, when appropriately designated by the owner, pur-
10 chaser, or consignee of the merchandise, a person
11 holding a valid license under section 641. When a
12 consignee declares on entry that he is the owner or
13 purchaser of merchandise the Customs Service may,
14 without liability, accept the declaration. For the pur-
15 poses of this Act, the importer of record must be one
16 of the parties who is eligible to file the documenta-
17 tion or information required by this section.

18 “(C) The Secretary, in prescribing regulations
19 to carry out this subsection, shall establish proce-
20 dures which insure the accuracy and timeliness of
21 import statistics, particularly statistics relevant to
22 the classification and valuation of imports. Correc-
23 tions of errors in such statistical data shall be trans-
24 mitted immediately to the Director of the Bureau of
25 the Census, who shall make corrections in the statis-

1 tics maintained by the Bureau. The Secretary shall
2 also provide, to the maximum extent practicable, for
3 the protection of the revenue, the enforcement of
4 laws governing the importation and exportation of
5 merchandise, the facilitation of the commerce of the
6 United States, and the equal treatment of all im-
7 porters of record of imported merchandise.

8 “(b) RECONCILIATION.—

9 “(1) IN GENERAL.—A party that electronically
10 transmits an entry summary or import activity sum-
11 mary statement may at the time of filing such sum-
12 mary or statement notify the Customs Service of his
13 intention to file a reconciliation pursuant to such
14 regulations as the Secretary may prescribe. Such
15 reconciliation must be filed by the importer of record
16 within such time period as is prescribed by regula-
17 tion but no later than 15 months following the filing
18 of the entry summary or import activity summary
19 statement; except that the prescribed time period for
20 reconciliation issues relating to the assessment of
21 antidumping and countervailing duties shall require
22 filing no later than 90 days after the Customs Serv-
23 ice advises the importer that a period of review for
24 antidumping or countervailing duty purposes has
25 been completed. Before filing a reconciliation, an im-

1 porter of record shall post bond or other security
2 pursuant to such regulations as the Secretary may
3 prescribe.

4 “(2) REGULATIONS REGARDING AD/CV DU-
5 TIES.—The Secretary shall prescribe, in consultation
6 with the Secretary of Commerce, such regulations as
7 are necessary to adapt the reconciliation process for
8 use in the collection of antidumping and countervail-
9 ing duties.

10 “(c) RELEASE OF MERCHANDISE.—The Customs
11 Service may permit the entry and release of merchandise
12 from customs custody in accordance with such regulations
13 as the Secretary may prescribe. No officer of the Customs
14 Service shall be liable to any person with respect to the
15 delivery of merchandise released from customs custody in
16 accordance with such regulations.

17 “(d) SIGNING AND CONTENTS.—Entries shall be
18 signed by the importer of record, or his agent, unless filed
19 pursuant to an electronic data interchange system. If elec-
20 tronically filed, each transmission of data shall be certified
21 by an importer of record or his agent, one of whom shall
22 be resident in the United States for purposes of receiving
23 service of process, as being true and correct to the best
24 of his knowledge and belief, and such transmission shall
25 be binding in the same manner and to the same extent

1 as a signed document. The entry shall set forth such facts
2 in regard to the importation as the Secretary may require
3 and shall be accompanied by such invoices, bills of lading,
4 certificates, and documents, or their electronically submit-
5 ted equivalents, as are required by regulation.

6 “(e) PRODUCTION OF INVOICE.—The Secretary may
7 provide by regulation for the production of an invoice,
8 parts thereof, or the electronic equivalents thereof, in such
9 manner and form, and under such terms and conditions,
10 as the Secretary considers necessary.

11 “(f) STATISTICAL ENUMERATION.—The Secretary,
12 the Secretary of Commerce, and the United States Inter-
13 national Trade Commission shall establish from time to
14 time for statistical purposes an enumeration of articles in
15 such detail as in their judgment may be necessary, com-
16 prehending all merchandise imported into the United
17 States and exported from the United States, and shall
18 seek, in conjunction with statistical programs for domestic
19 production and programs for achieving international har-
20 monization of trade statistics, to establish the comparabil-
21 ity thereof with such enumeration of articles. All import
22 entries and export declarations shall include or have at-
23 tached thereto an accurate statement specifying, in terms
24 of such detailed enumeration, the kinds and quantities of

1 all merchandise imported and exported and the value of
2 the total quantity of each kind of article.

3 “(g) STATEMENT OF COST OF PRODUCTION.—Under
4 such regulations as the Secretary may prescribe, the Cus-
5 toms Service may require a verified statement from the
6 manufacturer or producer showing the cost of producing
7 the imported merchandise, if the Customs Service consid-
8 ers such verification necessary for the appraisement of
9 such merchandise.

10 “(h) ADMISSIBILITY OF DATA ELECTRONICALLY
11 TRANSMITTED.—Any entry or other information transmit-
12 ted by means of an authorized electronic data interchange
13 system shall be admissible in any and all administrative
14 and judicial proceedings as evidence of such entry or infor-
15 mation.”.

16 (b) AMENDMENT TO SECTION 771.—Section 771 (19
17 U.S.C. 1677) is amended by adding at the end the follow-
18 ing new paragraph:

19 “(23) ENTRY.—The term ‘entry’ includes, in
20 appropriate circumstances as determined by the ad-
21 ministering authority, a reconciliation entry created
22 under a reconciliation process, defined in section
23 401(s), that is initiated by an importer. The liability
24 of an importer under an antidumping or countervail-
25 ing duty proceeding for entries of merchandise sub-

1 ject to the proceeding will attach to the correspond-
2 ing reconciliation entry or entries. Suspension of liq-
3 uidation of the reconciliation entry or entries, for the
4 purpose of enforcing this title, is equivalent to the
5 suspension of liquidation of the corresponding indi-
6 vidual entries; but the suspension of liquidation of
7 the reconciliation entry or entries for such purpose
8 does not preclude liquidation for any other pur-
9 pose.”.

10 **SEC. 638. APPRAISEMENT AND OTHER PROCEDURES.**

11 Section 500 (19 U.S.C. 1500) is amended—

12 (1) by striking out “The appropriate customs
13 officer” and inserting “The Customs Service”;

14 (2) by striking out “appraise” in subsection (a)
15 and inserting “fix the final appraisement of”;

16 (3) by striking out “ascertain the” in sub-
17 section (b) and inserting “fix the final”;

18 (4) by amending subsection (c)—

19 (A) by inserting “final” after “fix the”,
20 and

21 (B) by inserting “, taxes, and fees” after
22 “duties” wherever it appears; and

23 (5) by amending subsections (d) and (e) to read
24 as follows:

1 “(d) liquidate the entry and reconciliation, if
2 any, of such merchandise; and

3 “(e) give or transmit, pursuant to an electronic
4 data interchange system, notice of such liquidation
5 to the importer, his consignee, or agent in such form
6 and manner as the Secretary shall by regulation pre-
7 scribe.”.

8 **SEC. 639. VOLUNTARY RELIQUIDATIONS.**

9 Section 501 (19 U.S.C. 1501) is amended—

10 (1) by striking out “the appropriate customs of-
11 ficer on his own initiative” and inserting “the Cus-
12 toms Service”;

13 (2) by inserting “or transmitted” after “given”
14 wherever it appears; and

15 (3) by amending the section heading to read as
16 follows:

17 **“SEC. 501. VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS**
18 **SERVICE.”.**

19 **SEC. 640. APPRAISEMENT REGULATIONS.**

20 Section 502 (19 U.S.C. 1502) is amended—

21 (1) by amending subsection (a)—

22 (A) by inserting “(including regulations es-
23 tablishing procedures for the issuance of bind-
24 ing rulings prior to the entry of the merchan-
25 dise concerned)” after “law”,

1 (B) by striking out “ports of entry, and”
2 inserting “ports of entry. The Secretary”,

3 (C) by inserting “or classifying” after “ap-
4 praising” wherever it appears, and

5 (D) by striking out “such port” and insert-
6 ing “any port, and may direct any customs offi-
7 cer at any port to review entries of merchandise
8 filed at any other port”; and

9 (2) by striking out subsection (b) and redesign-
10 ating subsection (c) as subsection (b).

11 **SEC. 641. LIMITATION ON LIQUIDATION.**

12 Section 504 (19 U.S.C. 1504) is amended—

13 (1) by amending subsection (a)—

14 (A) by striking out “Except as provided in
15 subsection (b),” and inserting “Unless an entry
16 is extended under subsection (b) or suspended
17 as required by statute or court order,”,

18 (B) by striking out “or” at the end of
19 paragraph (2),

20 (C) by inserting “or” after the semicolon
21 at the end of paragraph (3), and

22 (D) by inserting the following new para-
23 graph after paragraph (3):

24 “(4) if a reconciliation is filed, or should have
25 been filed, the date of the filing under section 484

1 or the date the reconciliation should have been
2 filed;” and

3 (2) by amending subsections (b), (c), and (d) to
4 read as follows:

5 “(b) EXTENSION.—The Secretary may extend the pe-
6 riod in which to liquidate an entry if—

7 “(1) the information needed for the proper ap-
8 praisement or classification of the merchandise, or
9 for insuring compliance with applicable law, is not
10 available to the Customs Service; or

11 “(2) the importer of record requests such exten-
12 sion and shows good cause therefor.

13 The Secretary shall give notice of an extension under this
14 subsection to the importer of record and the surety of such
15 importer of record. Notice shall be in such form and man-
16 ner (which may include electronic transmittal) as the Sec-
17 retary shall by regulation prescribe. Any entry the liquida-
18 tion of which is extended under this subsection shall be
19 treated as having been liquidated at the rate of duty,
20 value, quantity, and amount of duty asserted at the time
21 of entry by the importer of record at the expiration of 4
22 years from the applicable date specified in subsection (a).

23 “(c) NOTICE OF SUSPENSION.—If the liquidation of
24 any entry is suspended, the Secretary shall by regulation
25 require that notice of the suspension be provided, in such

1 manner as the Secretary considers appropriate, to the im-
2 porter of record and to any authorized agent and surety
3 of such importer of record.

4 “(d) REMOVAL OF SUSPENSION.—When a suspension
5 required by statute or court order is removed, the Customs
6 Service shall liquidate the entry within 6 months after re-
7 ceiving notice of the removal from the Department of
8 Commerce, other agency, or a court with jurisdiction over
9 the entry. Any entry not liquidated by the Customs Service
10 within 6 months after receiving such notice shall be treat-
11 ed as having been liquidated at the rate of duty, value,
12 quantity, and amount of duty asserted at the time of entry
13 by the importer of record.”.

14 **SEC. 642. PAYMENT OF DUTIES AND FEES.**

15 (a) AMENDMENT TO SECTION 505.—Section 505
16 (U.S.C. 1505) is amended to read as follows:

17 **“SEC. 505. PAYMENT OF DUTIES AND FEES.**

18 “(a) DEPOSIT OF ESTIMATED DUTIES, FEES, AND
19 INTEREST.—Unless merchandise is entered for warehouse
20 or transportation, or under bond, the importer of record
21 shall deposit with the Customs Service at the time of mak-
22 ing entry, or at such later time as the Secretary may pre-
23 scribe by regulation, the amount of duties and fees esti-
24 mated to be payable thereon. Such regulations may pro-
25 vide that estimated duties and fees shall be deposited be-

1 fore or at the time an import activity summary statement
2 is filed. If an import activity summary statement is filed,
3 the estimated duties and fees shall be deposited together
4 with interest, at a rate determined by the Secretary, ac-
5 cruing from the first date of the month the statement is
6 required to be filed until the date such statement is actu-
7 ally filed.

8 “(b) COLLECTION OR REFUND OF DUTIES, FEES,
9 AND INTEREST DUE UPON LIQUIDATION OR RELIQUIDA-
10 TION.—The Customs Service shall collect any increased or
11 additional duties and fees due, together with interest
12 thereon, or refund any excess moneys deposited, together
13 with interest thereon, as determined on a liquidation or
14 reliquidation. Duties, fees, and interest determined to be
15 due upon liquidation or reliquidation are due 30 days after
16 issuance of the bill for such payment. Refunds of excess
17 moneys deposited, together with interest thereon, shall be
18 paid within 30 days of liquidation or reliquidation.

19 “(c) INTEREST.—Interest assessed due to an
20 underpayment of duties, fees, or interest shall accrue, at
21 a rate determined by the Secretary, from the date the im-
22 porter of record is required to deposit estimated duties,
23 fees, and interest to the date of liquidation or reliquidation
24 of the applicable entry or reconciliation. Interest on excess
25 moneys deposited shall accrue, at a rate determined by

1 the Secretary, from the date the importer of record depos-
2 its estimated duties, fees, and interest to the date of liq-
3 uidation or reliquidation of the applicable entry or rec-
4 onciliation.

5 “(d) DELINQUENCY.—If duties, fees, and interest de-
6 termined to be due or refunded are not paid in full within
7 the 30-day period specified in subsection (b), any unpaid
8 balance shall be considered delinquent and bear interest
9 by 30-day periods, at a rate determined by the Secretary,
10 from the date of liquidation or reliquidation until the full
11 balance is paid. No interest shall accrue during the 30-
12 day period in which payment is actually made.”.

13 (b) CONFORMING AMENDMENT.—Subsection (d) of
14 section 520 (19 U.S.C. 1520(d)) is repealed.

15 **SEC. 643. ABANDONMENT AND DAMAGE.**

16 Section 506 (19 U.S.C. 1506) is amended—

17 (1) by striking out “the appropriate customs of-
18 ficer” and “such customs officer” wherever they ap-
19 pear and inserting “the Customs Service”;

20 (2) by amending paragraph (1)—

21 (A) by striking out “not sent to the ap-
22 praiser’s stores for” and inserting “released
23 without an”,

24 (B) by striking out “of the examination
25 packages or quantities of merchandise”,

1 (C) by striking out “the appraiser’s stores”
2 and inserting “the Customs Service”, and

3 (D) by inserting “or entry” after “in-
4 voice”, and

5 (3) by amending paragraph (2)—

6 (A) by inserting “, electronically or other-
7 wise,” after “files”, and

8 (B) by striking out “written”.

9 **SEC. 644. CUSTOMS OFFICER’S IMMUNITY.**

10 Section 513 (19 U.S.C. 1513) is amended to read as
11 follows:

12 **“SEC. 513. CUSTOMS OFFICER’S IMMUNITY.**

13 “No customs officer shall be liable in any way to any
14 person for or on account of—

15 “(1) any ruling or decision regarding the ap-
16 praisement or the classification of any imported
17 merchandise or regarding the duties, fees, and taxes
18 charged thereon,

19 “(2) the collection of any dues, charges, duties,
20 fees, and taxes on or on account of any imported
21 merchandise, or

22 “(3) any other matter or thing as to which any
23 person might under this Act be entitled to protest or
24 appeal from the decision of such officer.”.

1 **SEC. 645. PROTESTS.**

2 Section 514 (19 U.S.C. 1514) is amended—

3 (1) by amending subsection (a)—

4 (A) by striking out “appropriate customs
5 officer” in the text preceding paragraph (1) and
6 inserting “Customs Service”,

7 (B) by inserting “or reconciliation as to
8 the issues contained therein,” after “entry,” in
9 paragraph (5),

10 (C) by striking out “and” and inserting
11 “or” at the end of paragraph (6),

12 (D) by striking out the comma at the end
13 of paragraph (7) and inserting a semicolon, and

14 (E) by striking out “appropriate customs
15 officer, who” in the text following paragraph
16 (7) and inserting “Customs Service, which”;

17 (2) by amending subsection (b) by striking out
18 “appropriate customs officer” and inserting “Cus-
19 toms Service”;

20 (3) by amending the first sentence of subsection
21 (c)(1) to read as follows: “A protest of a decision
22 made under subsection (a) shall be filed in writing,
23 or transmitted electronically pursuant to an elec-
24 tronic data interchange system, in accordance with
25 regulations prescribed by the Secretary. A protest
26 must set forth distinctly and specifically—

1 “(A) each decision described in subsection
2 (a) as to which protest is made;

3 “(B) each category of merchandise affected
4 by each decision set forth under paragraph (1);

5 “(C) the nature of each objection and the
6 reasons therefor; and

7 “(D) any other matter required by the Sec-
8 retary by regulation.”;

9 (4) by redesignating paragraph (2) of sub-
10 section (c) as paragraph (3) and by striking out
11 “such customs officer” in such redesignated para-
12 graph and inserting “the Customs Service”;

13 (5) by designating the last sentence of para-
14 graph (1) of subsection (c) as paragraph (2);

15 (6) by striking out “customs officer” in sub-
16 section (d) and inserting “Customs Service”; and

17 (7) by amending the section heading to read as
18 follows:

19 **“SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS**
20 **SERVICE.”.**

21 **SEC. 646. REFUNDS AND ERRORS.**

22 Section 520 (19 U.S.C. 1520) is amended—

23 (1) by inserting “or reconciliation” after
24 “entry” in paragraphs (1) and (4) of subsection (a);
25 and

1 (2) by amending subsection (c)—

2 (A) by striking out “appropriate customs
3 officer” wherever it appears and inserting
4 “Customs Service”,

5 (B) by inserting “or reconciliation” after
6 “reliquidate an entry”, and

7 (C) by inserting “, whether or not result-
8 ing from or contained in electronic trans-
9 mission,” after “inadvertence” the first place it
10 appears in paragraph (1).

11 **SEC. 647. BONDS AND OTHER SECURITY.**

12 Section 623 (19 U.S.C. 1623) is amended—

13 (1) by inserting “and the manner in which the
14 bond may be filed with or, pursuant to an author-
15 ized electronic data interchange system, transmitted
16 to the Customs Service” after “form of such bond”
17 in subsection (b)(1); and

18 (2) by inserting at the end of subsection (d) the
19 following new sentence: “Any bond transmitted to
20 the Customs Service pursuant to an authorized elec-
21 tronic data interchange system shall have the same
22 force and effect and be binding upon the parties
23 thereto as if such bond were manually executed,
24 signed, and filed.”.

1 **SEC. 648. CUSTOMHOUSE BROKERS.**

2 Section 641 (19 U.S.C. 1641) is amended—

3 (1) by adding at the end of subsection (a)(2)
4 the following new sentence: “It also includes the
5 preparation of documents or forms in any format
6 and the electronic transmission of documents, in-
7 voices, bills, or parts thereof, intended to be filed
8 with the Customs Service in furtherance of such ac-
9 tivities, whether or not signed or filed by the pre-
10 parer, or activities relating to such preparation, but
11 does not include the mere electronic transmission of
12 data received for transmission to Customs.”;

13 (2) by amending subsection (c)(1) to read as
14 follows:

15 “(1) IN GENERAL.—Each person granted a cus-
16 toms broker’s license under subsection (b) shall be
17 issued, in accordance with such regulations as the
18 Secretary shall prescribe, either or both of the
19 following:

20 “(A) A national permit for the conduct of
21 such customs business as the Secretary pre-
22 scribes by regulation.

23 “(B) A permit for each customs district in
24 which that person conducts customs business
25 and, except as provided in paragraph (2), regu-
26 larly employs at least 1 individual who is li-

1 censed under subsection (b)(2) to exercise re-
2 sponsible supervision and control over the cus-
3 toms business conducted by that person in that
4 district.”;

5 (3) by inserting at the end of subsection (c) the
6 following new paragraph:

7 “(4) APPOINTMENT OF SUBAGENTS.—Notwith-
8 standing subsection (c)(1), upon the implementation
9 by the Secretary under section 413(b)(2) of the com-
10 ponent of the National Customs Automation Pro-
11 gram referred to in section 411(a)(2)(B), a licensed
12 broker may appoint another licensed broker holding
13 a permit in a customs district to act on its behalf
14 as its subagent in that district if such activity re-
15 lates to the filing of information that is permitted by
16 law or regulation to be filed electronically. A licensed
17 broker appointing a subagent pursuant to this para-
18 graph shall remain liable for any and all obligations
19 arising under bond and any and all duties, taxes,
20 and fees, as well as any other liabilities imposed by
21 law, and shall be precluded from delegating to a
22 subagent such liability.”;

23 (4) by amending subsection (d)(2)(B)—

1 (A) by striking out “appropriate customs
2 officer” and inserting “Customs Service” in the
3 first and third sentences,

4 (B) by striking out “he” and inserting “it”
5 in the third sentence,

6 (C) by striking out “15 days” and insert-
7 ing “30 days” in the third sentence,

8 (D) by striking out “the appropriate cus-
9 toms officer and the customs broker; they” and
10 inserting “the Customs Service and the customs
11 broker; which” in the sixth sentence,

12 (E) by striking out “his” and inserting
13 “the” in the seventh sentence, and

14 (F) by striking out “for his decision” and
15 inserting “for the decision” in the eighth sen-
16 tence; and

17 (5) by amending subsection (f) by striking out
18 “United States Customs Service.” and inserting
19 “Customs Service. The Secretary may not prohibit
20 customs brokers from limiting their liability to other
21 persons in the conduct of customs business. For pur-
22 poses of this subsection or any other provision of
23 this Act pertaining to recordkeeping, all data re-
24 quired to be retained by a customs broker may be
25 kept on microfilm, optical disc, magnetic tapes, disks

1 or drums, video files or any other electrically gen-
 2 erated medium. Pursuant to such regulations as the
 3 Secretary shall prescribe, the conversion of data to
 4 such storage medium may be accomplished at any
 5 time subsequent to the relevant customs transaction
 6 and the data may be retained in a centralized basis
 7 according to such broker's business system."

8 **SEC. 649. CONFORMING AMENDMENTS.**

9 (a) PLACE OF ENTRY AND UNLADING.—Section 447
 10 (19 U.S.C. 1447) is amended by striking out "the appro-
 11 priate customs officer shall consider" and inserting "the
 12 Customs Service considers".

13 (b) UNLADING.—Section 449 (19 U.S.C. 1449) is
 14 amended by striking out "appropriate customs officer of
 15 such port issues a permit for the unlading of such mer-
 16 chandise or baggage," and inserting "Customs Service is-
 17 sues a permit for the unlading of such merchandise or
 18 baggage at such port,".

19 **Subtitle C—Miscellaneous Amend-**
 20 **ments to the Tariff Act of 1930**

21 **SEC. 651. ADMINISTRATIVE EXEMPTIONS.**

22 Section 321 (19 U.S.C. 1321) is amended—
 23 (1) by amending subsection (a)(1)—

1 (A) by striking out “of less than \$10” and
2 inserting “of an amount specified by the Sec-
3 retary by regulation, but not less than \$20,”,

4 (B) by inserting “, fees,” after “duties”
5 wherever it appears, and

6 (C) by striking out “and” at the end there-
7 of;

8 (2) by amending subsection (a)(2)—

9 (A) by striking out “shall not exceed—”
10 and inserting “shall not exceed an amount spec-
11 ified by the Secretary by regulation, but not
12 less than—”,

13 (B) by striking out “\$50” and “\$100” in
14 subparagraph (A) and inserting “\$100” and
15 “\$200”, respectively,

16 (C) by striking out “\$25” in subparagraph
17 (B) and inserting “\$200”,

18 (D) by striking out “\$5” in subparagraph
19 (C) and inserting “\$200”, and

20 (E) by striking the period at the end there-
21 of and inserting “; and”, and

22 (3) by inserting a new paragraph (3) at the end
23 of subsection (a) to read as follows:

24 “(3) waive the collection of duties, fees, and
25 taxes due on entered merchandise when such duties,

1 fees, or taxes are less than \$20 or such greater
2 amount as may be specified by the Secretary by reg-
3 ulation.”; and

4 (4) by amending subsection (b)—

5 (A) by striking out “to diminish any dollar
6 amount specified in subsection (a) and”; and

7 (B) by striking out “such subsection”
8 wherever it appears and inserting “subsection
9 (a)”.

10 **SEC. 652. REPORT OF ARRIVAL.**

11 Section 433 (19 U.S.C. 1433) is amended—

12 (1) by amending subsection (a)(1)—

13 (A) by striking out “or” at the end of sub-
14 paragraph (B),

15 (B) by inserting “or” after the semicolon
16 at the end of subparagraph (C), and

17 (C) by adding after subparagraph (C) the
18 following:

19 “(D) any vessel which has visited a hover-
20 ing vessel or received merchandise while outside
21 the territorial sea;”;

22 (2) by striking out “present to customs officers
23 such” in subsection (d) and inserting “present, or
24 transmit pursuant to an electronic data interchange

1 system, to the Customs Service such information,
2 data,”; and

3 (3) by amending subsection (e) to read as fol-
4 lows:

5 “(e) PROHIBITION ON DEPARTURES AND DIS-
6 CHARGE.—Unless otherwise authorized by law, a vessel,
7 aircraft or vehicle after arriving in the United States or
8 Virgin Islands may, but only in accordance with regula-
9 tions prescribed by the Secretary—

10 “(1) depart from the port, place, or airport of
11 arrival; or

12 “(2) discharge any passenger or merchandise
13 (including baggage).”.

14 **SEC. 653. ENTRY OF VESSELS.**

15 Section 434 (19 U.S.C. 1434) amended to read as
16 follows:

17 **“SEC. 434. ENTRY; VESSELS.**

18 “(a) FORMAL ENTRY.—Within 24 hours (or such
19 other period of time as may be provided under subsection
20 (c)(2)) after the arrival at any port or place in the United
21 States of—

22 “(1) any vessel from a foreign port or place;

23 “(2) any foreign vessel from a domestic port;

1 “(3) any vessel of the United States having on
2 board bonded merchandise or foreign merchandise
3 for which entry has not been made; or

4 “(4) any vessel which has visited a hovering
5 vessel or has delivered or received merchandise while
6 outside the territorial sea;

7 the master of the vessel shall, unless otherwise provided
8 by law, make formal entry at the nearest customs facility
9 or such other place as the Secretary may prescribe by
10 regulation.

11 “(b) PRELIMINARY ENTRY.—The Secretary may by
12 regulation permit the master to make preliminary entry
13 of the vessel with the Customs Service in lieu of formal
14 entry or before formal entry is made. In permitting pre-
15 liminary entry, the Customs Service shall board a suffi-
16 cient number of vessels to ensure compliance with the laws
17 it enforces.

18 “(c) REGULATIONS.—The Secretary may by regula-
19 tion—

20 “(1) prescribe the manner and format in which
21 entry under subsection (a) or subsection (b), or
22 both, must be made, and such regulations may pro-
23 vide that any such entry may be made electronically
24 pursuant to an electronic data interchange system;

25 “(2) provide that—

1 “(A) formal entry must be made within a
2 greater or lesser time than 24 hours after arriv-
3 al, but in no case more than 48 hours after ar-
4 rival, and

5 “(B) formal entry may be made before ar-
6 rival; and

7 “(3) authorize the Customs Service to permit
8 entry or preliminary entry of any vessel to be made
9 at a place other than a designated port of entry,
10 under such conditions as may be prescribed.”.

11 **SEC. 654. UNLAWFUL RETURN OF FOREIGN VESSEL PA-**
12 **PERS.**

13 Section 438 (19 U.S.C. 1438) is amended—

14 (1) by striking out “section 435” and inserting
15 “section 434”;

16 (2) by inserting “, or regulations issued there-
17 under,” after “of this Act”; and

18 (3) by striking out “the appropriate customs of-
19 ficer of the port where such vessel has been en-
20 tered.” and inserting “the Customs Service in the
21 port in which such vessel has entered.”.

22 **SEC. 655. VESSELS NOT REQUIRED TO ENTER.**

23 Section 441 (19 U.S.C. 1441) is amended—

24 (1) by amending the text preceding paragraph

25 (1) to read as follows: “The following vessels shall

1 not be required to make entry under section 434 or
2 to obtain clearance under section 4197 of the Re-
3 vised Statutes of the United States (46 U.S.C. App.
4 91):”;

5 (2) by amending paragraph (3) to read as
6 follows:

7 “(3) Any vessel carrying passengers on excursion
8 from the United States Virgin Islands to the British Vir-
9 gin Islands and returning, if—

10 “(A) the vessel does not in any way violate the
11 customs or navigation laws of the United States;

12 “(B) the vessel has not visited any hovering
13 vessel; and

14 “(C) the master of the vessel, if there is on
15 board any article required by law to be entered, re-
16 ports the article to the Customs Service immediately
17 upon arrival.”;

18 (3) by redesignating paragraphs (4) and (5) as
19 paragraphs (5) and (6), respectively, and inserting
20 after paragraph (3) the following:

21 “(4) Any United States documented vessel with rec-
22 reational endorsement or any undocumented United
23 States pleasure vessel not engaged in trade, if—

1 “(A) the vessel complies with the reporting re-
2 quirements of section 433, and with the customs and
3 navigation laws of the United States;

4 “(B) the vessel has not visited any hovering
5 vessel; and

6 “(C) the master of, and any other person on
7 board, the vessel, if the master or such person has
8 on board any article required by law to be entered
9 or declared, reports such article to the Customs
10 Service immediately upon arrival;”;

11 (4) by amending paragraph (6) (as so redesign-
12 nated) by striking out “enrolled and licensed to en-
13 gage in the foreign and coasting trade in the north-
14 ern, northeastern, and northwestern frontiers” and
15 inserting “documented under chapter 121 of title
16 46, United States Code, with a Great Lakes en-
17 dorsement”; and

18 (5) by amending the section heading to read as
19 follows:

20 **“SEC. 441. EXCEPTIONS TO VESSEL ENTRY AND CLEAR-**
21 **ANCE REQUIREMENTS.”.**

22 **SEC. 656. UNLADING.**

23 Section 448(a) (19 U.S.C. 1448(a)) is amended—

24 (1) by amending the first sentence—

1 (A) by striking out “enter)” and inserting
2 “enter or clear”),

3 (B) by striking out “or vehicle arriving
4 from a foreign port or place” and inserting “re-
5 quired to make entry under section 434, or ve-
6 hicle required to report arrival under section
7 433,”,

8 (C) by inserting “or transmitted pursuant
9 to an electronic data interchange system” after
10 “issued”, and

11 (D) by striking out the colon after “offi-
12 cer” and the proviso and inserting a period;

13 (2) by amending the second sentence—

14 (A) by striking out “, preliminary or other-
15 wise,”, and

16 (B) by inserting “, electronically pursuant
17 to an authorized electronic data interchange
18 system or otherwise,” after “may issue a per-
19 mit”;

20 (3) by striking out the last sentence and insert-
21 ing the following: “The owner or master of any ves-
22 sel or vehicle, or agent thereof, shall notify the Cus-
23 toms Service of any merchandise or baggage so un-
24 laden for which entry is not made within the time
25 prescribed by law or regulation. The Secretary shall

1 by regulation prescribe administrative penalties not
2 to exceed \$1,000 for each bill of lading for which no-
3 tice is not given. Any such administrative penalty
4 shall be subject to mitigation and remittance under
5 section 618. Such unentered merchandise or bag-
6 gage shall be the responsibility of the master or per-
7 son in charge of the importing vessel or vehicle, or
8 agent thereof, until it is removed from the carrier's
9 control in accordance with section 490.”; and

10 (4) by striking out “the appropriate customs of-
11 ficer” and “such customs officer” wherever they ap-
12 pear and inserting “the Customs Service”.

13 **SEC. 657. DECLARATIONS.**

14 Section 485 (19 U.S.C. 1485) is amended—

15 (1) by amending subsection (a)—

16 (A) by inserting “or transmit electroni-
17 cally” after “file”, and

18 (B) by inserting “and manner” after
19 “form”;

20 (2) by amending subsection (d)—

21 (A) by striking out “A importer” and in-
22 serting “An importer”, and

23 (B) by striking out “a importer” and in-
24 serting “an importer”; and

1 (3) by inserting after subsection (f) the follow-
2 ing new subsection:

3 “(g) EXPORTED MERCHANDISE RETURNED AS
4 UNDELIVERABLE.—With respect to any importation of
5 merchandise to which General Headnote 4(e) of the Har-
6 monized Tariff Schedule of the United States applies, any
7 person who gained any benefit from, or met any obligation
8 to, the United States as a result of the prior exportation
9 of such merchandise shall, in accordance with regulations
10 prescribed by the Secretary, within a reasonable time in-
11 form the Customs Service of the return of the merchan-
12 dise.”.

13 **SEC. 658. GENERAL ORDERS.**

14 Section 490 (19 U.S.C. 1490) is amended—

15 (1) by amending subsection (a) to read as fol-
16 lows:

17 “(a) INCOMPLETE ENTRY.—

18 “(1) Whenever—

19 “(A) the entry of any imported merchan-
20 dise is not made within the time provided by
21 law or by regulation prescribed by the Sec-
22 retary;

23 “(B) the entry of imported merchandise is
24 incomplete because of failure to pay the esti-
25 mated duties, fees, or interest;

1 “(C) in the opinion of the Customs Serv-
2 ice, the entry of imported merchandise cannot
3 be made for want of proper documents or other
4 cause; or

5 “(D) the Customs Service believes that any
6 merchandise is not correctly and legally
7 invoiced;

8 the carrier (unless subject to subsection (c)) shall
9 notify the bonded warehouse of such unentered mer-
10 chandise.

11 “(2) After notification under paragraph (1), the
12 bonded warehouse shall arrange for the transpor-
13 tation and storage of the merchandise at the risk
14 and expense of the consignee. The merchandise shall
15 remain in the bonded warehouse until—

16 “(A) entry is made or completed and the
17 proper documents are produced;

18 “(B) the information and data necessary
19 for entry are transmitted to the Customs Serv-
20 ice pursuant to an authorized electronic data
21 interchange system; or

22 “(C) a bond is given for the production of
23 documents or the transmittal of data.”;

24 (2) by amending subsection (b)—

1 (A) by amending the heading for sub-
2 section (b) to read as follows:

3 “(b) REQUEST FOR POSSESSION BY CUSTOMS.—”,
4 and

5 (B) by striking out “appropriate customs
6 officer” and inserting “Customs Service”; and

7 (3) by adding at the end the following new sub-
8 section:

9 “(c) GOVERNMENT MERCHANDISE.—Any imported
10 merchandise that—

11 “(1) is described in any of paragraphs (1)
12 through (4) of subsection (a); and

13 “(2) is consigned to, or owned by, the United
14 States Government;

15 shall be stored and disposed of in accordance with such
16 rules and procedures as the Secretary shall by regulation
17 prescribe.”.

18 **SEC. 659. UNCLAIMED MERCHANDISE.**

19 Section 491 (19 U.S.C. 1491) is amended—

20 (1) by amending subsection (a)—

21 (A) by striking out “customs custody for
22 one year” in the first sentence and inserting “in
23 a bonded warehouse pursuant to section 490 for
24 6 months”,

1 (B) by striking out “public store or bonded
2 warehouse for a period of one year” in the sec-
3 ond sentence and inserting “pursuant to section
4 490 in a bonded warehouse for 6 months”,

5 (C) by striking out “estimated duties and
6 storage” in the first sentence and inserting “es-
7 timated duties, taxes, fees, interest, storage,”,

8 (D) by inserting “taxes, fees, interest,”
9 after “duties,” wherever it appears, and

10 (E) by striking out “duties” in the last
11 sentence and inserting “duties, taxes, interest,
12 and fees”; and

13 (2) by redesignating subsection (b) as sub-
14 section (e) and inserting after subsection (a) the fol-
15 lowing new subsections:

16 “(b) NOTICE OF TITLE VESTING IN THE UNITED
17 STATES.—At the end of the 6-month period referred to
18 in subsection (a), the Customs Service may, in lieu of sale
19 of the merchandise, provide notice to all known interested
20 parties that the title to such merchandise shall be consid-
21 ered to vest in the United States free and clear of any
22 liens or encumbrances, on the 30th day after the date of
23 the notice unless, before such 30th day—

24 “(1) the subject merchandise is entered or with-
25 drawn for consumption; and

1 “(2) payment is made of all duties, taxes, fees,
2 transfer and storage charges, and other expenses
3 that may have accrued thereon.

4 “(c) RETENTION, TRANSFER, DESTRUCTION, OR
5 OTHER DISPOSITION.—If title to any merchandise vests
6 in the United States by operation of subsection (b), such
7 merchandise may be retained by the Customs Service for
8 official use, transferred to any other Federal agency or
9 to any State or local agency, destroyed, or otherwise dis-
10 posed of in accordance with such regulations as the Sec-
11 retary shall prescribe. All transfer and storage charges or
12 expenses accruing on retained or transferred merchandise
13 shall be paid by the receiving agency.

14 “(d) PETITION.—Whenever any party, having lost a
15 substantial interest in merchandise by virtue of title vest-
16 ing in the United States under subsection (b), can estab-
17 lish such title or interest to the satisfaction of the Sec-
18 retary within 30 days after the day on which title vests
19 in the United States under subsection (b), or can establish
20 to the satisfaction of the Secretary that the party did not
21 receive notice under subsection (b), the Secretary may,
22 upon receipt of a timely and proper petition and upon
23 finding that the facts and circumstances warrant, pay
24 such party out of the Treasury of the United States the
25 amount the Secretary believes the party would have re-

1 ceived under section 493 had the merchandise been sold
2 and a proper claim filed. The decision of the Secretary
3 with respect to any such petition is final and conclusive
4 on all parties.”; and

5 (3) by amending subsection (e) (as so redesign-
6 nated) by striking out “appropriate customs officer”
7 in paragraph (3) and inserting “Customs Service”.

8 **SEC. 660. DESTRUCTION OF MERCHANDISE.**

9 Section 492 (19 U.S.C. 1492) is amended—

10 (1) by inserting “, retained for official use, or
11 otherwise disposed of” after “destroyed”; and

12 (2) by striking out “appropriate customs offi-
13 cer” and inserting “Customs Service”.

14 **SEC. 661. PROCEEDS OF SALE.**

15 Section 493 (19 U.S.C. 1493) is amended—

16 (1) by inserting “taxes, and fees,” after “du-
17 ties,”;

18 (2) by striking out “by the appropriate customs
19 officer”; and

20 (3) by striking out “such customs officer” and
21 inserting “the Customs Service”.

22 **SEC. 662. ENTRY UNDER REGULATIONS.**

23 Section 498(a) (19 U.S.C. 1498(a)) is amended—

24 (1) by amending paragraph (1) to read as fol-
25 lows:

1 “(1) Merchandise, when—

2 “(A) the aggregate value of the shipment
3 does not exceed an amount specified by the Sec-
4 retary by regulation, but not more than \$2,500;
5 or

6 “(B) different commercial facilitation and
7 risk considerations that may vary for different
8 classes or kinds of merchandise or different
9 classes of transactions may dictate;” and

10 (2) by striking out “\$10,000” in paragraph (2)
11 and inserting “such amounts as the Secretary may
12 prescribe”.

13 **SEC. 663. AMERICAN TRADEMARKS.**

14 Section 526(e)(3) (19 U.S.C. 1526(e)(3)) is amend-
15 ed—

16 (1) by striking out “1 year” and inserting “90
17 days”; and

18 (2) by striking out “appropriate customs offi-
19 cers” and inserting “the Customs Service”.

20 **SEC. 664. SIMPLIFIED RECORDKEEPING FOR MERCHAN-**
21 **DISE TRANSPORTED BY PIPELINE.**

22 Part IV of title IV is amended by inserting after sec-
23 tion 553 the following new section:

1 **“SEC. 553A. RECORDKEEPING FOR MERCHANDISE TRANS-**
2 **PORTED BY PIPELINE.**

3 “Merchandise in Customs custody that is transported
4 by pipeline may be accounted for on a quantitative basis,
5 based on the bill of lading, or equivalent document of re-
6 ceipt, issued by the pipeline carrier. Unless the Customs
7 Service has reasonable cause to suspect fraud, the Cus-
8 toms Service may accept the bill of lading, or equivalent
9 document of receipt, issued by the pipeline carrier to the
10 shipper and accepted by the consignee to maintain iden-
11 tity. The shipper, pipeline operator, and consignee shall
12 be subject to the recordkeeping requirements of sections
13 508 and 509.”.

14 **SEC. 665. ENTRY FOR WAREHOUSE.**

15 Section 557(a) (19 U.S.C. 1557(a)) is amended—

16 (1) by designating the first 2 sentences of such
17 subsection as paragraph (1);

18 (2) by striking out in such paragraph (1) (as so
19 designated) “: *Provided*, That the total period of
20 time for which such merchandise may remain in
21 bonded warehouse shall not exceed 5 years from the
22 date of importation.” and inserting the following: “;
23 except that—

24 “(A) the total period of time for which such
25 merchandise may remain in bonded warehouse shall
26 not exceed 5 years from the date of importation; and

1 “(B) turbine fuel may be withdrawn for use
2 under section 309 without the payment of duty if an
3 amount equal to the quantity of fuel withdrawn is
4 shown to be used within 30 days after the day of
5 withdrawal, but duties (together with interest pay-
6 able from the date of the withdrawal at the rate of
7 interest established under section 6621 of title 26,
8 United States Code) shall be deposited by the 40th
9 day after the day of withdrawal on fuel that was
10 withdrawn in excess of the quantity shown to have
11 been so used during such 30-day period.”; and

12 (3) by designating the remaining sentences of
13 such subsection as paragraph (2).

14 **SEC. 666. CARTAGE.**

15 The first sentence of section 565 (19 U.S.C. 1565)
16 is amended to read as follows: “The cartage of merchan-
17 dise entered for warehouse shall be done by—

18 “(1) cartmen appointed and licensed by the
19 Customs Service; or

20 “(2) carriers designated under section 551 to
21 carry bonded merchandise;

22 who shall give bond, in a penal sum to be fixed by the
23 Customs Service, for the protection of the Government
24 against any loss of, or damage to, the merchandise while
25 being so carted.”.

1 **SEC. 667. SEIZURE.**

2 Section 612 (19 U.S.C. 1612) is amended—

3 (1) by amending subsection (a)—

4 (A) by striking out “the appropriate cus-
5 toms officer”, “such officer” and “the customs
6 officer” wherever they appear and inserting
7 “the Customs Service”, and

8 (B) by striking out “the appraiser’s return
9 and his” and inserting “its”; and

10 (2) by amending subsection (b) to read as fol-
11 lows:

12 “(b) If the Customs Service determines that the ex-
13 pense of keeping the vessel, vehicle, aircraft, merchandise,
14 or baggage is disproportionate to the value thereof, the
15 Customs Service may promptly order the destruction or
16 other appropriate disposition of such property under regu-
17 lations prescribed by the Secretary. No customs officer
18 shall be liable for the destruction or other disposition of
19 property made pursuant to this section.”.

20 **SEC. 668. LIMITATION ON ACTIONS.**

21 Section 621 (19 U.S.C. 1621) is amended—

22 (1) by inserting “any duty under section
23 592(d), 593A(d), or” before “any pecuniary pen-
24 alty”; and

1 (2) by striking out “discovered:” and all that
 2 follows thereafter and inserting the follow-
 3 ing: “discovered; except that—

4 “(1) in the case of an alleged violation of sec-
 5 tion 592 or 593A, no suit or action (including a suit
 6 or action for restoration of lawful duties under sub-
 7 section (d) of such sections) may be instituted unless
 8 commenced within 5 years after the date of the al-
 9 leged violation or, if such violation arises out of
 10 fraud, within 5 years after the date of discovery of
 11 fraud, and

12 “(2) the time of the absence from the United
 13 States of the person subject to the penalty or forfeit-
 14 ure, or of any concealment or absence of the prop-
 15 erty, shall not be reckoned within the 5-year period
 16 of limitation.”.

17 **SEC. 669. COLLECTION OF FEES ON BEHALF OF OTHER**
 18 **AGENCIES.**

19 The Tariff Act of 1930 is amended by inserting after
 20 section 528 the following new section:

21 **“SEC. 529. COLLECTION OF FEES ON BEHALF OF OTHER**
 22 **AGENCIES.**

23 “The Customs Service shall be reimbursed from the
 24 fees collected for the cost and expense, administrative and

1 otherwise, incurred in collecting any fees on behalf of any
2 government agency for any reason.”.

3 **SEC. 670. AUTHORITY TO SETTLE CLAIMS.**

4 The Tariff Act of 1930 is amended by inserting after
5 section 629 the following new section:

6 **“SEC. 630. AUTHORITY TO SETTLE CLAIMS.**

7 “(a) IN GENERAL.—With respect to a claim that can-
8 not be settled under chapter 171 of title 28, United States
9 Code, the Secretary may settle, for not more than \$50,000
10 in any one case, a claim for damage to, or loss of, privately
11 owned property caused by an investigative or law enforce-
12 ment officer (as defined in section 2680(h) of title 28,
13 United States Code) who is employed by the Customs
14 Service and acting within the scope of his or her employ-
15 ment.

16 “(b) LIMITATIONS.—The Secretary may not pay a
17 claim under subsection (a) that—

18 “(1) concerns commercial property;

19 “(2) is presented to the Secretary more than 1
20 year after it occurs; or

21 “(3) is presented by an officer or employee of
22 the United States Government and arose within the
23 scope of employment.

1 “(c) FINAL SETTLEMENT.—A claim may be paid
2 under this section only if the claimant accepts the amount
3 of settlement in complete satisfaction of the claim.”.

4 **SEC. 671. USE OF PRIVATE COLLECTION AGENCIES.**

5 The Tariff Act of 1930 is amended by inserting after
6 section 630 the following new section:

7 **“SEC. 631. USE OF PRIVATE COLLECTION AGENCIES.**

8 “(a) IN GENERAL.—Notwithstanding any other pro-
9 vision of law, the Secretary, under such terms and condi-
10 tions as the Secretary considers appropriate, shall enter
11 into contracts and incur obligations with one or more per-
12 sons for collection services to recover indebtedness arising
13 under the customs laws and owed the United States Gov-
14 ernment, but only after the Customs Service has ex-
15 hausted all administrative efforts, including all claims
16 against applicable surety bonds, to collect the indebted-
17 ness.

18 “(b) CONTRACT REQUIREMENTS.—Any contract en-
19 tered into under subsection (a) shall provide that—

20 “(1) the Secretary retains the authority to re-
21 solve a dispute, compromise a claim, end collection
22 action, and refer a matter to the Attorney General
23 to bring a civil action; and

24 “(2) the person is subject to—

1 “(A) section 552a of title 5, United States
2 Code, to the extent provided in subsection (m)
3 of such section; and

4 “(B) laws and regulations of the United
5 States Government and State governments re-
6 lated to debt collection practices.”.

7 **Subtitle D—Miscellaneous Provi-**
8 **sions and Consequential and**
9 **Conforming Amendments to**
10 **Other Laws**

11 **SEC. 681. AMENDMENTS TO THE HARMONIZED TARIFF**
12 **SCHEDULE.**

13 (a) RETURN SHIPMENTS.—General Note 4 of the
14 Harmonized Tariff Schedule of the United States is
15 amended—

16 (1) by striking out “and” at the end of subdivi-
17 sion (c);

18 (2) by inserting “and” after “1930,” in subdivi-
19 sion (d);

20 (3) by inserting after subdivision (d) the
21 following:

22 “(e) articles exported from the United States
23 which are returned within 45 days after such expor-
24 tation from the United States as undeliverable and

1 which have not left the custody of the carrier or for-
2 eign customs service,”; and

3 (4) by adding at the end the following new sen-
4 tence: “No exportation referred to in subdivision (e)
5 may be treated as satisfying any requirement for ex-
6 portation in order to receive a benefit from, or meet
7 an obligation to, the United States as a result of
8 such exportation.”.

9 (b) ENTRY NOT REQUIRED FOR LOCOMOTIVES AND
10 RAILWAY FREIGHT CARS.—

11 (1) The Notes to chapter 86 of such Schedule
12 are amended by inserting after note 3 the following
13 new note:

14 “4. Railway locomotives (provided for in headings 8601
15 and 8602) and railway freight cars (provided for in head-
16 ing 8606) on which no duty is owed are not subject to
17 the entry or release requirements for imported merchan-
18 dise set forth in sections 448 and 484 of the Tariff Act
19 of 1930. The Secretary of the Treasury may by regulation
20 establish appropriate reporting requirements, including
21 the requirement that a bond be posted to ensure compli-
22 ance.”.

23 (2) The U.S. Notes to subchapter V of chapter
24 99 of such Schedule are amended by inserting after
25 note 8 the following new note:

1 “9. Railway freight cars provided for in subheadings
2 9905.86.05 and 9905.86.10 are not subject to the entry
3 or release requirements for imported merchandise set
4 forth in sections 448 and 484 of the Tariff Act of 1930.
5 The Secretary of the Treasury may by regulation establish
6 appropriate reporting requirements, including the require-
7 ment that a bond be posted to ensure compliance.”.

8 (c) INSTRUMENTS OF INTERNATIONAL TRAFFIC.—
9 The U.S. Notes to subchapter III of chapter 98 of such
10 Schedule is amended by inserting after note 3 the follow-
11 ing new note:

12 “4. Instruments of international traffic, such as contain-
13 ers, lift vans, rail cars and locomotives, truck cabs and
14 trailers, etc. are exempt from formal entry procedures but
15 are required to be accounted for when imported and ex-
16 ported into and out of the United States, respectively,
17 through the manifesting procedures required for all inter-
18 national carriers by the United States Customs Service.
19 Fees associated with the importation of such instruments
20 of international traffic shall be reported and paid on a
21 periodic basis as required by regulations issued by the Sec-
22 retary of the Treasury and in accordance with 1956 Cus-
23 toms Convention on Containers (20 UST 30; TIAS
24 6634).”.

1 **SEC. 682. CUSTOMS PERSONNEL AIRPORT WORK SHIFT**
2 **REGULATION.**

3 Section 13031(g) of the Consolidated Omnibus
4 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(g)) is
5 amended—

6 (1) by striking out “In addition to the regula-
7 tions required under paragraph (2), the” and insert-
8 ing “The”;

9 (2) by striking out paragraph (2); and

10 (3) by redesignating paragraph (3) as para-
11 graph (2).

12 **SEC. 683. USE OF HARBOR MAINTENANCE TRUST FUND**
13 **AMOUNTS FOR ADMINISTRATIVE EXPENSES.**

14 (a) IN GENERAL.—Paragraph (3) of section 9505(c)
15 of the Internal Revenue Code of 1986 (relating to expendi-
16 tures from Harbor Maintenance Trust Fund) is amended
17 to read as follows:

18 “(3) for the payment of all expenses of adminis-
19 tration incurred by the Department of the Treasury,
20 the Army Corps of Engineers, and the Department
21 of Commerce related to the administration of sub-
22 chapter A of chapter 36 (relating to harbor mainte-
23 nance tax), but not in excess of \$5,000,000 for any
24 fiscal year.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to fiscal years beginning after
3 the date of the enactment of this Act.

4 **SEC. 684. AMENDMENTS TO TITLE 28, UNITED STATES**
5 **CODE.**

6 (a) AMENDMENTS RELATING TO ACCREDITATION OF
7 PRIVATE LABORATORIES.—Title 28 of the United States
8 Code is amended as follows:

9 (1) Section 1581(g) is amended by—

10 (A) striking out “and” at the end of para-
11 graph (1);

12 (B) by striking out the period at the end
13 of paragraph (2) and inserting “; and”; and

14 (C) by adding at the end the following:

15 “(3) any decision or order of the Customs Serv-
16 ice to deny, suspend, or revoke accreditation of a
17 private laboratory under section 499(b) of the Tariff
18 Act of 1930.”.

19 (2) Section 2631(g) is amended by inserting at
20 the end the following new paragraph:

21 “(3) A civil action to review any decision or order
22 of the Customs Service to deny, suspend, or revoke accred-
23 itation of a private laboratory under section 499(b) of the
24 Tariff Act of 1930 may be commenced in the Court of

1 International Trade by the person whose accreditation was
2 denied, suspended, or revoked.”.

3 (3) Section 2636 is amended—

4 (A) by redesignating subsection (h) as sub-
5 section (i); and

6 (B) by inserting after subsection (g) the
7 following new subsection:

8 “(h) A civil action contesting the denial, suspension,
9 or revocation by the Customs Service of a private labora-
10 tory’s accreditation under section 499(b) of the Tariff Act
11 of 1930 is barred unless commenced in accordance with
12 the rules of the Court of International Trade within 60
13 days after the date of the decision or order of the Customs
14 Service.”.

15 (4) Section 2640 is amended—

16 (A) by redesignating subsection (d) as sub-
17 section (e); and

18 (B) by inserting after subsection (c) the
19 following new subsection:

20 “(d) In any civil action commenced to review any
21 order or decision of the Customs Service under section
22 499(b) of the Tariff Act of 1930, the court shall review
23 the action on the basis of the record before the Customs
24 Service at the time of issuing such decision or order.”.

1 (5) Section 2642 is amended by inserting before
2 the period the following: “or laboratories accredited
3 by the Customs Service under section 499(b) of the
4 Tariff Act of 1930”.

5 (b) APPLICATION OF SUBSECTION (a) AMEND-
6 MENTS.—For purposes of applying the amendments made
7 by subsection (a), any decision or order of the Customs
8 Service denying, suspending, or revoking the accreditation
9 of a private laboratory on or after the date of the enact-
10 ment of this Act and before regulations to implement sec-
11 tion 499(b) of the Tariff Act of 1930 are issued shall be
12 treated as having been denied, suspended, or revoked
13 under such section 499(b).

14 (c) JURISDICTION OF COURT.—Section 1582(1) of
15 title 28, United States Code, is amended by inserting
16 “593A,” after “592,”.

17 (d) FILING OF OFFICIAL DOCUMENTS.—Section
18 2635(a) of title 28, United States Code, is amended to
19 read as follows:

20 “(a) In any action commenced in the Court of Inter-
21 national Trade contesting the denial of a protest under
22 section 515 of the Tariff Act of 1930 or the denial of a
23 petition under section 516 of such Act, the Customs Serv-
24 ice, as prescribed by the rules of the court, shall file with
25 the clerk of the court, as part of the official record, any

1 document, paper, information or data relating to the entry
 2 of merchandise and the administrative determination that
 3 is the subject of the protest or petition.”.

4 **SEC. 685. TREASURY FORFEITURE FUND.**

5 Section 9703 of title 31, United States Code (as
 6 added by Public Law 102–393), is amended—

7 (1) by redesignating subparagraphs (E), (F),
 8 (G), (H), and (I) of subsection (a)(2) as subpara-
 9 graphs (F), (G), (H), (I), and (J), respectively;

10 (2) by inserting after subparagraph (D) of sub-
 11 section (a)(2) the following new subparagraph:

12 “(E) the payment of claims against em-
 13 ployees of the Customs Service settled by the
 14 Secretary under section 630 of the Tariff Act
 15 of 1930;” and

16 (3) by striking out “shall” the first place it ap-
 17 pears in subsection (e) and inserting “may”.

18 **SEC. 686. AMENDMENTS TO THE REVISED STATUTES OF**
 19 **THE UNITED STATES.**

20 (a) TECHNICAL AMENDMENTS.—The Revised Stat-
 21 utes of the United States are amended as follows:

22 (1) Section 2793 (19 U.S.C. 288, 46 U.S.C.
 23 App. 111, 123) is amended—

24 (A) by striking out “Enrolled or licensed
 25 vessels engaged in the foreign and coasting

1 trade on the northern, northeastern, and north-
2 western frontiers of the United States,” and in-
3 serting “Documented vessels with a coastwise,
4 Great Lakes endorsement,”; and

5 (B) by striking out the first semicolon and
6 all the text that follows thereafter and inserting
7 a period.

8 (2) Section 3126 (19 U.S.C. 293) is amended—

9 (A) by striking out “Any vessel, on being
10 duly registered in pursuance of the laws of the
11 United States,” and inserting “Any United
12 States documented vessel with a registry or
13 coastwise endorsement, or both” and

14 (B) by striking out all the text occurring
15 after the first sentence.

16 (3) Section 3127 (19 U.S.C. 294) is amended
17 by striking out “in registered vessels” and inserting
18 “a United States documented vessel with a registry
19 or coastwise endorsement, or both,”.

20 (4) Section 4136 (46 U.S.C. App. 14) is
21 amended by striking out—

22 (A) “The Secretary of Commerce may
23 issue a register or enrollment” and inserting
24 “The Secretary of Transportation may issue a

1 certificate of documentation with a coastwise
2 endorsement”; and

3 (B) “Secretary of Commerce,” and insert-
4 ing “Secretary of Transportation,”.

5 (5) Section 4336 (46 U.S.C. App. 277) is
6 amended—

7 (A) by striking out “register or enrollment
8 or license of any vessel” and inserting “certifi-
9 cate of documentation of any documented ves-
10 sel”; and

11 (B) by striking out “Secretary of the
12 Treasury is not required to have its register or
13 enrollment or license” and inserting “Secretary
14 of Transportation is not required to have its
15 certificate of documentation”.

16 (b) CLEARANCE REQUIREMENTS.—Section 4197 of
17 such Revised Statutes (46 U.S.C. App. 91) is amended
18 to read as follows:

19 **“SEC. 4197. CLEARANCE; VESSELS.**

20 “(a) WHEN REQUIRED; VESSELS OF THE UNITED
21 STATES.—Except as otherwise provided by law, any vessel
22 of the United States shall obtain clearance from the Cus-
23 toms Service before proceeding from a port or place in
24 the United States—

25 “(1) for a foreign port or place;

1 “(2) for another port or place in the United
2 States if the vessel has on board bonded merchan-
3 dise or foreign merchandise for which entry has not
4 been made; or

5 “(3) outside the territorial sea to visit a hover-
6 ing vessel or to receive merchandise while outside
7 the territorial sea.

8 “(b) WHEN REQUIRED; OTHER VESSELS.—Except
9 as otherwise provided by law, any vessel that is not a ves-
10 sel of the United States shall obtain clearance from the
11 Customs Service before proceeding from a port or place
12 in the United States—

13 “(1) for a foreign port or place;

14 “(2) for another port or place in the United
15 States; or

16 “(3) outside the territorial sea to visit a hover-
17 ing vessel or to receive or deliver merchandise while
18 outside the territorial sea.

19 “(c) REGULATIONS.—The Secretary of the Treasury
20 may by regulation—

21 “(1) prescribe the manner in which clearance
22 under this section is to be obtained, including the
23 documents, data or information which shall be sub-
24 mitted or transmitted, pursuant to an authorized
25 data interchange system, to obtain the clearance;

1 “(2) permit the Customs Service to grant clear-
2 ance for a vessel under this section before all re-
3 quirements for clearance are complied with, but only
4 if the owner or operator of the vessel files a bond
5 in an amount set by the Secretary of the Treasury
6 conditioned upon the compliance by the owner or op-
7 erator with all specified requirements for clearance
8 within a time period (not exceeding 4 business days)
9 established by the Secretary of the Treasury; and

10 “(3) authorize the Customs Service to permit
11 clearance of any vessel to be obtained at a place
12 other than a designated port of entry, under such
13 conditions as he may prescribe.”.

14 **SEC. 687. AMENDMENTS TO TITLE 18, UNITED STATES**
15 **CODE.**

16 Section 965(a) of title 18, United States Code, is
17 amended—

18 (1) by striking out “sections 91, 92, and 94 of
19 Title 46” and inserting “section 431 of the Tariff
20 Act of 1930 (19 U.S.C. 1431) and section 4197 of
21 the Revised Statutes of the United States (46
22 U.S.C. App. 91),”;

23 (2) by striking out “the collector of customs for
24 the district wherein such vessel is then located” and
25 inserting “the Customs Service”; and

1 (3) by striking out “the collector like” and in-
2 serting in lieu thereof “the Customs Service like”.

3 **SEC. 688. AMENDMENT TO THE ACT TO PREVENT POLLU-**
4 **TION FROM SHIPS.**

5 Section 9(e) of the Act to Prevent Pollution from
6 Ships (94 Stat. 2301, 33 U.S.C. 1908(e)) is amended by
7 striking out “shall refuse or revoke” and all of the text
8 following thereafter and inserting “shall refuse or revoke
9 the clearance required by section 4197 of the Revised
10 Statutes of the United States (46 U.S.C. App. 91). Clear-
11 ance may be granted upon the filing of a bond or other
12 surety satisfactory to the Secretary.”.

13 **SEC. 689. MISCELLANEOUS TECHNICAL AMENDMENTS.**

14 (a) ACT OF OCTOBER 3, 1913.—The Act of October
15 3, 1913, is amended—

16 (1) in section IV, J, subsection 1 (19 U.S.C.
17 128) by striking out “registered as a vessel of the
18 United States,” and inserting “documented under
19 chapter 121 of title 46, United States Code,”; and

20 (2) in section IV, J, subsection 3 (19 U.S.C.
21 131)—

22 (A) by striking out “vessels of the United
23 States” and inserting “United States docu-
24 mented vessels”; and

1 (B) by striking out “registered as a vessel
2 of the United States.” and inserting “docu-
3 mented under chapter 121 of title 46, United
4 States Code.”.

5 (b) ACT OF AUGUST 5, 1935.—Section 4 of the Act
6 of August 5, 1935 (19 U.S.C. 1704) is amended—

7 (1) by striking out “whenever the collector of
8 customs of the district in which any vessel is, or is
9 sought to be, registered, enrolled, licensed, or num-
10 bered,” and inserting “when the Secretary of Trans-
11 portation”;

12 (2) by striking out “such collector” and insert-
13 ing “the Secretary of Transportation”;

14 (3) by striking out “said collector shall revoke
15 the registry, enrollment, license, or number of such
16 vessel” and inserting “the Secretary of Transpor-
17 tation shall revoke any endorsement on the vessel’s
18 certificate of documentation or number (when the
19 Secretary is the authority issuing the number under
20 chapter 123 of title 46, United States Code)”; and

21 (4) by striking out “Such collector and all per-
22 sons” and inserting “The Secretary of Transpor-
23 tation and all persons”.

1 (c) ACT OF NOVEMBER 6, 1966.—Sections 2(e) and
2 3(e) of the Act of November 6, 1966 (46 U.S.C. App.
3 817d(e) and 817e(e)) are each amended—

4 (1) by striking out “The collector of customs
5 at” and inserting “At”; and

6 (2) by inserting “, the Customs Service” after
7 “subsection (a) of this section”.

8 **SEC. 690. REPEAL OF OBSOLETE PROVISIONS OF LAW.**

9 (a) REVISED STATUTES.—The following provisions of
10 the Revised Statutes of the United States are repealed:

11 (1) So much of section 2792 as is codified at
12 19 U.S.C. 289 and 46 U.S.C. App. 110 and 112 (as
13 in effect on the date of the enactment of this Act).

14 (2) Section 3111 (19 U.S.C. 282).

15 (3) Section 3118 (19 U.S.C. 286).

16 (4) Section 3119 (19 U.S.C. 287).

17 (5) Section 3122 (19 U.S.C. 290).

18 (6) Section 3124 (19 U.S.C. 291).

19 (7) Section 3125 (19 U.S.C. 292).

20 (8) Section 4198 (46 U.S.C. App. 94).

21 (9) Section 4199 (46 U.S.C. App. 93).

22 (10) Section 4201 (46 U.S.C. App. 96).

23 (11) Section 4207.

24 (12) Section 4208 (46 U.S.C. App. 102).

25 (13) Section 4213 (46 U.S.C. App. 101).

1 (14) So much of section 4221 as is codified at
2 46 U.S.C. App. 113 (as in effect on the date of the
3 enactment of this Act).

4 (15) Section 4222 (46 U.S.C. App. 126).

5 (16) Sections 4306, 4307, and 4308 (46 U.S.C.
6 App. 351 through 353).

7 (17) Section 4332 (46 U.S.C. App. 274).

8 (18) Section 4348 (46 U.S.C. App. 293).

9 (19) Section 4358 (46 U.S.C. App. 306).

10 (20) Section 4361 (46 U.S.C. App. 307).

11 (21) Sections 4362 through 4369 (46 U.S.C.
12 App. 308 through 315).

13 (22) Sections 4573 through 4576 (46 U.S.C.
14 App. 674 through 677).

15 (b) TARIFF ACT OF 1930.—The following sections of
16 the Tariff Act of 1930 are repealed:

17 (1) Section 432 (19 U.S.C. 1432).

18 (2) Section 435 (19 U.S.C. 1435).

19 (3) Section 437 (19 U.S.C. 1437).

20 (4) Section 439 (19 U.S.C. 1439).

21 (5) Section 440 (19 U.S.C. 1440).

22 (6) Sections 443, 444, and 445 (19 U.S.C.
23 1443, 1444, and 1445).

24 (7) Section 465 (19 U.S.C. 1465).

25 (8) Section 482 (19 U.S.C. 1482).

1 (9) Section 583 (19 U.S.C. 1583).

2 (10) Section 585 (19 U.S.C. 1585).

3 (c) MISCELLANEOUS PROVISIONS.—The following
4 provisions are repealed:

5 (1) Section 1 of the Act of February 10, 1900
6 (46 U.S.C. App. 131).

7 (2) Section 2 of the Act of April 29, 1908 (46
8 U.S.C. App. 127).

9 (3) Section 1 of the Act of July 1, 1916 (46
10 U.S.C. App. 130).

11 (4) Sections 1 and 2 of the Act of July 3, 1926
12 (46 U.S.C. App. 293a and 293b).

13 (5) The last undesignated paragraph of section
14 201 of the Act of August 5, 1935 (19 U.S.C.
15 1432a), is repealed.

16 (6) The Act of June 16, 1937 (19 U.S.C.
17 1435b).

18 (7) The Act of May 4, 1934 (46 U.S.C. App.
19 91a).

20 (8) Section 1403(b) of the Water Resources De-
21 velopment Act of 1986 (Public Law 99-662; 26
22 U.S.C. 4461 note).

23 **SEC. 691. REPORTS TO CONGRESS.**

24 (a) ANTIDUMPING AND COUNTERVAILING DUTY
25 COLLECTIONS.—The Commissioner of Customs shall be-

1 fore the 60th day of each fiscal year after fiscal year 1994
2 submit to Congress a report regarding the collection dur-
3 ing the preceding fiscal year of duties imposed under the
4 antidumping and countervailing duty laws.

5 (b) CES FEE REPORT.—

6 (1) AMENDMENT.—Section 9501(c) of the Om-
7 nibus Budget Reconciliation Act of 1987 (19 U.S.C.
8 3 note) is amended by adding at the end the follow-
9 ing new paragraph:

10 “(3) The Commissioner of Customs is author-
11 ized to obtain from the operators of centralized
12 cargo examination stations information regarding
13 the fees paid to them for the provision of services at
14 these stations.”.

15 (2) REPORT.—Within 9 months after the date
16 of the enactment of this subsection, the Commis-
17 sioner of Customs shall submit to the Committees
18 referred to in section 9501(c) of the Omnibus Budg-
19 et Reconciliation Act of 1987, a report setting
20 forth—

21 (A) an estimate of the aggregate amount
22 of fees paid to operators of centralized cargo
23 examination stations during fiscal year 1993;
24 and

1 (B) the variations, if any, among customs
2 districts with respect to the amounts of the fees
3 charged for centralized cargo examination sta-
4 tion services.

5 (c) COMPLIANCE WITH CUSTOMS LAWS.—Section
6 123 of the Customs and Trade Act of 1990 (19 U.S.C.
7 2083) is amended—

8 (1) by redesignating subsection (d) as sub-
9 section (e), and

10 (2) by inserting after subsection (c) the follow-
11 ing:

12 “(d) COMPLIANCE PROGRAM.—The Commissioner of
13 Customs shall—

14 “(1) devise and implement a methodology for
15 estimating the level of compliance with the laws ad-
16 ministered by the Customs Service; and

17 “(2) include as an additional part of the report
18 required to be submitted under subsection (a) for
19 each of fiscal years 1994, 1995, and 1996, an eval-
20 uation of the extent to which such compliance was
21 obtained during the 12-month period preceding the
22 60th day before each such fiscal year.”.

23 (d) COURIER SERVICES COMPLIANCE REPORT.—The
24 Commissioner of Customs shall initiate a compliance re-
25 view of certain courier services which may not be eligible

1 for benefits under the regulations of the Customs Service
2 prescribed in part 128 of title 19 of the Code of Federal
3 Regulations and shall submit a report to Congress on the
4 results of such review within 1 year after the date of the
5 enactment of this Act.

6 **SEC. 692. EFFECTIVE DATE.**

7 This title takes effect on the date of the enactment
8 of this Act.

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