108TH CONGRESS
1ST SESSION

H. R. 2738

To implement the United States-Chile Free Trade Agreement.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2003

Mr. DELAY (for himself and Mr. RANGEL) (both by request) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

A BILL

To implement the United States-Chile 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "United States-Chile Free Trade Agreement Implementa-
6 tion Act".

7 (b) TABLE OF CONTENTS.—

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

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

Sec. 101. Approval and entry into force of the agreement.
Sec. 102. Relationship of the agreement to United States and State law.
Sec. 103. Consultation and layover provisions for, and effective date of, proclaimed actions.
Sec. 104. Implementing actions in anticipation of entry into force and initial regulations.
Sec. 105. Administration of dispute settlement proceedings.
Sec. 106. Arbitration of claims.
Sec. 107. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

Sec. 201. Tariff modifications.
Sec. 202. Rules of origin.
Sec. 203. Drawback.
Sec. 204. Customs user fees.
Sec. 205. Disclosure of incorrect information; denial of preferential tariff treatment; false certificates of origin.
Sec. 206. Reliquidation of entries.
Sec. 207. Recordkeeping requirements.
Sec. 208. Enforcement of textile and apparel rules of origin.
Sec. 209. Conforming amendments.
Sec. 210. Regulations.

TITLE III—RELIEF FROM IMPORTS

Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

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

Subtitle B—Textile and Apparel Safeguard Measures

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

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS

Sec. 401. Nonimmigrant traders and investors.
Sec. 402. Nonimmigrant professionals; labor attestation.
Sec. 403. Labor disputes.
Sec. 404. Conforming amendments.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to approve and implement the Free Trade
4 Agreement between the United States and the Re-
5 public of Chile entered into under the authority of
6 section 2103(b) of the Bipartisan Trade Promotion
7 Authority Act of 2002;

8 (2) to strengthen and develop economic rela-
9 tions between the United States and Chile for their
10 mutual benefit;

11 (3) to establish free trade between the two na-
12 tions through the reduction and elimination of bar-
13 riers to trade in goods and services and to invest-
14 ment; and

15 (4) to lay the foundation for further coopera-
16 tion to expand and enhance the benefits of such
17 Agreement.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) AGREEMENT.—The term ''Agreement''
21 means the United States-Chile Free Trade Agree-
22 ment approved by the Congress under section
23 101(a)(1).

24 (2) HTS.—The term ''HTS'' means the Har-
25 monized Tariff Schedule of the United States.

1 (3) TEXTILE OR APPAREL GOOD.—The term
2 ''textile or apparel good'' means a good listed in the
3 Annex to the Agreement on Textiles and Clothing
4 referred to in section 101(d)(4) of the Uruguay
5 Round Agreements Act (19 U.S.C. 3511(d)(4)).

6 TITLE I—APPROVAL OF, AND 7 GENERAL PROVISIONS RE- 8 LATING TO, THE AGREEMENT

9 SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE 10 AGREEMENT.

11 (a) APPROVAL OF AGREEMENT AND STATEMENT OF
12 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of
13 the Bipartisan Trade Promotion Authority Act of 2002
14 (19 U.S.C. 3805) and section 151 of the Trade Act of
15 1974 (19 U.S.C. 2191), the Congress approves—
16 (1) the United States-Chile Free Trade Agree-
17 ment entered into on June 6, 2003, with the Gov-
18 ernment of Chile and submitted to the Congress on
19 July 15, 2003; and
20 (2) the statement of administrative action pro-
21 posed to implement the Agreement that was sub-
22 mitted to the Congress on July 15, 2003.
23 (b) CONDITIONS FOR ENTRY INTO FORCE OF THE
24 AGREEMENT.—At such time as the President determines
25 that Chile has taken measures necessary to bring it into

1 compliance with the provisions of the Agreement that take
2 effect on the date on which the Agreement enters into
3 force, the President is authorized to exchange notes with
4 the Government of Chile providing for the entry into force,
5 on or after January 1, 2004, of the Agreement for the
6 United States.

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

9 (a) RELATIONSHIP TO UNITED STATES LAW.—
10 (1) UNITED STATES LAW TO PREVAIL IN CON-
11 FLICT.—No provision of the Agreement, nor the ap-
12 plication of any such provision to any person or cir-
13 cumstance, which is inconsistent with any law of the
14 United States shall have effect.
15 (2) CONSTRUCTION.—Nothing in this Act shall
16 be construed—
17 (A) to amend or modify any law of the
18 United States, or
19 (B) to limit any authority conferred under
20 any law of the United States,
21 unless specifically provided for in this Act.
22 (b) RELATIONSHIP OF AGREEMENT TO STATE
23 LAW.—
24 (1) LEGAL CHALLENGE.—No State law, or the
25 application thereof, may be declared invalid as to

1 any person or circumstance on the ground that the
2 provision or application is inconsistent with the
3 Agreement, except in an action brought by the
4 United States for the purpose of declaring such law
5 or application invalid.

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

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

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

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

15 (1) shall have any cause of action or defense
16 under the Agreement or by virtue of Congressional
17 approval thereof; or

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

1 **SEC. 103. CONSULTATION AND LAYOVER PROVISIONS FOR,**
2 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**
3 **TIONS.**

4 (a) CONSULTATION AND LAYOVER REQUIRE-
5 MENTS.—If a provision of this Act provides that the imple-
6 mentation of an action by the President by proclamation
7 is subject to the consultation and layover requirements of
8 this section, such action may be proclaimed only if—
9 (1) the President has obtained advice regarding
10 the proposed action from—
11 (A) the appropriate advisory committees
12 established under section 135 of the Trade Act
13 of 1974 (19 U.S.C. 2155); and
14 (B) the United States International Trade
15 Commission;
16 (2) the President has submitted a report to the
17 Committee on Ways and Means of the House of
18 Representatives and the Committee on Finance of
19 the Senate that sets forth—
20 (A) the action proposed to be proclaimed
21 and the reasons therefor; and
22 (B) the advice obtained under paragraph
23 (1);
24 (3) a period of 60 calendar days, beginning on
25 the first day on which the requirements set forth in

paragraphs (1) and (2) have been met has expired; and

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

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

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

(a) IMPLEMENTING ACTIONS.—

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

(A) the President may proclaim such actions, and

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

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force

1 is appropriately implemented on such date, but no
2 such proclamation or regulation may have an effec-
3 tive date earlier than the date of entry into force.
4 (2) WAIVER OF 15-DAY RESTRICTION.—The 15-
5 day restriction contained in section 103(b) on the
6 taking effect of proclaimed actions is waived to the
7 extent that the application of such restriction would
8 prevent the taking effect on the date the Agreement
9 enters into force of any action proclaimed under this
10 section.
11 (b) INITIAL REGULATIONS.—Initial regulations nec-
12 essary or appropriate to carry out the actions required by
13 or authorized under this Act or proposed in the statement
14 of administrative action referred to in section 101(a)(2)
15 to implement the Agreement shall, to the maximum extent
16 feasible, be issued within 1 year after the date of entry
17 into force of the Agreement. In the case of any imple-
18 menting action that takes effect on a date after the date
19 of entry into force of the Agreement, initial regulations
20 to carry out that action shall, to the maximum extent fea-
21 sible, be issued within 1 year after such effective date.
22 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**
23 **CEEDINGS.**
24 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—
25 The President is authorized to establish or designate with-

1 in the Department of Commerce an office that shall be
2 responsible for providing administrative assistance to pan-
3 els established under chapter 22 of the Agreement. The
4 office may not be considered to be an agency for purposes
5 of section 552 of title 5, United States Code.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated for each fiscal year after
8 fiscal year 2003 to the Department of Commerce such
9 sums as may be necessary for the establishment and oper-
10 ations of the office under subsection (a) and for the pay-
11 ment of the United States share of the expenses of panels
12 established under chapter 22 of the Agreement.

13 **SEC. 106. ARBITRATION OF CLAIMS.**

14 (a) SUBMISSION OF CERTAIN CLAIMS.—The United
15 States is authorized to resolve any claim against the
16 United States covered by article 10.15(1)(a)(i)(C) or
17 10.15(1)(b)(i)(C) of the Agreement, pursuant to the In-
18 vestor-State Dispute Settlement procedures set forth in
19 section B of chapter 10 of the Agreement.

20 (b) CONTRACT CLAUSES.—All contracts executed by
21 any agency of the United States on or after the date of
22 entry into force of the Agreement shall contain a clause
23 specifying the law that will apply to resolve any breach
24 of contract claim.

1 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

2 (a) EFFECTIVE DATES.—Except as provided in sub-
3 section (b), the provisions of this Act and the amendments
4 made by this Act take effect on the date the Agreement
5 enters into force.

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

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

12 TITLE II—CUSTOMS PROVISIONS

13 **SEC. 201. TARIFF MODIFICATIONS.**

14 (a) TARIFF MODIFICATIONS PROVIDED FOR IN THE
15 AGREEMENT.—

16 (1) PROCLAMATION AUTHORITY.—The Presi-
17 dent may proclaim—

18 (A) such modifications or continuation of
19 any duty,

20 (B) such continuation of duty-free or ex-
21 cise treatment, or

22 (C) such additional duties,

23 as the President determines to be necessary or ap-
24 propriate to carry out or apply articles 3.3, 3.7, 3.9,
25 article 3.20 (8), (9), (10), and (11), and Annex 3.3
26 of the Agreement.

1 (2) EFFECT ON CHILEAN GSP STATUS.—Not-
2 withstanding section 502(a)(1) of the Trade Act of
3 1974 (19 U.S.C. 2462(a)(1)), the President shall
4 terminate the designation of Chile 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.
8 (b) OTHER TARIFF MODIFICATIONS.—Subject to the
9 consultation and layover provisions of section 103(a), the
10 President may proclaim—
11 (1) such modifications or continuation of any
12 duty,
13 (2) such modifications as the United States
14 may agree to with Chile regarding the staging of any
15 duty treatment set forth in Annex 3.3 of the Agree-
16 ment,
17 (3) such continuation of duty-free or excise
18 treatment, or
19 (4) such additional duties,
20 as the President determines to be necessary or appropriate
21 to maintain the general level of reciprocal and mutually
22 advantageous concessions with respect to Chile provided
23 for by the Agreement.
24 (c) ADDITIONAL TARIFFS ON AGRICULTURAL SAFE-
25 GUARD GOODS.—

1 (1) IN GENERAL.—In addition to any duty pro-
2 claimed under subsection (a) or (b), and subject to
3 paragraphs (3) through (5), the Secretary of the
4 Treasury shall assess a duty, in the amount pre-
5 scribed under paragraph (2), on an agricultural safe-
6 guard good if the Secretary of the Treasury deter-
7 mines that the unit import price of the good when
8 it enters the United States, determined on an
9 F.O.B. basis, is less than the trigger price indicated
10 for that good in Annex 3.18 of the Agreement or
11 any amendment thereto.

12 (2) CALCULATION OF ADDITIONAL DUTY.—The
13 amount of the additional duty assessed under this
14 subsection shall be determined as follows:

15 (A) If the difference between the unit im-
16 port price and the trigger price is less than, or
17 equal to, 10 percent of the trigger price, no ad-
18 ditional duty shall be imposed.

19 (B) If the difference between the unit im-
20 port price and the trigger price is greater than
21 10 percent, but less than or equal to 40 per-
22 cent, of the trigger price, the additional duty
23 shall be equal to 30 percent of the difference
24 between the preferential tariff rate and the col-
25 umn 1 general rate of duty imposed under the

1 HTS on like articles at the time the additional
2 duty is imposed.
3 (C) If the difference between the unit im-
4 port price and the trigger price is greater than
5 40 percent, but less than or equal to 60 per-
6 cent, of the trigger price, the additional duty
7 shall be equal to 50 percent of the difference
8 between the preferential tariff rate and the col-
9 umn 1 general rate of duty imposed under the
10 HTS on like articles at the time the additional
11 duty is imposed.
12 (D) If the difference between the unit im-
13 port price and the trigger price is greater than
14 60 percent, but less than or equal to 75 per-
15 cent, of the trigger price, the additional duty
16 shall be equal to 70 percent of the difference
17 between the preferential tariff rate and the col-
18 umn 1 general rate of duty imposed under the
19 HTS on like articles at the time the additional
20 duty is imposed.
21 (E) If the difference between the unit im-
22 port price and the trigger price is greater than
23 75 percent of the trigger price, the additional
24 duty shall be equal to 100 percent of the dif-
25 ference between the preferential tariff rate and

the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

(3) EXCEPTIONS.—No additional duty under this subsection shall be assessed on an agricultural safeguard good if, at the time of entry, the good is subject to import relief under—

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

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

(4) TERMINATION.—This subsection shall cease to apply on the date that is 12 years after the date on which the Agreement enters into force.

(5) TARIFF-RATE QUOTAS.—If an agricultural safeguard good is subject to a tariff-rate quota, and the in-quota duty rate for the good proclaimed pursuant to subsection (a) or (b) is zero, any additional duty assessed under this subsection shall be applied only to over-quota imports of the good.

(6) NOTICE.—Not later than 60 days after the Secretary of the Treasury first assesses additional duties on an agricultural safeguard good under this subsection, the Secretary shall notify the Government of Chile in writing of such action and shall

1 provide to the Government of Chile data supporting
2 the assessment of additional duties.
3 (7) MODIFICATION OF TRIGGER PRICES.—Not
4 later than 60 calendar days before agreeing with the
5 Government of Chile pursuant to article 3.18(2)(b)
6 of the Agreement on a modification to a trigger
7 price for a good listed in Annex 3.18 of the Agree-
8 ment, the President shall notify the Committees on
9 Ways and Means and Agriculture of the House of
10 Representatives and the Committees on Finance and
11 Agriculture of the Senate of the proposed modifica-
12 tion and the reasons therefor.
13 (8) DEFINITIONS.—In this subsection:
14 (A) AGRICULTURAL SAFEGUARD GOOD.—
15 The term ''agricultural safeguard good'' means
16 a good—
17 (i) that qualifies as an originating
18 good under section 202;
19 (ii) that is included in the United
20 States Agricultural Safeguard Product List
21 set forth in Annex 3.18 of the Agreement;
22 and
23 (iii) for which a claim for preferential
24 tariff treatment under the Agreement has
25 been made.

1 (B) F.O.B.—The term ''F.O.B.'' means
2 free on board, regardless of the mode of trans-
3 portation, at the point of direct shipment by the
4 seller to the buyer.
5 (C) UNIT IMPORT PRICE.—The term ''unit
6 import price'' means the price expressed in dol-
7 lars per kilogram.
8 (d) CONVERSION TO AD VALOREM RATES.—For pur-
9 poses of subsections (a) and (b), with respect to any good
10 for which the base rate in the Schedule of the United
11 States to Annex 3.3 of the Agreement is a specific or com-
12 pound rate of duty, the President may substitute for the
13 base rate an ad valorem rate that the President deter-
14 mines to be equivalent to the base rate.
15 **SEC. 202. RULES OF ORIGIN.**
16 (a) ORIGINATING GOODS.—
17 (1) IN GENERAL.—For purposes of this Act
18 and for purposes of implementing the tariff treat-
19 ment provided for under the Agreement, except as
20 otherwise provided in this section, a good is an origi-
21 nating good if—
22 (A) the good is wholly obtained or pro-
23 duced entirely in the territory of Chile, the
24 United States, or both;
25 (B) the good—

1 (i) is produced entirely in the territory
2 of Chile, the United States, or both, and
3 (I) each of the nonoriginating
4 materials used in the production of
5 the good undergoes an applicable
6 change in tariff classification specified
7 in Annex 4.1 of the Agreement, or
8 (II) the good otherwise satisfies
9 any applicable regional value-content
10 or other requirements specified in
11 Annex 4.1 of the Agreement; and
12 (ii) satisfies all other applicable re-
13 quirements of this section; or
14 (C) the good is produced entirely in the
15 territory of Chile, the United States, or both,
16 exclusively from materials described in subpara-
17 graph (A) or (B).
18 (2) SIMPLE COMBINATION OR MERE DILU-
19 TION.—A good shall not be considered to be an orig-
20 inating good and a material shall not be considered
21 to be an originating material by virtue of having un-
22 dergone—
23 (A) simple combining or packaging oper-
24 ations; or

1 (B) mere dilution with water or another
2 substance that does not materially alter the
3 characteristics of the good or material.
4 (b) DE MINIMIS AMOUNTS OF NONORIGINATING MA-
5 TERIALS.—
6 (1) IN GENERAL.—Except as provided in para-
7 graphs (2) and (3), a good that does not undergo a
8 change in tariff classification pursuant to Annex 4.1
9 of the Agreement is an originating good if—
10 (A) the value of all nonoriginating mate-
11 rials that are used in the production of the good
12 and do not undergo the applicable change in
13 tariff classification does not exceed 10 percent
14 of the adjusted value of the good;
15 (B) the value of such nonoriginating mate-
16 rials is included in the value of nonoriginating
17 materials for any applicable regional value-con-
18 tent requirement; and
19 (C) the good meets all other applicable re-
20 quirements of this section.
21 (2) EXCEPTIONS.—Paragraph (1) does not
22 apply to the following:
23 (A) A nonoriginating material provided for
24 in chapter 4 of the HTS, or a nonoriginating
25 dairy preparation containing over 10 percent by

1 weight of milk solids provided for in subheading
2 1901.90 or 2106.90 of the HTS, that is used
3 in the production of a good provided for in
4 chapter 4 of the HTS.

5 (B) A nonoriginating material provided for
6 in chapter 4 of the HTS, or nonoriginating
7 dairy preparations containing over 10 percent
8 by weight of milk solids provided for in sub-
9 heading 1901.90 of the HTS, that are used in
10 the production of the following goods:

11 (i) Infant preparations containing
12 over 10 percent in weight of milk solids
13 provided for in subheading 1901.10 of the
14 HTS.

15 (ii) Mixes and doughs, containing over
16 25 percent by weight of butterfat, not put
17 up for retail sale, provided for in sub-
18 heading 1901.20 of the HTS.

19 (iii) Dairy preparations containing
20 over 10 percent by weight of milk solids
21 provided for in subheading 1901.90 or
22 2106.90 of the HTS.

23 (iv) Goods provided for in heading
24 2105 of the HTS.

1 (v) Beverages containing milk pro-
2 vided for in subheading 2202.90 of the
3 HTS.
4 (vi) Animal feeds containing over 10
5 percent by weight of milk solids provided
6 for in subheading 2309.90 of the HTS.
7 (C) A nonoriginating material provided for
8 in heading 0805 of the HTS, or any of sub-
9 headings 2009.11.00 through 2009.39 of the
10 HTS, that is used in the production of a good
11 provided for in any of subheadings 2009.11.00
12 through 2009.39 of the HTS, or in fruit or veg-
13 etable juice of any single fruit or vegetable, for-
14 tified with minerals or vitamins, concentrated
15 or unconcentrated, provided for in subheading
16 2106.90 or 2202.90 of the HTS.
17 (D) A nonoriginating material provided for
18 in chapter 15 of the HTS that is used in the
19 production of a good provided for in any of
20 headings 1501.00.00 through 1508, 1512,
21 1514, and 1515 of the HTS.
22 (E) A nonoriginating material provided for
23 in heading 1701 of the HTS that is used in the
24 production of a good provided for in any of
25 headings 1701 through 1703 of the HTS.

1 (F) A nonoriginating material provided for
2 in chapter 17 of the HTS or in heading
3 1805.00.00 of the HTS that is used in the pro-
4 duction of a good provided for in subheading
5 1806.10 of the HTS.

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

11 (H) A nonoriginating material used in the
12 production of a good provided for in any of
13 chapters 1 through 21 of the HTS, unless the
14 nonoriginating material is provided for in a dif-
15 ferent subheading than the good for which ori-
16 gin is being determined under this section.

17 (3) GOODS PROVIDED FOR IN CHAPTERS 50
18 THROUGH 63 OF THE HTS.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (B), a good provided for in any
21 of chapters 50 through 63 of the HTS that is
22 not an originating good because certain fibers
23 or yarns used in the production of the compo-
24 nent of the good that determines the tariff clas-
25 sification of the good do not undergo an appli-

1 cable change in tariff classification set out in
2 Annex 4.1 of the Agreement, shall be consid-
3 ered to be an originating good if the total
4 weight of all such fibers or yarns in that com-
5 ponent is not more than 7 percent of the total
6 weight of that component.

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

14 (c) ACCUMULATION.—

15 (1) ORIGINATING GOODS INCORPORATED IN
16 GOODS OF OTHER COUNTRY.—Originating goods or
17 materials of Chile or the United States that are in-
18 corporated into a good in the territory of the other
19 country shall be considered to originate in the terri-
20 tory of the other country.

21 (2) MULTIPLE PROCEDURES.—A good that is
22 produced in the territory of Chile, the United States,
23 or both, by 1 or more producers, is an originating
24 good if the good satisfies the requirements of sub-

1 section (a) and all other applicable requirements of
2 this section.
3 (d) REGIONAL VALUE-CONTENT.—
4 (1) IN GENERAL.—For purposes of subsection
5 (a)(2), the regional value-content of a good referred
6 to in Annex 4.1 of the Agreement shall be cal-
7 culated, at the choice of the person claiming pref-
8 erential tariff treatment for the good, on the basis
9 of the build-down method described in paragraph (2)
10 or the build-up method described in paragraph (3),
11 unless otherwise provided in Annex 4.1 of the Agree-
12 ment.
13 (2) BUILD-DOWN METHOD.—
14 (A) IN GENERAL.—The regional value-con-
15 tent of a good may be calculated on the basis
16 of the following build-down method:

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

17 (B) DEFINITIONS.—For purposes of sub-
18 paragraph (A):
19 (i) The term "RVC" means the re-
20 gional value-content, expressed as a per-
21 centage.
22 (ii) The term "AV" means the ad-
23 justed value.

1 (iii) The term "VNM" means the
2 value of nonoriginating materials used by
3 the producer in the production of the good.
4 (3) BUILD-UP METHOD.—
5 (A) IN GENERAL.—The regional value-con-
6 tent of a good may be calculated on the basis
7 of the following build-up method:

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

8 (B) DEFINITIONS.—For purposes of sub-
9 paragraph (A):
10 (i) The term "RVC" means the re-
11 gional value-content, expressed as a per-
12 centage.
13 (ii) The term "AV" means the ad-
14 justed value.
15 (iii) The term "VOM" means the
16 value of originating materials used by the
17 producer in the production of the good.
18 (e) VALUE OF MATERIALS.—
19 (1) IN GENERAL.—For purposes of calculating
20 the regional value-content of a good under sub-
21 section (d), and for purposes of applying the de
22 minimis rules under subsection (b), the value of a
23 material is—

1 (A) in the case of a material that is im-
2 ported by the producer of the good, the ad-
3 justed value of the material with respect to that
4 importation;
5 (B) in the case of a material acquired in
6 the territory in which the good is produced, ex-
7 cept for a material to which subparagraph (C)
8 applies, the producer's price actually paid or
9 payable for the material;
10 (C) in the case of a material provided to
11 the producer without charge, or at a price re-
12 flecting a discount or similar reduction, the sum
13 of—
14 (i) all expenses incurred in the
15 growth, production, or manufacture of the
16 material, including general expenses; and
17 (ii) an amount for profit; or
18 (D) in the case of a material that is self-
19 produced, the sum of—
20 (i) all expenses incurred in the pro-
21 duction of the material, including general
22 expenses; and
23 (ii) an amount for profit.
24 (2) FURTHER ADJUSTMENTS TO THE VALUE OF
25 MATERIALS.—

1 (A) ORIGINATING MATERIALS.—The fol-
2 lowing expenses, if not included in the value of
3 an originating material calculated under para-
4 graph (1), may be added to the value of the
5 originating material:
6 (i) The costs of freight, insurance,
7 packing, and all other costs incurred in
8 transporting the material to the location of
9 the producer.
10 (ii) Duties, taxes, and customs broker-
11 age fees on the material paid in the terri-
12 tory of Chile, the United States, or both,
13 other than duties and taxes that are
14 waived, refunded, refundable, or otherwise
15 recoverable, including credit against duty
16 or tax paid or payable.
17 (iii) The cost of waste and spoilage re-
18 sulting from the use of the material in the
19 production of the good, less the value of
20 renewable scrap or byproduct.
21 (B) NONORIGINATING MATERIALS.—The
22 following expenses, if included in the value of a
23 nonoriginating material calculated under para-
24 graph (1), may be deducted from the value of
25 the nonoriginating material:

1 (i) The costs of freight, insurance,
2 packing, and all other costs incurred in
3 transporting the material to the location of
4 the producer.
5 (ii) Duties, taxes, and customs broker-
6 age fees on the material paid in the terri-
7 tory of Chile, the United States, or both,
8 other than duties and taxes that are
9 waived, refunded, refundable, or otherwise
10 recoverable, including credit against duty
11 or tax paid or payable.
12 (iii) The cost of waste and spoilage re-
13 sulting from the use of the material in the
14 production of the good, less the value of
15 renewable scrap or byproducts.
16 (iv) The cost of originating materials
17 used in the production of the nonorigi-
18 nating material in the territory of Chile or
19 the United States.
20 (f) ACCESSORIES, SPARE PARTS, OR TOOLS.—Acces-
21 sories, spare parts, or tools delivered with a good that
22 form part of the good's standard accessories, spare parts,
23 or tools shall be regarded as a material used in the produc-
24 tion of the good, if—

1 (1) the accessories, spare parts, or tools are
2 classified with and not invoiced separately from the
3 good; and
4 (2) the quantities and value of the accessories,
5 spare parts, or tools are customary for the good.
6 (g) FUNGIBLE GOODS AND MATERIALS.—
7 (1) IN GENERAL.—
8 (A) CLAIM FOR PREFERENTIAL TREAT-
9 MENT.—A person claiming preferential tariff
10 treatment for a good may claim that a fungible
11 good or material is originating either based on
12 the physical segregation of each fungible good
13 or material or by using an inventory manage-
14 ment method.
15 (B) INVENTORY MANAGEMENT METHOD.—
16 In this subsection, the term ''inventory manage-
17 ment method'' means—
18 (i) averaging;
19 (ii) ''last-in, first-out'';
20 (iii)''first-in, first-out''; or
21 (iv) any other method—
22 (I) recognized in the generally
23 accepted accounting principles of the
24 country in which the production is

1 performed (whether Chile or the
2 United States); or
3 (II) otherwise accepted by that
4 country.
5 (2) ELECTION OF INVENTORY METHOD.—A
6 person selecting an inventory management method
7 under paragraph (1) for particular fungible goods or
8 materials shall continue to use that method for those
9 goods or materials throughout the fiscal year of that
10 person.
11 (h) PACKAGING MATERIALS AND CONTAINERS FOR
12 RETAIL SALE.—Packaging materials and containers in
13 which a good is packaged for retail sale, if classified with
14 the good, shall be disregarded in determining whether all
15 nonoriginating materials used in the production of the
16 good undergo the applicable change in tariff classification
17 set out in Annex 4.1 of the Agreement, and, if the good
18 is subject to a regional value-content requirement, the
19 value of such packaging materials and containers shall be
20 taken into account as originating or nonoriginating mate-
21 rials, as the case may be, in calculating the regional value-
22 content of the good.
23 (i) PACKING MATERIALS AND CONTAINERS FOR
24 SHIPMENT.—Packing materials and containers for ship-
25 ment shall be disregarded in determining whether—

1 (1) the nonoriginating materials used in the
2 production of the good undergo an applicable change
3 in tariff classification set out in Annex 4.1 of the
4 Agreement; and

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

7 (j) INDIRECT MATERIALS.—An indirect material
8 shall be considered to be an originating material without
9 regard to where it is produced.

10 (k) TRANSIT AND TRANSSHIPMENT.—A good that
11 has undergone production necessary to qualify as an origi-
12 nating good under subsection (a) shall not be considered
13 to be an originating good if, subsequent to that produc-
14 tion, the good undergoes further production or any other
15 operation outside the territory of Chile or the United
16 States, other than unloading, reloading, or any other proc-
17 ess necessary to preserve the good in good condition or
18 to transport the good to the territory of Chile or the
19 United States.

20 (l) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS
21 GOODS PUT UP IN SETS.—Notwithstanding the rules set
22 forth in Annex 4.1 of the Agreement, textile and apparel
23 goods classifiable as goods put up in sets for retail sale
24 as provided for in General Rule of Interpretation 3 of the
25 Harmonized System shall not be considered to be origi-

1 nating goods unless each of the goods in the set is an origi-
2 nating good or the total value of the nonoriginating goods
3 in the set does not exceed 10 percent of the value of the
4 set determined for purposes of assessing customs duties.

5 (m) APPLICATION AND INTERPRETATION.—In this
6 section:

7 (1) The basis for any tariff classification is the
8 HTS.

9 (2) Any cost or value referred to in this section
10 shall be recorded and maintained in accordance with
11 the generally accepted accounting principles applica-
12 ble in the territory of the country in which the good
13 is produced (whether Chile or the United States).

14 (n) DEFINITIONS.—In this section:

15 (1) ADJUSTED VALUE.—The term ''adjusted
16 value'' means the value determined in accordance
17 with articles 1 through 8, article 15, and the cor-
18 responding interpretive notes of the Agreement on
19 Implementation of Article VII of the General Agree-
20 ment on Tariffs and Trade 1994 referred to in sec-
21 tion 101(d)(8) of the Uruguay Round Agreements
22 Act, except that such value may be adjusted to ex-
23 clude any costs, charges, or expenses incurred for
24 transportation, insurance, and related services inci-
25 dent to the international shipment of the merchan-

dise from the country of exportation to the place of importation.

(2) FUNGIBLE GOODS OR FUNGIBLE MATERIALS.—The terms ''fungible goods'' and ''fungible materials'' mean goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical.

(3) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term ''generally accepted accounting principles'' means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of Chile or the United States, as the case may be.

(4) GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF CHILE, THE UNITED STATES, OR BOTH.—The term ''goods wholly obtained or produced entirely in the territory of Chile, the United States, or both'' means—

(A) mineral goods extracted in the territory of Chile, the United States, or both;

(B) vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of Chile, the United States, or both;

1 (C) live animals born and raised in the ter-
2 ritory of Chile, the United States, or both;
3 (D) goods obtained from hunting, trap-
4 ping, or fishing in the territory of Chile, the
5 United States, or both;
6 (E) goods (fish, shellfish, and other marine
7 life) taken from the sea by vessels registered or
8 recorded with Chile or the United States and
9 flying the flag of that country;
10 (F) goods produced on board factory ships
11 from the goods referred to in subparagraph
12 (E), if such factory ships are registered or re-
13 corded with Chile or the United States and fly
14 the flag of that country;
15 (G) goods taken by Chile or the United
16 States or a person of Chile or the United States
17 from the seabed or beneath the seabed outside
18 territorial waters, if Chile or the United States
19 has rights to exploit such seabed;
20 (H) goods taken from outer space, if the
21 goods are obtained by Chile or the United
22 States or a person of Chile or the United States
23 and not processed in the territory of a country
24 other than Chile or the United States;
25 (I) waste and scrap derived from—

1 (i) production in the territory of Chile,
2 the United States, or both; or
3 (ii) used goods collected in the terri-
4 tory of Chile, the United States, or both,
5 if such goods are fit only for the recovery
6 of raw materials;
7 (J) recovered goods derived in the territory
8 of Chile or the United States from used goods,
9 and used in the territory of that country in the
10 production of remanufactured goods; and
11 (K) goods produced in the territory of
12 Chile, the United States, or both, exclusively—
13 (i) from goods referred to in any of
14 subparagraphs (A) through (I), or
15 (ii) from the derivatives of goods re-
16 ferred to in clause (i),
17 at any stage of production.
18 (5) HARMONIZED SYSTEM.—The term ''Har-
19 monized System'' means the Harmonized Com-
20 modity Description and Coding System.
21 (6) INDIRECT MATERIAL.—The term ''indirect
22 material'' means a good used in the production, test-
23 ing, or inspection of a good but not physically incor-
24 porated into the good, or a good used in the mainte-

1 nance of buildings or the operation of equipment as-
2 sociated with the production of a good, including—
3 (A) fuel and energy;
4 (B) tools, dies, and molds;
5 (C) spare parts and materials used in the
6 maintenance of equipment or buildings;
7 (D) lubricants, greases, compounding ma-
8 terials, and other materials used in production
9 or used to operate equipment or buildings;
10 (E) gloves, glasses, footwear, clothing,
11 safety equipment, and supplies;
12 (F) equipment, devices, and supplies used
13 for testing or inspecting the good;
14 (G) catalysts and solvents; and
15 (H) any other goods that are not incor-
16 porated into the good but the use of which in
17 the production of the good can reasonably be
18 demonstrated to be a part of that production.
19 (7) MATERIAL.—The term ''material'' means a
20 good that is used in the production of another good,
21 including a part, ingredient, or indirect material.
22 (8) MATERIAL THAT IS SELF-PRODUCED.—The
23 term ''material that is self-produced'' means a mate-
24 rial that is an originating good produced by a pro-

1 ducer of a good and used in the production of that
2 good.
3 (9) NONORIGINATING GOOD OR NONORIGI-
4 NATING MATERIAL.—The terms ''nonoriginating
5 good'' and ''nonoriginating material'' mean a good
6 or material, as the case may be, that does not qual-
7 ify as an originating good under this section.
8 (10) PACKING MATERIALS AND CONTAINERS
9 FOR SHIPMENT.—The term ''packing materials and
10 containers for shipment'' means the goods used to
11 protect a good during its transportation, and does
12 not include the packaging materials and containers
13 in which a good is packaged for retail sale.
14 (11) PREFERENTIAL TARIFF TREATMENT.—
15 The term ''preferential tariff treatment'' means the
16 customs duty rate that is applicable to an origi-
17 nating good pursuant to chapter 3 of the Agree-
18 ment.
19 (12) PRODUCER.—The term ''producer'' means
20 a person who engages in the production of a good
21 in the territory of Chile or the United States.
22 (13) PRODUCTION.—The term ''production''
23 means growing, mining, harvesting, fishing, raising,
24 trapping, hunting, manufacturing, processing, as-
25 sembling, or disassembling a good.

1 (14) RECOVERED GOODS.—
2 (A) IN GENERAL.—The term ''recovered
3 goods'' means materials in the form of indi-
4 vidual parts that are the result of—
5 (i) the complete disassembly of used
6 goods into individual parts; and
7 (ii) the cleaning, inspecting, testing,
8 or other processing of those parts as nec-
9 essary for improvement to sound working
10 condition by one or more of the processes
11 described in subparagraph (B), in order
12 for such parts to be assembled with other
13 parts, including other parts that have un-
14 dergone the processes described in this
15 paragraph, in the production of a remanu-
16 factured good.
17 (B) PROCESSES.—The processes referred
18 to in subparagraph (A)(ii) are welding, flame
19 spraying, surface machining, knurling, plating,
20 sleeving, and rewinding.
21 (15) REMANUFACTURED GOOD.—The term ''re-
22 manufactured good'' means an industrial good as-
23 sembled in the territory of Chile or the United
24 States, that is listed in Annex 4.18 of the Agree-
25 ment, and—

1 (A) is entirely or partially comprised of re-
2 covered goods;
3 (B) has the same life expectancy and
4 meets the same performance standards as a
5 new good; and
6 (C) enjoys the same factory warranty as
7 such a new good.
8 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—
9 (1) IN GENERAL.—The President is authorized
10 to proclaim, as part of the HTS—
11 (A) the provisions set out in Annex 4.1 of
12 the Agreement; and
13 (B) any additional subordinate category
14 necessary to carry out this title consistent with
15 the Agreement.
16 (2) MODIFICATIONS.—
17 (A) IN GENERAL.—Subject to the consulta-
18 tion and layover provisions of section 103(a),
19 the President may proclaim modifications to the
20 provisions proclaimed under the authority of
21 paragraph (1)(A), other than provisions of
22 chapters 50 through 63 of the HTS, as in-
23 cluded in Annex 4.1 of the Agreement.
24 (B) ADDITIONAL PROCLAMATIONS.—Not-
25 withstanding subparagraph (A), and subject to

1 the consultation and layover provisions of sec-
2 tion 103(a), the President may proclaim—
3 (i) modifications to the provisions pro-
4 claimed under the authority of paragraph
5 (1)(A) that are necessary to implement an
6 agreement with Chile pursuant to article
7 3.20(5) of the Agreement; and
8 (ii) before the 1st anniversary of the
9 date of the enactment of this Act, modi-
10 fications to correct any typographical, cler-
11 ical, or other nonsubstantive technical
12 error regarding the provisions of chapters
13 50 through 63 of the HTS, as included in
14 Annex 4.1 of the Agreement.

15 **SEC. 203. DRAWBACK.**

16 (a) DEFINITION OF A GOOD SUBJECT TO CHILE FTA
17 DRAWBACK.—For purposes of this Act and the amend-
18 ments made by subsection (b), the term ''good subject to
19 Chile FTA drawback'' means any imported good other
20 than the following:
21 (1) A good entered under bond for transpor-
22 tation and exportation to Chile.
23 (2)(A) A good exported to Chile in the same
24 condition as when imported into the United States.
25 (B) For purposes of subparagraph (A)—

1 (i) processes such as testing, cleaning, re-
2 packing, inspecting, sorting, or marking a good,
3 or preserving it in its same condition, shall not
4 be considered to change the condition of the
5 good; and

6 (ii) if a good described in subparagraph
7 (A) is commingled with fungible goods and ex-
8 ported in the same condition, the origin of the
9 good for the purposes of subsection (j)(1) of
10 section 313 of the Tariff Act of 1930 (19
11 U.S.C. 1313(j)(1)) may be determined on the
12 basis of the inventory methods provided for in
13 the regulations implementing this title.

14 (3) A good—

15 (A) that is—

16 (i) deemed to be exported from the
17 United States;

18 (ii) used as a material in the produc-
19 tion of another good that is deemed to be
20 exported to Chile; or

21 (iii) substituted for by a good of the
22 same kind and quality that is used as a
23 material in the production of another good
24 that is deemed to be exported to Chile; and

25 (B) that is delivered—

1 (i) to a duty-free shop;
2 (ii) for ship's stores or supplies for a
3 ship or aircraft; or
4 (iii) for use in a project undertaken
5 jointly by the United States and Chile and
6 destined to become the property of the
7 United States.
8 (4) A good exported to Chile for which a refund
9 of customs duties is granted by reason of—
10 (A) the failure of the good to conform to
11 sample or specification; or
12 (B) the shipment of the good without the
13 consent of the consignee.
14 (5) A good that qualifies under the rules of ori-
15 gin set out in section 202 that is—
16 (A) exported to Chile;
17 (B) used as a material in the production of
18 another good that is exported to Chile; or
19 (C) substituted for by a good of the same
20 kind and quality that is used as a material in
21 the production of another good that is exported
22 to Chile.
23 (b) CONSEQUENTIAL AMENDMENTS.—
24 (1) BONDED MANUFACTURING WAREHOUSES.—
25 Section 311 of the Tariff Act of 1930 (19 U.S.C.

1311) is amended by adding at the end the following new paragraph:

"No article manufactured in a bonded warehouse from materials that are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to Chile without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United States. The duty shall be paid before the 61st day after the date of exportation, except that the duty may be waived or reduced by—

"(1) 100 percent during the 8-year period beginning on January 1, 2004;

"(2) 75 percent during the 1-year period beginning on January 1, 2012;

"(3) 50 percent during the 1-year period beginning on January 1, 2013; and

"(4) 25 percent during the 1-year period beginning on January 1, 2014.".

(2) BONDED SMELTING AND REFINING WAREHOUSES.—Section 312 of the Tariff Act of 1930 (19 U.S.C. 1312) is amended—

(A) in paragraph (1) of subsection (b), by striking "except that" and all that follows

1 through subparagraph (B) and inserting the
2 following: ''except that—

3 ''(A) in the case of a withdrawal for expor-
4 tation of such a product to a NAFTA country,
5 as defined in section 2(4) of the North Amer-
6 ican Free Trade Agreement Implementation
7 Act, if any of the imported metal-bearing mate-
8 rials are goods subject to NAFTA drawback, as
9 defined in section 203(a) of that Act, the duties
10 on the materials shall be paid, and the charges
11 against the bond canceled, before the 61st day
12 after the date of exportation; but upon the pres-
13 entation, before such 61st day, of satisfactory
14 evidence of the amount of any customs duties
15 paid to the NAFTA country on the product, the
16 duties on the materials may be waived or re-
17 duced (subject to section 508(b)(2)(B)) in an
18 amount that does not exceed the lesser of—

19 ''(i) the total amount of customs du-
20 ties owed on the materials on importation
21 into the United States, or

22 ''(ii) the total amount of customs du-
23 ties paid to the NAFTA country on the
24 product, and

1 "(B) in the case of a withdrawal for exportation of such a product to Chile, if any of the imported metal-bearing materials are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation, except that the duties may be waived or reduced by—

"(i) 100 percent during the 8-year period beginning on January 1, 2004,

"(ii) 75 percent during the 1-year period beginning on January 1, 2012,

"(iii) 50 percent during the 1-year period beginning on January 1, 2013, and

"(iv) 25 percent during the 1-year period beginning on January 1, 2014, or";

(B) in paragraph (4) of subsection (b), by striking "except that" and all that follows through subparagraph (B) and inserting the following: "except that—

"(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North Amer-

1 ican Free Trade Agreement Implementation
2 Act, if any of the imported metal-bearing mate-
3 rials are goods subject to NAFTA drawback, as
4 defined in section 203(a) of that Act, the duties
5 on the materials shall be paid, and the charges
6 against the bond canceled, before the 61st day
7 after the date of exportation; but upon the pres-
8 entation, before such 61st day, of satisfactory
9 evidence of the amount of any customs duties
10 paid to the NAFTA country on the product, the
11 duties on the materials may be waived or re-
12 duced (subject to section 508(b)(2)(B)) in an
13 amount that does not exceed the lesser of—
14 ''(i) the total amount of customs du-
15 ties owed on the materials on importation
16 into the United States, or
17 ''(ii) the total amount of customs du-
18 ties paid to the NAFTA country on the
19 product, and
20 ''(B) in the case of a withdrawal for expor-
21 tation of such a product to Chile, if any of the
22 imported metal-bearing materials are goods
23 subject to Chile FTA drawback, as defined in
24 section 203(a) of the United States-Chile Free
25 Trade Agreement Implementation Act, the du-

1 ties on the materials shall be paid, and the
2 charges against the bond canceled, before the
3 61st day after the date of exportation, except
4 that the duties may be waived or reduced by—
5 ''(i) 100 percent during the 8-year pe-
6 riod beginning on January 1, 2004,
7 ''(ii) 75 percent during the 1-year pe-
8 riod beginning on January 1, 2012,
9 ''(iii) 50 percent during the 1-year pe-
10 riod beginning on January 1, 2013, and
11 ''(iv) 25 percent during the 1-year pe-
12 riod beginning on January 1, 2014, or'';
13 and
14 (C) in subsection (d), in the matter pre-
15 ceding paragraph (1), by striking ''except that''
16 and all that follows through the end of para-
17 graph (2) and inserting the following: ''except
18 that—
19 ''(1) in the case of a withdrawal for exportation
20 to a NAFTA country, as defined in section 2(4) of
21 the North American Free Trade Agreement Imple-
22 mentation Act, if any of the imported metal-bearing
23 materials are goods subject to NAFTA drawback, as
24 defined in section 203(a) of that Act, charges
25 against the bond shall be paid before the 61st day

1 after the date of exportation; but upon the presen-
2 tation, before such 61st day, of satisfactory evidence
3 of the amount of any customs duties paid to the
4 NAFTA country on the product, the bond shall be
5 credited (subject to section 508(b)(2)(B)) in an
6 amount not to exceed the lesser of—

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

10 ''(B) the total amount of customs duties
11 paid to the NAFTA country on the product;
12 and

13 ''(2) in the case of a withdrawal for exportation
14 to Chile, if any of the imported metal-bearing mate-
15 rials are goods subject to Chile FTA drawback, as
16 defined in section 203(a) of the United States-Chile
17 Free Trade Agreement Implementation Act, charges
18 against the bond shall be paid before the 61st day
19 after the date of exportation, and the bond shall be
20 credited in an amount equal to—

21 ''(A) 100 percent of the total amount of
22 customs duties paid or owed on the materials
23 on importation into the United States during
24 the 8-year period beginning on January 1,
25 2004,

1 "(B) 75 percent of the total amount of
2 customs duties paid or owed on the materials
3 on importation into the United States during
4 the 1-year period beginning on January 1,
5 2012,
6 "(C) 50 percent of the total amount of
7 customs duties paid or owed on the materials
8 on importation into the United States during
9 the 1-year period beginning on January 1,
10 2013, and
11 "(D) 25 percent of the total amount of
12 customs duties paid or owed on the materials
13 on importation into the United States during
14 the 1-year period beginning on January 1,
15 2014.".
16 (3) DRAWBACK.—Section 313 of the Tariff Act
17 of 1930 (19 U.S.C. 1313) is amended—
18 (A) in paragraph (4) of subsection (j)—
19 (i) by striking "(4)" and inserting
20 "(4)(A)"; and
21 (ii) by adding at the end the following
22 new subparagraph:
23 "(B) Beginning on January 1, 2015, the expor-
24 tation to Chile of merchandise that is fungible with
25 and substituted for imported merchandise, other

1 than merchandise described in paragraphs (1)
2 through (5) of section 203(a) of the United States-
3 Chile Free Trade Agreement Implementation Act,
4 shall not constitute an exportation for purposes of
5 paragraph (2). The preceding sentence shall not be
6 construed to permit the substitution of unused draw-
7 back under paragraph (2) of this subsection with re-
8 spect to merchandise described in paragraph (2) of
9 section 203(a) of the United States-Chile Free
10 Trade Agreement Implementation Act.'';
11 (B) in subsection (n)—
12 (i) by striking ''(n)'' and inserting the
13 following:
14 ''(n) REFUNDS, WAIVERS, OR REDUCTIONS UNDER
15 CERTAIN FREE TRADE AGREEMENTS.—'';
16 (ii) in paragraph (1)—
17 (I) by striking ''; and'' at the end
18 of subparagraph (B);
19 (II) by striking the period at the
20 end of subparagraph (C) and insert-
21 ing ''; and''; and
22 (III) by adding at the end the
23 following new subparagraph:
24 ''(D) the term 'good subject to Chile FTA
25 drawback' has the meaning given that term in sec-

1 tion 203(a) of the United States-Chile Free Trade
2 Agreement Implementation Act.''; and
3 (iii) by adding the following new para-
4 graph at the end:
5 ''(4)(A) For purposes of subsections (a), (b), (f), (h),
6 (j)(2), (p), and (q), if an article that is exported to Chile
7 is a good subject to Chile FTA drawback, no customs du-
8 ties on the good may be refunded, waived, or reduced, ex-
9 cept as provided in subparagraph (B).
10 ''(B) The customs duties referred to in subparagraph
11 (A) may be refunded, waived, or reduced by—
12 ''(i) 100 percent during the 8-year period begin-
13 ning on January 1, 2004;
14 ''(ii) 75 percent during the 1-year period begin-
15 ning on January 1, 2012;
16 ''(iii) 50 percent during the 1-year period begin-
17 ning on January 1, 2013; and
18 ''(iv) 25 percent during the 1-year period begin-
19 ning on January 1, 2014.''; and
20 (C) in subsection (o)—
21 (i) by striking ''(o)'' and inserting the
22 following:
23 ''(o) SPECIAL RULES FOR CERTAIN VESSELS AND
24 IMPORTED MATERIALS.—''; and

1 (ii) by adding at the end the following
2 new paragraphs:
3 ''(3) For purposes of subsection (g), if—
4 ''(A) a vessel is built for the account and own-
5 ership of a resident of Chile or the Government of
6 Chile, and
7 ''(B) imported materials that are used in the
8 construction and equipment of the vessel are goods
9 subject to Chile FTA drawback, as defined in sec-
10 tion 203(a) of the United States-Chile Free Trade
11 Agreement Implementation Act,
12 no customs duties on such materials may be refunded,
13 waived, or reduced, except as provided in paragraph (4).
14 ''(4) The customs duties referred to in paragraph (3)
15 may be refunded, waived or reduced by—
16 ''(A) 100 percent during the 8-year period be-
17 ginning on January 1, 2004;
18 ''(B) 75 percent during the 1-year period begin-
19 ning on January 1, 2012;
20 ''(C) 50 percent during the 1-year period begin-
21 ning on January 1, 2013; and
22 ''(D) 25 percent during the 1-year period begin-
23 ning on January 1, 2014.''.

1 (4) MANIPULATION IN WAREHOUSE.—Section
2 562 of the Tariff Act of 1930 (19 U.S.C. 1562) is
3 amended—
4 (A) in paragraph (3), by striking ''to a
5 NAFTA country'' and inserting ''to Chile, to a
6 NAFTA country,'';
7 (B) by striking ''; and'' at the end of para-
8 graph (4)(B);
9 (C) by striking the period at the end of
10 paragraph (5) and inserting ''; and''; and
11 (D) by inserting after paragraph (5) the
12 following:
13 ''(6)(A) without payment of duties for expor-
14 tation to Chile, if the merchandise is of a kind de-
15 scribed in any of paragraphs (1) through (5) of sec-
16 tion 203(a) of the United States-Chile Free Trade
17 Agreement Implementation Act; and
18 ''(B) for exportation to Chile if the merchandise
19 consists of goods subject to Chile FTA drawback, as
20 defined in section 203(a) of the United States-Chile
21 Free Trade Agreement Implementation Act, except
22 that—
23 ''(i) the merchandise may not be with-
24 drawn from warehouse without assessment of a
25 duty on the merchandise in its condition and

1 quantity, and at its weight, at the time of with-
2 drawal from the warehouse with such additions
3 to, or deductions from, the final appraised value
4 as may be necessary by reason of a change in
5 condition, and

6 ''(ii) duty shall be paid on the merchandise
7 before the 61st day after the date of expor-
8 tation, except that such duties may be waived
9 or reduced by—

10 ''(I) 100 percent during the 8-year pe-
11 riod beginning on January 1, 2004,

12 ''(II) 75 percent during the 1-year pe-
13 riod beginning on January 1, 2012,

14 ''(III) 50 percent during the 1-year
15 period beginning on January 1, 2013, and

16 ''(IV) 25 percent during the 1-year
17 period beginning on January 1, 2014.''.

18 (5) FOREIGN TRADE ZONES.—Section 3(a) of
19 the Act of June 18, 1934 (commonly known as the
20 ''Foreign Trade Zones Act''; 19 U.S.C. 81c(a)) is
21 amended by striking the end period and inserting
22 the following: '': *Provided further,* That no merchan-
23 dise that consists of goods subject to Chile FTA
24 drawback, as defined in section 203(a) of the United
25 States-Chile Free Trade Agreement Implementation

1 Act, that is manufactured or otherwise changed in
2 condition shall be exported to Chile without an as-
3 sessment of a duty on the merchandise in its condi-
4 tion and quantity, and at its weight, at the time of
5 its exportation (or if the privilege in the first proviso
6 to this subsection was requested, an assessment of
7 a duty on the merchandise in its condition and
8 quantity, and at its weight, at the time of its admis-
9 sion into the zone) and the payment of the assessed
10 duty before the 61st day after the date of expor-
11 tation of the article, except that the customs duty
12 may be waived or reduced by (1) 100 percent during
13 the 8-year period beginning on January 1, 2004; (2)
14 75 percent during the 1-year period beginning on
15 January 1, 2012; (3) 50 percent during the 1-year
16 period beginning on January 1, 2013; and (4) 25
17 percent during the 1-year period beginning on Janu-
18 ary 1, 2014.''.
19 (c) INAPPLICABILITY TO COUNTERVAILING AND
20 ANTIDUMPING DUTIES.—Nothing in this section or the
21 amendments made by this section shall be considered to
22 authorize the refund, waiver, or reduction of counter-
23 vailing duties or antidumping duties imposed on an im-
24 ported good.

SEC. 204. CUSTOMS USER FEES.

Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is amended by inserting after paragraph (11) the following:

"(12) No fee may be charged under subsection (a)(9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Chile Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.".

SEC. 205. DISCLOSURE OF INCORRECT INFORMATION; DENIAL OF PREFERENTIAL TARIFF TREATMENT; FALSE CERTIFICATES OF ORIGIN.

(a) DISCLOSURE OF INCORRECT INFORMATION.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended—

(1) in subsection (c)—

(A) by redesignating paragraph (6) as paragraph (7); and

(B) by inserting after paragraph (5) the following new paragraph:

"(6) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-CHILE FREE TRADE AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incor-

1 rect claim that a good qualifies as an originating
2 good under section 202 of the United States-Chile
3 Free Trade Agreement Implementation Act if the
4 importer, in accordance with regulations issued by
5 the Secretary of the Treasury, voluntarily makes a
6 corrected declaration and pays any duties owing.'';
7 and

8 (2) by adding at the end the following new sub-
9 section:

10 ''(g) FALSE CERTIFICATIONS OF ORIGIN UNDER THE
11 UNITED STATES-CHILE FREE TRADE AGREEMENT.—

12 ''(1) IN GENERAL.—Subject to paragraph (2),
13 it is unlawful for any person to certify falsely, by
14 fraud, gross negligence, or negligence, in a Chile
15 FTA Certificate of Origin (as defined in section
16 508(f)(1)(B) of this Act that a good exported from
17 the United States qualifies as an originating good
18 under the rules of origin set out in section 202 of
19 the United States-Chile Free Trade Agreement Im-
20 plementation Act. The procedures and penalties of
21 this section that apply to a violation of subsection
22 (a) also apply to a violation of this subsection.

23 ''(2) IMMEDIATE AND VOLUNTARY DISCLOSURE
24 OF INCORRECT INFORMATION.—No penalty shall be
25 imposed under this subsection if, immediately after

1 an exporter or producer that issued a Chile FTA
2 Certificate of Origin has reason to believe that such
3 certificate contains or is based on incorrect informa-
4 tion, the exporter or producer voluntarily provides
5 written notice of such incorrect information to every
6 person to whom the certificate was issued.

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

9 ''(A) the information was correct at the
10 time it was provided in a Chile FTA Certificate
11 of Origin but was later rendered incorrect due
12 to a change in circumstances; and

13 ''(B) the person immediately and volun-
14 tarily provides written notice of the change in
15 circumstances to all persons to whom the per-
16 son provided the certificate.''.

17 (b) DENIAL OF PREFERENTIAL TARIFF TREAT-
18 MENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C.
19 1514) is amended by adding at the end the following new
20 subsection:

21 ''(g) DENIAL OF PREFERENTIAL TARIFF TREAT-
22 MENT UNDER UNITED STATES-CHILE FREE TRADE
23 AGREEMENT.—If the Bureau of Customs and Border Pro-
24 tection or the Bureau of Immigration and Customs En-
25 forcement finds indications of a pattern of conduct by an

1 importer of false or unsupported representations that
2 goods qualify under the rules of origin set out in section
3 202 of the United States-Chile Free Trade Agreement Im-
4 plementation Act, the Bureau of Customs and Border Pro-
5 tection, in accordance with regulations issued by the Sec-
6 retary of the Treasury, may deny preferential tariff treat-
7 ment under the United States-Chile Free Trade Agree-
8 ment to entries of identical goods imported by that person
9 until the person establishes to the satisfaction of the Bu-
10 reau of Customs and Border Protection that representa-
11 tions of that person are in conformity with such section
12 202.''.

13 **SEC. 206. RELIQUIDATION OF ENTRIES.**

14 Subsection (d) of section 520 of the Tariff Act of
15 1930 (19 U.S.C. 1520(d)) is amended—

16 (1) by striking ''(d)'' and inserting the fol-
17 lowing:

18 ''(d) GOODS QUALIFYING UNDER FREE TRADE
19 AGREEMENT RULES OF ORIGIN.—'';

20 (2) in the matter preceding paragraph (1), by
21 inserting ''or section 202 of the United States-Chile
22 Free Trade Agreement Implementation Act'' after
23 ''Act'';

24 (3) in paragraph (1), by striking ''those'' and
25 inserting ''the applicable''; and

1 (4) in paragraph (2), by inserting before the
2 semicolon '', or other certificates of origin, as the
3 case may be''.

4 **SEC. 207. RECORDKEEPING REQUIREMENTS.**

5 Section 508 of the Tariff Act of 1930 (19 U.S.C.
6 1508) is amended—

7 (1) by striking the heading of subsection (b)
8 and inserting the following: ''EXPORTATIONS TO
9 NAFTA COUNTRIES.—''; and

10 (2) by adding at the end the following:

11 ''(f) CERTIFICATES OF ORIGIN FOR GOODS EX-
12 PORTED UNDER THE UNITED STATES-CHILE FREE
13 TRADE AGREEMENT.—

14 ''(1) DEFINITIONS.—In this subsection:

15 ''(A) RECORDS AND SUPPORTING DOCU-
16 MENTS.—The term 'records and supporting
17 documents' means, with respect to an exported
18 good under paragraph (2), records and docu-
19 ments related to the origin of the good, includ-
20 ing—

21 ''(i) the purchase, cost, and value of,
22 and payment for, the good;

23 ''(ii) if applicable, the purchase, cost,
24 and value of, and payment for, all mate-

1 rials, including recovered goods, used in
2 the production of the good; and
3 "(iii) if applicable, the production of
4 the good in the form in which it was ex-
5 ported.
6 "(B) CHILE FTA CERTIFICATE OF ORI-
7 GIN.—The term 'Chile FTA Certificate of Ori-
8 gin' means the certification, established under
9 article 4.13 of the United States-Chile Free
10 Trade Agreement, that a good qualifies as an
11 originating good under such Agreement.
12 "(2) EXPORTS TO CHILE.—Any person who
13 completes and issues a Chile FTA Certificate of Ori-
14 gin for a good exported from the United States shall
15 make, keep, and, pursuant to rules and regulations
16 promulgated by the Secretary of the Treasury,
17 render for examination and inspection all records
18 and supporting documents related to the origin of
19 the good (including the Certificate or copies thereof).
20 "(3) RETENTION PERIOD.—Records and sup-
21 porting documents shall be kept by the person who
22 issued a Chile FTA Certificate of Origin for at least
23 5 years after the date on which the certificate was
24 issued.

1 “(g) PENALTIES.—Any person who fails to retain
2 records and supporting documents required by subsection
3 (f) or the regulations issued to implement that subsection
4 shall be liable for the greater of—
5 “(1) a civil penalty not to exceed $10,000; or
6 “(2) the general record keeping penalty that ap-
7 plies under the customs laws of the United States.”.

8 **SEC. 208. ENFORCEMENT OF TEXTILE AND APPAREL RULES**
9 **OF ORIGIN.**

10 (a) ACTION DURING VERIFICATION.—If the Sec-
11 retary of the Treasury requests the Government of Chile
12 to conduct a verification pursuant to article 3.21 of the
13 Agreement for purposes of determining that—
14 (1) an exporter or producer in Chile is com-
15 plying with applicable customs laws, regulations, and
16 procedures regarding trade in textile and apparel
17 goods, or
18 (2) claims that textile or apparel goods exported
19 or produced by such exporter or producer—
20 (A) qualify as originating goods under sec-
21 tion 202 of this Act, or
22 (B) are goods of Chile,
23 are accurate,

the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

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

(1) suspension of liquidation of entries of textile and apparel goods exported or produced by the person that is the subject of the verification, in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) publication of the name of the person that is the subject of the verification.

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a) is insufficient to make a determination under subsection (a), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (c) includes—

(1) publication of the identity of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to any textile or apparel goods exported or produced by the person that is the subject of the verification; and

(3) denial of entry into the United States of any textile or apparel goods exported or produced by the person that is the subject of the verification.

SEC. 209. CONFORMING AMENDMENTS.

Section 508(b)(2)(B)(i)(I) of the Tariff Act of 1930 (19 U.S.C. 1508(b)(2)(B)(i)(I)) is amended—

(1) by striking ''the last paragraph of section 311'' and inserting ''the eleventh paragraph of section 311''; and

(2) by striking ''the last proviso to section 3(a)'' and inserting ''the proviso preceding the last proviso to section 3(a)''.

SEC. 210. REGULATIONS.

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

(1) subsections (a) through (n) of section 202, and sections 203 and 204;

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

(3) proclamations issued under section 202(o).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

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

(2) CHILEAN ARTICLE.—The term "Chilean article" means an article that qualifies as an originating good under section 202(a) of this Act.

(3) CHILEAN TEXTILE OR APPAREL ARTICLE.—The term "Chilean textile or apparel article" means an article—

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

(B) that is a Chilean article.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement

1 may be filed with the Commission by an entity, including
2 a trade association, firm, certified or recognized union, or
3 group of workers, that is representative of an industry.
4 The Commission shall transmit a copy of any petition filed
5 under this subsection to the United States Trade Rep-
6 resentative.

7 (b) INVESTIGATION AND DETERMINATION.—Upon
8 the filing of a petition under subsection (a), the Commis-
9 sion, unless subsection (d) applies, shall promptly initiate
10 an investigation to determine whether, as a result of the
11 reduction or elimination of a duty provided for under the
12 Agreement, a Chilean article is being imported into the
13 United States in such increased quantities, in absolute
14 terms or relative to domestic production, and under such
15 conditions that imports of the Chilean article constitute
16 a substantial cause of serious injury or threat thereof to
17 the domestic industry producing an article that is like, or
18 directly competitive with, the imported article.

19 (c) APPLICABLE PROVISIONS.—The following provi-
20 sions of section 202 of the Trade Act of 1974 (19 U.S.C.
21 2252) apply with respect to any investigation initiated
22 under subsection (b):

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

25 (2) Subsection (c).

1 (3) Subsection (i).

2 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No
3 investigation may be initiated under this section with re-
4 spect to any Chilean article if, after the date that the
5 Agreement enters into force, import relief has been pro-
6 vided with respect to that Chilean article under this sub-
7 title, or if, at the time the petition is filed, the article is
8 subject to import relief under chapter 1 of title II of the
9 Trade Act of 1974.

10 **SEC. 312. COMMISSION ACTION ON PETITION.**

11 (a) DETERMINATION.—Not later than 120 days after
12 the date on which an investigation is initiated under sec-
13 tion 311(b) with respect to a petition, the Commission
14 shall make the determination required under that section.

15 (b) APPLICABLE PROVISIONS.—For purposes of this
16 subtitle, the provisions of paragraphs (1), (2), and (3) of
17 section 330(d) of the Tariff Act of 1930 (19 U.S.C.
18 1330(d) (1), (2), and (3)) shall be applied with respect
19 to determinations and findings made under this section
20 as if such determinations and findings were made under
21 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

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

1 may consider a determination of the Commission to be an
2 affirmative determination as provided for under paragraph
3 (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
4 1330(d)), the Commission shall find, and recommend to
5 the President in the report required under subsection (d),
6 the amount of import relief that is necessary to remedy
7 or prevent the injury found by the Commission in the de-
8 termination and to facilitate the efforts of the domestic
9 industry to make a positive adjustment to import competi-
10 tion. The import relief recommended by the Commission
11 under this subsection shall be limited to the relief de-
12 scribed in section 313(c). Only those members of the Com-
13 mission who voted in the affirmative under subsection (a)
14 are eligible to vote on the proposed action to remedy or
15 prevent the injury found by the Commission. Members of
16 the Commission who did not vote in the affirmative may
17 submit, in the report required under subsection (d), sepa-
18 rate views regarding what action, if any, should be taken
19 to remedy or prevent the injury.

20 (d) REPORT TO PRESIDENT.—Not later than the
21 date that is 30 days after the date on which a determina-
22 tion is made under subsection (a) with respect to an inves-
23 tigation, the Commission shall submit to the President a
24 report that includes—

1 (1) the determination made under subsection
2 (a) and an explanation of the basis for the deter-
3 mination;

4 (2) if the determination under subsection (a) is
5 affirmative, any findings and recommendations for
6 import relief made under subsection (c) and an ex-
7 planation of the basis for each recommendation; and

8 (3) any dissenting or separate views by mem-
9 bers of the Commission regarding the determination
10 and recommendation referred to in paragraphs (1)
11 and (2).

12 (e) PUBLIC NOTICE.—Upon submitting a report to
13 the President under subsection (d), the Commission shall
14 promptly make public such report (with the exception of
15 information which the Commission determines to be con-
16 fidential) and shall cause a summary thereof to be pub-
17 lished in the Federal Register.

18 **SEC. 313. PROVISION OF RELIEF.**

19 (a) IN GENERAL.—Not later than the date that is
20 30 days after the date on which the President receives the
21 report of the Commission in which the Commission's de-
22 termination under section 312(a) is affirmative, or which
23 contains a determination under section 312(a) that the
24 President considers to be affirmative under paragraph (1)
25 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.

1 1330(d)(1), the President, subject to subsection (b), shall
2 provide relief from imports of the article that is the subject
3 of such determination to the extent that the President de-
4 termines necessary to remedy or prevent the injury found
5 by the Commission and to facilitate the efforts of the do-
6 mestic industry to make a positive adjustment to import
7 competition.

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

12 (c) NATURE OF RELIEF.—

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

16 (A) The suspension of any further reduc-
17 tion provided for under Annex 3.3 of the Agree-
18 ment in the duty imposed on such article.

19 (B) An increase in the rate of duty im-
20 posed on such article to a level that does not
21 exceed the lesser of—

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

1 (ii) the column 1 general rate of duty
2 imposed under the HTS on like articles on
3 the day before the date on which the
4 Agreement enters into force.
5 (2) PROGRESSIVE LIBERALIZATION.—If the pe-
6 riod for which import relief is provided under this
7 section is greater than 1 year, the President shall
8 provide for the progressive liberalization (described
9 in article 8.2(2) of the Agreement) of such relief at
10 regular intervals during the period of its application.
11 (d) PERIOD OF RELIEF.—
12 (1) IN GENERAL.—Subject to paragraph (2),
13 the import relief that the President is authorized to
14 provide under this section, including any extensions
15 thereof, may not, in the aggregate, exceed 3 years.
16 (2) EXTENSION.—
17 (A) IN GENERAL.—If the initial period for
18 any import relief provided under this section is
19 less than 3 years, the President, after receiving
20 an affirmative determination from the Commis-
21 sion under subparagraph (B), may extend the
22 effective period of any import relief provided
23 under this section, subject to the limitation
24 under paragraph (1), if the President deter-
25 mines that—

1 (i) the import relief continues to be
2 necessary to remedy or prevent serious in-
3 jury and to facilitate adjustment; and
4 (ii) there is evidence that the industry
5 is making a positive adjustment to import
6 competition.
7 (B) ACTION BY COMMISSION.—(i) Upon a
8 petition on behalf of the industry concerned,
9 filed with the Commission not earlier than the
10 date which is 9 months, and not later than the
11 date which is 6 months, before the date on
12 which any action taken under subsection (a) is
13 to terminate, the Commission shall conduct an
14 investigation to determine whether action under
15 this section continues to be necessary to remedy
16 or prevent serious injury and whether there is
17 evidence that the industry is making a positive
18 adjustment to import competition.
19 (ii) The Commission shall publish notice of
20 the commencement of any proceeding under
21 this subparagraph in the Federal Register and
22 shall, within a reasonable time thereafter, hold
23 a public hearing at which the Commission shall
24 afford interested parties and consumers an op-
25 portunity to be present, to present evidence,

1 and to respond to the presentations of other
2 parties and consumers, and otherwise to be
3 heard.

4 (iii) The Commission shall transmit to the
5 President a report on its investigation and de-
6 termination under this subparagraph not later
7 than 60 days before the action under subsection
8 (a) is to terminate, unless the President speci-
9 fies a different date.

10 (e) RATE AFTER TERMINATION OF IMPORT RE-
11 LIEF.—When import relief under this section is termi-
12 nated with respect to an article—

13 (1) the rate of duty on that article after such
14 termination and on or before December 31 of the
15 year in which such termination occurs shall be the
16 rate that, according to the Schedule of the United
17 States in Annex 3.3 of the Agreement for the staged
18 elimination of the tariff, would have been in effect
19 1 year after the provision of relief under subsection
20 (a); and

21 (2) the rate of duty for that article after De-
22 cember 31 of the year in which termination occurs
23 shall be, at the discretion of the President, either—

1 (A) the applicable rate of duty for that ar-
2 ticle set out in the Schedule of the United
3 States in Annex 3.3 of the Agreement; or
4 (B) the rate of duty resulting from the
5 elimination of the tariff in equal annual stages
6 ending on the date set out in the United States
7 Schedule in Annex 3.3 of the Agreement for the
8 elimination of the tariff.
9 (f) ARTICLES EXEMPT FROM RELIEF.—No import
10 relief may be provided under this section on any article
11 subject to import relief under chapter 1 of title II of the
12 Trade Act of 1974.

13 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**

14 (a) GENERAL RULE.—No import relief may be pro-
15 vided under this subtitle after the date that is 10 years
16 after the date on which the Agreement enters into force.
17 (b) EXCEPTION.—If an article for which relief is pro-
18 vided under this subtitle is an article for which the period
19 for tariff elimination, set out in the Schedule of the United
20 States to Annex 3.3 of the Agreement, is 12 years, no
21 relief under this subtitle may be provided for that article
22 after the date that is 12 years after the date on which
23 the Agreement enters into force.

1 **SEC. 315. COMPENSATION AUTHORITY.**

2 For purposes of section 123 of the Trade Act of 1974
3 (19 U.S.C. 2133), any import relief provided by the Presi-
4 dent under section 313 shall be treated as action taken
5 under chapter 1 of title II of such Act.

6 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

7 Section 202 (a)(8) of the Trade Act of 1974 (19
8 U.S.C. 2252(a)(8)) is amended in the first sentence—
9 (1) by striking ''and''; and
10 (2) by inserting before the period at the end '',
11 and title III of the United States-Chile Free Trade
12 Agreement Implementation Act''.

13 Subtitle B—Textile and Apparel 14 Safeguard Measures

15 **SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

16 (a) IN GENERAL.—A request under this subtitle for
17 the purpose of adjusting to the obligations of the United
18 States under the Agreement may be filed with the Presi-
19 dent by an interested party. Upon the filing of a request,
20 the President shall review the request to determine, from
21 information presented in the request, whether to com-
22 mence consideration of the request.

23 (b) PUBLICATION OF REQUEST.—If the President de-
24 termines that the request under subsection (a) provides
25 the information necessary for the request to be considered,
26 the President shall cause to be published in the Federal

1 Register a notice of commencement of consideration of the
2 request, and notice seeking public comments regarding the
3 request. The notice shall include the request and the dates
4 by which comments and rebuttals must be received.

5 **SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

6 (a) DETERMINATION.—

7 (1) IN GENERAL.—If a positive determination is
8 made under section 321(b), the President shall de-
9 termine whether, as a result of the elimination of a
10 duty under the Agreement, a Chilean textile or ap-
11 parel article is being imported into the United States
12 in such increased quantities, in absolute terms or
13 relative to the domestic market for that article, and
14 under such conditions as to cause serious damage,
15 or actual threat thereof, to a domestic industry pro-
16 ducing an article that is like, or directly competitive
17 with, the imported article.

18 (2) SERIOUS DAMAGE.—In making a deter-
19 mination under paragraph (1), the President—

20 (A) shall examine the effect of increased
21 imports on the domestic industry, as reflected
22 in changes in such relevant economic factors as
23 output, productivity, utilization of capacity, in-
24 ventories, market share, exports, wages, em-

1 ployment, domestic prices, profits, and invest-
2 ment, none of which is necessarily decisive; and
3 (B) shall not consider changes in tech-
4 nology or consumer preference as factors sup-
5 porting a determination of serious damage or
6 actual threat thereof.
7 (b) PROVISION OF RELIEF.—
8 (1) IN GENERAL.—If a determination under
9 subsection (a) is affirmative, the President may pro-
10 vide relief from imports of the article that is the
11 subject of such determination, as provided in para-
12 graph (2), to the extent that the President deter-
13 mines necessary to remedy or prevent the serious
14 damage and to facilitate adjustment by the domestic
15 industry.
16 (2) NATURE OF RELIEF.—The relief that the
17 President is authorized to provide under this sub-
18 section with respect to imports of an article is an in-
19 crease in the rate of duty imposed on the article to
20 a level that does not exceed the lesser of—
21 (A) the column 1 general rate of duty im-
22 posed under the HTS on like articles at the
23 time the import relief is provided; or
24 (B) the column 1 general rate of duty im-
25 posed under the HTS on like articles on the

1 day before the date on which the Agreement en-
2 ters into force.

3 **SEC. 323. PERIOD OF RELIEF.**

4 (a) IN GENERAL.—The import relief that the Presi-
5 dent is authorized to provide under section 322, including
6 any extensions thereof, may not, in the aggregate, exceed
7 3 years.

8 (b) EXTENSION.—If the initial period for any import
9 relief provided under this section is less than 3 years, the
10 President may extend the effective period of any import
11 relief provided under this section, subject to the limitation
12 set forth in subsection (a), if the President determines
13 that—

14 (1) the import relief continues to be necessary
15 to remedy or prevent serious damage and to facili-
16 tate adjustment; and

17 (2) there is evidence that the industry is mak-
18 ing a positive adjustment to import competition.

19 **SEC. 324. ARTICLES EXEMPT FROM RELIEF.**

20 The President may not provide import relief under
21 this subtitle with respect to any article if import relief pre-
22 viously has been provided under this subtitle with respect
23 to that article.

1 **SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

2 When import relief under this subtitle is terminated
3 with respect to an article, the rate of duty on that article
4 shall be duty-free.

5 **SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

6 No import relief may be provided under this subtitle
7 with respect to any article after the date that is 8 years
8 after the date on which duties on the article are eliminated
9 pursuant to the Agreement.

10 **SEC. 327. COMPENSATION AUTHORITY.**

11 For purposes of section 123 of the Trade Act of 1974
12 (19 U.S.C. 2133), any import relief provided by the Presi-
13 dent under this subtitle shall be treated as action taken
14 under chapter 1 of title II of that Act.

15 **SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.**

16 The President may not release information which the
17 President considers to be confidential business informa-
18 tion unless the party submitting the confidential business
19 information had notice, at the time of submission, that
20 such information would be released by the President, or
21 such party subsequently consents to the release of the in-
22 formation. To the extent business confidential information
23 is provided, a nonconfidential version of the information
24 shall also be provided, in which the business confidential
25 information is summarized or, if necessary, deleted.

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS.

SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

Upon a basis of reciprocity secured by the Agreement, an alien who is a national of Chile (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) of such alien, if accompanying or following to join the alien) may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in clause (i) or (ii) of such section 101(a)(15)(E). For purposes of this section, the term ''national'' has the meaning given such term in article 14.9 of the Agreement.

SEC. 402. NONIMMIGRANT PROFESSIONALS; LABOR ATTESTATIONS.

(a) NONIMMIGRANT PROFESSIONALS.—

(1) DEFINITIONS.—Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by striking ''212(n)(1), or (c)'' and inserting ''212(n)(1), or (b1) who is entitled to enter the United States under

1 and in pursuance of the provisions of an agreement
2 listed in section 214(g)(8)(A), who is engaged in a
3 specialty occupation described in section 214(i)(3),
4 and with respect to whom the Secretary of Labor de-
5 termines and certifies to the Secretary of Homeland
6 Security and the Secretary of State that the intend-
7 ing employer has filed with the Secretary of Labor
8 an attestation under section 212(t)(1), or (c)''.

9 (2) ADMISSION OF NONIMMIGRANTS.—Section
10 214 of the Immigration and Nationality Act (8
11 U.S.C. 1184) is amended—

12 (A) in subsection (i)—

13 (i) in paragraph (1), by striking ''For
14 purposes'' and inserting ''Except as pro-
15 vided in paragraph (3), for purposes''; and

16 (ii) by adding at the end the fol-
17 lowing:

18 ''(3) For purposes of section 101(a)(15)(H)(i)(b1),
19 the term 'specialty occupation' means an occupation that
20 requires—

21 ''(A) theoretical and practical application of a
22 body of specialized knowledge; and

23 ''(B) attainment of a bachelor's or higher de-
24 gree in the specific specialty (or its equivalent) as a

1 minimum for entry into the occupation in the United
2 States.''; and
3 (B) in subsection (g), by adding at the end
4 the following:
5 ''(8)(A) The agreement referred to in section
6 101(a)(15)(H)(i)(b1) is the United States-Chile Free
7 Trade Agreement.
8 ''(B)(i) The Secretary of Homeland Security shall es-
9 tablish annual numerical limitations on approvals of initial
10 applications by aliens for admission under section
11 101(a)(15)(H)(i)(b1).
12 ''(ii) The annual numerical limitations described in
13 clause (i) shall not exceed 1,400 for nationals of Chile for
14 any fiscal year. For purposes of this clause, the term 'na-
15 tional' has the meaning given such term in article 14.9
16 of the United States-Chile Free Trade Agreement.
17 ''(iii) The annual numerical limitations described in
18 clause (i) shall only apply to principal aliens and not to
19 the spouses or children of such aliens.
20 ''(iv) The annual numerical limitation described in
21 paragraph (1)(A) is reduced by the amount of the annual
22 numerical limitations established under clause (i). How-
23 ever, if a numerical limitation established under clause (i)
24 has not been exhausted at the end of a given fiscal year,
25 the Secretary of Homeland Security shall adjust upwards

1 the numerical limitation in paragraph (1)(A) for that fis-
2 cal year by the amount remaining in the numerical limita-
3 tion under clause (i). Visas under section
4 101(a)(15)(H)(i)(b) may be issued pursuant to such ad-
5 justment within the first 45 days of the next fiscal year
6 to aliens who had applied for such visas during the fiscal
7 year for which the adjustment was made.

8 "(C) The period of authorized admission as a non-
9 immigrant under section 101(a)(15)(H)(i)(b1) shall be 1
10 year, and may be extended, but only in 1-year increments.
11 After every second extension, the next following extension
12 shall not be granted unless the Secretary of Labor had
13 determined and certified to the Secretary of Homeland Se-
14 curity and the Secretary of State that the intending em-
15 ployer has filed with the Secretary of Labor an attestation
16 under section 212(t)(1) for the purpose of permitting the
17 nonimmigrant to obtain such extension.

18 "(D) The numerical limitation described in para-
19 graph (1)(A) for a fiscal year shall be reduced by one for
20 each alien granted an extension under subparagraph (C)
21 during such year who has obtained 5 or more consecutive
22 prior extensions.".

23 (b) LABOR ATTESTATIONS.—Section 212 of the Im-
24 migration and Nationality Act (8 U.S.C. 1182) is amend-
25 ed—

1 (1) by redesignating the subsection (p) added
2 by section 1505(f) of Public Law 106–386 (114
3 Stat. 1526) as subsection (s); and
4 (2) by adding at the end the following:
5 ''(t)(1) No alien may be admitted or provided status
6 as a nonimmigrant under section 101(a)(15)(H)(i)(b1) in
7 an occupational classification unless the employer has filed
8 with the Secretary of Labor an attestation stating the fol-
9 lowing:
10 ''(A) The employer—
11 ''(i) is offering and will offer during the
12 period of authorized employment to aliens ad-
13 mitted or provided status under section
14 101(a)(15)(H)(i)(b1) wages that are at least—
15 ''(I) the actual wage level paid by the
16 employer to all other individuals with simi-
17 lar experience and qualifications for the
18 specific employment in question; or
19 ''(II) the prevailing wage level for the
20 occupational classification in the area of
21 employment,
22 whichever is greater, based on the best informa-
23 tion available as of the time of filing the attes-
24 tation; and

1 "(ii) will provide working conditions for
2 such a nonimmigrant that will not adversely af-
3 fect the working conditions of workers similarly
4 employed.

5 "(B) There is not a strike or lockout in the
6 course of a labor dispute in the occupational classi-
7 fication at the place of employment.

8 "(C) The employer, at the time of filing the at-
9 testation—

10 "(i) has provided notice of the filing under
11 this paragraph to the bargaining representative
12 (if any) of the employer's employees in the oc-
13 cupational classification and area for which
14 aliens are sought; or

15 "(ii) if there is no such bargaining rep-
16 resentative, has provided notice of filing in the
17 occupational classification through such meth-
18 ods as physical posting in conspicuous locations
19 at the place of employment or electronic notifi-
20 cation to employees in the occupational classi-
21 fication for which nonimmigrants under section
22 101(a)(15)(H)(i)(b1) are sought.

23 "(D) A specification of the number of workers
24 sought, the occupational classification in which the

1 workers will be employed, and wage rate and condi-
2 tions under which they will be employed.

3 ''(2)(A) The employer shall make available for public
4 examination, within one working day after the date on
5 which an attestation under this subsection is filed, at the
6 employer's principal place of business or worksite, a copy
7 of each such attestation (and such accompanying docu-
8 ments as are necessary).

9 ''(B)(i) The Secretary of Labor shall compile, on a
10 current basis, a list (by employer and by occupational clas-
11 sification) of the attestations filed under this subsection.
12 Such list shall include, with respect to each attestation,
13 the wage rate, number of aliens sought, period of intended
14 employment, and date of need.

15 ''(ii) The Secretary of Labor shall make such list
16 available for public examination in Washington, D.C.

17 ''(C) The Secretary of Labor shall review an attesta-
18 tion filed under this subsection only for completeness and
19 obvious inaccuracies. Unless the Secretary of Labor finds
20 that an attestation is incomplete or obviously inaccurate,
21 the Secretary of Labor shall provide the certification de-
22 scribed in section 101(a)(15)(H)(i)(b1) within 7 days of
23 the date of the filing of the attestation.

24 ''(3)(A) The Secretary of Labor shall establish a
25 process for the receipt, investigation, and disposition of

1 complaints respecting the failure of an employer to meet
2 a condition specified in an attestation submitted under
3 this subsection or misrepresentation by the employer of
4 material facts in such an attestation. Complaints may be
5 filed by any aggrieved person or organization (including
6 bargaining representatives). No investigation or hearing
7 shall be conducted on a complaint concerning such a fail-
8 ure or misrepresentation unless the complaint was filed
9 not later than 12 months after the date of the failure or
10 misrepresentation, respectively. The Secretary of Labor
11 shall conduct an investigation under this paragraph if
12 there is reasonable cause to believe that such a failure or
13 misrepresentation has occurred.

14 "(B) Under the process described in subparagraph
15 (A), the Secretary of Labor shall provide, within 30 days
16 after the date a complaint is filed, for a determination as
17 to whether or not a reasonable basis exists to make a find-
18 ing described in subparagraph (C). If the Secretary of
19 Labor determines that such a reasonable basis exists, the
20 Secretary of Labor shall provide for notice of such deter-
21 mination to the interested parties and an opportunity for
22 a hearing on the complaint, in accordance with section 556
23 of title 5, United States Code, within 60 days after the
24 date of the determination. If such a hearing is requested,
25 the Secretary of Labor shall make a finding concerning

1 the matter by not later than 60 days after the date of
2 the hearing. In the case of similar complaints respecting
3 the same applicant, the Secretary of Labor may consoli-
4 date the hearings under this subparagraph on such com-
5 plaints.

6 ''(C)(i) If the Secretary of Labor finds, after notice
7 and opportunity for a hearing, a failure to meet a condi-
8 tion of paragraph (1)(B), a substantial failure to meet a
9 condition of paragraph (1)(C) or (1)(D), or a misrepresen-
10 tation of material fact in an attestation—

11 ''(I) the Secretary of Labor shall notify the Sec-
12 retary of State and the Secretary of Homeland Secu-
13 rity of such finding and may, in addition, impose
14 such other administrative remedies (including civil
15 monetary penalties in an amount not to exceed
16 $1,000 per violation) as the Secretary of Labor de-
17 termines to be appropriate; and

18 ''(II) the Secretary of State or the Secretary of
19 Homeland Security, as appropriate, shall not ap-
20 prove petitions or applications filed with respect to
21 that employer under section 204, 214(c), or
22 101(a)(15)(H)(i)(b1) during a period of at least 1
23 year for aliens to be employed by the employer.

24 ''(ii) If the Secretary of Labor finds, after notice and
25 opportunity for a hearing, a willful failure to meet a condi-

1 tion of paragraph (1), a willful misrepresentation of mate-
2 rial fact in an attestation, or a violation of clause (iv)—
3 ‘‘(I) the Secretary of Labor shall notify the Sec-
4 retary of State and the Secretary of Homeland Secu-
5 rity of such finding and may, in addition, impose
6 such other administrative remedies (including civil
7 monetary penalties in an amount not to exceed
8 $5,000 per violation) as the Secretary of Labor de-
9 termines to be appropriate; and
10 ‘‘(II) the Secretary of State or the Secretary of
11 Homeland Security, as appropriate, shall not ap-
12 prove petitions or applications filed with respect to
13 that employer under section 204, 214(c), or
14 101(a)(15)(H)(i)(b1) during a period of at least 2
15 years for aliens to be employed by the employer.
16 ‘‘(iii) If the Secretary of Labor finds, after notice and
17 opportunity for a hearing, a willful failure to meet a condi-
18 tion of paragraph (1) or a willful misrepresentation of ma-
19 terial fact in an attestation, in the course of which failure
20 or misrepresentation the employer displaced a United
21 States worker employed by the employer within the period
22 beginning 90 days before and ending 90 days after the
23 date of filing of any visa petition or application supported
24 by the attestation—

1 "(I) the Secretary of Labor shall notify the Sec-
2 retary of State and the Secretary of Homeland Secu-
3 rity of such finding and may, in addition, impose
4 such other administrative remedies (including civil
5 monetary penalties in an amount not to exceed
6 $35,000 per violation) as the Secretary of Labor de-
7 termines to be appropriate; and

8 "(II) the Secretary of State or the Secretary of
9 Homeland Security, as appropriate, shall not ap-
10 prove petitions or applications filed with respect to
11 that employer under section 204, 214(c), or
12 101(a)(15)(H)(i)(b1) during a period of at least 3
13 years for aliens to be employed by the employer.

14 "(iv) It is a violation of this clause for an employer
15 who has filed an attestation under this subsection to in-
16 timidate, threaten, restrain, coerce, blacklist, discharge, or
17 in any other manner discriminate against an employee
18 (which term, for purposes of this clause, includes a former
19 employee and an applicant for employment) because the
20 employee has disclosed information to the employer, or to
21 any other person, that the employee reasonably believes
22 evidences a violation of this subsection, or any rule or reg-
23 ulation pertaining to this subsection, or because the em-
24 ployee cooperates or seeks to cooperate in an investigation
25 or other proceeding concerning the employer's compliance

1 with the requirements of this subsection or any rule or
2 regulation pertaining to this subsection.
3 "(v) The Secretary of Labor and the Secretary of
4 Homeland Security shall devise a process under which a
5 nonimmigrant under section 101(a)(15)(H)(i)(b1) who
6 files a complaint regarding a violation of clause (iv) and
7 is otherwise eligible to remain and work in the United
8 States may be allowed to seek other appropriate employ-
9 ment in the United States for a period not to exceed the
10 maximum period of stay authorized for such non-
11 immigrant classification.
12 "(vi)(I) It is a violation of this clause for an employer
13 who has filed an attestation under this subsection to re-
14 quire a nonimmigrant under section 101(a)(15)(H)(i)(b1)
15 to pay a penalty for ceasing employment with the employer
16 prior to a date agreed to by the nonimmigrant and the
17 employer. The Secretary of Labor shall determine whether
18 a required payment is a penalty (and not liquidated dam-
19 ages) pursuant to relevant State law.
20 "(II) If the Secretary of Labor finds, after notice and
21 opportunity for a hearing, that an employer has committed
22 a violation of this clause, the Secretary of Labor may im-
23 pose a civil monetary penalty of $1,000 for each such vio-
24 lation and issue an administrative order requiring the re-
25 turn to the nonimmigrant of any amount paid in violation

1 of this clause, or, if the nonimmigrant cannot be located,
2 requiring payment of any such amount to the general fund
3 of the Treasury.

4 ''(vii)(I) It is a failure to meet a condition of para-
5 graph (1)(A) for an employer who has filed an attestation
6 under this subsection and who places a nonimmigrant
7 under section 101(a)(15)(H)(i)(b1) designated as a full-
8 time employee in the attestation, after the nonimmigrant
9 has entered into employment with the employer, in non-
10 productive status due to a decision by the employer (based
11 on factors such as lack of work), or due to the non-
12 immigrant's lack of a permit or license, to fail to pay the
13 nonimmigrant full-time wages in accordance with para-
14 graph (1)(A) for all such nonproductive time.

15 ''(II) It is a failure to meet a condition of paragraph
16 (1)(A) for an employer who has filed an attestation under
17 this subsection and who places a nonimmigrant under sec-
18 tion 101(a)(15)(H)(i)(b1) designated as a part-time em-
19 ployee in the attestation, after the nonimmigrant has en-
20 tered into employment with the employer, in nonproduc-
21 tive status under circumstances described in subclause (I),
22 to fail to pay such a nonimmigrant for such hours as are
23 designated on the attestation consistent with the rate of
24 pay identified on the attestation.

1 "(III) In the case of a nonimmigrant under section
2 101(a)(15)(H)(i)(b1) who has not yet entered into employ-
3 ment with an employer who has had approved an attesta-
4 tion under this subsection with respect to the non-
5 immigrant, the provisions of subclauses (I) and (II) shall
6 apply to the employer beginning 30 days after the date
7 the nonimmigrant first is admitted into the United States,
8 or 60 days after the date the nonimmigrant becomes eligi-
9 ble to work for the employer in the case of a nonimmigrant
10 who is present in the United States on the date of the
11 approval of the attestation filed with the Secretary of
12 Labor.

13 "(IV) This clause does not apply to a failure to pay
14 wages to a nonimmigrant under section
15 101(a)(15)(H)(i)(b1) for nonproductive time due to non-
16 work-related factors, such as the voluntary request of the
17 nonimmigrant for an absence or circumstances rendering
18 the nonimmigrant unable to work.

19 "(V) This clause shall not be construed as prohibiting
20 an employer that is a school or other educational institu-
21 tion from applying to a nonimmigrant under section
22 101(a)(15)(H)(i)(b1) an established salary practice of the
23 employer, under which the employer pays to non-
24 immigrants under section 101(a)(15)(H)(i)(b1) and
25 United States workers in the same occupational classifica-

1 tion an annual salary in disbursements over fewer than
2 12 months, if—

3 ‘‘(aa) the nonimmigrant agrees to the com-
4 pressed annual salary payments prior to the com-
5 mencement of the employment; and

6 ‘‘(bb) the application of the salary practice to
7 the nonimmigrant does not otherwise cause the non-
8 immigrant to violate any condition of the non-
9 immigrant's authorization under this Act to remain
10 in the United States.

11 ‘‘(VI) This clause shall not be construed as super-
12 seding clause (viii).

13 ‘‘(viii) It is a failure to meet a condition of paragraph
14 (1)(A) for an employer who has filed an attestation under
15 this subsection to fail to offer to a nonimmigrant under
16 section 101(a)(15)(H)(i)(b1), during the nonimmigrant's
17 period of authorized employment, benefits and eligibility
18 for benefits (including the opportunity to participate in
19 health, life, disability, and other insurance plans; the op-
20 portunity to participate in retirement and savings plans;
21 and cash bonuses and non-cash compensation, such as
22 stock options (whether or not based on performance)) on
23 the same basis, and in accordance with the same criteria,
24 as the employer offers to United States workers.

1 ‘‘(D) If the Secretary of Labor finds, after notice and
2 opportunity for a hearing, that an employer has not paid
3 wages at the wage level specified in the attestation and
4 required under paragraph (1), the Secretary of Labor
5 shall order the employer to provide for payment of such
6 amounts of back pay as may be required to comply with
7 the requirements of paragraph (1), whether or not a pen-
8 alty under subparagraph (C) has been imposed.

9 ‘‘(E) The Secretary of Labor may, on a case-by-case
10 basis, subject an employer to random investigations for
11 a period of up to 5 years, beginning on the date on which
12 the employer is found by the Secretary of Labor to have
13 committed a willful failure to meet a condition of para-
14 graph (1) or to have made a willful misrepresentation of
15 material fact in an attestation. The authority of the Sec-
16 retary of Labor under this subparagraph shall not be con-
17 strued to be subject to, or limited by, the requirements
18 of subparagraph (A).

19 ‘‘(F) Nothing in this subsection shall be construed
20 as superseding or preempting any other enforcement-re-
21 lated authority under this Act (such as the authorities
22 under section 274B), or any other Act.

23 ‘‘(4) For purposes of this subsection:

24 ‘‘(A) The term ‘area of employment’ means the
25 area within normal commuting distance of the work-

1 site or physical location where the work of the non-
2 immigrant under section 101(a)(15)(H)(i)(b1) is or
3 will be performed. If such worksite or location is
4 within a Metropolitan Statistical Area, any place
5 within such area is deemed to be within the area of
6 employment.

7 ''(B) In the case of an attestation with respect
8 to one or more nonimmigrants under section
9 101(a)(15)(H)(i)(b1) by an employer, the employer
10 is considered to 'displace' a United States worker
11 from a job if the employer lays off the worker from
12 a job that is essentially the equivalent of the job for
13 which the nonimmigrant or nonimmigrants is or are
14 sought. A job shall not be considered to be essen-
15 tially equivalent of another job unless it involves es-
16 sentially the same responsibilities, was held by a
17 United States worker with substantially equivalent
18 qualifications and experience, and is located in the
19 same area of employment as the other job.

20 ''(C)(i) The term 'lays off', with respect to a
21 worker—

22 ''(I) means to cause the worker's loss of
23 employment, other than through a discharge for
24 inadequate performance, violation of workplace
25 rules, cause, voluntary departure, voluntary re-

1 tirement, or the expiration of a grant or con-
2 tract; but

3 ''(II) does not include any situation in
4 which the worker is offered, as an alternative to
5 such loss of employment, a similar employment
6 opportunity with the same employer at equiva-
7 lent or higher compensation and benefits than
8 the position from which the employee was dis-
9 charged, regardless of whether or not the em-
10 ployee accepts the offer.

11 ''(ii) Nothing in this subparagraph is intended
12 to limit an employee's rights under a collective bar-
13 gaining agreement or other employment contract.

14 ''(D) The term 'United States worker' means
15 an employee who—

16 ''(i) is a citizen or national of the United
17 States; or

18 ''(ii) is an alien who is lawfully admitted
19 for permanent residence, is admitted as a ref-
20 ugee under section 207 of this title, is granted
21 asylum under section 208, or is an immigrant
22 otherwise authorized, by this Act or by the Sec-
23 retary of Homeland Security, to be employed.''.

24 (c) SPECIAL RULE FOR COMPUTATION OF PRE-
25 VAILING WAGE.—Section 212(p)(1) of the Immigration

1 and Nationality Act (8 U.S.C. 1182(p)(1)) is amended by
2 striking "(n)(1)(A)(i)(II) and (a)(5)(A)" and inserting
3 "(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)".

4 (d) FEE.—

5 (1) IN GENERAL.—Section 214(c) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1184(c)) is
7 amended by adding at the end the following:

8 "(11)(A) Subject to subparagraph (B), the Secretary
9 of Homeland Security or the Secretary of State, as appro-
10 priate, shall impose a fee on an employer who has filed
11 an attestation described in section 212(t)—

12 "(i) in order that an alien may be initially
13 granted nonimmigrant status described in section
14 101(a)(15)(H)(i)(b1); or

15 "(ii) in order to satisfy the requirement of the
16 second sentence of subsection (g)(8)(C) for an alien
17 having such status to obtain certain extensions of
18 stay.

19 "(B) The amount of the fee shall be the same as the
20 amount imposed by the Secretary of Homeland Security
21 under paragraph (9), except that if such paragraph does
22 not authorize such Secretary to impose any fee, no fee
23 shall be imposed under this paragraph.

1 "(C) Fees collected under this paragraph shall be de-
2 posited in the Treasury in accordance with section
3 286(s).".

4 (2) USE OF FEE.—Section 286(s)(1) of the Im-
5 migration and Nationality Act (8 U.S.C. 1356(s)(1))
6 is amended by striking "section 214(c)(9)." and in-
7 serting "paragraphs (9) and (11) of section
8 214(c).".

9 **SEC. 403. LABOR DISPUTES.**

10 Section 214(j) of the Immigration and Nationality
11 Act (8 U.S.C. 1184(j)) is amended—

12 (1) by striking "(j)" and inserting "(j)(1)";

13 (2) by striking "this subsection" each place
14 such term appears and inserting "this paragraph";
15 and

16 (3) by adding at the end the following:

17 "(2) Notwithstanding any other provision of this Act
18 except section 212(t)(1), and subject to regulations pro-
19 mulgated by the Secretary of Homeland Security, an alien
20 who seeks to enter the United States under and pursuant
21 to the provisions of an agreement listed in subsection
22 (g)(8)(A), and the spouse and children of such an alien
23 if accompanying or following to join the alien, may be de-
24 nied admission as a nonimmigrant under subparagraph
25 (E), (L), or (H)(i)(b1) of section 101(a)(15) if there is

in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien's entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.''.

SEC. 404. CONFORMING AMENDMENTS.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

(1) in subsection (b), by striking ''(other than a nonimmigrant described in subparagraph (H)(i), (L), or (V) of section 101(a)(15))'' and inserting ''(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)'';

(2) in subsection (c)(1), by striking ''section 101(a)(15)(H), (L), (O), or (P)(i)'' and inserting ''subparagraph (H), (L), (O), or (P)(i) of section

1 101(a)(15) (excluding nonimmigrants under section
2 101(a)(15)(H)(i)(b1))''; and
3 (3) in subsection (h), by striking ''(H)(i)'' and
4 inserting ''(H)(i)(b) or (c)''.

○