

Public Law 108–77
108th Congress

An Act

To implement the United States-Chile Free Trade Agreement.

Sept. 3, 2003

[H.R. 2738]

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States-Chile Free Trade Agreement Implementation Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- 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.

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- 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.

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SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States and the Republic of Chile entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002;

(2) to strengthen and develop economic relations between the United States and Chile for their mutual benefit;

(3) to establish free trade between the 2 nations through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of such Agreement.

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SEC. 3. DEFINITIONS.

In this Act:

(1) **AGREEMENT.**—The term “Agreement” means the United States-Chile Free Trade Agreement approved by the Congress under section 101(a)(1).

(2) **HTS.**—The term “HTS” means the Harmonized Tariff Schedule of the United States.

(3) **TEXTILE OR APPAREL GOOD.**—The term “textile or apparel good” means a good 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)).

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

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

(a) **APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.**—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves—

(1) the United States-Chile Free Trade Agreement entered into on June 6, 2003, with the Government of Chile and submitted to the Congress on July 15, 2003; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on July 15, 2003.

(b) **CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.**—At such time as the President determines that Chile has taken

measures necessary to bring it into compliance with the provisions of the Agreement that take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Chile providing for the entry into force, on or after January 1, 2004, of the Agreement for the United States.

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

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(a) RELATIONSHIP TO UNITED STATES LAW.—

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

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

(A) to amend or modify any law of the United States,
or

(B) to limit any authority conferred under any law of the United States,
unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

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

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

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

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

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

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

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

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

President.
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(a) CONSULTATION AND LAYOVER REQUIREMENTS.—If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

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

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the United States International Trade Commission;

Reports.

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

(A) the action proposed to be proclaimed and the reasons therefor; and

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

(3) a period of 60 calendar days, beginning on 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).

Federal Register,
publication.

(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.

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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 is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

(2) **WAIVER OF 15-DAY RESTRICTION.**—The 15-day restriction contained in section 103(b) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

Deadlines.

(b) **INITIAL REGULATIONS.**—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action referred to in section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date of entry into force of the Agreement. In the case of any implementing action that takes effect on a date after the date of entry into force of the Agreement, initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

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SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) **ESTABLISHMENT OR DESIGNATION OF OFFICE.**—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 22 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for each fiscal year after fiscal year 2003 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 22 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

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

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

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

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(a) **EFFECTIVE DATES.**—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

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

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

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

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

(1) **PROCLAMATION AUTHORITY.**—The President may proclaim—

- (A) such modifications or continuation of any duty,
- (B) such continuation of duty-free or excise treatment,

or

- (C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 3.3, 3.7, 3.9, article 3.20 (8), (9), (10), and (11), and Annex 3.3 of the Agreement.

(2) **EFFECT ON CHILEAN GSP STATUS.**—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of Chile as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date of entry into force of the Agreement.

President.
Termination
date.

(b) **OTHER TARIFF MODIFICATIONS.**—Subject to the consultation and layover provisions of section 103(a), the President may proclaim—

- (1) such modifications or continuation of any duty,
- (2) such modifications as the United States may agree to with Chile regarding the staging of any duty treatment set forth in Annex 3.3 of the Agreement,
- (3) such continuation of duty-free or excise treatment,
- (4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Chile provided for by the Agreement.

(c) ADDITIONAL TARIFFS ON AGRICULTURAL SAFEGUARD GOODS.—

(1) IN GENERAL.—In addition to any duty proclaimed under subsection (a) or (b), and subject to paragraphs (3) through (5), the Secretary of the Treasury shall assess a duty, in the amount prescribed under paragraph (2), on an agricultural safeguard good if the Secretary of the Treasury determines that the unit import price of the good when it enters the United States, determined on an F.O.B. basis, is less than the trigger price indicated for that good in Annex 3.18 of the Agreement or any amendment thereto.

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

(A) If the difference between the unit import price and the trigger price is less than, or equal to, 10 percent of the trigger price, no additional duty shall be imposed.

(B) If the difference between the unit import price and the trigger price is greater than 10 percent, but less than or equal to 40 percent, of the trigger price, the additional duty shall be equal to 30 percent of the difference 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.

(C) If the difference between the unit import price and the trigger price is greater than 40 percent, but less than or equal to 60 percent, of the trigger price, the additional duty shall be equal to 50 percent of the difference 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.

(D) If the difference between the unit import price and the trigger price is greater than 60 percent, but less than or equal to 75 percent, of the trigger price, the additional duty shall be equal to 70 percent of the difference 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.

(E) If the difference between the unit import price and the trigger price is greater than 75 percent of the trigger price, the additional duty shall be equal to 100 percent of the difference 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.

Applicability.

(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. Applicability.

(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 provide to the Government of Chile data supporting the assessment of additional duties. Deadline.

(7) **MODIFICATION OF TRIGGER PRICES.**—Not later than 60 calendar days before agreeing with the Government of Chile pursuant to article 3.18(2)(b) of the Agreement on a modification to a trigger price for a good listed in Annex 3.18 of the Agreement, the President shall notify the Committees on Ways and Means and Agriculture of the House of Representatives and the Committees on Finance and Agriculture of the Senate of the proposed modification and the reasons therefor. Deadline.
President.

(8) **DEFINITIONS.**—In this subsection:

(A) **AGRICULTURAL SAFEGUARD GOOD.**—The term “agricultural safeguard good” means a good—

(i) that qualifies as an originating good under section 202;

(ii) that is included in the United States Agricultural Safeguard Product List set forth in Annex 3.18 of the Agreement; and

(iii) for which a claim for preferential tariff treatment under the Agreement has been made.

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

(C) **UNIT IMPORT PRICE.**—The term “unit import price” means the price expressed in dollars per kilogram.

(d) **CONVERSION TO AD VALOREM RATES.**—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 3.3 of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. RULES OF ORIGIN.

(a) **ORIGINATING GOODS.**—

(1) **IN GENERAL.**—For purposes of this Act and for purposes of implementing the tariff treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—

(A) the good is wholly obtained or produced entirely in the territory of Chile, the United States, or both;

(B) the good—

(i) is produced entirely in the territory of Chile, the United States, or both, and

(I) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1 of the Agreement, or

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- (II) the good otherwise satisfies any applicable regional value-content or other requirements specified in Annex 4.1 of the Agreement; and
 - (ii) satisfies all other applicable requirements of this section; or
 - (C) the good is produced entirely in the territory of Chile, the United States, or both, exclusively from materials described in subparagraph (A) or (B).
- (2) SIMPLE COMBINATION OR MERE DILUTION.—A good shall not be considered to be an originating good and a material shall not be considered to be an originating material by virtue of having undergone—
 - (A) simple combining or packaging operations; or
 - (B) mere dilution with water or another substance that does not materially alter the characteristics of the good or material.
- (b) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—
 - (1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 4.1 of the Agreement is an originating good if—
 - (A) the value of all nonoriginating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;
 - (B) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement; and
 - (C) the good meets all other applicable requirements of this section.
 - (2) EXCEPTIONS.—Paragraph (1) does not apply to the following:
 - (A) A nonoriginating material provided for in chapter 4 of the HTS, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90 of the HTS, that is used in the production of a good provided for in chapter 4 of the HTS.
 - (B) A nonoriginating material provided for in chapter 4 of the HTS, or nonoriginating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the HTS, that are used in the production of the following goods:
 - (i) Infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the HTS.
 - (ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the HTS.
 - (iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90 of the HTS.
 - (iv) Goods provided for in heading 2105 of the HTS.
 - (v) Beverages containing milk provided for in subheading 2202.90 of the HTS.

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the HTS.

(C) A nonoriginating material provided for in heading 0805 of the HTS, or any of subheadings 2009.11.00 through 2009.39 of the HTS, that is used in the production of a good provided for in any of subheadings 2009.11.00 through 2009.39 of the HTS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90 of the HTS.

(D) A nonoriginating material provided for in chapter 15 of the HTS that is used in the production of a good provided for in any of headings 1501.00.00 through 1508, 1512, 1514, and 1515 of the HTS.

(E) A nonoriginating material provided for in heading 1701 of the HTS that is used in the production of a good provided for in any of headings 1701 through 1703 of the HTS.

(F) A nonoriginating material provided for in chapter 17 of the HTS or in heading 1805.00.00 of the HTS that is used in the production of a good provided for in subheading 1806.10 of the HTS.

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

(H) A nonoriginating material used in the production of a good provided for in any of chapters 1 through 21 of the HTS, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

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

(A) IN GENERAL.—Except as provided in subparagraph (B), a good provided for in any of chapters 50 through 63 of the HTS that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4.1 of the Agreement, shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

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

(c) ACCUMULATION.—

(1) ORIGINATING GOODS INCORPORATED IN GOODS OF OTHER COUNTRY.—Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of Chile, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of subsection (a) and all other applicable requirements of this section.

(d) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—For purposes of subsection (a)(2), the regional value-content of a good referred to in Annex 4.1 of the Agreement shall be calculated, at the choice of the person claiming preferential tariff treatment for the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3), unless otherwise provided in Annex 4.1 of the Agreement.

(2) BUILD-DOWN METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-down method:

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

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

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

(ii) The term “AV” means the adjusted value.

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

(3) BUILD-UP METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

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

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

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

(ii) The term “AV” means the adjusted value.

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

(e) VALUE OF MATERIALS.—

(1) IN GENERAL.—For purposes of calculating the regional value-content of a good under subsection (d), and for purposes of applying the de minimis rules under subsection (b), the value of a material is—

(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material with respect to that importation;

(B) in the case of a material acquired in the territory in which the good is produced, except for a material to which subparagraph (C) applies, the producer’s price actually paid or payable for the material;

(C) in the case of a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the sum of—

(i) all expenses incurred in the growth, production, or manufacture of the material, including general expenses; and

(ii) an amount for profit; or

(D) in the case of a material that is self-produced, the sum of—

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit.

(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS.—

(A) ORIGINATING MATERIALS.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Chile, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproduct.

(B) NONORIGINATING MATERIALS.—The following expenses, if included in the value of a nonoriginating material calculated under paragraph (1), may be deducted from the value of the nonoriginating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of Chile, the United States, or both, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(iv) The cost of originating materials used in the production of the nonoriginating material in the territory of Chile or the United States.

(f) ACCESSORIES, SPARE PARTS, OR TOOLS.—Accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools shall be regarded as a material used in the production of the good, if—

(1) the accessories, spare parts, or tools are classified with and not invoiced separately from the good; and

(2) the quantities and value of the accessories, spare parts, or tools are customary for the good.

(g) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TREATMENT.—A person claiming preferential tariff treatment for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term “inventory management method” means—

- (i) averaging;
- (ii) “last-in, first-out”;
- (iii) “first-in, first-out”; or
- (iv) any other method—

(I) recognized in the generally accepted accounting principles of the country in which the production is performed (whether Chile or the United States); or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for particular fungible goods or materials shall continue to use that method for those goods or materials throughout the fiscal year of that person.

(h) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(i) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers for shipment shall be disregarded in determining whether—

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

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

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

(k) TRANSIT AND TRANSSHIPMENT.—A good that has undergone production necessary to qualify as an originating good under subsection (a) shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Chile or the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(l) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set forth in Annex 4.1 of the Agreement, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the Harmonized System shall not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating

goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

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

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

(2) Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether Chile or the United States). Records.

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term “adjusted value” means the value determined in accordance with articles 1 through 8, article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, except that such value may be adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise 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;

(C) live animals born and raised in the territory of Chile, the United States, or both;

(D) goods obtained from hunting, trapping, or fishing in the territory of Chile, the United States, or both;

(E) goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with Chile or the United States and flying the flag of that country;

(F) goods produced on board factory ships from the goods referred to in subparagraph (E), if such factory ships are registered or recorded with Chile or the United States and fly the flag of that country;

(G) goods taken by Chile or the United States or a person of Chile or the United States from the seabed or beneath the seabed outside territorial waters, if Chile or the United States has rights to exploit such seabed;

(H) goods taken from outer space, if the goods are obtained by Chile or the United States or a person of

Chile or the United States and not processed in the territory of a country other than Chile or the United States;

(I) waste and scrap derived from—

(i) production in the territory of Chile, the United States, or both; or

(ii) used goods collected in the territory of Chile, the United States, or both, if such goods are fit only for the recovery of raw materials;

(J) recovered goods derived in the territory of Chile or the United States from used goods, and used in the territory of that country in the production of remanufactured goods; and

(K) goods produced in the territory of Chile, the United States, or both, exclusively—

(i) from goods referred to in any of subparagraphs

(A) through (I), or

(ii) from the derivatives of goods referred to in clause (i),

at any stage of production.

(5) HARMONIZED SYSTEM.—The term “Harmonized System” means the Harmonized Commodity Description and Coding System.

(6) INDIRECT MATERIAL.—The term “indirect material” means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment or buildings;

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

(7) MATERIAL.—The term “material” means a good that is used in the production of another good, including a part, ingredient, or indirect material.

(8) MATERIAL THAT IS SELF-PRODUCED.—The term “material that is self-produced” means a material that is an originating good produced by a producer of a good and used in the production of that good.

(9) NONORIGINATING GOOD OR NONORIGINATING MATERIAL.—The terms “nonoriginating good” and “nonoriginating material” mean a good or material, as the case may be, that does not qualify as an originating good under this section.

(10) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—The term “packing materials and containers for shipment”

means the goods used to protect a good during its transportation, and does not include the packaging materials and containers in which a good is packaged for retail sale.

(11) PREFERENTIAL TARIFF TREATMENT.—The term “preferential tariff treatment” means the customs duty rate that is applicable to an originating good pursuant to chapter 3 of the Agreement.

(12) PRODUCER.—The term “producer” means a person who engages in the production of a good in the territory of Chile or the United States.

(13) PRODUCTION.—The term “production” means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(14) RECOVERED GOODS.—

(A) IN GENERAL.—The term “recovered goods” means materials in the form of individual parts that are the result of—

(i) the complete disassembly of used goods into individual parts; and

(ii) the cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the processes described in subparagraph (B), in order for such parts to be assembled with other parts, including other parts that have undergone the processes described in this paragraph, in the production of a remanufactured good.

(B) PROCESSES.—The processes referred to in subparagraph (A)(ii) are welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding.

(15) REMANUFACTURED GOOD.—The term “remanufactured good” means an industrial good assembled in the territory of Chile or the United States, that is listed in Annex 4.18 of the Agreement, and—

(A) is entirely or partially comprised of recovered goods;

(B) has the same life expectancy and meets the same performance standards as a new good; and

(C) enjoys the same factory warranty as such a new good.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

(A) the provisions set out in Annex 4.1 of the Agreement; and

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

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and lay-over provisions of section 103(a), the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63 of the HTS, as included in Annex 4.1 of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and lay-over provisions of section 103(a), the President may proclaim—

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) that are necessary to implement an agreement with Chile pursuant to article 3.20(5) of the Agreement; and

(ii) before the 1st anniversary of the date of the enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 4.1 of the Agreement.

19 USC 3805
note.

SEC. 203. DRAWBACK.

(a) **DEFINITION OF A GOOD SUBJECT TO CHILE FTA DRAWBACK.**—For purposes of this Act and the amendments made by subsection (b), the term “good subject to Chile FTA drawback” means any imported good other than the following:

(1) A good entered under bond for transportation and exportation to Chile.

(2)(A) A good exported to Chile in the same condition as when imported into the United States.

(B) For purposes of subparagraph (A)—

(i) processes such as testing, cleaning, repacking, inspecting, sorting, or marking a good, or preserving it in its same condition, shall not be considered to change the condition of the good; and

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

(3) A good—

(A) that is—

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

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

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

(B) that is delivered—

(i) to a duty-free shop;

(ii) for ship’s stores or supplies for a ship or aircraft; or

(iii) for use in a project undertaken jointly by the United States and Chile and destined to become the property of the United States.

(4) A good exported to Chile for which a refund of customs duties is granted by reason of—

(A) the failure of the good to conform to sample or specification; or

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

(5) A good that qualifies under the rules of origin set out in section 202 that is—

(A) exported to Chile;

(B) used as a material in the production of another good that is exported to Chile; or

(C) substituted for by a good of the same kind and quality that is used as a material in the production of another good that is exported to Chile.

(b) CONSEQUENTIAL AMENDMENTS.—

(1) BONDED MANUFACTURING WAREHOUSES.—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 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 American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

“(i) the total amount of customs duties owed on the materials on importation into the United States, or

“(ii) the total amount of customs duties paid to the NAFTA country on the product, and

“(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 American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

“(i) the total amount of customs duties owed on the materials on importation into the United States, or

“(ii) the total amount of customs duties paid to the NAFTA country on the product, and

“(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”; and

(C) in subsection (d), in the matter preceding paragraph (1), by striking “except that” and all that follows through the end of paragraph (2) and inserting the following: “except that—

“(1) in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback,

as defined in section 203(a) of that Act, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 508(b)(2)(B)) in an amount not to exceed the lesser of—

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

“(B) the total amount of customs duties paid to the NAFTA country on the product; and

“(2) in the case of a withdrawal for exportation 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, charges against the bond shall be paid before the 61st day after the date of exportation, and the bond shall be credited in an amount equal to—

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

“(B) 75 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2012,

“(C) 50 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2013, and

“(D) 25 percent of the total amount of customs duties paid or owed on the materials on importation into the United States during the 1-year period beginning on January 1, 2014.”.

(3) DRAWDRAW.—Section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) is amended—

(A) in paragraph (4) of subsection (j)—

(i) by striking “(4)” and inserting “(4)(A)”; and

(ii) by adding at the end the following new subparagraph:

“(B) Beginning on January 1, 2015, the exportation to Chile of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, shall not constitute an exportation for purposes of paragraph (2). The preceding sentence shall not be construed to permit the substitution of unused drawback under paragraph (2) of this subsection with respect to merchandise described in paragraph (2) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.”;

(B) in subsection (n)—

(i) by striking “(n)” and inserting the following:

“(n) REFUNDS, WAIVERS, OR REDUCTIONS UNDER CERTAIN FREE TRADE AGREEMENTS.—”;

(ii) in paragraph (1)—

Effective date.

(I) by striking “; and” at the end of subparagraph (B);

(II) by striking the period at the end of subparagraph (C) and inserting “; and”; and

(III) by adding at the end the following new subparagraph:

“(D) the term ‘good subject to Chile FTA drawback’ has the meaning given that term in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.”; and

(iii) by adding the following new paragraph at the end:

“(4)(A) For purposes of subsections (a), (b), (f), (h), (j)(2), (p), and (q), if an article that is exported to Chile is a good subject to Chile FTA drawback, no customs duties on the good may be refunded, waived, or reduced, except as provided in subparagraph (B).

“(B) The customs duties referred to in subparagraph (A) may be refunded, 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.”; and

(C) in subsection (o)—

(i) by striking “(o)” and inserting the following:

“(o) SPECIAL RULES FOR CERTAIN VESSELS AND IMPORTED MATERIALS.—”; and

(ii) by adding at the end the following new paragraphs:

“(3) For purposes of subsection (g), if—

“(A) a vessel is built for the account and ownership of a resident of Chile or the Government of Chile, and

“(B) imported materials that are used in the construction and equipment of the vessel are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, no customs duties on such materials may be refunded, waived, or reduced, except as provided in paragraph (4).

“(4) The customs duties referred to in paragraph (3) may be refunded, waived or reduced by—

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

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

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

“(D) 25 percent during the 1-year period beginning on January 1, 2014.”.

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

(A) in paragraph (3), by striking “to a NAFTA country” and inserting “to Chile, to a NAFTA country,”;

(B) by striking “and” at the end of paragraph (4)(B);

(C) by striking the period at the end of paragraph (5) and inserting “; and”; and

(D) by inserting after paragraph (5) the following:

“(6)(A) without payment of duties for exportation to Chile, if the merchandise is of a kind described in any of paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act; and

“(B) for exportation to Chile if the merchandise consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, except that—

“(i) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to, or deductions from, the final appraised value as may be necessary by reason of a change in condition, and

“(ii) duty shall be paid on the merchandise before the 61st day after the date of exportation, except that such 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.”.

(5) FOREIGN TRADE ZONES.—Section 3(a) of the Act of June 18, 1934 (commonly known as the “Foreign Trade Zones Act”; 19 U.S.C. 81c(a)) is amended by striking the end period and inserting the following: “: *Provided further*, That no merchandise that consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to Chile without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that the customs 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.”.

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

19 USC 3805
note.

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.”.

19 USC 3805
note.

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

(2) by adding at the end the following new subsection:

“(g) **FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES-CHILE FREE TRADE AGREEMENT.**—

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

“(2) **IMMEDIATE AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.**—No penalty shall be imposed under this subsection if, immediately after an exporter or producer that issued a Chile FTA Certificate of Origin has reason to believe that such certificate contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certificate was issued.

“(3) **EXCEPTION.**—A person may not be considered to have violated paragraph (1) if—

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

Applicability.

“(B) the person immediately and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certificate.”.

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

“(g) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER UNITED STATES-CHILE FREE TRADE AGREEMENT.—If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may deny preferential tariff treatment under the United States-Chile Free Trade Agreement to entries of identical goods imported by that person until the person establishes to the satisfaction of the Bureau of Customs and Border Protection that representations of that person are in conformity with such section 202.”.

SEC. 206. RELIQUIDATION OF ENTRIES.

19 USC 3805
note.

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

(1) by striking “(d)” and inserting the following:

“(d) GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.—”;

(2) in the matter preceding paragraph (1), by inserting “or section 202 of the United States-Chile Free Trade Agreement Implementation Act” after “Act”;

(3) in paragraph (1), by striking “those” and inserting “the applicable”; and

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

SEC. 207. RECORDKEEPING REQUIREMENTS.

19 USC 3805
note.

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

(1) by striking the heading of subsection (b) and inserting the following: “EXPORTATIONS TO NAFTA COUNTRIES.—”; and

(2) by adding at the end the following:

“(f) CERTIFICATES OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-CHILE FREE TRADE AGREEMENT.—

“(1) DEFINITIONS.—In this subsection:

“(A) RECORDS AND SUPPORTING DOCUMENTS.—The term ‘records and supporting documents’ means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

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

“(ii) if applicable, the purchase, cost, and value of, and payment for, all materials, including recovered goods, used in the production of the good; and

“(iii) if applicable, the production of the good in the form in which it was exported.

“(B) CHILE FTA CERTIFICATE OF ORIGIN.—The term ‘Chile FTA Certificate of Origin’ means the certification, established under article 4.13 of the United States-Chile

Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

“(2) EXPORTS TO CHILE.—Any person who completes and issues a Chile FTA Certificate of Origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the Certificate or copies thereof).

“(3) RETENTION PERIOD.—Records and supporting documents shall be kept by the person who issued a Chile FTA Certificate of Origin for at least 5 years after the date on which the certificate was issued.

“(g) PENALTIES.—Any person who fails to retain records and supporting documents required by subsection (f) or the regulations issued to implement that subsection shall be liable for the greater of—

“(1) a civil penalty not to exceed \$10,000; or

“(2) the general record keeping penalty that applies under the customs laws of the United States.”.

19 USC 3805
note.

SEC. 208. ENFORCEMENT OF TEXTILE AND APPAREL RULES OF ORIGIN.

(a) ACTION DURING VERIFICATION.—If the Secretary of the Treasury requests the Government of Chile to conduct a verification pursuant to article 3.21 of the Agreement for purposes of determining that—

(1) an exporter or producer in Chile is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, or

(2) claims that textile or apparel goods exported or produced by such exporter or producer—

(A) qualify as originating goods under section 202 of this Act, or

(B) are goods of Chile,
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.

19 USC 3805
note.

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.

19 USC 3805
note.

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.

19 USC 3805
note.

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.

19 USC 3805
note.

(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 may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any

Records.

petition filed under this subsection to the United States Trade Representative.

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

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

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

(2) Subsection (c).

(3) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Chilean article if, after the date that the Agreement enters into force, import relief has been provided with respect to that Chilean article under this subtitle, or if, at the time the petition is filed, the article is subject to import relief under chapter 1 of title II of the Trade Act of 1974.

19 USC 3805
note.
Deadline.

SEC. 312. COMMISSION ACTION ON PETITION.

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

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

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the determination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to the relief described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required

under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) **REPORT TO PRESIDENT.**—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

Deadline.

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) **PUBLIC NOTICE.**—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

Federal Register,
publication.

SEC. 313. PROVISION OF RELIEF.

(a) **IN GENERAL.**—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

19 USC 3805
note.
Deadline.
President.

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

(c) **NATURE OF RELIEF.**—

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

(A) The suspension of any further reduction provided for under Annex 3.3 of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

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

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) **PROGRESSIVE LIBERALIZATION.**—If the period for which import relief is provided under this section is greater than

1 year, the President shall provide for the progressive liberalization (described in article 8.2(2) of the Agreement) of such relief at regular intervals during the period of its application.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), the import relief that the President is authorized to provide under this section, including any extensions thereof, may not, in the aggregate, exceed 3 years.

(2) EXTENSION.—

(A) IN GENERAL.—If the initial period for any import relief provided under this section is less than 3 years, the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section, subject to the limitation under paragraph (1), if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment; and

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

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned, filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article—

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

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

Notice.
Federal Register,
publication.

Reports.
Deadline.

(A) the applicable rate of duty for that article set out in the Schedule of the United States in Annex 3.3 of the Agreement; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the United States Schedule in Annex 3.3 of the Agreement for the elimination of the tariff.

(f) **ARTICLES EXEMPT FROM RELIEF.**—No import relief may be provided under this section on any article subject to import relief under chapter 1 of title II of the Trade Act of 1974.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

19 USC 3805
note.

(a) **GENERAL RULE.**—No import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force.

(b) **EXCEPTION.**—If an article for which relief is provided under this subtitle is an article for which the period for tariff elimination, set out in the Schedule of the United States to Annex 3.3 of the Agreement, is 12 years, no relief under this subtitle may be provided for that article after the date that is 12 years after the date on which the Agreement enters into force.

SEC. 315. COMPENSATION AUTHORITY.

19 USC 3805
note.

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

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

19 USC 3805
note.

Section 202(a)(8) of the Trade Act of 1974 (19 U.S.C. 2252(a)(8)) is amended in the first sentence—

(1) by striking “and”; and

(2) by inserting before the period at the end “, and title III of the United States-Chile Free Trade Agreement Implementation Act”.

Subtitle B—Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

President.
19 USC 3805
note.

(a) **IN GENERAL.**—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) **PUBLICATION OF REQUEST.**—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include the request and the dates by which comments and rebuttals must be received.

Federal Register,
publication.
Notice.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

President.
19 USC 3805
note.

(a) **DETERMINATION.**—

(1) **IN GENERAL.**—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the elimination of a duty under the Agreement, a Chilean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) **SERIOUS DAMAGE.**—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(b) **PROVISION OF RELIEF.**—

(1) **IN GENERAL.**—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as provided in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry.

(2) **NATURE OF RELIEF.**—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

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

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

19 USC 3805
note.

SEC. 323. PERIOD OF RELIEF.

(a) **IN GENERAL.**—The import relief that the President is authorized to provide under section 322, including any extensions thereof, may not, in the aggregate, exceed 3 years.

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

(1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment; and

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

19 USC 3805
note.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if import relief previously has been provided under this subtitle with respect to that article.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.19 USC 3805
note.

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

SEC. 326. TERMINATION OF RELIEF AUTHORITY.19 USC 3805
note.

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

SEC. 327. COMPENSATION AUTHORITY.19 USC 3805
note.

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

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.19 USC 3805
note.

The President may not release information which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent business confidential information is provided, a nonconfidential version of the information shall also be provided, in which the business confidential information is summarized or, if necessary, deleted.

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS

SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.19 USC 3805
note.

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.19 USC 3805
note.**(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 and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A), who is engaged in a specialty occupation described in section 214(i)(3), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State

that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1), or (c)".

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

(A) in subsection (i)—

(i) in paragraph (1), by striking "For purposes" and inserting "Except as provided in paragraph (3), for purposes"; and

(ii) by adding at the end the following:

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

"(A) theoretical and practical application of a body of specialized knowledge; and

"(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."; and

(B) in subsection (g), by adding at the end the following:

"(8)(A) The agreement referred to in section 101(a)(15)(H)(i)(b1) is the United States-Chile Free Trade Agreement.

"(B)(i) The Secretary of Homeland Security shall establish annual numerical limitations on approvals of initial applications by aliens for admission under section 101(a)(15)(H)(i)(b1).

"(ii) The annual numerical limitations described in clause (i) shall not exceed 1,400 for nationals of Chile for any fiscal year. For purposes of this clause, the term 'national' has the meaning given such term in article 14.9 of the United States-Chile Free Trade Agreement.

"(iii) The annual numerical limitations described in clause (i) shall only apply to principal aliens and not to the spouses or children of such aliens.

"(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under section 101(a)(15)(H)(i)(b) may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

"(C) The period of authorized admission as a nonimmigrant under section 101(a)(15)(H)(i)(b1) shall be 1 year, and may be extended, but only in 1-year increments. After every second extension, the next following extension shall not be granted unless the Secretary of Labor had determined and certified to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) for the purpose of permitting the nonimmigrant to obtain such extension.

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

(b) LABOR ATTESTATIONS.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

Aliens.

(1) by redesignating the subsection (p) added by section 1505(f) of Public Law 106-386 (114 Stat. 1526) as subsection (s); and

(2) by adding at the end the following:

“(t)(1) No alien may be admitted or provided status as a non-immigrant under section 101(a)(15)(H)(i)(b1) in an occupational classification unless the employer has filed with the Secretary of Labor an attestation stating the following:

“(A) The employer—

“(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status under section 101(a)(15)(H)(i)(b1) wages that are at least—

“(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

“(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the attestation; and

“(ii) will provide working conditions for such a non-immigrant that will not adversely affect the working conditions of workers similarly employed.

“(B) There is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.

“(C) The employer, at the time of filing the attestation—

“(i) has provided notice of the filing under this paragraph to the bargaining representative (if any) of the employer’s employees in the occupational classification and area for which aliens are sought; or

“(ii) if there is no such bargaining representative, has provided notice of filing in the occupational classification through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the occupational classification for which nonimmigrants under section 101(a)(15)(H)(i)(b1) are sought.

“(D) A specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

“(2)(A) The employer shall make available for public examination, within one working day after the date on which an attestation under this subsection is filed, at the employer’s principal place of business or worksite, a copy of each such attestation (and such accompanying documents as are necessary).

Public inspection.
Deadline.

“(B)(i) The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the attestations filed under this subsection. Such list shall include, with respect to each attestation, the wage rate, number of aliens sought, period of intended employment, and date of need.

Records.

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

Public inspection.

“(C) The Secretary of Labor shall review an attestation filed under this subsection only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that an attestation is incomplete or obviously inaccurate, the Secretary of Labor shall provide the certification described in section 101(a)(15)(H)(i)(b1) within 7 days of the date of the filing of the attestation.

“(3)(A) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the failure of an employer to meet a condition specified in an attestation submitted under this subsection or misrepresentation by the employer of material facts in such an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

Deadlines.

“(B) Under the process described in subparagraph (A), the Secretary of Labor shall provide, within 30 days after the date a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

Notice.

“(C)(i) If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B), a substantial failure to meet a condition of paragraph (1)(C) or (1)(D), or a misrepresentation of material fact in an attestation—

Notification.

“(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), or 101(a)(15)(H)(i)(b1) during a period of at least 1 year for aliens to be employed by the employer.

“(ii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1), a willful misrepresentation of material fact in an attestation, or a violation of clause (iv)—

Notification.

“(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not

to exceed \$5,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), or 101(a)(15)(H)(i)(b1) during a period of at least 2 years for aliens to be employed by the employer.

“(iii) If the Secretary of Labor finds, after notice and opportunity for a hearing, a willful failure to meet a condition of paragraph (1) or a willful misrepresentation of material fact in an attestation, in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition or application supported by the attestation—

“(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$35,000 per violation) as the Secretary of Labor determines to be appropriate; and

Notification.

“(II) the Secretary of State or the Secretary of Homeland Security, as appropriate, shall not approve petitions or applications filed with respect to that employer under section 204, 214(c), or 101(a)(15)(H)(i)(b1) during a period of at least 3 years for aliens to be employed by the employer.

“(iv) It is a violation of this clause for an employer who has filed an attestation under this subsection to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this clause, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer’s compliance with the requirements of this subsection or any rule or regulation pertaining to this subsection.

“(v) The Secretary of Labor and the Secretary of Homeland Security shall devise a process under which a nonimmigrant under section 101(a)(15)(H)(i)(b1) who files a complaint regarding a violation of clause (iv) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

“(vi)(I) It is a violation of this clause for an employer who has filed an attestation under this subsection to require a nonimmigrant under section 101(a)(15)(H)(i)(b1) to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer. The Secretary of Labor shall determine whether a required payment is a penalty (and not liquidated damages) pursuant to relevant State law.

“(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty

of \$1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

“(vii)(I) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) designated as a full-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status due to a decision by the employer (based on factors such as lack of work), or due to the nonimmigrant’s lack of a permit or license, to fail to pay the nonimmigrant full-time wages in accordance with paragraph (1)(A) for all such non-productive time.

“(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

Applicability.

“(III) In the case of a nonimmigrant under section 101(a)(15)(H)(i)(b1) who has not yet entered into employment with an employer who has had approved an attestation under this subsection with respect to the nonimmigrant, the provisions of subclauses (I) and (II) shall apply to the employer beginning 30 days after the date the nonimmigrant first is admitted into the United States, or 60 days after the date the nonimmigrant becomes eligible to work for the employer in the case of a nonimmigrant who is present in the United States on the date of the approval of the attestation filed with the Secretary of Labor.

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

“(V) This clause shall not be construed as prohibiting an employer that is a school or other educational institution from applying to a nonimmigrant under section 101(a)(15)(H)(i)(b1) an established salary practice of the employer, under which the employer pays to nonimmigrants under section 101(a)(15)(H)(i)(b1) and United States workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, if—

“(aa) the nonimmigrant agrees to the compressed annual salary payments prior to the commencement of the employment; and

“(bb) the application of the salary practice to the nonimmigrant does not otherwise cause the nonimmigrant to violate any condition of the nonimmigrant’s authorization under this Act to remain in the United States.

“(VI) This clause shall not be construed as superseding clause (viii).

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

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

“(E) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations for a period of up to 5 years, beginning on the date on which the employer is found by the Secretary of Labor to have committed a willful failure to meet a condition of paragraph (1) or to have made a willful misrepresentation of material fact in an attestation. The authority of the Secretary of Labor under this subparagraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).

“(F) Nothing in this subsection shall be construed as superseding or preempting any other enforcement-related authority under this Act (such as the authorities under section 274B), or any other Act.

“(4) For purposes of this subsection:

“(A) The term ‘area of employment’ means the area within normal commuting distance of the worksite or physical location where the work of the nonimmigrant under section 101(a)(15)(H)(i)(b1) is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

“(B) In the case of an attestation with respect to one or more nonimmigrants under section 101(a)(15)(H)(i)(b1) by an employer, the employer is considered to ‘displace’ a United States worker from a job if the employer lays off the worker from a job that is essentially the equivalent of the job for which the nonimmigrant or nonimmigrants is or are sought. A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a United States worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job.

“(C)(i) The term ‘lays off’, with respect to a worker—

“(I) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

“(II) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

“(ii) Nothing in this subparagraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(D) The term ‘United States worker’ means an employee who—

“(i) is a citizen or national of the United States; or

“(ii) is an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207 of this title, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.”.

(c) SPECIAL RULE FOR COMPUTATION OF PREVAILING WAGE.—Section 212(p)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(p)(1)) is amended by striking “(n)(1)(A)(i)(II) and (a)(5)(A)” and inserting “(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)”.

(d) FEE.—

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

Fees.

“(11)(A) Subject to subparagraph (B), the Secretary of Homeland Security or the Secretary of State, as appropriate, shall impose a fee on an employer who has filed an attestation described in section 212(t)—

“(i) in order that an alien may be initially granted non-immigrant status described in section 101(a)(15)(H)(i)(b1); or

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

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

“(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(s).”.

(2) USE OF FEE.—Section 286(s)(1) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(1)) is amended by striking “section 214(c)(9).” and inserting “paragraphs (9) and (11) of section 214(c).”.

19 USC 3805
note.

SEC. 403. LABOR DISPUTES.

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

(1) by striking “(j)” and inserting “(j)(1)”;

(2) by striking “this subsection” each place such term appears and inserting “this paragraph”; and

(3) by adding at the end the following:

Regulations.

“(2) Notwithstanding any other provision of this Act except section 212(t)(1), and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement

listed in subsection (g)(8)(A), and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (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.”.

Notice.

SEC. 404. CONFORMING AMENDMENTS.

19 USC 3805
note.

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 101(a)(15) (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1))”; and

(3) in subsection (h), by striking “(H)(i)” and inserting “(H)(i)(b) or (c)”.

Approved September 3, 2003.

LEGISLATIVE HISTORY—H.R. 2738 (S. 1416):

HOUSE REPORTS: No. 108–224, Pt. 1 (Comm. on Ways and Means) and Pt. 2 (Comm. on the Judiciary).

SENATE REPORTS: No. 108–116 accompanying S. 1416 (jointly from Comm. on Finance and Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 149 (2003):

July 24, considered and passed House.

July 31, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 39 (2003):

Sept. 3, Presidential remarks.

