immediately preceding phrase ''Act of Congress'' and thereby describe only the period of enactment for the authorizing ''Act of Congress'' that must occur for an agency rule or regulation on R.S. 2477 rights-of-way to take effect. Under this reading, the phrase ''subsequent to the date of enactment'' means that the agency rule can become effective only if it is expressly authorized by a new, not a previous, Act of Congress. This limitation on agency rulemaking would expire at the end of fiscal year 1997.

Alternatively, ''subsequent to the date of enactment of this Act'' could apply to all of section 108 and thereby describe the time period applicable to the limitation on agency rulemaking on R.S. 2477 rights-of-way. Under this reading, the phrase ''subsequent to the date of enactment of this Act'' means that the requirement for an express authorization by an Act of Congress before the agency rule can become effective is a permanent requirement beginning with the enactment of the fiscal year 1997 appropriation. We believe the latter interpretation is the meaning best ascribed to section 108 based on its legislative history and purpose.

Language similar to that found in section 108 first appeared as section 349(a)(1) of the National Highway System Designation Act of 1995, Pub. L. No. 104–59, 109 Stat. 568, 617–618 (1995). Section 349(a)(1) states:

''(a) MORATORIUM.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, no agency of the Federal Government may take any action to prepare, promulgate, or implement any rule or regulation addressing rights-of-way authorized pursuant to section 2477 of the Revised Statutes (43 U.S.C. 932), as such section was in effect before October 21, 1976.''

As indicated by the heading of subsection (a) of section 349, paragraph (1) was a moratorium on agency actions on rules and regulations regarding R.S. 2477 rights-of-way. Paragraph (2) provided that the moratorium would be effective through September 30, 1996. The purpose of the moratorium was to delay regulations proposed by the Secretary of the Interior so that the Congress and the states could address concerns over proposed changes to the process for recognizing state and local government claims for rights-of-way across federal lands granted pursuant to R.S. 2477. 141 Cong. Rec. S8924–8925 (daily ed. June 22, 1995) (statements of Sens. Stevens and Murkowski).

Before the moratorium expired, the Senate Committee on Energy and Natural Resources considered S. 1425, a bill to ''recognize the validity of rights-of-way granted under section 2477 of the Revised Statutes, and for other purposes.'' The bill, as reported from the Committee on May 9, 1996, consisted entirely of the language now found at section 108 of the fiscal year 1997 Interior Appropriations Act. The purpose of S. 1425 was to allow the Department of the Interior to develop new regulations while prohibiting their implementation until expressly approved by an Act of Congress. S. Rep. No. 104–261, at 2 (1996). There is no question that if it had been enacted into law, S. 1425 would have continued indefinitely the restriction against agency rules or regulations on R.S. 2477 rights-of-way becoming effective without an authorizing Act of Congress. See, id., at 3–4 (Letter from June E. O'Neill, Director, Congressional Budget Office, dated May 8, 1996). While no further action was taken on S. 1425, its language ultimately became section 108 of the fiscal year 1997 Interior Appropriations Act.

A little more than a month after the Senate Committee on Energy and Natural Resources reported S. 1425, the House of Representatives passed H.R. 3662, the Department of the Interior and Related Agencies Appropriations Bill, 1997. Section 109 of H.R. 3662 stated that ''None of the funds appropriated or otherwise made available by this Act may be obligated or expended by the Secretary of the Interior for developing, promulgating, and thereafter implementing a rule concerning right-of-way under section 2477 of the Revised Statutes.''

This language was identical to language in the fiscal year 1996 appropriation act enacted two months before. See note 2 above. When the Senate Committee on Appropriations reported its version of the appropriations bill, it deleted the House language and substituted the language of S. 1425, stating that it was ''identical to the bipartisan proposal reported by the Senate Energy and Natural Resources Committee (Senate bill 1475 [sic]).'' S. Rep. No. 104–319, at 56 (1996). This is the language ultimately enacted as section 108 of the fiscal year 1997 Interior Appropriations Act as contained in Pub. L. No. 104–208.

This history strongly supports the conclusion that Congress intended section 108 to be permanent. Section 108 was lifted verbatim from a bill that by virtue of its language and its character as general legislation would, if enacted, have continued indefinitely the restriction on implementing rules on R.S. 2477 rights-of-way. Also, the Senate and ultimately the Congress substituted the language of S. 1425 for the language of H.R. 3662, which like the identical language of Pub. L. No. 140–134 for fiscal year 1996, was clearly applicable only for a fiscal year. In revealing the origin of section 108, the applicable discussion in S. Rep. No. 104–319 and H. Conf. Rep. No. 104–863 contains nothing to suggest that Congress intended for the effect of the language from S. 1425, i.e., an indefinite restriction, to be different when included in the appropriation act.

Other reasons support the conclusion that the Congress intended section 108 to be permanent legislation. The language of section 108 is not a restriction on the use of appropriations. It is a substantive provision addressing when certain agency rules or regulations can take effect. Its language standing alone is permanent in nature. 36 Comp. Gen. at 436. Also, no real effect would be given to the phrase ''subsequent to the date of enactment of this Act'' if it were interpreted to only describe the time period when an authorizing ''Act of Congress'' must occur before an agency rule becomes effective. Section 108 could not have been designed to vitiate a prior Act of Congress expressly authorizing final agency rules or regulations on R.S. 2477 rights-of-way for the simple reason that there was and is none. Accordingly, any Act of Congress expressly authorizing a final rule or regulation on R.S. 2477 rights-of-way would be one enacted after enactment of the fiscal year 1997 Interior Appropriations Act. For the phrase ''subsequent to the date of enactment of this Act'' to have any effect, it must mean that the section 108 restriction on when a rule or regulation on R.S. 2477 rights-of-way takes effect is permanent law beginning with the date of enactment of the fiscal year 1997 Interior Appropriations Act.

For the reasons discussed above, we conclude that section 108 is permanent law. I trust the foregoing will be of assistance.

Sincerely yours,

ROBERT P. MURPHY,
General Counsel.

FOOTNOTES

[1] The Department of the Interior and Related Agencies Appropriations Act, 1997, is contained in section 101(d) of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104–208, 110 Stat. 3009, 3009–181(1996).

[2] Section 8 of the Mining Act of 1866 stated that ''the right of way for the construction of highways over public lands, not reserved for public uses is hereby granted.'' That section was codified as section 2477 of the Revised Statutes, and has been commonly referred to since then as ''R.S. 2477.'' Section 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94–579, 90 Stat. 2793, repealed R.S. 2477 but section 701 provided that FLPMA did not terminate any land use, including rights-of-way, existing on October 21, 1976. FLPMA did not provide a time limitation on filing claims for pre-1976 rights-of-way. The rules and regulations that are the subject of section 108 are proposals to change how R.S. 2477 claims are processed.

[3] Your letter refers to another restriction running through fiscal year 1996. Section 110 of the Department of the Interior and Related Agencies Appropriations Act, 1996, as contained in section 101(c) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104–134, 110 Stat. 1321, 1321–156, provided that none of the funds appropriated or otherwise made available by the Act could be used by the Secretary of the Interior to develop, promulgate, and implement a rule concerning R.S. 2477 rights-of-way. 110 Stat. 1321–177. This provision was in H.R. 1977, the Department of Interior and Related Agencies Appropriations Bill, 1996, when it was reported from the House Committee on Appropriations on June 30, 1995. It remained intact through the enactment of Pub. L. No. 104–134 on April 26, 1996, and is narrower in scope than the moratorium enacted by section 349 of Pub. L. No. 104–59 five months earlier.

[4] The provision for the moratorium was added to the Senate bill as a floor amendment and had a December 1, 1995 expiration date. The conference committee adopted the moratorium contained in the Senate bill and extended its application through the end of fiscal year 1996. H. Rep. Conf. Rep. No. 104–345 at 108 (Nov. 15, 1995), reprinted in 1995 U.S.C.C.A.N. 610.

TRIBUTE TO DURHAM MANUFACTURING CO.

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1997

Ms. DELAURO. Mr. Speaker, on Saturday, September 13, 1997, the Durham Manufacturing Co. in Durham, CT will be celebrating its 75th anniversary. It gives me great pleasure to rise today to congratulate Durham Manufacturing on this milestone.

There have been so many changes in the way companies and corporations function in the past several decades. For many Americans, company loyalty is a thing of the past and so many workers feel isolated on the job. Durham Manufacturing is an example of a small company that has not abandoned its workers in pursuit of a more profitable bottomline. Indeed, Durham has managed to stay competitive, and even flourish, all while ensuring that employees are treated fairly.

The history of Durham Manufacturing is the classic manufacturing success story of a small company, turning out a quality product and creating a niche for itself in the market. Situated in the predominantly rural town of Durham, Durham Manufacturing was established in 1922. The company specialized in the manufacture of tin coated iron cash boxes. Over the years, the company made changes in its product line to reflect the needs of the market. The products made at Durham Manufacturing expanded and the means of production varied.

As the needs of the country changed, Durham adapted to meet them. During World War II, Durham was the Army's largest supplier of metal first aid boxes. After the war, Durham's focus turned toward developing proprietary product lines. Today, Durham produces a top quality line of first aid boxes, storage cabinets and bins and office products.

However notable Durham Manufacturing's products are, what is more important is the feeling of family and community fostered by the company. Durham is as dedicated to its employees as it is to its customers. As a result, several members of families work together at Durham and in some cases generations of families have been employed there.

This kind of company loyalty has helped keep Durham successful. As everyone gathers to celebrate the 75th anniversary, Durham is a leader in the metal packaging industry.

I am very pleased to congratulate Durham on its 75th anniversary and I am hopeful that there will be many more.

NAFTA PARITY FOR U.S. WOOL APPAREL INDUSTRY

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1997

Mr. LAFALCE. Mr. Speaker, today, I am introducing legislation that will redress a wrong inflicted on an important segment of the U.S. textile and apparel industry during NAFTA negotiations. I believe it is important for the credibility of NAFTA to correct a serious flaw in this agreement that has adversely and unfairly affected U.S. textile and apparel producers.

During NAFTA negotiations with Canada, changes were made in the original United States-Canada Free Trade Agreement [CFTA] with respect to imports of men's and boys' wool suits, jackets and slacks—changes which both injure United States manufacturers in this sector and give no avenue for relief from this injury. My legislation will correct this mistake and return to provisions that were originally in the CFTA.

When the United States and Canada negotiated the textile and apparel provisions of the CFTA, special duty allowances were made for tailored men's and boys' wool apparel made from foreign fabric, that is, fabric not produced in either the United States or Canada. According to CFTA rules of origin, wool apparel could qualify for CFTA tariffs only if both the apparel and fabric originated in Canada or the United States. Because Canada claimed a shortage of wool fabric, a temporary Tariff Preference Level [TPL] was established for this category of imported apparel for items made from textiles that were not available in either the United States or Canada—hence, the special treatment for wool apparel made from non-United States or Canadian textiles.

At the time, Canadian manufacturers of tailored wool apparel constituted only a small portion of the Canadian apparel industry, and the TPL was intended only to ensure that they had an adequate supply of wool fabric. Moreover, Canadian negotiators refused to set sublimits for categories of wool apparel in response to United States concerns about concentration of products. Canada explicitly assured the United States that it would never allow targeting of products, and Canada would continue shipping a wide range of products. The CFTA mandated renegotiation of the Tariff Preference Level by January 1, 1998, according to changing conditions and circumstances of the market.

During NAFTA negotiations, textiles and apparel issues with Canada remained unresolved until the end of negotiations in August 1992, even though agreement with Mexico had been reached 4 months earlier. A deal was struck at the last minute that would have a major impact on U.S. industry. First, preference levels increased slightly, but a sublimit for wool suits was set at 99 percent of the TPL and effectively was not a sublimit.

Second, the CFTA monitoring and renegotiation requirements were dropped that would have made adjustments to ''reflect current conditions in the textile and apparel industries.'' Indeed, the Office of the U.S. Trade Representative has said that NAFTA negotiations constituted a fulfillment of the CFTA mandate.

The result of this retention of Tariff Preference Levels—and indeed the increase of levels rather than a lowering—has resulted in an unacceptable surge in imports of this product from Canada. United States industry believes this provision has been used by Canadian producers for ''wholesale circumvention of the rule of origin''—and the rule of origin is the foundation of a free trade agreement. The legislation I am introducing today would restore the mandate to monitor and renegotiate the schedule of Tariff Preference Levels by January 1, 1998.

Since 1988, the surge of tailored wool apparel imports from Canada has devastated the United States industry. U.S. production of men's and boys' wool suits has dropped more than 40 percent, and employment has fallen almost 50 percent. At the time of CFTA negotiations, United States industry voiced concern about establishing Tariff Preference Levels for goods made from nonoriginating fabric, but Canada assured United States negotiators that preexisting trade patterns would not be altered. Clearly, this has not happened.

Yet, U.S. industry does not normal access to safeguard actions as provided in other sections of NAFTA which would allow it to petition the U.S. Government for temporary relief from injurious imports. Instead, the wool apparel industry was excluded from NAFTA safeguard action because CFTA provisions were retained instead that reserved the Parties rights under GATT—but did not address quantitative restrictions. This reliance on GATT—now the WTO—only for the U.S. textile and apparel industry in turn imposes limitations on the use of safeguards because of U.S. legislation recognizing the phasehout of the Multifiber Agreement. The effect gives the U.S. wool apparel industry no recourse to safeguard action—a situation that no U.S. trade agreement has allowed in the past.

Even more glaring in the NAFTA is the specific omission of allowed consultations between the United States and Canada for surges of United States imports for wool products entering the United States under quantitative restrictions. The legislation I am introducing would allow the U.S. industry for tailored wool apparel to have normal access to safeguard provisions under the NAFTA.

Mr. Speaker, I believe Congress must take corrective action when it becomes aware that a major piece of legislation unfairly excludes and injures a sector of U.S. industry, especially when this effect was not intended. We owe it to U.S. workers in the tailored wool apparel sector to restore legislation to its original intent and to provide for a normal avenue under U.S. trade law to redress injury from imports.

The text of the bill follows:

H.R.—

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

SECTION 1. RENEGOTIATION OF QUANTITIES OF WOOL ARTICLES ELIGIBLE FOR TARIFF PREFERENCE LEVELS.

By not later than January 1, 1998, the President shall take the necessary steps to renegotiate with Canada the annual quantity limitations of tailored wool apparel assembled in Canada from fabric or yarn produced or obtained in a country other than a NAFTA country, that is eligible for preferential tariff treatment under Appendix 6.B.1 to Annex 300–B of the NAFTA, to reflect current conditions in the wool textile and apparel industry located in Canada and the United States, including the ability of tailored wool apparel producers to obtain supplies of wool fabric within the territories of Canada and the United States.

SEC. 2. AVAILABILITY OF SAFEGUARD PROCEDURES.

For purposes of part 1 of subtitle A of title III of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3351) and following)—

(1) the term ''Canadian article'' shall be deemed to include tailored wool apparel assembled in Canada from fabric or yarn produced or obtained in a country other than a NAFTA country, that is eligible for preferential tariff treatment under Appendix 6.B.1 to Annex 300–B of the NAFTA; and

(2) subsection (d)(2) of section 302 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3352(d)(2)) shall not apply to articles described in paragraph (1).

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term ''NAFTA'' means the North American Free Trade Agreement approved by the Congress under section 101(a) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3311(a)); and

(2) the term ''NAFTA country'' has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3301(2)).

A TRIBUTE TO THE AMERICAN YOUTH SOCCER ORGANIZATION

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1997

Mr. SHERMAN. Mr. Speaker, I rise today to commend the American Youth Soccer program for its contributions toward promoting athletic activities among children in our community. It is a great honor to rise on behalf of all of those involved in youth soccer.

The American Youth Soccer Organization is an extremely important nonprofit corporation dedicated to promoting youth soccer in our community. This soccer program keeps our kids off the streets, promotes their self-esteem, and puts our children's minds and bodies to work. Both our community and our children profit from this league.

I believe the American Youth Soccer Organization's motto ''everyone plays'' describes the nurturing environment that this organization strives to provide our children on the soccer field. I am proud to represent and honor an organization that encourages all of our