

TARIFF ACT OF 1930

[As Amended Through P.L. 112-99, Enacted March 13, 2012]

[Titles I and II were replaced by the Harmonized Tariff Schedule of the United States; see 76 Stat. 72]

TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

SEC. 301. [Repealed.]

SEC. 302.¹ PORTO RICO—EXEMPTION FROM INTERNAL-REVENUE TAXES.

Articles, goods, wares, or merchandise going into Porto Rico from the United States shall be exempted from the payment of any tax imposed by the internal-revenue laws of the United States.

SEC. 303. [Repealed.]

SEC. 304. [19 U.S.C. 1304] MARKING OF IMPORTED ARTICLES AND CONTAINERS.

(a) **MARKING OF ARTICLES.**—Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character or words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

¹This section was incorporated into the Internal Revenue Code of 1989 as section 3361(b). See 26 U.S.C. 7653.

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*, That this subdivision (J) shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12, 1934 (U.S.C. 1934 edition, title 19, secs. 1351-1354), as extended; or

(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) MARKING OF CONTAINERS.—Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of sub-

section (a). If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) MARKING OF CERTAIN PIPE AND FITTINGS.—(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or continuous paint stenciling¹.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the five² methods specified in paragraph (1), the article may be marked by an equally permanent method of marking or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

(d) MARKING OF COMPRESSED GAS CYLINDERS.—No exception may be made under subsection (a)(3) with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

(e) MARKING OF CERTAIN MANHOLE RINGS OR FRAMES, COVERS, AND ASSEMBLIES THEREOF.—No exception may be made under subsection (a)(3) with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country or origin by means of die stamping, cast-in-mold lettering, etching, engraving, or an equally permanent method of marking.

(f) MARKING OF CERTAIN COFFEE AND TEA PRODUCTS.—The marking requirements of subsections (a) and (b) shall not apply to articles described in subheadings 0901.21, 0901.22, 0902.10, 0902.20, 0902.30, 0902.40, 2101.10, and 2101.20 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(g) MARKING OF SPICES.—The marking requirements of subsections (a) and (b) shall not apply to articles provided for under subheadings 0904.11, 0904.12, 0904.20, 0905.00, 0906.10, 0906.20, 0907.00, 0908.10, 0908.20, 0908.30, 0909.10, 0909.20, 0909.30, 0909.40, 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50, 0910.91, 0910.99, 1106.20, 1207.40, 1207.50, 1207.91, 1404.90, and

¹Section 207(a)(1) of the North American Free Trade Agreement Implementation Act (P.L. 103-182) amended this paragraph by striking “or engraving” and inserting “engraving, or continuous paint stenciling”. Section 213(b) of such Act provides the amendments made by sections 204 through 209 take effect on the date the Agreement enters into force with respect to the United States.

²Section 207(a)(2) of the North American Free Trade Agreement Implementation Act (P.L. 103-182) amended this paragraph by striking “four” and inserting “five” and by striking “such as paint stenciling”. Section 213(b) of such Act provides the amendments made by sections 204 through 209 take effect on the date the Agreement enters into force with respect to the United States.

3302.10, and items classifiable in categories 0712.90.60, 0712.90.8080, 1209.91.2000, 1211.90.2000, 1211.90.8040, 1211.90.8050, 1211.90.8090, 2006.00.3000, 2918.13.2000, 3203.00.8000, 3301.90.1010, 3301.90.1020, and 3301.90.1050 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(h) MARKING OF CERTAIN SILK PRODUCTS.—The marking requirements of subsections (a) and (b) shall not apply either to—

(1) articles provided for in subheading 6214.10.10 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1997; or

(2) articles provided for in heading 5007 of the Harmonized Tariff Schedule of the United States as in effect on January 1, 1997.

(i) ADDITIONAL DUTIES FOR FAILURE TO MARK.—If at the time of importation any article (or its container, as provided in subsection (b) hereof) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) hereof) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(j) DELIVERY WITHHELD UNTIL MARKED.—No imported article held in customs custody for inspection, examination, or appraisal shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (i) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(k)¹ TREATMENT OF GOODS OF A NAFTA COUNTRY.—

(1) APPLICATION OF SECTION.—In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 2(4) of the North American Free Trade Agree-

¹ This subsection was added by section 207(a)(5) of the North American Free Trade Agreement Implementation Act (P.L. 103-182). Section 213(b) of such Act provides the amendments made by sections 204 through 209 take effect on the date the Agreement enters into force with respect to the United States.

ment Implementation Act) under the regulations issued by the Secretary to implement Annex 311 of the North American Free Trade Agreement—

(A) the exemption under subsection (a)(3)(H) shall be applied by substituting “reasonably know” for “necessarily know”;

(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) if the good—

(i) is an original work of art, or

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

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

(2) PETITION RIGHTS OF NAFTA EXPORTERS AND PRODUCERS REGARDING MARKING DETERMINATIONS.—

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

(i) The term “adverse marking decision” means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person—

(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

(B) INTERVENTION OR PETITION REGARDING ADVERSE MARKING DECISIONS.—If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth—

(i) a description of the merchandise; and

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

(C) EFFECT OF DETERMINATION REGARDING DECISION.—If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision—

(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or

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

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

(I) PENALTIES.—Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this Act shall—

(1) upon conviction for the first violation of this subsection, be fined not more than \$100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than \$250,000, or imprisoned for not more than 1 year, or both.

Part II—United States Tariff Commission

SEC. 305. [19 U.S.C. 1305] IMMORAL ARTICLES—IMPORTATION PROHIBITED.

(a) PROHIBITION OF IMPORTATION.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may, in his dis-

cretion, admit the so-called classics or books or recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes: *Provided further*, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.

(b) ENFORCEMENT PROCEDURES.—Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Court of International Trade from the decision of such customs officer. Upon the seizure of such book or matter, such customs officer shall transmit information thereof to the United States attorney of the district in which is situated either—

- (1) the office at which such seizure took place; or
- (2) the place to which such book or matter is addressed;

and the United States attorney shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

(c) Notwithstanding the provisions of subsections (a) and (b), whenever a customs officer discovers any obscene material after such material has been imported or brought into the United States, or attempted to be imported or brought into the United States, he may refer the matter to the United States attorney for the institution of forfeiture proceedings under this section. Such proceedings shall begin no more than 30 days after the time the material is seized; except that no seizure or forfeiture shall be invalidated for delay if the claimant is responsible for extending the action beyond the allowable time limits or if proceedings are postponed pending the consideration of constitutional issues.

(d) Upon motion of the United States, a court shall stay such civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter.

(b)¹ COORDINATION OF FORFEITURE PROCEEDINGS WITH CRIMINAL PROCEEDINGS.—(1) Notwithstanding subsection (a), whenever the Customs Service is of the opinion that criminal prosecution would be appropriate or that further criminal investigation is warranted in connection with allegedly obscene material seized at the time of entry, the appropriate customs officer shall immediately

¹ So in law. Probably should be redesignated as "(e)".

transmit information concerning such seizure to the United States Attorney of the district of the addressee's residence. No notice to the addressee or consignee concerning the seizure is required at the time of such transmittal.

(2) Upon receipt of such information, such United States attorney shall promptly determine whether in such attorney's opinion the referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to such seizure.

(3) If the United States attorney is of the opinion that no prejudice to such investigation will result from such referral, such attorney shall immediately so notify the Customs Service in writing. The appropriate customs officer shall immediately notify in writing the addressee or consignee of the seizure and shall transmit information concerning such seizure to the United States Attorney of the district in which is situated the office at which such seizure has taken place. The actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 14 days of the seizure unless the United States Attorney of the district of the addressee's residence certifies in writing and includes specific, articulable facts demonstrating that the determination required in paragraph (2) of this subsection could not be made in sufficient time to comply with this deadline. In such cases, the actions described in paragraphs (1) through (3) of this subsection shall take place within sufficient time to allow for the filing of a forfeiture complaint within 21 days of seizure.

(4) If the United States Attorney for the district of the addressee's residence concludes that material prejudice to such investigation will result from such referral, such United States attorney shall place on file, within 14 days of the date of seizure, a dated certification stating that it is the United States attorney's judgment that referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to the seizure. The certification shall set forth specific, articulable facts demonstrating that withholding referral for forfeiture is necessary.

(5)(A) As soon as the circumstances change so that withholding of referral for forfeiture is no longer necessary for purposes of the criminal investigation, the United States attorney shall immediately so notify the Customs Service in writing and shall furnish a copy of the certification described in paragraph (4) above to the Customs Service.

(B) In any matter referred to a United States attorney for possible criminal prosecution wherein subparagraph (5)(A) does not apply, the United States attorney shall immediately notify the Customs Service in writing concerning the disposition of the matter, whether by institution of a prosecution or a letter of declination, and shall also furnish a copy of the certification described in paragraph (4) of this subsection to the Customs Service.

(C) Upon receipt of the notification described in subparagraph (A) or (B) of this paragraph, the appropriate customs officer shall immediately notify the addressee or consignee of the seizure and shall transmit information concerning the seizure, including a copy

of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph, to the United States Attorney of the district in which is situated the office at which such seizure has taken place, who shall institute forfeiture proceedings in accordance with subsection (a) hereof within 14 days of the date of the notification described in subparagraph (A) or (B) above. A copy of the certification described in paragraph (4) above and a copy of the notification described in subparagraph (A) or (B) of this paragraph shall be affixed to the complaint for forfeiture.

(c)¹ **STAY ON MOTION.**—Upon motion of the United States, a court, for good cause shown, shall stay civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter whether in the same or in a different district.

SEC. 306. [19 U.S.C. 1306] CATTLE, SHEEP, SWINE, AND MEATS—IMPORTATION PROHIBITED IN CERTAIN CASES.

(a) **IN GENERAL.**—Except as provided in subsection (b), if the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals, from such foreign country, is prohibited *Provided*, That wild ruminants or swine may be imported from any such country upon such conditions, including post entry conditions, to be prescribed in import permits or in regulations, as the Secretary may impose for the purpose of preventing the dissemination of said diseases into or within the United States: *And provided further*, That the subsequent distribution, maintenance, and exhibition of such animals in the United States shall be limited to zoological parks approved by said Secretary as meeting such standards as he may by regulation prescribe for the purpose of preventing the dissemination of said diseases into or within the United States. The Secretary may at any time seize and dispose of any such animals which are not handled in accordance with the conditions imposed by him or which are distributed to or maintained or exhibited at any place in the United States which is not then an approved zoological park, in such manner as he deems necessary for said purpose.

(b) **EXCEPTION.**—The Secretary of Agriculture may permit, subject to such terms and conditions as the Secretary determines appropriate, the importation of cattle, sheep, other ruminants, or swine (including embryos of the animals), or the fresh, chilled, or frozen meat of the animals, from a region if the Secretary determines that the region from which the animal or meat originated is, and is likely to remain, free from rinderpest and foot-and-mouth disease, or is, and is likely to remain, a region of low prevalence of rinderpest and foot-and-mouth disease.

(c) **REGULATIONS.**—The Secretary of Agriculture is authorized to make rules and regulations to carry out the purposes of this sec-

¹ So in law. Probably should be redesignated as "(f)".

tion, and in such rules and regulations the Secretary of Agriculture may prescribe the terms and conditions for the destruction of all cattle, sheep, and other ruminants, and swine, and of all meats, offered for entry, and refused admission into the United States, unless such cattle, sheep, ruminants, swine, or meats be exported by the consignee within the time fixed therefor in such rules and regulations.

SEC. 307. [19 U.S.C. 1307] CONVICT MADE GOODS—IMPORTATION PROHIBITED.

All goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

“Forced labor,” as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For purposes of this section, the term “forced labor or/and indentured labor” includes forced or indentured child labor.

SEC. 308. [19 U.S.C. 1308] PROHIBITION ON IMPORTATION OF DOG AND CAT FUR PRODUCTS.

(a) DEFINITIONS.—In this section:

(1) CAT FUR.—The term “cat fur” means the pelt or skin of any animal of the species *Felis catus*.

(2) INTERSTATE COMMERCE.—The term “interstate commerce” means the transportation for sale, trade, or use between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof.

(3) CUSTOMS LAWS.—The term “customs laws of the United States” means any other law or regulation enforced or administered by the United States Customs Service.

(4) DESIGNATED AUTHORITY.—The term “designated authority” means the Secretary of the Treasury, with respect to the prohibitions under subsection (b)(1)(A), and the President (or the President’s designee), with respect to the prohibitions under subsection (b)(1)(B).

(5) DOG FUR.—The term “dog fur” means the pelt or skin of any animal of the species *Canis familiaris*.

(6) DOG OR CAT FUR PRODUCT.—The term “dog or cat fur product” means any item of merchandise which consists, or is composed in whole or in part, of any dog fur, cat fur, or both.

(7) PERSON.—The term “person” includes any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States.

(8) UNITED STATES.—The term “United States” means the customs territory of the United States, as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(b) PROHIBITIONS.—

(1) IN GENERAL.—It shall be unlawful for any person to—

(A) import into, or export from, the United States any dog or cat fur product; or

(B) introduce into interstate commerce, manufacture for introduction into interstate commerce, sell, trade, or advertise in interstate commerce, offer to sell, or transport or distribute in interstate commerce in the United States, any dog or cat fur product.

(2) EXCEPTION.—This subsection shall not apply to the importation, exportation, or transportation, for noncommercial purposes, of a personal pet that is deceased, including a pet preserved through taxidermy.

(c) PENALTIES AND ENFORCEMENT.—

(1) CIVIL PENALTIES.—

(A) IN GENERAL.—Any person who violates any provision of this section or any regulation issued under this section may, in addition to any other civil or criminal penalty that may be imposed under title 18, United States Code, or any other provision of law, be assessed a civil penalty by the designated authority of not more than—

(i) \$10,000 for each separate knowing and intentional violation;

(ii) \$5,000 for each separate grossly negligent violation; or

(iii) \$3,000 for each separate negligent violation.

(B) DEBARMENT.—The designated authority may prohibit a person from importing, exporting, transporting, distributing, manufacturing, or selling any fur product in the United States, if the designated authority finds that the person has engaged in a pattern or practice of actions that has resulted in a final administrative determination with respect to the assessment of civil penalties for knowing and intentional or grossly negligent violations of any provision of this section or any regulation issued under this section.

(C) FACTORS IN ASSESSING PENALTIES.—In determining the amount of civil penalties under this paragraph, the designated authority shall take into account the degree of culpability, any history of prior violations under this section, ability to pay, the seriousness of the violation, and such other matters as fairness may require.

(D) NOTICE.—No penalty may be assessed under this paragraph against a person unless the person is given notice and opportunity for a hearing with respect to such violation in accordance with section 554 of title 5, United States Code.

(2) **FORFEITURE.**—Any dog or cat fur product manufactured, taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, imported, or exported contrary to the provisions of this section or any regulation issued under this section shall be subject to forfeiture to the United States.

(3) **ENFORCEMENT.**—The Secretary of the Treasury shall enforce the provisions of this section with respect to the prohibitions under subsection (b)(1)(A), and the President shall enforce the provisions of this section with respect to the prohibitions under subsection (b)(1)(B).

(4) **REGULATIONS.**—Not later than 270 days after the date of the enactment of this section, the designated authorities shall, after notice and opportunity for comment, issue regulations to carry out the provisions of this section. The regulations of the Secretary of the Treasury shall provide for a process by which testing laboratories, whether domestic or foreign, can qualify for certification by the United States Customs Service by demonstrating the reliability of the procedures used for determining the type of fur contained in articles intended for sale or consumption in interstate commerce. Use of a laboratory certified by the United States Customs Service to determine the nature of fur contained in an item to which subsection (b) applies is not required to avoid liability under this section but may, in a case in which a person can establish that the goods imported were tested by such a laboratory and that the item was not found to be a dog or cat fur product, prove dispositive in determining whether that person exercised reasonable care for purposes of paragraph (6).

(5) **REWARD.**—The designated authority shall pay a reward of not less than \$500 to any person who furnishes information that establishes or leads to a civil penalty assessment, debarment, or forfeiture of property for any violation of this section or any regulation issued under this section.

(6) **AFFIRMATIVE DEFENSE.**—Any person accused of a violation under this section has a defense to any proceeding brought under this section on account of such violation if that person establishes by a preponderance of the evidence that the person exercised reasonable care—

(A) in determining the nature of the products alleged to have resulted in such violation; and

(B) in ensuring that the products were accompanied by documentation, packaging, and labeling that were accurate as to the nature of the products.

(7) **COORDINATION WITH OTHER LAWS.**—Nothing in this section shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the customs laws of the United States.

(d) **PUBLICATION OF NAMES OF CERTAIN VIOLATORS.**—The designated authorities shall, at least once each year, publish in the Federal Register a list of the names of any producer, manufacturer, supplier, seller, importer, or exporter, whether or not located within the customs territory of the United States or subject to the jurisdiction of the United States, against whom a final administrative

determination with respect to the assessment of a civil penalty for a knowing and intentional or a grossly negligent violation has been made under this section.

(e) **REPORTS.**—In order to enable Congress to engage in active, continuing oversight of this section, the designated authorities shall provide the following:

(1) **PLAN FOR ENFORCEMENT.**—Within 3 months after the date of the enactment of this section, the designated authorities shall submit to Congress a plan for the enforcement of the provisions of this section, including training and procedures to ensure that United States Government personnel are equipped with state-of-the-art technologies to identify potential dog or cat fur products and to determine the true content of such products.

(2) **REPORT ON ENFORCEMENT EFFORTS.**—Not later than 1 year after the date of the enactment of this section, and on an annual basis thereafter, the designated authorities shall submit a report to Congress on the efforts of the United States Government to enforce the provisions of this section and the adequacy of the resources to do so. The report shall include an analysis of the training of United States Government personnel to identify dog and cat fur products effectively and to take appropriate action to enforce this section. The report shall include the findings of the designated authorities as to whether any government has engaged in a pattern or practice of support for trade in products the importation of which are prohibited under this section.

SEC. 309. [19 U.S.C. 1309] SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT.

(a) **EXEMPTION FROM DUTIES AND TAXES.**—Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax—

(1) for supplies (not including equipment) of (A) vessels or aircraft operated by the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, or (C) aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States; or

(2) for supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other

part of the United States or between Alaska and any other part of the United States, where such trade by foreign vessels is permitted; or

(3) for supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

The provisions for free withdrawals made by this subsection (a) shall not apply to petroleum products for vessels or aircraft in voyages or flights exclusively between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

(b) **DRAWBACK.**—Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, imported articles, and articles of domestic manufacture or production, laden as supplies upon any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign vessel or aircraft, shall be considered to be exported within the meaning of the drawback provisions of this Act.

(c) **ARTICLES REMOVED IN, OR RETURNED TO, THE UNITED STATES.**—Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 317 of this Act and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

(d) **RECIPROCAL PRIVILEGES.**—The privileges granted by this section and section 317 of this Act in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 317 shall not apply thereafter in respect of aircraft registered in that foreign country.

SEC. 310. [19 U.S.C. 1310] FREE IMPORTATION OF MERCHANDISE RECOVERED FROM SUNKEN AND ABANDONED VESSELS.

Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.

SEC. 311. [19 U.S.C. 1311] BONDED MANUFACTURING WAREHOUSES.

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

No flour, manufactured in a bonded manufacturing warehouse from wheat imported from ninety days after the date of the enactment of this Act, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exacting of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the appropriate customs officer of the port, who shall certify to such shipment and exportation, or lading for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided*, That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouse under the Act of March 24, 1874, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would

be assessed and collected by law if such waste or by-products were imported from a foreign country: *Provided*, That all waste material may be destroyed under Government supervision. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

A careful account shall be kept by the appropriate custom officer of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturer containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse for the sole purpose of export therefrom: *Provided*, That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

The provisions of section 3433 of the Revised Statutes shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

Distilled spirits and wines which are rectified in bonded manufacturing warehouse, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier.

No article manufactured in a bonded warehouse from materials that are goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to a NAFTA country, as defined in section 2(4) of that Act, 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 upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

(2) the total amount of customs duties paid on the materials to the NAFTA country.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no article manufactured in a bonded warehouse, except to the extent that such article is made from an article that is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, may be withdrawn from such warehouse for exportation to Canada during the period such Agreement is in operation without payment of a duty on such imported merchandise in its condition, and at the rate of duty in effect, at the time of importation.¹

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.

¹This undesignated paragraph was amended by section 203(b)(1) of the North American Free Trade Agreement Implementation Act (P.L. 103-182). Section 213(c) of such Act is as follows:
(c) PROVISIONS WITH DELAYED EFFECTIVE DATES.—The amendments made by section 203(b) apply—

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

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

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

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

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

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

SEC. 312. [19 U.S.C. 1312] BONDED SMELTING AND REFINING WAREHOUSES.

(a) Any plant engaged in smelting or refining, or both, of metal-bearing materials as defined in this section may, upon the giving of satisfactory bond, be designated a bonded smelting or refining warehouse. Metal-bearing materials may be entered into a bonded smelting or refining warehouse without the payment of duties thereon and there smelted or refined, or both, together with metal-bearing materials of domestic or foreign origin. Upon arrival of imported metal-bearing materials at the warehouse they shall be sampled according to commercial methods and assayed, both under customs supervision. The bond shall be charged with a sum equal in amount to the duties which would be payable on such metal-bearing materials in their condition as imported if entered for consumption, and the bond charge shall be adjusted to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond.

(b) The several charges against such bond may be canceled in whole or in part—

(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c); 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
- (2) upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing materials, or
- (3) upon the transfer of the bond charges to another bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), or
- (4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), and upon withdrawal from such other warehouse for exportation or domestic consumption the provisions of this section shall apply; 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
- (5) upon the transfer to another bonded smelting or refining warehouse without physical shipment of metal of bond charges representing a quantity of dutiable metal contained in imported metal-bearing materials less wastage provided for in subsection (c) of the plant of initial treatment of such materials provided there is on hand at the warehouse to which the transfer is made sufficient like metal in any form to satisfy the transferred bond charges.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no charges against such bond may be canceled in whole or part upon an exportation to Canada under paragraph (1) or (4) during the period such Agreement is in operation except to the extent that the metal-bearing materials were of Canadian origin as determined in accordance with section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988.¹

(c) For purposes of paragraphs (1), (3), (4), and (5) of subsection (b), due allowances shall be made for wastage of metals other than copper, lead, and zinc, as ascertained from time to time by the Secretary of the Treasury.

(d) Upon the exportation of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; 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

¹This undesignated paragraph was added by section 203(b)(2)(B) of the North American Free Trade Agreement Implementation Act (P.L. 103-182). Section 213(c) provides an effective date as follows:

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

- (1) with respect to exports from the United States to Canada—
 (A) on January 1, 1996, if Canada is a NAFTA country on that date, and
 (B) after such date for so long as Canada continues to be a NAFTA country; and
- (2) with respect to exports from the United States to Mexico—
 (A) on January 1, 2001, if Mexico is a NAFTA country on that date; and
 (B) after such date for so long as Mexico continues to be a NAFTA country.

- (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.

If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, no bond shall be credited under this subsection with respect to an exportation of a product to Canada during the period such Agreement is in operation except to the extent that the product is a drawback eligible good under section 204(a) of the United States-Canada Free Trade Agreement Implementation Act of 1988.

(e) Two or more smelting or refining warehouses may be included under one general bond and the quantities of each kind of metal subject to duty on hand at all of such warehouses may be aggregated to satisfy the bond obligation.

(f) For purposes of this section—

(1) the term “metal-bearing materials” means metal-bearing ores and other metal-bearing materials provided for in chapter 26 of the Harmonized Tariff Schedule of the United States, metal waste and scrap and unwrought metal to be smelted or refined provided for in chapters 71 through 83 of the Harmonized Tariff Schedule of the United States, and metal compounds to be processed for the recovery of their metal content;

(2) the term “smelting or refining” embraces only pyrometallurgical, hydrometallurgical, electrometallurgical, chemical, or other process—

(A) for the treatment of metal-bearing materials to reduce the metal content thereof to a metallic state in the course of recovering it in forms which if imported would be classifiable in chapters 71 through 83 of the Harmonized Tariff Schedule of the United States as unwrought metal,

or in the form of oxides or other compounds which are obtained directly from the treatment of materials provided for in chapter 26 of the Harmonized Tariff Schedule of the United States, and

(B) for the treatment of unwrought metal or metal waste and scrap to remove impurities or undesired components; and

(3) the term “product of smelting or refining” means metals or metal-bearing materials resulting directly from smelting or refining processes, but does not include metal-bearing ores of chapter 26 of the Harmonized Tariff Schedule of the United States.

(g) Labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer. The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

SEC. 313. [19 U.S.C. 1313] DRAWBACK AND REFUNDS.

(a) **ARTICLES MADE FROM IMPORTED MERCHANDISE.**—Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) **SUBSTITUTION FOR DRAWBACK PURPOSES.**—If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, but only if those articles have not been used prior to such exportation or destruction; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) **MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.**—

(1) CONDITIONS FOR DRAWBACK.—Upon the exportation or destruction under the supervision of the Customs Service of articles or merchandise—

(A) upon which the duties have been paid,

(B) which has been entered or withdrawn for consumption,

(C) which is—

(i) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation, or

(ii) ultimately sold at retail by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and

(D) which, within 3 years after the date of importation or withdrawal, as applicable, has been exported or destroyed under the supervision of the Customs Service, the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

(2) DESIGNATION OF IMPORT ENTRIES.—For purposes of paragraph (1)(C)(ii), drawback may be claimed by designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (1) (A) and (B) under the supervision of the Customs Service. The merchandise designated for drawback must be identified in the import documentation with the same eight-digit classification number and specific product identifier (such as part number, SKU, or product code) as the returned merchandise.

(3) WHEN DRAWBACK CERTIFICATES NOT REQUIRED.—For purposes of this subsection, drawback certificates are not required if the drawback claimant and the importer are the same party, or if the drawback claimant is a drawback successor to the importer as defined in subsection (s)(3).

(d) FLAVORING EXTRACTS AND MEDICINAL, OR TOILET PREPARATIONS.—Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits and wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been stamped or re-stamped, and marked, especially for export, under regulations pre-

scribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(e) IMPORTED SALT FOR CURING FISH.—Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

(f) EXPORTATION OF MEATS CURED WITH IMPORTED SALT.—Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than \$100.

(g) MATERIALS FOR CONSTRUCTION AND EQUIPMENT OR VESSELS BUILT FOR FOREIGNERS.—The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

(h) Upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, there shall be refunded, upon satisfactory proof that such imported merchandise has been so used, the duties which have been paid thereon, in amounts not less than \$100.

(i) TIME LIMITATION ON EXPORTATION.—Unless otherwise provided for in this section, no drawback shall be allowed under the provisions of this section unless the completed article is exported, or destroyed under the supervision of the Customs Service, within five years after importation of the imported merchandise.

(j) UNUSED MERCHANDISE DRAWBACK.—

(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law upon entry or importation—

(A) is, before the close of the 3-year period beginning on the date of importation—

(i) exported, or

(ii) destroyed under customs supervision; and

(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback. The exporter (or destroyer) has the right to claim drawback under this paragraph, but may endorse such right to the importer or any intermediate party.

(2) Subject to paragraph (4), if there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law upon entry or importation, any other merchandise (whether imported or domestic), that—

(A) is commercially interchangeable with such imported merchandise;

(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and
(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph, if that party—

(I) is the importer of the imported merchandise, or

(II) received from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the party the imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise (and any such transferred merchandise, regardless of its origin, will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise);

then, notwithstanding any other provision of law, upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback under this subsection, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee. For purposes of subparagraph (A) of this paragraph, wine of the same color having a price variation not to exceed 50 percent between the imported wine and the exported wine shall be deemed to be commercially interchangeable.

(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies,
shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

(4)(A) Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of

section 203(a) of that Act, shall not constitute an exportation for purposes of paragraph (2).

(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.

(k)(1) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise if no certificate of delivery is issued with respect to such imported merchandise.

(2) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for a drawback product of the same kind and quality shall be treated as the use of such drawback product if no certificate of delivery or certificate of manufacture and delivery pertaining to such drawback product is issued, other than that which documents the product's manufacture and delivery. As used in this paragraph, the term "drawback product" means any domestically produced product, manufactured with imported merchandise or any other merchandise (whether imported or domestic) of the same kind and quality, that is subject to drawback.

(l) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the authority for the electronic submission of drawback entries and the designation of the person to whom any refund or payment of drawback shall be made.

(m) SOURCE OF PAYMENT.—Any drawback of duties that may be authorized under the provisions of this Act shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

(n) REFUNDS, WAIVERS, OR REDUCTIONS UNDER CERTAIN FREE TRADE AGREEMENTS.—(1)¹ For purposes of this subsection and subsection (o)—

(A) the term "NAFTA Act" means the North American Free Trade Agreement Implementation Act;

(B) the terms "NAFTA country" and "good subject to NAFTA drawback" have the same respective meanings that

¹This subsection was amended by section 203(b)(3) of the North American Free Trade Agreement Implementation Act (P.L. 103-182). Section 213(c) provides an effective date as follows:

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

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

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

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

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

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

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

are given such terms in sections 2(4) and 203(a) of the NAFTA Act;

(C) a refund, waiver, or reduction of duty under paragraph (2) of this subsection or paragraph (1) of subsection (o) is subject to section 508(b)(2)(B); and

(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.

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

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

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

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

(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.

(o) SPECIAL RULES FOR CERTAIN VESSELS AND IMPORTED MATERIALS.—(1)¹ For purposes of subsection (g), if—

(A) a vessel is built for the account and ownership of a resident of a NAFTA country or the government of a NAFTA country, and

¹This subsection was amended by section 203(b)(3) of the North American Free Trade Agreement Implementation Act (P.L. 103–182). Section 213(c) provides an effective date as follows:
(c) PROVISIONS WITH DELAYED EFFECTIVE DATES.—The amendments made by section 203(b) apply—

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

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

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

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

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

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

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to NAFTA drawback, the amount of customs duties refunded, waived, or reduced on such materials may not exceed the lesser of the total amount of customs duties paid or owed on the materials on importation into the United States or the total amount of customs duties paid on the vessel to the NAFTA country.

(2) If Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, then for purposes of subsection (g), vessels built for Canadian account and ownership, or for the Government of Canada, may not be considered to be built for any foreign account and ownership, or for the government of any foreign country, except to the extent that the materials in such vessels are drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Implementation Act of 1988.

(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.

(p) SUBSTITUTION OF FINISHED PETROLEUM DERIVATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, if—

(A) an article (hereafter referred to in this subsection as the “exported article”) of the same kind and quality as a qualified article is exported;

(B) the requirements set forth in paragraph (2) are met; and

(C) a drawback claim is filed regarding the exported article;

drawback shall be allowed as described in paragraph (4).

(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are as follows:

(A) The exporter of the exported article—

(i) manufactured or produced a qualified article in a quantity equal to or greater than the quantity of the exported article,

(ii) purchased or exchanged, directly or indirectly, a qualified article from a manufacturer or producer described in subsection (a) or (b) in a quantity equal to or greater than the quantity of the exported article,

(iii) imported a qualified article in a quantity equal to or greater than the quantity of the exported article, or

(iv) purchased or exchanged, directly or indirectly, a qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

(B) In the case of the requirement described in subparagraph (A)(ii), the manufacturer or producer produced the qualified article in a quantity equal to or greater than the quantity of the exported article.

(C) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the exported article is exported during the period that the qualified article described in subparagraph (A)(i) or (A)(ii) (whichever is applicable) is manufactured or produced, or within 180 days after the close of such period.

(D) In the case of the requirement of subparagraph (A)(i) or (A)(ii), the specific petroleum refinery or production facility which made the qualified article concerned is identified.

(E) In the case of the requirement of subparagraph (A)(iii) or (A)(iv), the exported article is exported within 180 days after the date of entry of an imported qualified article described in subparagraph (A)(iii) or (A)(iv) (whichever is applicable).

(F) Except as otherwise specifically provided in this subsection, the drawback claimant complies with all requirements of this section, including providing certificates which establish the drawback eligibility of articles for which drawback is claimed.

(G) The manufacturer, producer, importer, transferor, exporter, and drawback claimant of the qualified article and the exported article maintain all records required by regulation.

(3) DEFINITION OF QUALIFIED ARTICLE, ETC.—For purposes of this subsection—

(A) The term “qualified article” means an article—

(i) described in—

(I) headings 2707, 2708, 2709.00, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902, and sub-headings 2903.21.00, 2909.19.14, 2917.36, 2917.39.04, 2917.39.15, 2926.10.00, 3811.21.00, and 3811.90.00 of the Harmonized Tariff Schedule of the United States, or

(II) headings 3901 through 3914 of such Schedule (as such headings apply to the primary forms provided under Note 6 to chapter 39 of the Harmonized Tariff Schedule of the United States), and

(ii) which is—

(I) manufactured or produced as described in subsection (a) or (b) from crude petroleum or a petroleum derivative,

(II) imported duty-paid, or

(III) an article of the same kind and quality as described in subparagraph (B), or any combination thereof, that is transferred, as so certified in a certificate of delivery or certificate of manufacture and delivery in a quantity not greater than the quantity of articles purchased or exchanged.

The transferred merchandise described in subclause (III), regardless of its origin, so designated on the certificate of delivery or certificate of manufacture and delivery shall be the qualified article for purposes of this section. A party who issues a certificate of delivery, or certificate of manufacture and delivery, shall also certify to the Commissioner of Customs that it has not, and will not, issue such certificates for a quantity greater than the amount eligible for drawback and that appropriate records will be maintained to demonstrate that fact.

(B) An article, including an imported, manufactured, substituted, or exported article, is of the same kind and quality as the qualified article for which it is substituted under this subsection if it is a product that is commercially interchangeable with or referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article. If an article is referred to under the same eight-digit classification of the Harmonized Tariff Schedule of the United States as the qualified article on January 1, 2000, then whether or not the article has been reclassified under another eight-digit classification after January 1, 2000, the article shall be deemed to be an article that is referred to under the same eight-digit classification of such Schedule as the qualified article for purposes of the preceding sentence.

(C) The term “drawback claimant” means the exporter of the exported article or the refiner, producer, or importer of either the qualified article or the exported article. Any person eligible to file a drawback claim under this subparagraph may designate another person to file such claim.

(4) LIMITATION ON DRAWBACK.—The amount of drawback payable under this subsection shall not exceed the amount of drawback that would be attributable to the article—

(A) manufactured or produced under subsection (a) or (b) by the manufacturer or producer described in clause (i) or (ii) of paragraph (2)(A), or

(B) imported under clause (iii) or (iv) of paragraph (2)(A) had the claim qualified for drawback under subsection (j).

(5) SPECIAL RULES FOR ETHYL ALCOHOL.—For purposes of this subsection, any duty paid under subheading 9901.00.50 of the Harmonized Tariff Schedule of the United States on im-

ports of ethyl alcohol or a mixture of ethyl alcohol may not be refunded if the exported article upon which a drawback claim is based does not contain ethyl alcohol or a mixture of ethyl alcohol.

(q) PACKAGING MATERIAL.—

(1) PACKAGING MATERIAL UNDER SUBSECTIONS (c) AND (j).—Packaging material, whether imported and duty paid, and claimed for drawback under either subsection (c) or (j)(1), or imported and duty paid, or substituted, and claimed for drawback under subsection (j)(2), shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on such imported material.

(2) PACKAGING MATERIAL UNDER SUBSECTIONS (a) AND (b).—Packaging material that is manufactured or produced under subsection (a) or (b) shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on the imported or substituted merchandise used to manufacture or produce such material.

(3) CONTENTS.—Packaging material described in paragraphs (1) and (2) shall be eligible for drawback whether or not they contain articles or merchandise, and whether or not any articles or merchandise they contain are eligible for drawback.

(4) EMPLOYING PACKAGING MATERIAL FOR ITS INTENDED PURPOSE PRIOR TO EXPORTATION.—The use of any packaging material for its intended purpose prior to exportation shall not be treated as a use of such material prior to exportation for purposes of applying subsection (a), (b), or (c), or paragraph (1)(B) or (2)(C)(i) of subsection (j).

(r) FILING DRAWBACK CLAIMS.—

(1) A drawback entry and all documents necessary to complete a drawback claim, including those issued by the Customs Service, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that the Customs Service was responsible for the untimely filing.

(2) A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.

(3)(A) The Customs Service may, notwithstanding the limitation set forth in paragraph (1), extend the time for filing a drawback claim for a period not to exceed 18 months, if—

(i) the claimant establishes to the satisfaction of the Customs Service that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster on or after January 1, 1994; and

(ii) the claimant files a request for such extension with the Customs Service—

(I) within 1 year from the last day of the 3-year period referred to in paragraph (1), or

(II) within 1 year after the date of the enactment of this paragraph,

whichever is later.

(B) If an extension is granted with respect to a request filed under this paragraph, the periods of time for retaining records set forth in subsection (t) of this section and section 508(c)(3) shall be extended for an additional 18 months or, in a case to which subparagraph (A)(ii) applies, for a period not to exceed 1 year from the date the claim is filed.

(C) For purposes of this paragraph, the term “major disaster” has the meaning given that term in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(s) DESIGNATION OF MERCHANDISE BY SUCCESSOR.—

(1) For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.

(2) For purposes of subsection (j)(2), a drawback successor may designate—

(A) imported merchandise which the predecessor, before the date of succession, imported; or

(B) imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise for which the predecessor received, before the date of succession, from the person who imported and paid any duty due on the imported merchandise a certificate of delivery transferring to the predecessor such merchandise;

as the basis for drawback on merchandise possessed by the drawback predecessor after the date of succession.

(3) For purposes of this subsection, the term “drawback successor” means an entity to which another entity (in this subsection referred to as the “predecessor”) has transferred by written agreement, merger, or corporate resolution—

(A) all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(B) the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(4) No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor’s records) certifies that—

(A) the transferred merchandise was not and will not be claimed by the predecessor, and

(B) the predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.

(t) DRAWBACK CERTIFICATES.—Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this Act, with the retention period beginning on the date that such certificate is issued.

(u) ELIGIBILITY OF ENTERED OR WITHDRAWN MERCHANDISE.—Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.

(v) MULTIPLE DRAWBACK CLAIMS.—Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.

(w) LIMITED APPLICABILITY FOR CERTAIN AGRICULTURAL PRODUCTS.—

(1) IN GENERAL.—No drawback shall be available with respect to an agricultural product subject to the over-quota rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1).

(2) APPLICATION TO TOBACCO.—Notwithstanding paragraph (1), drawback shall also be available pursuant to subsection (a) with respect to any tobacco subject to the over-quota rate of duty established under a tariff-rate quota.

(x) DRAWBACKS FOR RECOVERED MATERIALS.—For purposes of subsections (a), (b), and (c), the term “destruction” includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise. In determining the amount of duties to be refunded as drawback to a claimant under this subsection, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant shall be deducted from the value of the imported merchandise that is destroyed, or from the value of the merchandise used, or designated as used, in the manufacture of the article.

(y) ARTICLES SHIPPED TO THE UNITED STATES INSULAR POSSESSIONS.—Articles described in subsection (j)(1) shall be eligible for drawback under this section if duty was paid on the merchandise upon importation into the United States and the person claiming the drawback demonstrates that the merchandise has entered the customs territory of the United States Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

(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.

SEC. 314. [Repealed.]**SEC. 315. [19 U.S.C. 1315] EFFECTIVE DATES OF RATES OF DUTY.**

(a) Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this Act or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe, except that—

(1) any article released under an informal mail entry shall be subject to duty at the rate or rates in effect when the preparation of the entry is completed;

(2) any article which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation under section 552 of this Act, if entered for consumption at the port designated by the consignee, or his agent, in such transportation entry without having been taken into the custody of the appropriate customs officer under section 490 of this Act, shall be subject to the rate or rates in effect when the transportation entry was accepted at the port of original importation.

(3) any article for which duties may, under section 505 of this Act, be paid at a time later than the time of making entry shall be subject to the rate or rates in effect at the time of entry.

(b) Any article which has been entered for consumption but which, before release from custody of the Customs Service, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.

(c) Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in chapter 98 of the Harmonized Tariff Schedule of the United States and section 562 of this Act (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

(d) No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under

an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties or the imposition of countervailing duties under section 303 (as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act) or section 701. This subsection shall not apply with respect to increases in rates of duty resulting from the enactment of the Harmonized Tariff Schedule of the United States to replace the Tariff Schedules of the United States.

SEC. 316.¹ CUBAN RECIPROCITY TREATY NOT AFFECTED.

Nothing in this Act shall be construed to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or the provisions of the Act of December 17, 1903, chapter 1.

SEC. 317. [19 U.S.C. 1317] TOBACCO PRODUCTS—SUPPLIES FOR AIRCRAFT.

(a) The shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes, for consumption beyond the jurisdiction of the internal-revenue laws of the United States, as defined by section 3448 of the Revised Statutes, shall be deemed exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such articles without payment of duty or internal-revenue tax.

(b) The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of any vessel or aircraft described in subdivision (2) or (3) of section 309(a) of this Act, or for use as ground equipment for any such aircraft, shall be deemed an exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal-revenue tax. With respect to merchandise for use as ground equipment, such shipment or delivery shall not be deemed an exportation within the meaning of the internal-revenue laws relating to taxes other than those imposed upon or by reason of importation.

SEC. 318. [19 U.S.C. 1318] EMERGENCIES.

(a) Whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time herein prescribed for the performance of any act, and may authorize the Secretary of the Treasury to permit, under such regulations as the Secretary of the Treasury may prescribe, the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work. The Secretary of the Treasury shall report to the Congress any action taken under the provisions of this section.

¹The treaty referred to in this section has been terminated.

(b)(1) Notwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et seq.) or to a specific threat to human life or national interests, is authorized to take the following actions on a temporary basis:

(A) Eliminate, consolidate, or relocate any office or port of entry of the Customs Service.

(B) Modify hours of service, alter services rendered at any location, or reduce the number of employees at any location.

(C) Take any other action that may be necessary to respond directly to the national emergency or specific threat.

(2) Notwithstanding any other provision of law, the Commissioner of Customs, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.

(3) The Secretary of the Treasury or the Commissioner of Customs, as the case may be, shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 72 hours after taking any action under paragraph (1) or (2).

SEC. 319. [19 U.S.C. 1319a] DUTY ON COFFEE IMPORTED INTO PUERTO RICO.

The Legislature of Puerto Rico is hereby empowered to impose tariff duties upon coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States. Such duties, shall be collected and accounted for as now provided by law in the case of duties collected in Puerto Rico.

SEC. 320. [Repealed.]

SEC. 321. [19 U.S.C. 1321] ADMINISTRATIVE EXEMPTIONS.

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference of an amount specified by the Secretary by regulation, but not less than \$20, between the total estimated duties, fees, and taxes deposited, or the total duties fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, taxes, and interest actually accruing thereon;

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed an amount specified by the Secretary by regulation, but not less than—

(A) \$100 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States \$200, in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and America Samoa), or

(B) \$200 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under subheading 9804.00.30, 9804.00.65, or 9804.00.70 of this Act, or

(C) \$200 in any other case.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2); and

(3) waive the collection of duties, fees, taxes, and interest due on entered merchandise when such duties, fees, taxes, or interest are less than \$20 or such greater amount as may be specified by the Secretary by regulation.

(b) The Secretary of the Treasury is authorized by regulations to prescribe exceptions to any exemption provided for in subsection (a) whenever he finds that such action is consistent with the purpose of subsection (a) or is necessary for any reason to protect the revenue or to prevent unlawful importations.

SEC. 322. [19 U.S.C. 1322] INTERNATIONAL TRAFFIC AND RESCUE WORK.

(a) Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury. The authority delegated to the Secretary by this subsection shall not extend to communications satellites and components and parts thereof.

(b) The Secretary of the Treasury may provide by regulation or instruction for the admission, without entry and without the payment of any duty or tax imposed upon or by reason of importation, of—

(1) aircraft, equipment, supplies, and spare parts for use in searches, rescues, investigations, repairs, and salvage in connection with accidental damage to aircraft;

(2) fire-fighting and rescue and relief equipment and supplies for emergent temporary use in connection with conflagrations;

(3) rescue and relief equipment and supplies for emergent temporary use in connection with floods and other disasters, and

(4) personal property reasonably related to the use and enjoyment of a separated tract of land as described in article III of the Treaty To Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado Rivers as the International Boundary between the United States of America and the United Mexican States signed on November 23, 1970.

Any articles admitted under the authority of this subsection and used otherwise than for a purpose herein expressed, or not exported in such time and manner as may be prescribed in the regulations or instructions herein authorized, shall be forfeited to the United States.

SEC. 323. [19 U.S.C. 1323] CONSERVATION OF FISHERY RESOURCES.

Upon the convocation of a conference on the use or conservation of international fishery resources, the President shall, by all appropriate means at his disposal, seek to persuade countries whose domestic fishing practices or policies affect such resources, to engage in negotiations in good faith relating to the use or conservation of such resources. If, after such efforts by the President and by other countries which have agreed to engage in such negotiations, any other country whose conservation practices or policies affect the interests of the United States and such other countries, has, in the judgment of the President, failed or refused to engage in such negotiations in good faith, the President may, if he is satisfied that such action is likely to be effective in inducing such country to engage in such negotiations in good faith, increase the rate of duty on any fish (in any form) which is the product of such country, for such time as he deems necessary, to a rate not more than 50 percent above the rate existing on July 1, 1934.

Part II—United States Tariff Commission**SEC. 330. [19 U.S.C. 1330] ORGANIZATION OF THE COMMISSION.**

(a) **MEMBERSHIP.**—The United States International Trade Commission (referred to in this title as the “Commission”) shall be composed of six commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of international trade problems and efficiency in administering the duties and functions of the Commission. A person who has served as a commissioner for more than 5 years (excluding service as a commissioner before the date of the enactment of the Trade Act of 1974) shall not be eligible for reappointment as a commissioner. Not more than three of the commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

(b) **TERMS OF OFFICE.**—The terms of office of the commissioners holding office on the date of the enactment of the Trade Act of 1974 which (but for this sentence) would expire on June 16, 1975, June 16, 1976, June 16, 1977, June 16, 1978, June 16, 1979, June 16, 1980, shall expire on December 16, 1976, June 16, 1978, December 16, 1979, June 16, 1981, December 16, 1982, and June 16, 1984, respectively. The term of office of each commissioner appointed after such date shall expire 9 years from the date of the expiration of the term for which his predecessor was appointed, except that—

(1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and

(2) any commissioner may continue to serve as a commissioner after an expiration of his term of office until his successor is appointed and qualified.

(c)¹ CHAIRMAN AND VICE CHAIRMAN; QUORUM.—

(1) The chairman and the vice chairman of the Commission shall be designated by the President from among the members of the Commission not ineligible, under paragraph (3), for designation. The President shall notify the Congress of his designations under this paragraph. If, as of the date on which a term begins under paragraph (2), the President has not designated the chairman of the Commission for such term, the Commissioner who, as of such date—

(A) is a member of a different political party than the chairman of the Commission for the immediately preceding term, and

(B) has the longest period of continuous service as a commissioner,

shall serve as chairman of the Commission for the portion of such term preceding the date on which an individual designated by the President takes office as chairman.

(2) After June 16, 1978, the terms of office for the chairman and vice chairman of the Commission shall be as follows:

(A) The first term of office occurring after such date shall begin on June 17, 1978, and end at the close of June 16, 1980.

(B) Each term of office thereafter shall begin on the day after the closing date of the immediately preceding term of office and end at the close of the 2-year period beginning on such day.

(3)(A) The President may not designate as the chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman of the Commission for the immediately preceding term is a member, or who has less than 1 year of continuous service as a commissioner as of the date such designation is being made.¹

(B) The President may not designate as the vice chairman of the Commission for any term any commissioner who is a member of the political party of which the chairman for that term is a member.

(C) If any commissioner does not complete a term as chairman or vice chairman by reason of death, resignation, removal from office as a commissioner, or expiration of his term of office as a commissioner, the President shall designate as the chairman or vice chairman, as the case may be, for the remainder of such term a commissioner who is a member of the same political party. Designation of a chairman under this subparagraph may be made without regard to the 1-year continuous service requirement under subparagraph (A).¹

(4) The vice chairman shall act as chairman in case of the absence or disability of the chairman. During any period in which there is no chairman or vice chairman, the commissioner having

¹Margins for paragraphs so in law. Probably should be moved 2 ems to the right. See amendment made by section 2(a) of Public Law 95-106 (91 Stat. 867).

¹Pursuant to section 1(a)(3)(B) of P.L. 102-185, 105 Stat. 1280, this amendment shall apply to terms beginning on and after June 17, 1996.

¹Pursuant to section 1(a)(3)(B) of P.L. 102-185, 105 Stat. 1280, this amendment shall apply to terms beginning on and after June 17, 1996.

the longest period of continuous service as a commissioner shall act as chairman.

(5) No commissioner shall actively engage in any business, vocation, or employment other than that of serving as a commissioner.

(6) A majority of the commissioners in office shall constitute a quorum, but the Commission may function notwithstanding vacancies.

(d) EFFECT OF DIVIDED VOTE IN CERTAIN CASES.—

(1) In a proceeding in which the Commission is required to determine—

(A) under section 202 of the Trade Act of 1974, whether increased imports of an article are a substantial cause of serious injury, or the threat thereof, as described in subsection (b)(1) of that section (hereafter in this subsection referred to as “serious injury”), or

(B) under section 406 of such Act, whether market disruption exists,

and the commissioners voting are equally divided with respect to such determination, then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.

(2) If under section 202(b) or 406 of the Trade Act of 1974 there is an affirmative determination of the Commission, or a determination of the Commission which the President may consider an affirmative determination under paragraph (1), that serious injury or market disruption exists, respectively, and a majority of the commissioners voting are unable to agree on a finding or recommendation described in section 202(e)(1) of such Act or the finding described in section 406(a)(3) of such Act, as the case may be (hereafter in this subsection referred to as a “remedy finding”), then—

(A) if a plurality of not less than three commissioners so voting agree on a remedy finding, such remedy finding shall, for purposes of section 203 of such Act, be treated as the remedy finding of the Commission, or

(B) if two groups, both of which include not less than 3 commissioners, each agree upon a remedy finding and the President reports under section 204(a) of such Act that—

(i) he is taking the action agreed upon by one such group, then the remedy finding agreed upon by the other group shall, for purposes of section 203 of such Act, be treated as the remedy finding of the Commission, or

(ii) he is taking action which differs from the action agreed upon by both such groups, or that he will not take any action, then the remedy finding agreed upon by either such group may be considered by the Congress as the remedy finding of the Commission and shall, for purposes of section 203 of such Act, be treated as the remedy finding of the Commission.

(3) In any proceeding to which paragraph (1) applies in which the commissioners voting are equally divided on a deter-

mination that serious injury exists, or that market disruption exists, the Commission shall report to the President the determination of each group of commissioners. In any proceeding to which paragraph (2) applies, the Commission shall report to the President the remedy finding of each group of commissioners voting.

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section 203(a) of the Trade Act of 1974, notwithstanding section 152(a)(1)(A) of such Act, the second blank space in the joint resolution described in such section 152(a)(1)(A) shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners _____, _____, and _____." The three blank spaces shall be filled with the names of the appropriate Commissioners.

(5) Whenever, in any case in which the Commission is authorized to make an investigation upon its own motion, upon complaint, or upon application of any interested party, one-half of the number of commissioners voting agree that the investigation should be made, such investigation shall thereupon be carried out in accordance with the statutory authority covering the matter in question. Whenever the Commission is authorized to hold hearings in the course of any investigation and one-half of the number of commissioners voting agree that hearings should be held, such hearings shall thereupon be held in accordance with the statutory authority covering the matter in question.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2)(A) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) not to exceed the following:

(i) \$54,000,000 for fiscal year 2003.

(ii) \$57,240,000 for fiscal year 2004.

(B) Not to exceed \$2,500 of the amount authorized to be appropriated for any fiscal year under subparagraph (A) may be used, subject to the approval of the Chairman of the Commission, for reception and entertainment expenses.

(C) No part of any sum that is appropriated under the authority of subparagraph (A) may be used by the Commission in the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for increases authorized by law in salary, pay, retirement, and other employee benefits.

(4) By not later than the date on which the President submits to Congress the budget of the United States Government for a fis-

cal year, the Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Commission to carry out its functions.

(f) The Commission shall be considered to be an independent regulatory agency for purposes of chapter 35 of title 44, United States Code.

SEC. 331. [19 U.S.C. 1331] GENERAL POWERS.

(a)(1)(A) Except as provided in paragraph (2), the chairman of the Commission shall—

(i) appoint and fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary,

(ii) procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, and

(iii) exercise and be responsible for all other administrative functions of the Commission.

(B) The chairman of the Commission may accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Commission.

(C) Any decision by the chairman under subparagraph (A) or (B) shall be subject to disapproval by a majority vote of all the commissioners in office.

(2) Subject to approval by a majority vote of all the commissioners in office, the chairman may—

(A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS-15 of the General Schedule in section 5332 of title 5, United States Code, and

(B) formulate the annual budget of the Commission.

(3) No member of the Commission, in making public statements with respect to any policy matter for which the Commission has responsibility, shall represent himself as speaking for the Commission, or his views as being the views of the Commission, with respect to such matter except to the extent that the Commission has adopted the policy being expressed.

(b) APPLICATION OF CIVIL SERVICE LAW.—With the exception of the secretary, a clerk to each commissioner, and such special experts as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil service law.

(c) EXPENSES.—All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation or upon official business in any other places than at their respective headquarters, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chair-

man¹ (except that in the case of a commissioner, or the personal staff of any commissioner, such vouchers may be approved by that commissioner).

(d) **PRINCIPAL OFFICE AT WASHINGTON.**—The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(e) **OFFICE AT NEW YORK.**—The commission is authorized to establish and maintain an office at the port of New York for the purpose of directing or carrying on any investigation, receiving and compiling statistics, selecting, describing, and filing samples of articles, and performing any of the duties or exercising any of the powers imposed upon it by law.

(f) **OFFICIAL SEAL.**—The commission is authorized to adopt an official seal, which shall be judicially noticed.

SEC. 332. [19 U.S.C. 1332] INVESTIGATIONS.

(a) **INVESTIGATIONS AND REPORTS.**—It shall be the duty of the commission to investigate the administration and fiscal and industrial effects of the customs laws of this country now in force or which may be hereafter enacted, the relations between the rates of duty on raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including their relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereafter provided.

(b) **INVESTIGATIONS OF TARIFF RELATIONS.**—The commission shall have power to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production.

(c) **INVESTIGATION OF PARIS ECONOMY PACT.**—The commission shall have power to investigate the Paris Economy Pact and similar organizations and arrangements in Europe.

(d) **INFORMATION FOR PRESIDENT AND CONGRESS.**—In order that the President and the Congress may secure information and assistance, it shall be the duty of the commission to—

(1) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of the United States of articles of the United States, whenever in the opinion of the commission it is practicable;

(2) Ascertain conversion costs and costs of production in the principal growing, producing, or manufacturing centers of

¹ P.L. 95-106 struck out "Commission" and inserted "chairman". The text actually read "commission".

foreign countries of articles imported into the United States, whenever in the opinion of the commission such conversion costs or costs of production are necessary for comparison with conversion costs or costs of production in the United States and can be reasonably ascertained;

(3) Select and describe articles which are representative of the classes or kinds of articles imported into the United States and which are similar to or comparable with articles of the United States; select and describe articles of the United States similar to or comparable with such imported articles; and obtain and file samples of articles so selected, whenever the commission deems it advisable;

(4) Ascertain import costs of such representative articles so selected;

(5) Ascertain the grower's, producer's, or manufacturer's selling price in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected; and

(6) Ascertain all other facts which will show the differences in or which affect competition between articles of the United States and imported articles in the principal markets of the United States.

(e) DEFINITIONS.—When used in this subdivision and in subdivision (d)—

(1) The term “article” includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured;

(2) The term “import cost” means the transaction value of the imported merchandise determined in accordance with section 402(b) plus, when not included in the transaction value, all necessary expenses, exclusive of customs duties, of bringing such merchandise to the United States.

(f) The Tariff Commission is hereby directed, within eight months from the passage of this Act, to ascertain the approximate average cost per barrel to the oil refiners located on the Atlantic seaboard of crude petroleum delivered to them from the oil fields of the United States during the three years preceding 1930, and the present approximate average cost per barrel of crude petroleum from Lake Maracaibo, Venezuela, delivered to the same points. Such relative costs shall be immediately certified to the Speaker of the House of Representatives and to the President of the Senate for the information of the Congress.

(g) REPORTS TO PRESIDENT AND CONGRESS.—The commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress. However, the Commission may not release information which the Commission 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 Commission, or such party subsequently consents to the release of the information. The Commission shall report to Congress on the

first Monday of December of each year hereafter a statement of the methods adopted and all expenses incurred, a summary of all reports made during the year, and a list of all votes taken by the commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each such annual report shall include a list of all complaints filed under section 337 during the year for which such report is being made, the date on which each such complaint was filed, and the action taken thereon, and the status of all investigations conducted by the commission under such section during such year and the date on which each such investigation was commenced.

SEC. 333. [19 U.S.C. 1333] TESTIMONY AND PRODUCTION OF PAPERS.

(a) **AUTHORITY TO OBTAIN INFORMATION.**—For the purposes of carrying out its functions and duties in connection with any investigation authorized by law, the commission or its duly authorized agent or agents (1) shall have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) may summon witnesses, take testimony, and administer oaths, (3) may require any person, firm, copartnership, corporation, or association to produce books or papers relation to any matter pertaining to such investigation, and (4) may require any person, firm, copartnership, corporation, or association to furnish in writing, in such detail and in such form as the commission may prescribe, information in their possession pertaining to such investigation. Any member of the commission may sign subpoenas, and members and agents of the commission, when authorized by the commission, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(b) **WITNESSES AND EVIDENCE.**—Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any district or territorial court of the United States or the Supreme Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) **MANDAMUS.**—At the request of the commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of Part II of this title or any order of the commission made in pursuance thereof.

(d) **DEPOSITIONS.**—The commission may order testimony to be taken by deposition in any proceeding or investigation pending be-

fore the commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person, firm, copartnership, corporation, or association, may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission, as hereinbefore provided.

(e) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same, except employees of the commission, shall severally be entitled to the same fees and mileage as are paid for like services in the courts of the United States.

(f) STATEMENTS UNDER OATH.—The commission is authorized, in order to ascertain any facts required by subdivision (d) of section 332, to require any importer and any American grower, producer, manufacturer, or seller to file with the commission a statement, under oath, giving his selling prices in the United States of any article imported, grown, produced, fabricated, manipulated, or manufactured by him.

(g) REPRESENTATION IN COURT PROCEEDINGS.—The Commission shall be represented in all judicial proceedings by attorneys who are employees of the commission or, at the request of the commission, by the Attorney General of the United States.

(h) ADMINISTRATIVE PROTECTIVE ORDERS.—Any correspondence, private letters of reprimand, and other documents and files relating to violations or possible violations of administrative protective orders issued by the Commission in connection with investigations or other proceedings under this title shall be treated as information described in section 552(b)(3) of title 5, United States Code.

SEC. 334. [19 U.S.C. 1334] COOPERATION WITH OTHER AGENCIES.

The commission shall in appropriate matters act in conjunction and cooperation with the Treasury Department, the Department of Commerce, the Federal Trade Commission, or any other departments, or independent establishments of the Government, and such departments and independent establishments of the Government shall cooperate fully with the commission for the purposes of aiding and assisting in its work, and, when directed by the President, shall furnish to the commission, on its request, all records, papers, and information in their possession relating to any of the subjects of investigation by the commission and shall detail, from time to time, such officials and employees to said commission as he may direct.

SEC. 335. [19 U.S.C. 1335] RULES AND REGULATIONS.

The commission is authorized to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

SEC. 336. [19 U.S.C. 1336] EQUALIZATION OF COSTS OF PRODUCTION.

(a) CHANGE OF CLASSIFICATION OR DUTIES.— In order to put into force and effect the policy of Congress by this Act intended, the commission (1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the commission there is good and sufficient reason therefor, upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at such hearings. The commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in the costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.

(b) [Repealed.]

(c) PROCLAMATION BY THE PRESIDENT.—The President shall by proclamation approve the rates of duty and changes in classification specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such difference in costs of production.

(d) EFFECTIVE DATE OF RATES AND CHANGES.—Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification specified in the report of the commission shall take effect.

(e) ASCERTAINMENT OF DIFFERENCES IN COSTS OF PRODUCTION.—In ascertaining under this section the differences in costs of production, the commission shall take into consideration, in so far as it finds it practicable:

(1) IN THE CASE OF A DOMESTIC ARTICLE.—(A) The cost of production as hereinafter in this section defined; (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; and (C) other relevant factors that constitute an advantage or disadvantage in competition.

(2) IN THE CASE OF A FOREIGN ARTICLE.—(A) The cost of production as hereinafter in this section defined, or, if the commission finds that such cost is not readily ascertainable, the commission may accept as evidence thereof, or as supplemental thereto, the weighted average of the invoice prices or values for a representative period and/or the average wholesale selling price for a representative period (which price shall be that at which the article is freely offered for sale to all purchasers in

the principal market or markets of the principal competing country or countries in the ordinary course of trade and in the usual wholesale quantities in such market or markets); (B) transportation costs and other costs incident to delivery to the principal market or markets of the United States for the article; (C) other relevant factors that constitute an advantage or disadvantage in competition, including advantages granted to the foreign producers by a government, person, partnership, corporation, or association in a foreign country.

(f) MODIFICATION OF CHANGES IN DUTY.—Any increased or decreased rate of duty or change in classification which has taken effect as above provided may be modified or terminated in the same manner and subject to the same conditions and limitations (including time of taking effect) as is provided in this section in the case of original increases, decreases, or changes.

(g) PROHIBITION AGAINST TRANSFERS FROM THE FREE LIST TO THE DUTIABLE LIST OR FROM THE DUTIABLE LIST TO THE FREE LIST.—Nothing in this section shall be construed to authorize a transfer of an article from the dutiable list to the free list or from the free list to the dutiable list, nor a change in form of duty. Whenever it is provided in any paragraph of Title I of this Act, or in any amendatory Act, that the duty or duties shall not exceed a specified ad valorem rate upon the articles provided for in such paragraph, no rate determined under the provisions of this section upon such articles shall exceed the maximum ad valorem rate so specified.

(h) DEFINITIONS.—For the purpose of this section—

(1) The term “domestic article” means an article wholly or in part the growth or product of the United States; and the term “foreign article” means an article wholly or in part the growth or product of a foreign country.

(2) The term “United States” includes the several States and Territories and the District of Columbia.

(3) The term “foreign country” means any empire, country, dominion, colony, or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions).

(4) The term “cost of production”, when applied with respect to either a domestic article or a foreign article, includes, for a period which is representative of conditions in production of the article: (A) The price or cost of materials, labor costs, and other direct charges incurred in the production of the article and in the processes or methods employed in its production; (B) the usual general expenses, including charges for depreciation or depletion which are representative of the equipment and property employed in the production of the article and charges for rent or interest which are representative of the cost of obtaining capital or instruments or production; and (C) the cost of containers and coverings of whatever nature, and other costs, charges, and expenses incident to placing the article in condition packed ready for delivery.

(i) RULES AND REGULATIONS OF PRESIDENT.—The President is authorized to make all needful rules and regulations for carrying out his functions under the provisions of this section.

(j) [Repealed.]

(k) INVESTIGATIONS PRIOR TO ENACTMENT OF ACT.—All uncompleted investigations instituted prior to the approval of this Act under the provisions of section 315 of the Tariff Act of 1922, including investigations in which the President has not proclaimed changes in classification or increases or decreases in rates of duty, shall be dismissed without prejudice; but the information and evidence secured by the commission in any such investigation may be given due consideration in any investigation instituted under the provisions of this section.

SEC. 337. [19 U.S.C. 1337] UNFAIR PRACTICES IN IMPORT TRADE.

(a)(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) Unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), (D), and (E)) into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is—

(i) to destroy or substantially injure an industry in the United States;

(ii) to prevent the establishment of such an industry;

or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that—

(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17, United States Code; or

(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent.

(C) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946.

(D) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of a semiconductor chip product in a manner that constitutes infringement of a mask work registered under chapter 9 of title 17, United States Code.

(E) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consigner, of an article that constitutes infringement of the exclusive rights in a design protected under chapter 13 of title 17, United States Code.

(2) Subparagraphs (B), (C), (D), and (E) of paragraph (1) apply only if an industry in the United States, relating to the articles

protected by the patent, copyright, trademark, mask work, or design concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned—

- (A) significant investment in plant and equipment;
- (B) significant employment of labor or capital; or
- (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

(4) For the purposes of this section, the phrase “owner, importer, or consignee” includes any agent of the owner, importer, or consignee.

(b) INVESTIGATIONS OF VIOLATIONS BY COMMISSION.—(1) The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commissioner shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation and make its determination under this section at the earliest practicable time after the date of publication of notice of such investigation. To promote expeditious adjudication, the Commission shall, within 45 days after an investigation is initiated, establish a target date for its final determination.

(2) During the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that a matter, in whole or in part, may come within the purview of subtitle B of title VII of this Act,¹ it shall promptly notify the Secretary of Commerce so that such action may be taken as is otherwise authorized by such subtitle. If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section 701 or 731, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, United States Code, the Commission shall terminate, or not institute, any investigation into the matter. If the Commission has reason to believe the matter before it is based in part on alleged acts and effects which are within the purview of section 701 or 731 of this Act, and in part on alleged acts and effects which may, independently from or in conjunction with those within the purview of such section, establish a basis for relief under this section, then it may institute or continue an investigation into the matter. If the Commission notifies the Secretary or the administering authority (as defined in section 771(1) of this Act) with respect to a matter under this paragraph, the Commission may suspend its investigation during the time the matter is before the Secretary or admin-

¹Section 321(a)(1)(C)(i)(I) of P.L. 103-465 attempted to amend this paragraph by striking “the Tariff Act of 1930” and inserting “this Act”. Section 261(d)(1)(B)(ii)(I) of such Act struck “of section 303 or subtitle B of title VII of the Tariff Act of 1930” and inserted “of subtitle B of title VII of this Act”.

istering authority for final decision. Any final decision by the administering authority under section 701 or 731 of this Act with respect to the matter within such section 701 or 731 of which the Commission has notified the Secretary or administering authority shall be conclusive upon the Commission with respect to the issue of less-than-fair-value sales or subsidization and the matters necessary for such decision.

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, except that the Commission may, by issuing a consent order or on the basis of an agreement between the private parties to the investigation, including an agreement to present the matter for arbitration, terminate any such investigation, in whole or in part, without making such a determination. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. A respondent may raise any counterclaim in a manner prescribed by the Commission. Immediately after a counterclaim is received by the Commission, the respondent raising such counterclaim shall file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the party would exist under section 1391 of title 28, United States Code. Any counterclaim raised pursuant to this section shall relate back to the date of the original complaint in the proceeding before the Commission. Action on such counterclaim shall not delay or affect the proceeding under this section, including the legal and equitable defenses that may be raised under this subsection. Any person adversely affected by a final determination of the Commission under subsection (d), (e), (f), or (g) may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5, United States Code. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), (f), and (g) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code. Determinations by the Commission under subsections (e), (f), and (j) with respect to forfeiture of bonds and under subsection (h) with respect to the imposition of sanctions for abuse of discovery or abuse of process shall also be reviewable in accordance with section 706 of title 5, United States Code.

(d) EXCLUSION OF ARTICLES FROM ENTRY.—(1) If the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy,

the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

(2) The authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that—

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

(e) EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.—(1) If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of this section, the bond may be forfeited to the complainant.

(2) A complainant may petition the Commission for the issuance of an order under this subsection. The Commission shall make a determination with regard to such petition by no later than the 90th day after the date on which the Commission's notice of investigation is published in the Federal Register. The Commission may extend the 90-day period for an additional 60 days in a case it designates as a more complicated case. The Commission shall publish in the Federal Register its reasons why it designated the case as being more complicated. The Commission may require the complainant to post a bond as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent.

(3) The Commission may grant preliminary relief under this subsection or subsection (f) to the same extent as preliminary injunctions and temporary restraining orders may be granted under the Federal Rules of Civil Procedure.

(4) The Commission shall prescribe the terms and conditions under which bonds may be forfeited under paragraphs (1) and (2).

(f) CEASE AND DESIST ORDERS.—(1) In addition to, or in lieu of, taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be. If a temporary cease and desist order is issued in addition to, or in lieu of, an exclusion order under subsection (e), the Commission may require the complainant to post a bond, in an amount determined by the Commission to be sufficient to protect the respondent from any injury, as a prerequisite to the issuance of an order under this subsection. If the Commission later determines that the respondent has not violated the provisions of this section, the bond may be forfeited to the respondent. The Commission shall prescribe the terms and conditions under which the bonds may be forfeited under this paragraph.

(2) Any person who violates an order issued by the Commission under paragraph (1) after it has become final shall forfeit and pay to the United States a civil penalty for each day on which an importation of articles, or their sale, occurs in violation of the order of not more than the greater of \$100,000, twice the domestic value of the articles entered or sold on such day in violation of the order. Such penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs. In such actions, the United States district courts may issue mandatory injunctions incorporating the relief sought by the Commission as they deem appropriate in the enforcement of such final orders of the Commission.

(g)(1) If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(D) the person fails to show good cause why the person should not be found in default; and

(E) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the pub-

lic health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

(2) In addition to the authority of the Commission to issue a general exclusion from entry of articles when a respondent appears to contest an investigation concerning a violation of the provisions of this section, a general exclusion from entry of articles, regardless of the source or importer of the articles, may be issued if—

(A) no person appears to contest an investigation concerning a violation of the provisions of this section,

(B) such a violation is established by substantial, reliable, and probative evidence, and

(C) the requirements of subsection (d)(2) are met.

(h) The Commission may by rule prescribe sanctions for abuse of discovery and abuse of process to the extent authorized by Rule 11 and Rule 37 of the Federal Rules of Civil Procedure.

(i) FORFEITURE.—

(1) In addition to taking action under subsection (d), the Commission may issue an order providing that any article imported in violation of the provisions of this section be seized and forfeited to the United States if—

(A) the owner, importer, or consignee of the article previously attempted to import the article into the United States;

(B) the article was previously denied entry into the United States by reason of an order issued under subsection (d); and

(C) upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article written notice of—

(i) such order, and

(ii) the seizure and forfeiture that would result from any further attempt to import the article into the United States.

(2) The Commission shall notify the Secretary of the Treasury of any order issued under this subsection and, upon receipt of such notice, the Secretary of the Treasury shall enforce such order in accordance with the provisions of this section.

(2) Upon the attempted entry of articles subject to an order issued under this subsection, the Secretary of the Treasury shall immediately notify all ports of entry of the attempted importation and shall identify the persons notified under paragraph (1)(C).

(4) The Secretary of the Treasury shall provide—

(A) the written notice described in paragraph (1)(C) to the owner, importer, or consignee of any article that is denied entry into the United States by reason of an order issued under subsection (d); and

(B) a copy of such written notice to the Commission.

(j) REFERRAL TO THE PRESIDENT.—(1) If the Commission determines that there is a violation of this section, or that, for purposes

of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), (f), (g), or (i), with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the 60-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), (f), (g), or (i) with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), (f), (g) or (i) with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall, until such determination becomes final, be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the determination becomes final, the bond may be forfeited to the complainant. The Commission shall prescribe the terms and conditions under which bonds may be forfeited under this paragraph.

(4) If the President does not disapprove such determination within such 60-day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of paragraph (3) and subsection (c) such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(k) PERIOD OF EFFECTIVENESS.—(1) Except as provided in subsections (f) and (j), any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(2) If any person who has previously been found by the Commission to be in violation of this section petitions the Commission for a determination that the petitioner is no longer in violation of this section or for a modification or rescission of an exclusion from entry or order under subsection (d), (e), (f), (g), or (i)—

(A) the burden of proof in any proceeding before the Commission regarding such petition shall be on the petitioner; and

(B) relief may be granted by the Commission with respect to such petition—

(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding, or

(ii) on grounds which would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(l) IMPORTATIONS BY OR FOR THE UNITED STATES.—Any exclusion from entry or order under subsection (d), (e), (f), (g), or (i), in cases based on a preceding involving a patent, copyright, mask work, or design under subsection (a)(1), shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Whenever any article would have been excluded from entry or would not have been entered pursuant to the provisions of such subsections but for the operation of this subsection, an owner of the patent, copyright, or mask work adversely affected shall be entitled to reasonable and entire compensation in an action before the United States Court of Federal Claims pursuant to the procedures of section 1498 of title 28, United States Code.

(m) DEFINITION OF UNITED STATES.—For purposes of this section and sections 338 and 340, the term “United States” means the customs territory of the United States as defined in general note 2 of the Harmonized Tariff Schedule of the United States.

(n)(1) Information submitted to the Commission or exchanged among the parties in connection with proceedings under this section which is properly designated as confidential pursuant to Commission rules may not be disclosed (except under a protective order issued under regulations of the Commission which authorizes limited disclosure of such information) to any person (other than a person described in paragraph (2)) without the consent of the person submitting it.

(2) Notwithstanding the prohibition contained in paragraph (1), information referred to in that paragraph may be disclosed to—

(A) an officer or employee of the Commission who is directly concerned with—

(i) carrying out the investigation or related proceeding in connection with which the information is submitted,

(ii) the administration of a bond posted pursuant to subsection (e), (f), or (j),

(iii) the administration or enforcement of an exclusion order issued pursuant to subsection (d), (e), or (g), a cease and desist order issued pursuant to subsection (f), or a consent order issued pursuant to subsection (c),

(iv) proceedings for the modification or rescission of a temporary or permanent order issued under subsection (d), (e), (f), (g), or (i), or a consent order issued under this section, or

(v) maintaining the administrative record of the investigation or related proceeding,

(B) an officer or employee of the United States Government who is directly involved in the review under subsection (j), or

(C) an officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under subsection (d), (e), or (g) resulting from the investigation or related proceeding in connection with which the information is submitted.

SEC. 338. [19 U.S.C. 1338] DISCRIMINATION BY FOREIGN COUNTRIES.

(a) **ADDITIONAL DUTIES.**—The President when he finds that the public interest will be served thereby shall by proclamation specify and declare new or additional duties as hereinafter provided upon articles wholly or in part the growth or product of, or imported in a vessel of, any foreign country whenever he shall find as a fact that such country—

(1) Imposes, directly or indirectly, upon the disposition in or transportation in transit through or reexportation from such country of any article wholly or in part the growth or product of the United States any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like articles of every foreign country; or

(2) Discriminates in fact against the commerce of the United States, directly or indirectly, by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition, in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country.

(b) **EXCLUSION FROM IMPORTATION.**—If at any time the President shall find it to be a fact that any foreign country has not only discriminated against the commerce of the United States, as aforesaid, but has, after the issuance of a proclamation as authorized in subdivision (a) of this section, maintained or increased its said discriminations against the commerce of the United States, the President is hereby authorized, if he deems it consistent with the interests of the United States, to issue a further proclamation directing that such products of said country or such articles imported in its vessels as he shall deem consistent with the public interests shall be excluded from importation into the United States.

(c) **APPLICATION OF PROCLAMATION.**—Any proclamation issued by the President under the authority of this section shall, if he deems it consistent with the interests of the United States, extend to the whole of any foreign country or may be confined to any subdivision or subdivisions thereof; and the President shall, whenever he deems the public interests require, suspend, revoke, supplement, or amend any such proclamation.

(d) **DUTIES TO OFFSET COMMERCIAL DISADVANTAGES.**—Whenever the President shall find as a fact that any foreign country places any burden or disadvantage upon the commerce of the United States by any of the unequal impositions or discriminations aforesaid, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per centum ad valorem or its equivalent, on any products of, or on articles imported in a vessel of, such foreign country; and thirty days after the date of such proclamation there shall be levied, collected, and paid upon the articles enumerated in such proclamation when imported into the United States from such foreign country such new or additional rate or rates of duty; or, in case of articles declared subject to exclusion from importation into the United States under the provi-

sions of subdivision (b) of this section, such articles shall be excluded from importation.

(e) DUTIES TO OFFSET BENEFITS TO THIRD COUNTRY.—Whenever the President shall find as a fact that any foreign country imposes any unequal imposition or discrimination as aforesaid upon the commerce of the United States, or that any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country other than the foreign country in which such industry is located, and whenever the President shall determine that any new or additional rate or rates of duty or any prohibition hereinbefore provided for do not effectively remove such imposition or discrimination and that any benefits from any such imposition or discrimination accrue or are likely to accrue to any industry in any foreign country, he shall, when he finds that the public interest will be served thereby, by proclamation specify and declare such new or additional rate or rates of duty upon the articles wholly or in part the growth or product of any such industry as he shall determine will offset such benefits, not to exceed 50 per centum ad valorem or its equivalent, upon importation from any foreign country into the United States of such articles; and on and after thirty days after the date of any such proclamation such new or additional rate or rates of duty so specified and declared in such proclamation shall be levied, collected, and paid upon such articles.

(f) FORFEITURE OF ARTICLES.—All articles imported contrary to the provisions of this section shall be forfeited to the United States and shall be liable to be seized, prosecuted, and condemned in like manner and under the same regulations, restrictions, and provisions as may from time to time be established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws. Whenever the provisions of this Act shall be applicable to importations into the United States of articles wholly or in part the growth or product of any foreign country, they shall be applicable thereto whether such articles are imported directly or indirectly.

(g) ASCERTAINMENT BY COMMISSION OR DISCRIMINATIONS.—It shall be the duty of the commission to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in subdivisions (a), (b), and (e) of this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.

(h) RULES AND REGULATIONS OF SECRETARY OF TREASURY.—The Secretary of the Treasury with the approval of the President shall make such rules and regulations as are necessary for the execution of such proclamations as the President may issue in accordance with the provisions of this section.

(i) DEFINITION.—When used in this section the term “foreign country” means any empire, country, dominion, colony or protectorate, or any subdivision or subdivisions thereof (other than the United States and its possessions), within which separate tariff rates or separate regulations of commerce are enforced.

SEC. 339. [19 U.S.C. 1339] TRADE REMEDY ASSISTANCE OFFICE.

(a) There is established in the Commission a separate office to be known as the Trade Remedy Assistance Office which shall provide full information to the public upon request and shall, to the extent feasible, provide assistance and advice to interested parties concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them—

(1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and

(2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.

(c) For purposes of this section—

(1) The term “eligible small business” means any business concern which, in the agency’s judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an “eligible small business”, the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

(2) The term “trade laws” means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition);

(B) chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

(E) section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security); and

(F) section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade).

SEC. 340. [Section 340, act June 17, 1930, ch. 497, title III, § 340, 46 Stat. 706, related to the preparation of a certain report by the commission to Congress. See Tariff Commission Reports, No. 46, Parts 1 to 8.]

SEC. 341. [19 U.S.C. 1341] INTERFERENCE WITH FUNCTIONS OF COMMISSION.

(a) INTERFERING WITH OR INFLUENCING THE COMMISSION OR ITS EMPLOYEES.—It shall be unlawful for any person (1) to prevent or attempt to prevent, by force, intimidation, threat, or in any other manner, any member or employee of the commission from exercising the functions imposed upon the commission by this title, or (2) to induce, or attempt to induce, by like means any such member or employee to make any decision or order, or to take any action, with respect to any matter within the authority of the commission.

(b) PENALTY.—Any person who violates any of the provisions of this section shall, upon conviction thereof, be fined not more than \$1,000 or imprisonment for not more than one year, or both.

(c) DEFINITION.—As used in this section the term “person” includes an individual, corporation, association, partnership, or any other organization or group of individuals.

PART III—PROMOTION OF FOREIGN TRADE

SEC. 350. [19 U.S.C. 1351] (a)(1) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof: *Provided*, That the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.

(B) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.

(2) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made—

(A) Increasing by more than 50 per centum any rate of duty existing on July 1, 1934; except that a specific rate of duty existing on July 1, 1934, may be converted to its ad valorem equivalent based on the value of imports of the article concerned during the calendar year 1934 (determined in the same manner as provided in subparagraph (D)(ii)) and the proclamation may provide an ad valorem rate of duty not in excess of 50 per centum above such ad valorem equivalent.

(B) Transferring any article between the dutiable and free lists.

(C) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, or with respect to which notice of intention to negotiate was published in the Federal Register on November 16, 1954, decreasing by more than 50 per centum any rate of duty existing on January 1, 1945.

(D) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, and before July 1, 1958, decreasing (except as provided in subparagraph (C) of this paragraph) any rate of duty below the lowest of the following rates:

(i) The rate 15 per centum below the rate existing on January 1, 1955.

(ii) In the case of any article subject to an ad valorem rate of duty above 50 per centum (or a combination of ad valorem rates aggregating more than 50 per centum), the rate 50 per centum ad valorem (or a combination of ad valorem rates aggregating 50 per centum). In the case of any article subject to a specific rate of duty (or a combination of rates including a specific rate) the ad valorem equivalent of which has been determined by the President to have been above 50 per centum during a period determined by the President to be a representative period, the rate 50 per centum ad valorem or the rate (or a combination of rates), however stated, the ad valorem equivalent to which the President determines would have been 50 per centum during such period. The standards of valuation contained in section 402 of this Act (as in effect, with respect to the article concerned, during the representative period) shall be utilized by the President, to the maximum extent he finds such utilization practicable, in making the determinations under the preceding sentence.

(E) In order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the rates provided for in paragraph (4)(A) of this subsection.

(3)(A) Subject to the provisions of subparagraphs (B) and (C) of this paragraph and of subparagraph (B) of paragraph (4) of this subsection, the provisions of any proclamation made under paragraph (1)(B) of this subsection, and the provisions of any proclamation of suspension under paragraph (5) of this subsection, shall be in effect from and after such time as is specified in the proclamation.

(B) In the case of any decrease in duty to which paragraph (2)(D) of this subsection applies—

(i) if the total amount of the decrease under the foreign trade agreement does not exceed 15 per centum of the rate existing on January 1, 1955, the amount of decrease becoming initially effective at one time shall not exceed 5 per centum of the rate existing on January 1, 1955;

(ii) except as provided in clause (i), not more than one-third of the total amount of the decrease under the foreign trade agreement shall become initially effective at one time; and

(iii) no part of the decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year.

(C) No part of any decrease in duty to which the alternative specified in paragraph (2)(D)(i) of this subsection applies shall become initially effective after the expiration of the three-year period which begins on July 1, 1955. If any part of such decrease has become effective, then for purposes of this subparagraph any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period expires.

(D) If (in order to carry out a foreign trade agreement entered into by a President on or after June 12, 1955) the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed any limitation specified in paragraph (2) (C) or (D) or paragraph 4(A) or (B) of this subsection or subparagraph (B) of this paragraph by not more than whichever of the following is lesser:

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

(ii) One-half of 1 per centum ad valorem.

In the case of a specific rate (or of a combination of rates which includes a specific rate), the one-half of 1 per centum specified in clause (ii) of the preceding sentence shall be determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purposes of paragraph (2)(D)(ii) of this subsection.

(4)(A) No proclamation pursuant to paragraph (1)(B) of this subsection shall be made, in order to carry out a foreign trade agreement entered into by the President on or after July 1, 1958, decreasing any rate of duty below the lowest of the following rates:

(i) The rate which would result from decreasing the rate existing on July 1, 1958, by 20 per centum of such rate.

(ii) Subject to paragraph (2)(B) of this subsection, the rate 2 per centum ad valorem below the rate existing on July 1, 1958.

(iii) The rate 50 per centum ad valorem or, in the case of any article subject to a specific rate of duty or to a combination of rates including a specific rate, any rate (or combination of rates), however stated, the ad valorem equivalent of which has been determined as 50 per centum ad valorem.

The provisions of clauses (ii) and (iii) of this subparagraph and of subparagraph (B)(ii) of this paragraph shall, in the case of any article subject to a combination of ad valorem rates of duty, apply to the aggregate of such rates; and, in the case of any article subject to a specific rate of duty or to a combination of rates including a specific rate, such provisions shall apply on the basis of the ad valorem equivalent of such rate or rates, during a representative period (whether or not such period includes July 1, 1958), determined in the same manner as the ad valorem equivalent of rates not stated wholly in ad valorem terms is determined for the purpose of paragraph (2)(D)(ii) of this subsection.

(B)(i) In the case of any decrease in duty to which clause (i) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 10 per centum of the rate of duty existing on July 1, 1958, or, in any case in which the rate has been increased since that date, exceed such 10 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(ii) In the case of any decrease in duty to which clause (ii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed 1 per centum ad valorem or, in any case in which the rate has been increased since July 1, 1958, exceed such 1 per centum or one-third of the total amount of the decrease under the foreign trade agreement, whichever is the greater.

(iii) In the case of any decrease in duty to which clause (iii) of subparagraph (A) of this paragraph applies, such decrease shall become initially effective in not more than four annual stages, and no amount of decrease becoming initially effective at one time shall exceed one-third of the total amount of the decrease under the foreign trade agreement.

(C) In the case of any decrease in duty to which subparagraph (A) of this paragraph applies (i) no part of a decrease after the first part shall become initially effective until the immediately previous part shall have been in effect for a period or periods aggregating not less than one year, nor after the first part shall have been in effect for a period or periods aggregating more than three years, and (ii) no part of a decrease shall become initially effective after the expiration of the four-year period which begins on July 1, 1962. If any part of a decrease has become effective, then for the purposes of clauses (i) and (ii) of the preceding sentence any time thereafter during which such part of the decrease is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining when the three-year period or the four-year period, as the case may be, expires.

(5) [Repealed.]

(6) The President may at any time terminate, in whole or in part, any proclamation made pursuant to this section.

(b) Nothing in this section shall be construed to prevent the application, with respect to rates of duty established under this section or the Trade Expansion Act of 1962 pursuant to agreements

with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or to preclude giving effect to an agreement with Cuba concluded under this section or the Trade Expansion Act of 1962, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba. Nothing in this Act or the Trade Expansion Act of 1962 shall be construed to preclude the application to any product of Cuba (including products preferentially free of duty) of a rate of duty not higher than the rate applicable to the like products of other foreign countries (except the Philippines), whether or not the application of such rate involves any preferential customs treatment. No rate of duty on products of Cuba shall be decreased—

(1) In order to carry out a foreign trade agreement entered into by the President before June 12, 1955, and before July 1, 1962, by more than 50 per centum of the rate of duty existing on January 1, 1945, with respect to products of Cuba.

(2) In order to carry out a foreign trade agreement entered into by the President on or after June 12, 1955, below the applicable alternative specified in subsection (a)(2)(C) or (D) or (4)(A) (subject to the applicable provisions of subsection (a)(3)(B), (C), and (D) and (4)(B) and (C)), each such alternative to be read for the purposes of this paragraph as relating to the rate of duty applicable to products of Cuba. With respect to products of Cuba, the limitation of subsection (a)(2)(D)(ii) or (4)(A)(iii) may be exceeded to such extent as may be required to maintain an absolute margin of preference to which such products are entitled.

(3) In order to carry out a foreign trade agreement entered into after June 30, 1962, and before July 1, 1967, below the lowest rate permissible by applying title II of the Trade Expansion Act of 1962 to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on July 1, 1962, with respect to such product.

(c)(1) As used in this section, the term “duties and other import restrictions” includes (A) rate and form of import duties and classification of articles, and (B) limitations, prohibitions, charges, and exactions other than duties, imposed on importation or imposed for the regulation of imports.

(2) For purposes of this section—

(A) Except as provided in subsection (d), the terms “existing on July 1, 1934”, “existing on January 1, 1945”, “existing on January 1, 1955”, and “existing on July 1, 1958” refer to rates of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on the date specified, except rates in effect by reason of action taken pursuant to section 5 of the Trade Agreements Extension Act of 1951 (19 U.S.C., sec. 1362).

(B) The term “existing” without the specification of any date, when used with respect to any matter relating to the conclusion of, or proclamation to carry out, a foreign trade agreement, means existing on the day on which that trade agreement is entered into.

(d)(1) When any rate of duty has been increased or decreased for the duration of war or an emergency, by agreement or otherwise, any further increase or decrease shall be computed upon the basis of the post-war or post-emergency rate carried in such agreement or otherwise.

(2) Where under a foreign trade agreement the United States has reserved the unqualified right to withdraw or modify, after the termination of war or an emergency, a rate on a specific commodity, the rate on such commodity to be considered as “existing on January 1, 1945” for the purpose of this section shall be the rate which would have existed if the agreement had not been entered into.

(3) No proclamation shall be made pursuant to this section for the purpose of carrying out any foreign trade agreement the proclamation with respect to which has been terminated in whole by the President prior to the date this subsection is enacted.

(e) [Repealed.]

(f) It is hereby declared to be the sense of the Congress that the President, during the course of negotiating any foreign trade agreement under this section, should seek information and advice with respect to such agreement from representatives of industry, agriculture, and labor.

TITLE IV—ADMINISTRATIVE PROVISIONS

PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

Subpart A—Definitions

SEC. 401. [19 U.S.C. 1401] MISCELLANEOUS.

When used in this title or in Part I of Title III—

(a) VESSEL.—The word “vessel” includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

(b) VEHICLE.—The word “vehicle” includes every description of carriage or other contrivance used, or capable of being used, as a means of transportation on land, but does not include aircraft.

(c) MERCHANDISE.—The word “merchandise” means goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited, and monetary instruments as defined in section 5312 of title 31, United States Code.

(d) PERSON.—The word “person” includes partnerships, associations, and corporations.

(e) MASTER.—The word “master” means the person having the command of the vessel.

(f) DAY.—The word “day” means the time from eight o’clock antemeridian to five o’clock postmeridian.

(g) NIGHT.—The word “night” means the time from five o’clock postmeridian to eight o’clock antemeridian.

(h) UNITED STATES.—The term “United States” includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, Wake Island,

Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(i) OFFICER OF THE CUSTOMS: CUSTOMS OFFICER.—The terms “officer of the customs” and “customs officer” mean any officer of the Bureau of Customs of the Treasury Department (also hereinafter referred to as the “Customs Service”) or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person, including foreign law enforcement officers, authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

(j) CUSTOMS WATERS.—The term “customs waters” means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(k) The term “hovering vessel” means—

(1) any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws of the United States; and

(2) any vessel which has visited a vessel described in paragraph (1).

(l) SECRETARY.—The term “Secretary” means the Secretary of the Treasury or his delegate.

(m) CONTROLLED SUBSTANCE.—The term “controlled substance” has the meaning given that term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, a controlled substance shall be treated as merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

(1) an appropriate license or permit; or

(2) the Controlled Substances Import and Export Act.

(n) The term “electronic transmission” means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.

(o) The term “electronic entry” means the electronic transmission of the Customs Service of—

(1) entry information required for the entry of merchandise, and

(2) entry summary information required for the classification and appraisalment of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(p) The term “electronic data interchange system” means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.

(q) The term “National Customs Automation Program” means the program established under section 411.

(r) The term “import activity summary statement” refers to data or information transmitted electronically to the Customs Service, in accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(s) The term “reconciliation” means an electronic process, initiated at the request of an importer, under which the elements of an entry (other than those elements related to the admissibility of the merchandise) that are undetermined at the time the importer files or transmits the documentation or information required by section 484(a)(1)(B), or the import activity summary statement, are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, recordkeeping, and protest.

(t) RECONFIGURED ENTRY.—The term “reconfigured entry” means an entry filed on an import activity summary statement which substitutes for all or part of 1 or more entries filed under section 484(a)(1)(A) or filed on a reconciliation entry that aggregates the entry elements to be reconciled under section 484(b) for purposes of liquidation, reliquidation, or protest.

SEC. 402. [19 U.S.C. 1401a] VALUE.

(a) IN GENERAL.—(1) Except as otherwise specifically provided for in this Act, imported merchandise shall be appraised, for the purposes of this Act, on the basis of the following:

(A) The transaction value provided for under subsection

(b).

(B) The transaction value of identical merchandise provided for under subsection (c), if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2).

(C) The transaction value of similar merchandise provided for under subsection (c), if the value referred to in subparagraph (B) cannot be determined.

(D) The deductive value provided for under subsection (d), if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).

(E) The computed value provided for under subsection (e), if the value referred to in subparagraph (D) cannot be determined.

(F) The value provide for under subsection (f), if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise

shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

(b) TRANSACTION VALUE OF IMPORTED MERCHANDISE.—(1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to—

(A) the packing costs incurred by the buyer with respect to the imported merchandise;

(B) any selling commission incurred by the buyer with respect to the imported merchandise;

(C) the value, apportioned as appropriate, of any assist;

(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

The price actually paid or payable for imported merchandise shall be increased by the amounts attributable to the items (and no others) described in subparagraphs (A) through (E) only to the extent that each such amount (i) is not otherwise included within the price actually paid or payable; and (ii) is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in the preceding sentence, the transaction value of the imported merchandise concerned shall be treated, for purposes of this section, as one that cannot be determined.

(2)(A) The transaction value of imported merchandise determined under paragraph (1) shall be the appraised value of that merchandise for the purposes of this Act only if—

(i) there are no restrictions on the disposition or use of the imported merchandise by the buyer other than restrictions that—

(I) are imposed or required by law,

(II) limit the geographical area in which the merchandise may be resold, or

(III) do not substantially affect the value of the merchandise;

(ii) the sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consid-

eration for which a value cannot be determined with respect to the imported merchandise;

(iii) no part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment therefor can be made under paragraph (1)(E); and

(iv) the buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable, for purposes of this subsection, under subparagraph (B).

(B) The transaction value between a related buyer and seller is acceptable for the purposes of this subsection if an examination of the circumstances of the sale of the imported merchandise indicates that the relationship between such buyer and seller did not influence the price actually paid or payable; or if the transaction value of the imported merchandise closely approximates—

(i) the transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States;

(ii) the deductive value or computed value for identical merchandise or similar merchandise; or

(iii) the transaction value determined under this subsection in sales to unrelated buyers of merchandise, for exportation to the United States, that is identical in all respects to the imported merchandise but was not produced in the country in which the imported merchandise was produced;

but only if each value referred to in clause (i), (ii) or (iii) that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise. No two sales to unrelated buyers may be used for comparison for purposes of clause (iii) unless the sellers are unrelated.

(C) In applying the values used for comparison purposes under subparagraph (B), there shall be taken into account differences with respect to the sales involved (if such differences are based on sufficient information whether supplied by the buyer or otherwise available to the customs officer concerned) in—

(i) commercial levels;

(ii) quantity levels;

(iii) the costs, commissions, values, fees, and proceeds described in paragraph (1); and

(iv) the costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(3) The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (1):

(A) Any reasonable cost or charge that is incurred for—

(i) the construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) the transportation of the merchandise after such importation.

(B) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable.

(4) For purposes of this subsection—

(A) The term “price actually paid or payable” means the total payment (whether direct or indirect, and exclusive of 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 in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(B) Any rebate of, or other decrease in, the price actually paid or payable that is made or otherwise effected between the buyer and seller after the date of the importation of the merchandise into the United States shall be disregarded in determining the transaction value under paragraph (1).

(c) TRANSACTION VALUE OF IDENTICAL MERCHANDISE AND SIMILAR MERCHANDISE.—(1) The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value for purposes of this Act under subsection (b) but adjusted under paragraph (2) of this subsection) of imported merchandise that is—

(A) with respect to the merchandise being appraised, either identical merchandise or similar merchandise, as the case may be; and

(B) exported to the United States or about the time that the merchandise being appraised is exported to the United States.

(2) Transaction values determined under this subsection shall be based on sales of identical merchandise or similar merchandise, as the case may be, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise or similar merchandise at either a different commercial level or in different quantities, or both, shall be used, but adjusted to take account of any such difference. Any adjustment made under this paragraph shall be based on sufficient information. If in applying this paragraph with respect to any imported merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, such imported merchandise shall be appraised on the basis of the lower or lowest of such values.

(d) DEDUCTIVE VALUE.—(1) For purposes of this subsection, the term “merchandise concerned” means the merchandise being appraised, identical merchandise, or similar merchandise.

(2)(A) The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (3)) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States.

(i) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the

merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(ii) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(iii) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This clause shall apply to appraisement of merchandise only if the importer so elects and notifies the customs officer concerned of that election within such time as shall be prescribed by the Secretary.

(B) For purposes of subparagraph (A), the unit price at which merchandise is sold in the greatest aggregate quantity is the unit price at which such merchandise is sold to unrelated persons, at the first commercial level after importation (in cases to which subparagraph (A)(i) or (ii) applies) or after further processing (in cases to which subparagraph (A)(iii) applies) at which such sales take place, in a total volume that is (i) greater than the total volume sold at any other unit price, and (ii) sufficient to establish the unit price.

(3)(A) The price determined under paragraph (2) shall be reduced by an amount equal to—

(i) any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(ii) the actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(iii) the usual costs and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, if such costs are not included as a general expense under clause (i);

(iv) the customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, such merchandise for which vendors in the United States are ordinarily liable; and

(v) (but only in the case of a price determined under paragraph (2)(A)(iii)) the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to cost of such processing.

(B) For purposes of applying paragraph (A)—

(i) the deduction made for profits and general expenses shall be based upon the importer's profits and general expenses, unless such profits and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind, in which case the deduction shall be based on the usual profit and general expenses reflected in such sales, as determined from sufficient information; and

(ii) any State or local tax imposed on the importer with respect to the sale of imported merchandise shall be treated as a general expense.

(C) The price determined under paragraph (2) shall be increased (but only to the extent that such costs are not otherwise included) by an amount equal to the packing costs incurred by the importer or the buyer, as the case may be, with respect to the merchandise concerned.

(D) For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connected with the production or sale for export of the merchandise concerned shall be disregarded.

(e) COMPUTED VALUE.—(1) The computed value of imported merchandise is the sum of—

(A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(C) any assist, if its value is not included under subparagraph (A) or (B); and

(D) the packing costs.

(2) For purposes of paragraph (1)—

(A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country or exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and

(B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

(f) VALUE IF OTHER VALUES CANNOT BE DETERMINED OR USED.—(1) If the value of imported merchandise cannot be determined, or otherwise used for the purposes of this Act, under subsections (b) through (e), the merchandise shall be appraised for the

purposes of this Act on the basis of a value that is derived from the methods set forth in such subsections, with such methods being reasonably adjusted to the extent necessary to arrive at a value.

(2) Imported merchandise may not be appraised, for the purposes of this Act, on the basis of—

(A) the selling price in the United States of merchandise produced in the United States;

(B) a system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(C) the price of merchandise in the domestic market of the country of exportation;

(D) a cost of production, other than a value determined under subsection (e) for merchandise that is identical merchandise or similar merchandise to the merchandise being appraised;

(E) the price of merchandise for export to a country other than the United States;

(F) minimum values for appraisement; or

(G) arbitrary or fictitious values.

This paragraph shall not apply with respect to the ascertainment, determination, or estimation of foreign market value or United States price under title VII.

(g) SPECIAL RULES.—(1) For purposes of this section, the persons specified in any of the following subparagraphs shall be treated as persons who are related:

(A) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owing, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(2) For purposes of this section, merchandise (including, but not limited to, identical merchandise and similar merchandise) shall be treated as being of the same class or kind as other merchandise if it is within a group or range of merchandise produced by a particular industry or industry sector.

(3) For purposes of this section, information that is submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by the customs officer concerned on the basis of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles. The term “generally accepted accounting principles” refers to any generally recognized consensus or substantial authoritative support regarding—

(A) which economic resources and obligations should be recorded as assets and liabilities;

(B) which changes in assets and liabilities should be recorded;

(C) how the assets and liabilities and changes in them should be measured;

(D) what information should be disclosed and how it should be disclosed; and

(E) which financial statements should be prepared.

The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the merchandise is sought to be established.

(h) DEFINITIONS.—As used in this section—

(1)(A) The term “assist” means any of the following if supplied directly or indirectly, and free of charges or at reduced cost, by the buyer or imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(B) No service or work to which subparagraph (A)(iv) applies shall be treated as an assist for purposes of this section if such service or work—

(i) is performed by an individual who is domiciled within the United States;

(ii) is performed by that individual while he is acting as an employee or agent of the buyer of the imported merchandise; and

(iii) is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(C) For purposes of this section, the following apply in determining the value of assists described in subparagraph (A)(iv):

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value thereof that is added outside the United States.

(2) The term “identical merchandise” means—

(A) merchandise that is identical in all respects to, and was produced in the same country and by the same person as, the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of ap-

plying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that is identical in all respects to, and was produced in the same country as, but not produced by the same person as, the merchandise being appraised.

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(3) The term “packing costs” means the cost of all containers and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(4) The term “similar merchandise” means—

(A) merchandise that—

(i) was produced in the same country and by the same person as the merchandise being appraised,

(ii) is like the merchandise being appraised in characteristics and component material, and

(iii) is commercially interchangeable with the merchandise being appraised; or

(B) if merchandise meeting the requirements under subparagraph (A) cannot be found (or for purposes of applying subsection (b)(2)(B)(i), regardless of whether merchandise meeting such requirements can be found), merchandise that—

(i) was produced in the same country as, but not produced by the same person as, the merchandise being appraised, and

(ii) meets the requirements set forth in subparagraph (A)(ii) and (iii).

Such term does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch that—

(I) was supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise; and

(II) is not an assist because undertaken within the United States.

(5) The term “sufficient information”, when required under this section for determining—

(A) any amount—

(i) added under subsection (b)(1) to the price actually paid or payable,

(ii) deducted under subsection (d)(3) as profit or general expense or value from further processing, or

(iii) added under subsection (e)(2) as profit or general expense;

- (B) any difference taken into account for purposes of subsection (b)(2)(C); or
 (C) any adjustment made under subsection (c)(2);
 means information that establishes the accuracy of such amount, difference, or adjustment.

Subpart B—National Customs Automation Program

SEC. 411. [19 U.S.C. 1411] NATIONAL CUSTOMS AUTOMATION PROGRAM.

(a) ESTABLISHMENT.—The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the “Program”) which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

- (1) Existing components:
- (A) The electronic entry of merchandise.
 - (B) The electronic entry summary of required information.
 - (C) The electronic transmission of invoice information.
 - (D) The electronic transmission of manifest information.
 - (E) Electronic payments of duties, fees, and taxes.
 - (F) The electronic status of liquidation and reliquidation.
 - (G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).
- (2) Planned components:
- (A) The electronic filing and status of protests.
 - (B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.
 - (C) The electronic filing of import activity summary statements and reconciliation.
 - (D) The electronic filing of bonds.
 - (E) The electronic penalty process.
 - (F) The electronic filing of drawback claims, records, or entries.
 - (G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) PARTICIPATION IN PROGRAM.—The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. The Secretary may, by regulation, require the electronic submission of information described in subsection (a) or any other information required to be submitted to the Customs Service separately pursuant to this subpart.

(c) FOREIGN-TRADE ZONES.—Not later than January 1, 2000, the Secretary shall provide for the inclusion of commercial importation data from foreign-trade zones under the Program.

(d) INTERNATIONAL TRADE DATA SYSTEM.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary of the Treasury (in this subsection, referred to as the “Secretary”) shall oversee the establishment of an electronic trade data inter-

change system to be known as the “International Trade Data System” (ITDS). The ITDS shall be implemented not later than the date that the Automated Commercial Environment (commonly referred to as “ACE”) is fully implemented.

(B) PURPOSE.—The purpose of the ITDS is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by the United States Customs and Border Protection, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

(C) PARTICIPATION.—

(i) IN GENERAL.—All Federal agencies that require documentation for clearing or licensing the importation and exportation of cargo shall participate in the ITDS.

(ii) WAIVER.—The Director of the Office of Management and Budget may waive, in whole or in part, the requirement for participation for any Federal agency based on the vital national interest of the United States.

(D) CONSULTATION.—The Secretary shall consult with and assist the United States Customs and Border Protection and other agencies in the transition from paper to electronic format for the submission, issuance, and storage of documents relating to data required to enter cargo into the United States. In so doing, the Secretary shall also consult with private sector stakeholders, including the Commercial Operations Advisory Committee, in developing uniform data submission requirements, procedures, and schedules, for the ITDS.

(E) COORDINATION.—The Secretary shall be responsible for coordinating the operation of the ITDS among the participating agencies and the office within the United States Customs and Border Protection that is responsible for maintaining the ITDS.

(2) DATA ELEMENTS.—

(A) IN GENERAL.—The Interagency Steering Committee (established under paragraph (3)) shall, in consultation with the agencies participating in the ITDS, define the standard set of data elements to be collected, stored, and shared in the ITDS, consistent with laws applicable to the collection and protection of import and export information. The Interagency Steering Committee shall periodically review the data elements in order to update the standard set of data elements, as necessary.

(B) COMMITMENTS AND OBLIGATIONS.—The Interagency Steering Committee shall ensure that the ITDS data requirements are compatible with the commitments and obligations of the United States as a member of the World Customs Organization (WCO) and the World Trade Organization (WTO) for the entry and movement of cargo.

(3) INTERAGENCY STEERING COMMITTEE.—There is established an Interagency Steering Committee (in this section, referred to as the “Committee”). The members of the Committee shall include the Secretary (who shall serve as the chairperson of the Committee), the Director of the Office of Management and Budget, and the head of each agency participating in the ITDS. The Committee shall assist the Secretary in overseeing the implementation of, and participation in, the ITDS.

(4) REPORT.—The President shall submit a report before the end of each fiscal year to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. Each report shall include information on—

(A) the status of the ITDS implementation;

(B) the extent of participation in the ITDS by Federal agencies;

(C) the remaining barriers to any agency’s participation;

(D) the consistency of the ITDS with applicable standards established by the World Customs Organization and the World Trade Organization;

(E) recommendations for technological and other improvements to the ITDS; and

(F) the status of the development, implementation, and management of the Automated Commercial Environment within the United States Customs and Border Protection.

(5) SENSE OF CONGRESS.—It is the sense of Congress that agency participation in the ITDS is an important priority of the Federal Government and that the Secretary shall coordinate the operation of the ITDS closely among the participating agencies and the office within the United States Customs and Border Protection that is responsible for maintaining the ITDS.

(6) CONSTRUCTION.—Nothing in this section shall be construed as amending or modifying subsection (g) of section 301 of title 13, United States Code.

(7) DEFINITION.—The term “Commercial Operations Advisory Committee” means the Advisory Committee established pursuant to section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 2071 note) or any successor committee.

SEC. 412. [19 U.S.C. 1412] PROGRAM GOALS.

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

(1) is uniform and consistent;

(2) is as minimally intrusive upon the normal flow of business activity as practicable; and

(3) improves compliance.

SEC. 413. [19 U.S.C. 1413] IMPLEMENTATION AND EVALUATION OF PROGRAM.

(a) OVERALL PROGRAM PLAN.—

(1) IN GENERAL.—Before the 180th day after the date of the enactment of the North American Free Trade Agreement

Implementation Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

- (A) a general description of the ultimate configuration of the Program;
- (B) a description of each of the existing components of the Program listed in section 411(a)(1); and
- (C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.

(2) ADDITIONAL INFORMATION.—In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

- (A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and
- (B) the effects that the existing components are currently having, and the effects that the planned components will likely have, on—
 - (i) importers, brokers, and other users of the Program, and
 - (ii) Customs Service occupations, operations, processes, and systems.

(b) IMPLEMENTATION PLAN, TESTING, AND EVALUATION.—

(1) IMPLEMENTATION PLAN.—For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall—

- (A) develop an implementation plan;
- (B) test the component in order to assess its viability;
- (C) evaluate the component in order to assess its contribution toward achieving the program goals; and
- (D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(2) IMPLEMENTATION.—

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

- (i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and
- (ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) EVALUATION AND REPORT.—The Secretary shall—

- (A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each fiscal year;

(C) with respect to the existing Program component listed in section 411(a)(1)(G) transmit to the Committees—

(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the implementation of the planned Program components listed in section 411(a)(2) (B) and (C), and

(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1994, and annually thereafter through fiscal year 2000, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 411(a)(2).

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) COMMITTEES.—For purposes of this section, the term “Committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 414. [19 U.S.C. 1414] REMOTE LOCATION FILING.

(a) CORE ENTRY INFORMATION.—

(1) IN GENERAL.—A Program participant may file electronically an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereafter in this section referred to as a “remote location”) if—

(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2)(A) regarding such method of filing; and

(B) the participant elects to file from the remote location.

(2) REQUIREMENTS.—

(A) IN GENERAL.—In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(i) The electronic entry of merchandise.

(ii) The electronic entry summary of required information.

(iii) The electronic transmission of invoice information (when required by the Customs Service).

(iv) The electronic payment of duties, fees, and taxes.

(v) Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.

(B) RESTRICTION ON EXEMPTION FROM REQUIREMENTS.—The Customs Service may not permit any exemption or waiver from the requirements established by this section for participation in remote entry filing.

(3) CONDITIONS ON FILING UNDER THIS SECTION.—The Secretary may prohibit a Program participant from participating in remote location filing, and may remove a Program participant from participation in remote location filing, if the participant—

(i)¹ fails to meet all the compliance requirements and operational standards of remote location filing; or

(ii)¹ fails to adhere to all applicable laws and regulations.

(4) ALTERNATIVE FILING.—Any Program participant that is eligible to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d).

(b) ADDITIONAL ENTRY INFORMATION.—

(1) IN GENERAL.—A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirements under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

(2) REQUIREMENTS.—The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.

(3) FILING OF ADDITIONAL INFORMATION.—

(A) IF INFORMATION ELECTRONICALLY ACCEPTABLE.—A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

(B) ALTERNATIVE FILING.—If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

(C) APPROPRIATE LOCATION.—For purposes of subparagraph (B), the “appropriate location” is—

(i) before January 1, 1999, a designated location; and

(ii) after December 31, 1998—

(I) if the paper documentation is required for release, a designated location; or

¹ Clauses (i) and (ii) probably should be redesignated as subparagraphs (A) and (B).

(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

(D) OTHER.—A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

(c) POST-ENTRY SUMMARY INFORMATION.—A Program participant that is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

(d) DEFINITIONS.—As used in this section:

(1) The term “designated location” means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.

(2) The term “Program participant” means, with respect to an entry of merchandise, any party entitled to make the entry under section 484(a)(2)(B).

Part II—Report, Entry, and Unlading of Vessels and Vehicles

SEC. 431. [19 U.S.C. 1431] MANIFEST—REQUIREMENT, FORM, AND CONTENTS.

(a) IN GENERAL.—Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) shall have a manifest that complies with the requirements prescribed under subsection (d).

(b) PRODUCTION OF MANIFEST.—Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

(c)(1) Except as provided in subparagraph (2), the following information, when contained in such vessel or aircraft manifest¹, shall be available for public disclosure:

(A) The name and address of each importer or consignee and the name and address of the shipper to such importer or

¹Section 11(1) of Pub. L. 104–153 (110 Stat. 1389) amended subsection (c)(1) in the matter preceding subparagraph (A) by inserting “vessel or aircraft” before “manifest”. Section 3(a)(3) of Pub. L. 104–295 (110 Stat. 3515) also amended this subsection in the matter preceding subparagraph (A) by striking “such manifest” and inserting “a vessel manifest”. This amendment was not executable as a result of the earlier amendment made by Pub. L. 104–153.

consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.

- (B) The general character of the cargo.
 - (C) The number of packages and gross weight.
 - (D) The name of the vessel, aircraft, or carrier.
 - (E) The seaport or airport of loading.
 - (F) The seaport or airport of discharge.
 - (G) The country of origin of the shipment.
 - (H) The trademarks appearing on the goods or packages.
- (2) The information listed in paragraph (1) shall not be available for public disclosure if—
- (A) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or
 - (B) the information is exempt under the provisions of section 552(b)(1) of title 5 of the United States Code.
- (3) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in paragraph (1), shall establish procedures to provide access to manifests. Such procedures shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests.

(d) REGULATIONS.—

- (1) IN GENERAL.—The Secretary shall by regulation—
- (A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);
 - (B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letters and documents shipments to be accounted for by summary manifesting procedures;
 - (C) prescribe the manner of production for, and the delivery or electronic transmittal of the manifest required by subsection (a); and
 - (D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b).
- (2) LETTERS AND DOCUMENTS SHIPMENTS.—For purposes of paragraph (1)(B)—
- (A) the Customs Service may require with respect to letters and documents shipments—
 - (i) that they be segregated by country of origin, and
 - (ii) additional examination procedures that are not necessary for individually manifested shipments;
 - (B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and
 - (C) the term “letters and documents” means—
 - (i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and

(iii) personal correspondence, whether on paper, cards, photographs, tapes, or other media.

SEC. 431A. [19 U.S.C. 1431a] DOCUMENTATION OF WATERBORNE CARGO.

(a) **APPLICABILITY.**—This section shall apply to all cargo to be exported that is moved by a vessel carrier from a port in the United States.

(b) **DOCUMENTATION REQUIRED.**—(1) No shipper of cargo subject to this section (including an ocean transportation intermediary that is a non-vessel-operating common carrier (as defined in section 3(17)(B) of the Shipping Act of 1984 (46 U.S.C. App. 1702(17)(B))) may tender or cause to be tendered to a vessel carrier cargo subject to this section for loading on a vessel in a United States port, unless such cargo is properly documented pursuant to this subsection.

(2) For the purposes of this subsection, cargo shall be considered properly documented if the shipper submits to the vessel carrier or its agent a complete set of shipping documents no later than 24 hours after the cargo is delivered to the marine terminal operator, but under no circumstances later than 24 hours prior to departure of the vessel.

(3) A complete set of shipping documents shall include—

(A) for shipments for which a shipper's export declaration is required, a copy of the export declaration or, if the shipper files such declarations electronically in the Automated Export System, the complete bill of lading, and the master or equivalent shipping instructions, including the Internal Transaction Number (ITN); or

(B) for shipments for which a shipper's export declaration is not required, a shipper's export declaration exemption statement and such other documents or information as the Secretary may by regulation prescribe.

(4) The Secretary shall by regulation prescribe the time, manner, and form by which shippers shall transmit documents or information required under this subsection to the Customs Service.

(c) **LOADING UNDOCUMENTED CARGO PROHIBITED.**—

(1) No marine terminal operator (as defined in section 3(14) of the Shipping Act of 1984 (46 U.S.C. App. 1702(14))) may load, or cause to be loaded, any cargo subject to this section on a vessel unless instructed by the vessel carrier operating the vessel that such cargo has been properly documented in accordance with this section.

(2) When cargo is booked by 1 vessel carrier to be transported on the vessel of another vessel carrier, the booking carrier shall notify the operator of the vessel that the cargo has been properly documented in accordance with this section. The operator of the vessel may rely on such notification in releasing the cargo for loading aboard the vessel.

(d) **REPORTING OF UNDOCUMENTED CARGO.**—

(1) **IN GENERAL.**—A vessel carrier shall notify the Customs Service of any cargo tendered to such carrier that is not prop-

erly documented pursuant to this section and that has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal, and the location of the cargo in the marine terminal.

(2) SHARING ARRANGEMENTS.—For vessel carriers that are members of vessel sharing agreements (or any other arrangement whereby a carrier moves cargo on another carrier's vessel), the vessel carrier accepting the booking shall be responsible for reporting undocumented cargo, without regard to whether it operates the vessel on which the transportation is to be made.

(3) REASSIGNMENT TO ANOTHER VESSEL.—For purposes of this subsection and subsection (f), if merchandise has been tendered to a marine terminal operator and subsequently reassigned for carriage on another vessel, the merchandise shall be considered properly documented if the information provided reflects carriage on the previously assigned vessel and otherwise meets the requirements of subsection (b). Notwithstanding the preceding sentence, it shall be the responsibility of the vessel carrier to notify the Customs Service promptly of any reassignment of merchandise for carriage on a vessel other than the vessel on which the merchandise was originally assigned.

(4) MULTIPLE CONTAINERS.—If a single shipment is comprised of multiple containers, the 48-hour period described in paragraph (1) shall begin to run from the time the last container of the shipment is delivered to the marine terminal operator. It shall be the responsibility of the person tendering the cargo to inform the carrier that the shipment consists of multiple containers that will be delivered to the marine terminal operator at different times as part of a single shipment.

(e) ASSESSMENT OF PENALTIES.—Whoever is found to have violated subsection (b) of this section shall be liable to the United States for civil penalties in a monetary amount up to the value of the cargo, or the actual cost of the transportation, whichever is greater.

(f) SEIZURE OF UNDOCUMENTED CARGO.—

(1) Any cargo that is not properly documented pursuant to this section and has remained in the marine terminal for more than 48 hours after being delivered to the marine terminal operator shall be subject to search, seizure, and forfeiture.

(2) The shipper of any such cargo is liable to the marine terminal operator and to the ocean carrier for demurrage and other applicable charges for any undocumented cargo which has been notified to or searched or seized by the Customs Service for the entire period the cargo remains under the order and direction of the Customs Service. Unless the cargo is seized by the Customs Service and forfeited, the marine terminal operator and the ocean carrier shall have a lien on the cargo for the amount of the demurrage and other charges.

(g) EFFECT ON OTHER PROVISIONS.—Nothing in this section shall be construed, interpreted, or applied to relieve or excuse any party from compliance with any obligation or requirement arising under any other law, regulation, or order with regard to the documentation or carriage of cargo.

SEC. 432. [Repealed.]**SEC. 433. [19 U.S.C. 1433] REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.**

(a) **VESSEL ARRIVAL.**—(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—
(A) any vessel from a foreign port or place;
(B) any foreign vessel from a domestic port;
(C) any vessel of the United States carrying foreign merchandise for which entry has not been made; or
(D) any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;
the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

(2) The Secretary may by regulation—

(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

(B) extend the time in which reports of arrival must be made, but not later than 24 hours after arrival.

(b) **VEHICLE ARRIVAL.**—(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

(A) report the arrival; and

(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

(c) **AIRCRAFT ARRIVAL.**—The pilot of any aircraft arriving in the United States or the Virgin Islands from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

(d) **PRESENTATION OF DOCUMENTATION.**—The master, person in charge of a vehicle, or aircraft pilot shall present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data, documents, papers, or manifests as the Secretary may by regulation prescribe.

(e) **PROHIBITION ON DEPARTURES AND DISCHARGE.**—Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—

(1) depart from the port, place, or airport of arrival; or

(2) discharge any passenger or merchandise (including baggage).

SEC. 434. [19 U.S.C. 1434] ENTRY; VESSELS.

(a) **FORMAL ENTRY.**—Within 24 hours (or such other period of time as may be provided under subsection (c)(2)) after the arrival at any port or place in the United States of—

(1) any vessel from a foreign port or place;

(2) any foreign vessel from a domestic port;

(3) any vessel of the United States having on board foreign merchandise for which entry has not been made; or

(4) any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(b) **PRELIMINARY ENTRY.**—The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.

(c) **REGULATIONS.**—The Secretary may by regulation—

(1) prescribe the manner and format in which entry under subsection (a) or subsection (b), or both, must be made, and such regulations may provide that such any entry may be made electronically pursuant to an electronic data interchange system;

(2) provide that—

(A) formal entry must be made within a greater or lesser time than 24 hours after arrival, but in no case more than 48 hours after arrival, and

(B) formal entry may be made before arrival; and

(3) authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.

SEC. 435. [Repealed.]

SEC. 436. [19 U.S.C. 1436] PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, ENTRY, AND CLEARANCE REQUIREMENTS.

(a) **UNLAWFUL ACTS.**—It is unlawful—

(1) to fail to comply with section 431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91);

(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 431, 433(d), or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) without revealing the facts;

(3) to fail to make entry or to obtain clearance as required by section 434 or 644 of this Act, section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), or section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509); or

(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

(b) **CIVIL PENALTY.**—Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation, and any conveyance used in

connection with any such violation is subject to seizure and forfeiture.

(c) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (b), any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) is, upon conviction, liable for a fine of not more than \$2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than \$10,000 or imprisonment for not more than 5 years, or both.

(d) ADDITIONAL CIVIL PENALTY.—If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 584, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.

SEC. 437. [Repealed]

SEC. 438. [19 U.S.C. 1438] UNLAWFUL RETURN OF FOREIGN VESSEL'S PAPERS.

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section 434 of this Act, or regulations issued thereunder, until such master shall produce to him a clearance in due form from the Customs Service in the port in which such vessel has entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than \$5,000.

[SECS. 439, 440 Repealed.]

SEC. 441. [19 U.S.C. 1441] EXCEPTIONS TO VESSEL ENTRY AND CLEARANCE REQUIREMENTS.

The following vessels shall not be required to make entry under section 434 or to obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91):

(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade.

(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise: *Provided*, That the master of any such vessel shall be required to report such baggage and merchandise to the appropriate customs officer within twenty-four hours after arrival.

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if—

(A) the vessel complies with the reporting requirements of section 433, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival.

(5) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided*, That the master, owner or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board.

(6)¹ Any vessel required to anchor at the Belle Isle Anchorage in the waters of the Detroit River in the State of Michigan, for the purposes of awaiting the availability of cargo or berthing space or for the purpose of taking on a pilot or awaiting pilot services, or at the direction of the Coast Guard, prior to proceeding to the Port of Toledo, Ohio, where the vessel makes entry under section 434 or obtains clearance under section 4197 of the Revised Statutes of the United States.

SEC. 442. [19 U.S.C. 1442] RESIDUE CARGO.

Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this Act, proceed to such foreign port of destination with the cargo so destined therefor, without unloading the same and without the payment of duty thereon. Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to port or from district to district for the unloading thereof.

¹Margin so in law.

[SECS. 443–445. Repealed.]**SEC. 446. [19 U.S.C. 1446] SUPPLIES AND STORES RETAINED ON BOARD.**

Vessels arriving in the United States from foreign ports may retain on board, without the payment of duty, all coal and other fuel supplies, ships' stores, sea stores, and the legitimate equipment of such vessels. Any such supplies, ships' stores, sea stores, or equipment landed and delivered from such vessel shall be considered and treated as imported merchandise: *Provided*, That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States, which are delayed in port for any cause, may be transferred under a permit by the appropriate customs officer and under customs supervision from the vessel so delayed to another vessel of the same line and owner, and engaged in the foreign trade, without the payment of duty thereon.

SEC. 447. [19 U.S.C. 1447] PLACE OF ENTRY AND UNLADING.

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, That upon good cause therefor being shown, the Secretary of Commerce may permit entry of any vessel to be made at a place other than port of entry designated by him, under such conditions as he shall prescribe: *And provided further*, That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if the Customs Service considers the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.

SEC. 448. [19 U.S.C. 1448] UNLADING.

(a) PERMITS AND PRELIMINARY ENTRIES.—Except as provided in section 441 of this Act (relating to vessels not required to enter or clear), no merchandise, passengers, or baggage shall be unladen from any vessel required to make entry under section 434, or vehicle required to report arrival under section 433, until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unlading of the same issued or transmitted pursuant to an electronic data interchange system by the Customs Service. After the entry of any vessel or report of the arrival of any vehicle, the Customs Service may issue a permit, electronically pursuant to an authorized electronic data interchange system or otherwise, to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefore having been issued. The owner or master of any vessel or vehicle, or

agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall by regulation prescribe administrative penalties not to exceed \$1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 618. Such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490.

(b) **SPECIAL DELIVERY PERMIT.**—The Secretary of the Treasury is authorized to provide by regulations for the issuing of special permits for delivery, prior to formal entry therefor, of perishable articles and other articles, the immediate delivery of which is necessary.

SEC. 449. [19 U.S.C. 1449] UNLADING AT PORT OF ENTRY.

Except as provided in sections 442 and 447 of this act (relating to residue cargo and to bulk cargo, respectively), merchandise and baggage imported in such vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the Customs Service issues a permit for the unloading of such merchandise or baggage at such port, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be treated as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination.

SEC. 450. [19 U.S.C. 1450] UNLADING ON SUNDAYS, HOLIDAYS, OR DURING OVERTIME HOURS.

No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying aircraft, vessel or vehicle on Sunday, a holiday, or during overtime hours, except under special license granted by the appropriate customs officer under such regulations as the Secretary of the Treasury may prescribe.

SEC. 451. [19 U.S.C. 1451] SAME—EXTRA COMPENSATION.

Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unloading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act of February 13, 1911, as amended (U.S.C., 1952 edition, title 19, sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of spe-

cial licenses for the unloading of such vessels or vehicles for a period not to exceed one year. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the appropriate customs officer shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services deposits sufficient money to pay, or gives a bond in an amount to be fixed by such customs officer, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unloading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest: *Provided*, That the provisions of this section, sections 450 and 452 of this Act, and the provisions of section 5 of the Act of February 13, 1911, as amended (U.S.C., title 19, sec. 267), insofar as such section 5 requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a highway vehicle, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, nor to the lading or unloading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry. At ports of entry and customs stations where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, the appropriate customs officer, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as the Secretary of the Treasury in his discretion may determine to be necessary to facilitate the inspection and passage of such merchandise, baggage, or persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be paid compensation in accordance with existing law as interpreted by the United States Supreme Court in the case of the United States v. Howard C. Myers (320 U.S. 561); but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway vehicle, bridge, tunnel, or ferry, or other person. As used in this section, the term "ferry" shall mean a passenger service operated with the use of ves-

sels which arrive in the United States on regular schedules at intervals of at least once each hour during any period in which customs service is to be furnished without reimbursement as above provided.

SEC. 452. [19 U.S.C. 1452] LADING ON SUNDAYS, HOLIDAYS, OR AT NIGHT.

No merchandise or baggage entered for transportation under bond or for exportation with the benefit of drawback, or other merchandise or baggage required to be laden under customs supervision, shall be laden on any vessel or vehicle at night or on Sunday or a holiday, except under special license therefor to be issued by the appropriate customs officer under the same conditions and limitations as pertain to the unloading of imported merchandise or merchandise being transported in bond.

SEC. 453. [19 U.S.C. 1453] LADING AND UNLADING OF MERCHANDISE OR BAGGAGE—PENALTIES.

If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is \$500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture.

SEC. 454. [19 U.S.C. 1454] UNLADING OF PASSENGERS—PENALTY.

If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the appropriate customs officer, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of \$1,000 for the first passenger and \$500 for each additional such passenger so unladen.

SEC. 455. [19 U.S.C. 1455] BOARDING AND DISCHARGING INSPECTORS.

The appropriate customs officer for the district in which any vessel or vehicle arrives from a foreign port or place may put on board of such vessel or vehicle while within such district, and if necessary while going from one district to another, one or more inspectors or other customs officers to examine the cargo and contents of such vessel or vehicle and superintend the unloading thereof, and to perform such other duties as may be required by law or the customs regulations for the protection of the revenue. Such inspector or other customs officer may, if he shall deem the same necessary for the protection of the revenue, secure the hatches or other communications or outlets of such vessel or vehicle with customs seals or other proper fastenings while such vessel is not in the act of unloading and such fastenings shall not be removed without permission of the inspector or other customs officer. Such inspector or other customs officer may require any vessel or vehicle to discontinue or suspend unloading during the continuance of unfavorable weather or any conditions rendering the discharge of cargo

dangerous or detrimental to the revenue. Any officer, owner, agent of the owner, or member of the crew of any such vessel who obstructs or hinders any such inspector or other customs officer in the performance of his duties, shall be liable to a penalty of not more than \$500.

SEC. 456. [19 U.S.C. 1456] COMPENSATION AND EXPENSES OF INSPECTORS BETWEEN PORTS.

The compensation of any inspector or other customs officer, stationed on any vessel or vehicle while proceeding from one port to another and returning therefrom, shall be reimbursed to the Government by the master or owner of such vessel, together with the actual expense of such inspector or customs officer for subsistence, or in lieu of such expenses such vessel or vehicle may furnish such inspector or customs officer the accommodations usually supplied to passengers.

SEC. 457. [19 U.S.C. 1457] TIME FOR UNLADING.

Whenever any merchandise remains on board any vessel or vehicle from a foreign port more than twenty-five days after the date on which report of said vessel or vehicle was made, the appropriate customs officer may take possession of such merchandise and cause the same to be unladen at the expense and risk of the owners thereof, or may place one or more inspectors or other customs officers on board of said vessel or vehicle to protect the revenue. The compensation and expenses of any such inspector or customs officer for subsistence while on board of such vessel or vehicle shall be reimbursed to the Government by the owner or master of such vessel or vehicle.

SEC. 458. [19 U.S.C. 1458] BULK CARGO, TIME FOR UNLADING.

The limitation of time for unloading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are required in connection with the unloading shall, for every day consumed in unloading in excess of twenty-five days from the date of the vessel's entry, be reimbursed by the master or owner of such vessel.

SEC. 459. [19 U.S.C. 1459] REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

(1) enter the United States only at a border crossing point designated by the Secretary; and

(2) immediately—

(A) report the arrival, and

(B) present themselves, and all articles accompanying them for inspection;

to the customs officer at the customs facility designated for that crossing point.

(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew

members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

(c) **INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.**—Except as otherwise authorized by the Secretary, individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

(d) **DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.**—Except as otherwise authorized by the Secretary, any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

(e) **UNLAWFUL ACTS.**—It is unlawful—

- (1) to fail to comply with subsection (a), (b), or (c);
- (2) to present any forged, altered, or false document or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;
- (3) to violate subsection (d); or
- (4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

(f) **CIVIL PENALTY.**—Any individual who violates any provision of subsection (e) is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation.

(g) **CRIMINAL PENALTY.**—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally violates any provision of subsection (e) is, upon conviction, liable for a fine of not more than \$5,000, or imprisonment for not more than 1 year, or both.

SEC. 460. [Repealed.]

SEC. 461. [19 U.S.C. 1461] SAME—INSPECTION.

All merchandise and baggage imported or brought in from any contiguous country, except as otherwise provided by law or by regulations of the Secretary of the Treasury, shall be unladen in the presence of and be inspected by a customs officer at the first port of entry at which the same shall arrive; and such officer may require the owner, or his agent, or other person having charge or possession of any trunk, traveling bag, sack, valise, or other container, or of any closed vehicle, to open the same for inspection, or to furnish a key or other means for opening the same.

SEC. 462. [19 U.S.C. 1462] SAME—FORFEITURE.

If such owner, agent, or other person shall fail to comply with his demand, the officer shall retain such trunk, traveling bag, sack, valise, or other container or closed vehicle, and open the same, and, as soon thereafter as may be practicable, examine the contents,

and if any article subject to duty or any article the importation of which is prohibited is found therein, the whole contents and the container or vehicle shall be subject to forfeiture.

SEC. 463. [19 U.S.C. 1463] SAME—SEALED VESSELS AND VEHICLES.

To avoid unnecessary inspection of merchandise imported from a contiguous country at the first port of arrival, the master of the vessel or the person in charge of the vehicle in which such merchandise is imported may apply to the customs officer of the United States stationed in the place from which such merchandise is shipped, and such officer may seal such vessel or vehicle. Any vessel or vehicle so sealed, may proceed with such merchandise to the port of destination under such regulations as the Secretary of the Treasury may prescribe.

SEC. 464. [19 U.S.C. 1464] SAME—PENALTIES IN CONNECTION WITH SEALED VESSELS AND VEHICLES.

If the master of such vessel or the person in charge of any such vehicle fails to proceed with reasonable promptness to the port of destination and to deliver such vessel or vehicle to the proper officers of the customs, or fails to proceed in accordance with such regulations of the Secretary of the Treasury, or unloads such merchandise or any part thereof at other than such port of destination, or disposes of any such merchandise by sale or otherwise, he shall be guilty of a felony and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than five years, or both; and any such vessel or vehicle, with its contents, shall be subject to forfeiture.

SEC. 465. [Repealed.]

SEC. 466. [19 U.S.C. 1466] EQUIPMENT AND REPAIRS OF VESSELS

(a) The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country. If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure forfeiture¹ For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

¹ P.L. 95-410, sec. 206, 92 Stat. 901, omitted the period following "forfeiture".

(b) NOTICE.—If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a penalty claim. Such notice shall—

- (1) describe the circumstances of the alleged violation;
- (2) specify all laws and regulations allegedly violated;
- (3) disclose all the material facts which establish the alleged violation;
- (4) state the estimated loss of lawful duties, if any, and taking into account all of the circumstances, the amount of the proposed penalty; and
- (5) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

(c) VIOLATION.—After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b), the appropriate customs officer shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the persons to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b).

(d) If the owner or master of such vessel furnishes good and sufficient evidence that—

- (1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;
- (2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or
- (3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo;

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

(e)(1) In the case of any vessel referred to in subsection (a) that arrives in a port of the United States two years or more after its last departure from a port in the United States, the duties imposed by this section shall apply with respect to—

(A) fish nets and netting, and

(B) other equipments and parts thereof, repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(2) If such vessel is designed and used primarily for transporting passengers or property, paragraph (1) shall not apply if the vessel departed from the United States for the sole purpose of obtaining such equipments, parts, materials, or repairs.

(f) The duty imposed under subsection (a) shall not apply to the cost of repair parts, materials, or expenses of repairs in a foreign country upon a United States civil aircraft, within the meaning of general note (3)(c)(iv) of the Harmonized Tariff Schedule of the United States.

(g) The duty imposed by subsection (a) shall not apply to entries on and after October 1, 1979, and before January 1, 1982, of—

(1) tuna purse seine nets and netting which are equipments or parts thereof,

(2) repair parts for such nets and netting, or materials used in repairing such nets and netting; or

(3) the expenses of repairs of such nets and netting, for any United States documented tuna purse seine vessel of greater than 500 tons carrying capacity or any United States tuna purse seine vessel required to carry a certificate of inclusion under the general permit issued to the American Tuna-boat Association pursuant to section 104 of the Marine Mammal Protection Act of 1972.

(h) The duty imposed by subsection (a) of this section shall not apply to—

(1) the cost of any equipment, or any part of equipment, purchased for, or the repair parts or materials to be used, or the expense of repairs made in a foreign country with respect to, LASH (Lighter Aboard Ship) barges documented under the laws of the United States and utilized as cargo containers;

(2) the cost of spare repair parts or materials (other than nets or nettings) which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in the United States, at sea, or in a foreign country, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country;

(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country; or

(4) the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).

SEC. 467. [19 U.S.C. 1467] SPECIAL INSPECTION, EXAMINATION, AND SEARCH.

Whenever a vessel from a foreign port or place or from a port or place in any Territory or possession of the United States arrives at a port or place in the United States or the Virgin Islands, whether directly or via another port or place in the United States or the Virgin Islands, the appropriate customs officer for such port or place of arrival may, under such regulations as the Secretary of the Treasury may prescribe and for the purpose of assuring compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, cause inspection, examination, and search to be made of the persons, baggage, and merchandise discharged or unladen from such vessel, whether or not any or all such persons, baggage, or merchandise has previously been inspected, examined, or searched by officers of the customs.

Part III—Ascertainment, Collection, and Recovery of Duties

SEC. 481. [19 U.S.C. 1481] INVOICE—CONTENTS.

(a) IN GENERAL.—All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this action shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;

(9) All rebates, drawbacks, and bounties separately itemized, allowed upon the exportation of the merchandise; and

(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisalment, examination and classification of the merchandise.

(b) SHIPMENTS NOT PURCHASED AND NOT SHIPPED BY MANUFACTURER.—If the merchandise is shipped to a person in the United States by a person other than the manufacturer, otherwise than by purchase, such person shall state on the invoice the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) IMPORTER PROVISION OF INFORMATION.—Any information required to be set forth on an invoice may alternatively be provided by any of the parties qualifying as an “importer of record” under section 484(a)(2)(B) by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.

(d) EXCEPTIONS BY REGULATIONS.—The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section.

SEC. 482. [Repealed.]

SEC. 483. [Repealed.]

SEC. 484. [19 U.S.C. 1484] ENTRY OF MERCHANDISE.

(a) REQUIREMENT AND TIME.—

(1) Except as provided in sections 490, 498, 552, and 553, one of the parties qualifying as “importer of record” under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—

(A) make entry therefor by filing with the Bureau of Customs and Border Protection such documentation or, pursuant to an authorized electronic data interchange system, such information as is necessary to enable the Bureau of Customs and Border Protection to determine whether the merchandise may be released from custody of the Bureau of Customs and Border Protection;

(B) complete the entry, or substitute 1 or more reconfigured entries on an import activity summary statement, by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

- (i) properly assess duties on the merchandise,
- (ii) collect accurate statistics with respect to the merchandise, and
- (iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, and permit the filing of reconfigured entries, covering merchandise released under a special delivery permit pursuant to section 448(b) and entries or warehouse withdrawals made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month. Entries filed under paragraph (1)(A) shall not be liquidated if covered by an import activity summary statement, but instead each reconfigured entry in the import activity summary statement shall be subject to liquidation or reliquidation pursuant to section 500, 501, or 504.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

(b) RECONCILIATION.—

(1) IN GENERAL.—A party may elect to file a reconciliation with regard to such entry elements as are identified by the party pursuant to regulations prescribed by the Secretary. If the party so elects, the party shall declare that a reconciliation will be filed. The declaration shall be made in such manner as the Secretary shall prescribe and at the time the documentation or information required by subsection (a)(1)(B) or the import activity summary statement is filed with, or transmitted to, the Customs Service, or at such later time as the Customs Service may, in its discretion, permit. The reconciliation shall be filed by the importer of record at such time and in such manner as the Secretary prescribes but not later than 21 months after the date the importer declares his intent to file the reconciliation. In the case of reconciling issues relating to the assessment of antidumping and countervailing duties, the reconciliation shall be filed not later than 90 days after the date the Customs Service advises the importer that the period of review for antidumping or countervailing duty purposes has been completed. Before filing a reconciliation, an importer of record shall post bond or other security pursuant to such regulations as the Secretary may prescribe.

(2) REGULATIONS REGARDING AD/CV DUTIES.—The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties.

(c) RELEASE OF MERCHANDISE.—The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

(d) SIGNING AND CONTENTS.—(1) Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system. If electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 42 of the Act of July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1124), or any other applicable law, including a trademark appearing on the goods or packaging.

(e) PRODUCTION OF INVOICE.—The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) STATISTICAL ENUMERATION.—The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) STATEMENT OF COST OF PRODUCTION.—Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.

(h) ADMISSIBILITY OF DATA ELECTRONICALLY TRANSMITTED.—Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

(i) SPECIAL RULE FOR FOREIGN TRADE ZONE OPERATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as provided in paragraph (3), all merchandise (including merchandise of different classes, types, and categories), withdrawn from a foreign trade zone during any 7-day period, shall, at the option of the operator or user of the zone, be the subject of a single estimated entry or release filed on or before the first day of the 7-day period in which the merchandise is to be withdrawn from the zone. The estimated entry or release shall be treated as a single entry and a single release of merchandise for purposes of section 13031(a)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(9)(A)) and all fee exclusions and limitations of such section 13031 shall apply, including the maximum and minimum fee amounts provided for under subsection (b)(8)(A)(i) of such section. The entry summary for the estimated entry or release shall cover only the merchandise actually withdrawn from the foreign trade zone during the 7-day period.

(2) OTHER REQUIREMENTS.—The Secretary of the Treasury may require that the operator or user of the zone—

(A) use an electronic data interchange approved by the Customs Service—

(i) to file the entries described in paragraph (1);
and

(ii) to pay the applicable duties, fees, and taxes with respect to the entries; and

(B) satisfy the Customs Service that accounting, transportation, and other controls over the merchandise are adequate to protect the revenue and meet the requirements of other Federal agencies.

(3) EXCEPTION.—The provisions of paragraph (1) shall not apply to merchandise the entry of which is prohibited by law or merchandise for which the filing of an entry summary is required before the merchandise is released from customs custody.

(4) FOREIGN TRADE ZONE; ZONE.—In this subsection, the terms “foreign trade zone” and “zone” mean a zone established pursuant to the Act of June 18, 1934, commonly known as the Foreign Trade Zones Act (19 U.S.C. 81a et seq.).

(j) TREATMENT OF MULTIPLE ENTRIES OF MERCHANDISE AS SINGLE TRANSACTION.—In the case of merchandise that is purchased and invoiced as a single entity but—

(1) is shipped in an unassembled or disassembled condition in separate shipments due to the size or nature of the merchandise, or

(2) is shipped in separate shipments due to the inability of the carrier to include all of the merchandise in a single shipment (at the instruction of the carrier),

the Customs Service may, upon application by an importer in advance, treat such separate shipments for entry purposes as a single transaction.

SEC. 484a. [19 U.S.C. 1484a] ARTICLES RETURNED FROM SPACE NOT TO BE CONSTRUED AS IMPORTATION.

The return of articles from space shall not be considered an importation, and an entry of such articles shall not be required, if:

(1) such articles were previously launched into space from the customs territory of the United States aboard a spacecraft operated by, or under the control of, United States persons and owned—

(A) wholly by United States persons, or

(B) in substantial part by United States persons, or

(C) by the United States;

(2) such articles were maintained or utilized while in space solely on board such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section; and

(3) such articles were returned to the customs territory directly from space aboard such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section;

without regard to whether such articles have been advanced in value or improved in condition by any process of manufacture or other means while in space.

SEC. 484b. DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE AT UNITED STATES BOAT SHOWS.

(a) IN GENERAL.—Notwithstanding any other provision of law, any vessel meeting the definition of a large yacht as provided in

subsection (b) and which is otherwise dutiable may be imported without the payment of duty if imported with the intention to offer for sale at a boat show in the United States. Payment of duty shall be deferred, in accordance with this section, until such large yacht is sold.

(b) DEFINITION.—As used in this section, the term “large yacht” means a vessel that exceeds 79 feet in length, is used primarily for recreation or pleasure, and has been previously sold by a manufacturer or dealer to a retail consumer.

(c) DEFERRAL OF DUTY.—At the time of importation of any large yacht, if such large yacht is imported for sale at a boat show in the United States and is otherwise dutiable, duties shall not be assessed and collected if the importer of record—

(1) certifies to the Customs Service that the large yacht is imported pursuant to this section for sale at a boat show in the United States; and

(2) posts a bond, which shall have a duration of 6 months after the date of importation, in an amount equal to twice the amount of duty on the large yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States.

(d) PROCEDURES UPON SALE.—

(1)¹ DEPOSIT OF DUTY.—If any large yacht (which has been imported for sale at a boat show in the United States with the deferral of duties as provided in this section) is sold within the 6-month period after importation—

(A) entry shall be completed and duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the large yacht at the time of importation) shall be deposited with the Customs Service; and

(B) the bond posted as required by subsection (c)(2) shall be returned to the importer.

(e) PROCEDURES UPON EXPIRATION OF BOND PERIOD.—

(1) IN GENERAL.—If the large yacht entered with deferral of duties is neither sold nor exported within the 6-month period after importation—

(A) entry shall be completed and duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the large yacht at the time of importation) shall be deposited with the Customs Service; and

(B) the bond posted as required by subsection (c)(2) shall be returned to the importer.

(2) ADDITIONAL REQUIREMENTS.—No extensions of the bond period shall be allowed. Any large yacht exported in compliance with the bond period may not be reentered for purposes of sale at a boat show in the United States (in order to receive duty deferral benefits) for a period of 3 months after such exportation.

¹ So in law. Probably should have inserted a paragraph (2) as well.

(f) REGULATIONS.—The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

SEC. 485. [19 U.S.C. 1485] DECLARATION.

(a) REQUIREMENT—FORM AND CONTENTS.—Every importer of record making an entry under the provisions of section 484 of this Act shall make and file or transmit electronically therewith, in a form and manner to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase, or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;

(2) That the prices set forth in the invoice are true, in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;

(3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and

(4) That he will produce at once to the appropriate customs officer any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct.

(b) BOOKS AND PERIODICALS.—The Secretary of the Treasury is authorized to prescribe regulations for one declaration in the case of books, magazines, newspapers, and periodicals published and imported in successive parts, numbers, or volumes, and entitled to free entry.

(c) AGENTS.—In the event that an entry is made by an agent under the provisions of section 484 of this Act and such agent is not in possession of such declaration of the importer of record, such agent shall give a bond to produce such declaration.

(d) An importer of record shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of an importer of record.

(e) SEPARATE FORMS FOR PURCHASE AND NONPURCHASE IMPORTATIONS.—The Secretary of the Treasury shall prescribe separate forms for the declaration in the case of merchandise which is imported in pursuance of a purchase or agreement to purchase and merchandise which is imported otherwise than in pursuance of a purchase or agreement to purchase.

(f) DECEASED OR INSOLVENT PERSONS—PARTNERSHIPS AND CORPORATIONS.—Whenever such merchandise is consigned to a deceased person, or to an insolvent person who has assigned the same for the benefit of his creditors, the executor or administrator,

or the assignee of such person or receiver or trustee in bankruptcy, shall be considered as the importer of record; when consigned to a partnership the declaration of one of the partners only shall be required, and when consigned to a corporation such declaration may be made by any officer of such corporation. Whether the importer or record is an individual, a partnership, or a corporation, the declaration may be made by any person who has knowledge of the facts and who is specifically authorized by such individual, a member of such partnership, or an officer of such corporation to make such declaration.

(g) EXPORTED MERCHANDISE RETURNED AS UNDELIVERABLE.—With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.

SEC. 486. [19 U.S.C. 1486] ADMINISTRATION OF OATHS—VERIFICATION OF DOCUMENTS.

(a) CUSTOMS OFFICERS.—The following officers and employees may administer any oaths required or authorized by law or regulations promulgated thereunder in respect of any matter coming before such officers or employees in the performance of their official duties: (1) Any customs officer appointed by the President; (2) the chief assistant of any such officer, or any officer or employee of the customs field service designated for the purpose by such officer or by the Secretary of the Treasury; and (3) any officer or employee of the Bureau of Customs designated for the purpose by the Secretary of the Treasury.

(b) POSTMASTERS.—The postmaster or assistant postmaster of the United States at any post office where customs officers are not stationed, is hereby authorized to administer any oaths required to be made to statements in customs documents by importers of merchandise, not exceeding \$100 in value, through the mails.

(c) NO COMPENSATION.—No compensation or fee shall be demanded or accepted for administering any oath under the provisions of this section.

(d) VERIFICATION IN LIEU OF OATH.—The Secretary of the Treasury may by regulation prescribe that any document required by any law administered by the Customs Service to be under oath may be verified by a written declaration in such form as he shall prescribe, such declaration to be in lieu of the oath otherwise required.

SEC. 487. [19 U.S.C. 1487] VALUE IN ENTRY—AMENDMENT.

The importer of record or his agent may, under such regulations as the Secretary of the Treasury may prescribe, at the time entry is made, make in the entry such additions to or deductions from the cost or value given in the invoice as, in his opinion, may raise or lower the same to the value of such merchandise.

SEC. 488. [Repealed.]

SEC. 489. [Repealed.]

SEC. 490. [19 U.S.C. 1490] GENERAL ORDERS.

(a) **INCOMPLETE ENTRY.**—

(1) Whenever—

(A) the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;

(B) the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;

(C) in the opinion of the Customs Service, the entry of imported merchandise cannot be made for want of proper documents or other cause; or

(D) the Customs Service believes that any merchandise is not correctly and legally invoiced;

the carrier (unless subject to subsection (c)) shall notify the bonded warehouse of such unentered merchandise.

(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until—

(A) entry is made or completed and the proper documents are produced;

(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

(C) a bond is given for the production of documents or the transmittal of data.

(b) **REQUEST FOR POSSESSION BY CUSTOMS.**—At the request of the consignee of any merchandise, or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the Customs Service after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made.

(c) **GOVERNMENT MERCHANDISE.**—Any imported merchandise that—

(1) is described in any of subparagraphs (A) through (D) of subsection (a)(1); and

(2) is consigned to, or owned by, the United States Government;

shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.

SEC. 491. [19 U.S.C. 1491] UNCLAIMED MERCHANDISE; DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES AND MALT LIQUOR

(a) Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in a bonded warehouse pursuant to section 490 for 6 months from the date of importation thereof, without all estimated duties, taxes, fees, interest, storage, or other charges thereon hav-

ing been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the Customs Service at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, taxes, fees, interest, storage, and other charges, if permitted to remain in pursuant to section 490 in a bonded warehouse for 6 months, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 559 of this Act may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, taxes, fees, interest, storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, taxes, fees, interest, charges, and expenses nor may it be entered for warehouse. The computation of duties, taxes, interest, and fees for the purposes of this section and sections 493 and 559 of this Act shall be at the rate of rates applicable at the time the merchandise becomes subject to sale.

(b) NOTICE OF TITLE VESTING IN THE UNITED STATES.—At the end of the 6-month period referred to in subsection (a), the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day—

(1) the subject merchandise is entered or withdrawn for consumption; and

(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

(c) RETENTION, TRANSFER, DESTRUCTION, OR OTHER DISPOSITION.—If title to any merchandise vests in the United States by operation of subsection (b), such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on retained or transferred merchandise shall be paid by the receiving agency.

(d) PETITION.—Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b), can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b), or can establish to the satisfaction of the Secretary that the party did not receive notice under subsection (b), the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Treasury of the United States the amount the Secretary believes the party would have received under section 493 had the merchandise been sold

and a proper claim filed. The decision of the Secretary with respect to any such petition is final and conclusive on all parties.

(e) All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by—

(1) delivery to such Government agencies, as in the opinion of the Secretary have a need for such distilled spirits, wines, and malt liquor for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency;

(2) gifts to such eleemosynary institutions as, in the opinion of the Secretary, have a need for such distilled spirits, wines, and malt liquor for medical purposes;

(3) sale by Customs Service at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

(4) destruction.

SEC. 492. [19 U.S.C. 1492] DESTRUCTION OF ABANDONED OR FORFEITED MERCHANDISE.

Except as provided in section 3369 of the Revised Statutes, as amended (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the Customs Service shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed, retained for official use, or otherwise disposed of under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction.

SEC. 493. [19 U.S.C. 1493] PROCEEDS OF SALE.

The surplus of the proceeds of sales under section 491 of this Act, after the payment of storage charges, expenses, duties, taxes, and fees, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited in the Treasury of the United States, if claim therefor shall not be filed with the Customs Service within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale.

SEC. 494. [19 U.S.C. 1494] EXPENSE OF WEIGHING AND MEASURING.

In all cases in which the invoice or entry does not state the weight, quantity, or measure of the merchandise, the expense of ascertaining the same shall be collected from the importer of record before its release from customs custody.

SEC. 495. [19 U.S.C. 1495] PARTNERSHIP BOND.

When any bond is required by law or regulations to be executed by any partnership for any purpose connected with the transaction of business at any customhouse, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same.

SEC. 496. [19 U.S.C. 1496] EXAMINATION OF BAGGAGE.

The appropriate customs officer may cause an examination to be made of the baggage of any person arriving in the United States in order to ascertain what articles are contained therein and whether subject to duty, free of duty, or prohibited notwithstanding a declaration and entry therefor has been made.

SEC. 497. [19 U.S.C. 1497] PENALTIES FOR FAILURE TO DECLARE.

(a) IN GENERAL.—(1) Any article which—

(A) is not included in the declaration and entry as made or transmitted; and

(B) is not mentioned before examination of the baggage begins—

(i) in writing by such person, if written declaration and entry was required, or

(ii) orally, if written declaration and entry was not required;

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

(A) if the article is a controlled substance, either \$500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

(B) if the article is not a controlled substance, the value of the article.

(b) VALUE OF CONTROLLED SUBSTANCES.—(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.

SEC. 498. [19 U.S.C. 1498] ENTRY UNDER REGULATIONS.

(a) AUTHORIZED FOR CERTAIN MERCHANDISE.—The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

(1) Merchandise, when—

- (A) the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than \$2,500; or
- (B) different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;
- (2) Products of the United States, when the aggregate value of the shipment does not exceed such amounts as the Secretary may prescribe and the products are imported—
- (A) for the purposes of repair or alteration prior to re-exportation, or
- (B) after having been either rejected or returned by the foreign purchaser to the United States for credit;
- (3) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;
- (4) Merchandise recovered from a wrecked or stranded vessel;
- (5) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;
- (6) Articles sent by persons in foreign countries as gifts to persons in the United States;
- (7) Articles carried on the person or contained in the baggage of a person arriving in the United States;
- (8) Tools of trade of a person arriving in the United States;
- (9) Personal effects of citizens of the United States who have died in a foreign country;
- (10) Merchandise within the provisions of sections 465¹ and 466 of this Act (relating to supplies, repairs, and equipment on vessels and railway cars) at the first port of arrival;
- (11) Merchandise when in the opinion of the Secretary of the Treasury the value thereof can not be declared; and
- (12) Merchandise within the provisions of paragraph 1631² of this Act.

(b) APPLICATION OF GENERAL PROVISIONS.—The Secretary of the Treasury is authorized to include in such rules and regulations any of the provisions of section 484 or 485 of this Act (relating, respectively, to entry and to declaration of merchandise generally).

SEC. 499. [19 U.S.C. 1499] EXAMINATION OF MERCHANDISE.

(a) ENTRY EXAMINATION.—

(1) IN GENERAL.—Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

¹ Section 465 was repealed by section 690(b)(7) of Pub. Law 103-182.

² Section 1631 was repealed. See section 101(a) of Pub. Law 87-456.

- (2) EXAMINATION.—The Customs Service—
- (A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisalment or otherwise;
 - (B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;
 - (C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and
 - (D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.
- (3) UNSPECIFIED ARTICLES.—If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry—
- (A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record, or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or
 - (B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees, and taxes thereon paid accordingly.
- (4) DEFICIENCY.—If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.
- (5) INFORMATION REQUIRED FOR RELEASE.—If an examination is conducted, any information required for release shall be provided, either electronically or in paper form, to the Customs Service at the port of examination. The absence of such information does not limit the authority of the Customs Service to conduct an examination.
- (b) TESTING LABORATORIES.—
- (1) ACCREDITATION OF PRIVATE TESTING LABORATORIES.—The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations—
- (A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;
 - (B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed \$100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service—

(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

(C) may provide for the imposition of a reasonable charge for accreditation and periodic reaccreditation.

The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 13031(e)(6) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(6)).

(2) APPEAL OF ADVERSE ACCREDITATION DECISIONS.—A laboratory applying for accreditation, or that is accredited, under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28, United States Code, in the Court of International Trade within 60 days after issuance of the decision or order.

(3) TESTING BY ACCREDITED LABORATORIES.—When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1) that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accepted by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry. Nothing in this subsection shall be construed to limit in any way or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.

(4) AVAILABILITY OF TESTING PROCEDURE, METHODOLOGIES, AND INFORMATION.—Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are—

(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

(ii) developed by the Customs Service for enforcement purposes.

(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information reveals information which is—

(i) proprietary to the holder of a copyright or patent; or

- (ii) developed by the Customs Service for enforcement purposes.
- (5) MISCELLANEOUS PROVISIONS.—For purposes of this subsection—
- (A) any reference to a private laboratory includes a reference to a private gauger; and
- (B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.
- (c) DETENTIONS.—Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:
- (1) IN GENERAL.—Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.
- (2) NOTICE OF DETENTION.—The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—
- (A) the initiation of the detention;
- (B) the specific reason for the detention;
- (C) the anticipated length of the detention;
- (D) the nature of the tests or inquiries to be conducted; and
- (E) the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.
- (3) TESTING RESULTS.—Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.
- (4) SEIZURE AND FORFEITURE.—If otherwise provided by law, detained merchandise may be seized and forfeited.
- (5) EFFECT OF FAILURE TO MAKE DETERMINATION.—
- (A) The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as

a decision of the Customs Service to exclude the merchandise for purposes of section 514(a)(4).

(B) For purposes of section 1581 of title 28, United States Code, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.

(C) Notwithstanding section 2639 of title 28, United States Code, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

SEC. 500. [19 U.S.C. 1500] APPRAISEMENT, CLASSIFICATION, AND LIQUIDATION PROCEDURES.

The Customs Service shall, under rules and regulations prescribed by the Secretary—

(a) fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 402, by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;

(b) fix the final classification and rate of duty applicable to such merchandise;

(c) fix the final amount of duty to be paid on such merchandise and determine any increased or additional duties, taxes, and fees due or any excess of duties, taxes, and fees deposited;

(d) liquidate the entry and reconciliation, if any, of such merchandise; and

(e) give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.

SEC. 501. [19 U.S.C. 1501] VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS SERVICE.

A liquidation made in accordance with section 500 or 504 or any reliquidation thereof made in accordance with this section may be reliquidated in any respect by the Customs Service, notwithstanding the filing of a protest, within ninety days from the date on which notice of the original liquidation is given or transmitted to the importer, his consignee or agent. Notice of such reliquidation shall be given or transmitted in the manner prescribed with respect to original liquidations under section 500(e).

SEC. 502. [19 U.S.C. 1502] REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.

(a) **POWERS OF SECRETARY OF THE TREASURY.**—The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law (including regulations establishing procedures for the issuance of binding rulings prior to the

entry of the merchandise concerned), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry. The Secretary may direct any customs officer to go from one port of entry to another for the purpose of appraising or classifying or assisting in appraising or classifying merchandise imported at any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port.

(b) DUTIES OF CUSTOMS OFFICERS.—It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the decision of the Secretary shall be binding upon all officers of the customs.

SEC. 503. [19 U.S.C. 1503] DUTIABLE VALUE.—

Except as provided in section 520(c) (relating to reliquidation on the basis of authorized corrections of errors) or section 562 (relating to withdrawal from manipulating warehouses) of this Act, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty or rates based upon or regulated in any manner by the value of the merchandise, shall be the appraised value determined upon liquidation, in accordance with section 500 or any adjustment thereof made pursuant to section 501 of the Tariff Act: *Provided, however,* That if reliquidation is required pursuant to a final judgment or order of the United States Court of International Trade which includes a reappraisement of imported merchandise, the basis for such assessment shall be the final appraised value determined by such court.

SEC. 504. [19 U.S.C. 1504] LIMITATION ON LIQUIDATION.

(a)¹ LIQUIDATION.—

(1) ENTRIES FOR CONSUMPTION.—Unless an entry of merchandise for consumption is extended under subsection (b) of this section or suspended as required by statute or court order, except as provided in section 751(a)(3), an entry of merchandise for consumption not liquidated within 1 year from—

(A) the date of entry of such merchandise,

(B) the date of the final withdrawal of all such merchandise covered by a warehouse entry,

¹ Section 1563(e)(1) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108-429; 118 Stat. 2585) amended subsections (a) and (b) in their entirety which are reflected above. Section 2102(1) of such public law (118 Stat. 2597) provides as follows:

SEC. 2102. LIMITATION ON LIQUIDATIONS.

Section 504 of the Tariff Act of 1930 (19 U.S.C. 1504) is amended—

(1) in subsection (a)—

(A) by striking “or” at the end of paragraph (3);

(B) in paragraph (4), by striking “filed,” and inserting “filed, whichever is earlier; or”;

and

(C) by inserting after paragraph (4) the following:

“(5) if a reconfigured entry is filed under an import activity summary statement, the date the import activity summary statement is filed or should have been filed, whichever is earlier;”;

and

The amendments made by section 2102(1) to section 504(a) of the Tariff Act of 1930 were not executed.

(C) the date of withdrawal from warehouse of such merchandise for consumption if, pursuant to regulations issued under section 505(a), duties may be deposited after the filing of any entry or withdrawal from warehouse, or

(D) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 500(e), notice of liquidation need not be given of an entry deemed liquidated.

(2) ENTRIES OR CLAIMS FOR DRAWBACK.—

(A) IN GENERAL.—Except as provided in subparagraph (B) or (C), unless an entry or claim for drawback is extended under subsection (b) or suspended as required by statute or court order, an entry or claim for drawback not liquidated within 1 year from the date of entry or claim shall be deemed liquidated at the drawback amount asserted by the claimant at the time of entry or claim. Notwithstanding section 500(e), notice of liquidation need not be given of an entry deemed liquidated.

(B) UNLIQUIDATED IMPORTS.—An entry or claim for drawback whose designated or identified import entries have not been liquidated and become final within the 1-year period described in subparagraph (A), or within the 1-year period described in subparagraph (C), shall be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise, and upon the filing with the Customs Service of a written request for the liquidation of the drawback entry or claim. Such a request must include a waiver of any right to payment or refund under other provisions of law. The Secretary of the Treasury shall prescribe any necessary regulations for the purpose of administering this subparagraph.

(C) EXCEPTION.—An entry or claim for drawback filed before the date of the enactment of this paragraph, the liquidation of which is not final as of the date of the enactment of this paragraph, shall be deemed liquidated on the date that is 1 year after the date of the enactment of this paragraph at the drawback amount asserted by the claimant at the time of the entry or claim.

(3) PAYMENTS OR REFUNDS.—Payment or refund of duties owed pursuant to paragraph (1) or (2) shall be made to the importer of record or drawback claimant, as the case may be, not later than 90 days after liquidation.

(b) EXTENSION.—The Secretary of the Treasury may extend the period in which to liquidate an entry if—

(1) the information needed for the proper appraisalment or classification of the imported or withdrawn merchandise, or for determining the correct drawback amount, or for ensuring compliance with applicable law, is not available to the Customs Service; or

(2) the importer of record or drawback claimant, as the case may be, requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record or drawback claimant, as the case may be, and the surety of such importer of record or drawback claimant. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record, or the drawback amount asserted at the time of entry by the drawback claimant, at the expiration of 4 years from the applicable date specified in subsection (a).

(c) NOTICE OF SUSPENSION.—If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record or drawback claimant, as the case may be, and to any authorized agent and surety of such importer of record or drawback claimant.

(d) REMOVAL OF SUSPENSION.—Except as provided in section 751(a)(3), when a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry, unless liquidation is extended under subsection (b), within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry (other than an entry with respect to which liquidation has been extended under subsection (b)) not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record or (in the case of a drawback entry or claim) at the drawback amount asserted at the time of entry by the drawback claimant.

SEC. 505. [19 U.S.C. 1505] PAYMENT OF DUTIES AND FEES.

(a) DEPOSIT OF ESTIMATED DUTIES AND FEES.—Unless the entry is subject to a periodic payment referred to in this subsection or the merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of entry, or at such later time as the Secretary may prescribe by regulation (but not later than 12 working days after entry or release) the amount of duties and fees estimated to be payable on such merchandise. As soon as a periodic payment module of the Automated Commercial Environment is developed, but no later than October 1, 2004, the Secretary shall promulgate regulations, after testing the module, permitting a participating importer of record to deposit estimated duties and fees for entries of merchandise, other than merchandise entered for warehouse, transportation, or under bond, no later than the 15 working days following the month in which the merchandise is entered or released, whichever comes first.

(b) COLLECTION OR REFUND OF DUTIES, FEES, AND INTEREST DUE UPON LIQUIDATION OR RELIQUIDATION.—The Customs Service

shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

(c) INTEREST.—Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest or, in a case in which a claim is made under section 520(d), from the date on which such claim is made, to the date of liquidation or reliquidation of the applicable entry or reconciliation. The Secretary may prescribe an alternative mid-point interest accounting methodology, which may be employed by the importer, based upon aggregate data in lieu of accounting for such interest from each deposit data provided in this subsection.

(d) DELINQUENCY.—If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b), any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.

SEC. 506. [19 U.S.C. 1506] ALLOWANCE FOR ABANDONMENT AND DAMAGE.

Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

(1) ABANDONMENT WITHIN THIRTY DAYS.—Where the importer abandons to the United States, within thirty days after entry in the case of merchandise released without an examination, or within thirty days after the release in the case of merchandise sent to the Customs Service for examination, any imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice or entry in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the collector directs unless the Customs Service is satisfied that the merchandise is so far destroyed as to be nondeliverable;¹

(2) PERISHABLE MERCHANDISE, CONDEMNED.—Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files, electronically or otherwise, with the Customs Service notice thereof, an

¹ So in law. Semicolon at the end of paragraph (1) probably should be a period.

invoiced description and the location thereof, and the name of the vessel or vehicle in which imported.

SEC. 507. [19 U.S.C. 1507] TARE AND DRAFT.

(a) **IN GENERAL.**—The Secretary of the Treasury is hereby authorized to prescribe and issue regulations for the ascertainment of tare upon imported merchandise, including the establishment of reasonable and just schedule tares therefor, but (except as otherwise provided in this section) there shall not be any allowance for draft or for impurities, other than excessive moisture and impurities not usually found in or upon such or similar merchandise.

(b) **CRUDE OIL AND PETROLEUM PRODUCTS.**—In ascertaining tare on imports of crude oil, and on imports of petroleum products, allowance shall be made for all detectable moisture and impurities present in, or upon, the imported crude oil or petroleum products.

SEC. 508. [19 U.S.C. 1508] RECORDKEEPING.

(a) **REQUIREMENTS.**—Any—

(1) owner, importer, consignee, importer of record, entry filer, or other party who—

(A) imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(B) knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) agent of any party described in paragraph (1); or

(3) person whose activities require the filing of a declaration or entry, or both;

shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which—

(A) pertain to any such activity, or to the information contained in the records required by this Act in connection with any such activity; and

(B) are normally kept in the ordinary course of business.

(b) **EXPORTATIONS TO NAFTA COUNTRIES.**—

(1) **DEFINITIONS.**—As used in this subsection—

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

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

(ii) the purchase of, cost of, value of, and payment for, all material, including indirect materials, used in the production of the good; and

(iii) the production of the good.

For purposes of this subparagraph, the terms “indirect material,” “material,” “preferential tariff treatment,” “used,” and “value” have the respective meanings given them in articles 415 and 514 of the North American Free Trade Agreement.

(B) The term "NAFTA Certificate of Origin" means the certification, established under article 501 of the North American Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO NAFTA COUNTRIES.—

(A) IN GENERAL.—Any person who completes and signs a NAFTA Certificate of Origin for a good for which preferential treatment under the North American Free Trade Agreement is claimed shall make, keep, and render for examination and inspection all records relating to the origin of the good (including the Certificate or copies thereof) and the associated records.

(B) CLAIMS FOR CERTAIN WAIVERS, REDUCTIONS, OR REFUNDS OF DUTIES OR FOR CREDIT AGAINST BONDS.—

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

(I) a waiver or reduction of duty under the eleventh paragraph of section 311, section 312(b)(1) or (4), section 562(2), or the proviso preceding the last proviso to section 3(a) of the Foreign Trade Zones Act;

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

(III) a refund, waiver, or reduction of duty under section 313(n)(2) or (o)(1);

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

(ii) INFORMATION REQUIRED.—Within 30 days after making a claim described in clause (i) with respect to an article, the person making the claim must disclose to the Customs Service whether that person has prepared, or has knowledge that another person has prepared, a NAFTA Certificate of Origin for the article. If after such 30-day period the person making the claim either—

(I) prepares a NAFTA Certificate of Origin for the article; or

(II) learns of the existence of such a Certificate for the article;

that person, within 30 days after the occurrence described in subclause (I) or (II), must disclose the occurrence to the Customs Service.

(iii) ACTION ON CLAIM.—If the Customs Service determines that a NAFTA Certificate of Origin has been prepared with respect to an article for which a claim described in clause (i) is made, the Customs Service may make such adjustments regarding the previous customs treatment of the article as may be warranted under the claim.

(3) EXPORTS UNDER THE CANADIAN AGREEMENT.—Any person who exports, or who knowingly causes to be exported, any merchandise to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada shall

make, keep, and render for examination and inspection such records (including certifications of origin or copies thereof) which pertain to the exportations.

(c) PERIOD OF TIME.—The records required by subsections (a) and (b) shall be kept for such periods of time as the Secretary shall prescribe; except that—

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

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

(3) records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.

(d) LIMITATION.—For the purposes of this section and section 509, a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless—

(1) the terms and conditions of the importation are controlled by the person placing the order; or

(2) technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.

(e) SUBSECTION (b) PENALTIES.—

(1) RELATING TO NAFTA EXPORTS.—Any person who fails to retain records required by paragraph (2) of subsection (b) or the regulations issued to implement that paragraph shall be liable for—

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

(B) the general recordkeeping penalty that applies under the customs laws; whichever penalty is higher.

(2) RELATING TO CANADIAN AGREEMENT EXPORTS.—Any person who fails to retain the records required by paragraph (3) of subsection (b) or the regulations issued to implement that paragraph shall be liable for a civil penalty not to exceed \$10,000.

(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) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES 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) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) CAFTA–DR CERTIFICATION OF ORIGIN.—The term “CAFTA–DR certification of origin” means the certification established under article 4.16 of the Dominican Republic-Central America-United States Free Trade Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO CAFTA–DR COUNTRIES.—Any person who completes and issues a CAFTA–DR certification 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 certification or copies thereof).

(3) RETENTION PERIOD.—Records and supporting documents shall be kept by the person who issued a CAFTA–DR certification of origin for at least 5 years after the date on which the certification was issued.

(h) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-PERU TRADE PROMOTION 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) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) PTPA CERTIFICATION OF ORIGIN.—The term “PTPA certification of origin” means the certification established under article 4.15 of the United States-Peru Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO PERU.—Any person who completes and issues a PTPA certification 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 certification or copies thereof).

(3) RETENTION PERIOD.—The person who issues a PTPA certification of origin shall keep the records and supporting documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

(i) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-KOREA 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) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) KFTA CERTIFICATION OF ORIGIN.—The term “KFTA certification of origin” means the certification established under article 6.15 of the United States-Korea Free Trade Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO KOREA.—Any person who completes and issues a KFTA certification 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 certification or copies thereof).

(3) RETENTION PERIOD.—The person who issues a KFTA certification of origin shall keep the records and supporting

documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

(j) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-COLOMBIA TRADE PROMOTION 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) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) CTPA CERTIFICATION OF ORIGIN.—The term “CTPA certification of origin” means the certification established under article 4.15 of the United States-Colombia Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO COLOMBIA.—Any person who completes and issues a CTPA certification 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 certification or copies thereof).

(3) RETENTION PERIOD.—The person who issues a CTPA certification of origin shall keep the records and supporting documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

(k) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE UNITED STATES-PANAMA TRADE PROMOTION 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) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) the production of the good in the form in which it was exported.

(B) PANAMA TPA CERTIFICATION OF ORIGIN.—The term “Panama TPA certification of origin” means the certification established under article 4.15 of the United States-Panama Trade Promotion Agreement that a good qualifies as an originating good under such Agreement.

(2) EXPORTS TO PANAMA.—Any person who completes and issues a Panama TPA certification 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 certification or copies thereof).

(3) RETENTION PERIOD.—The person who issues a Panama TPA certification of origin shall keep the records and supporting documents relating to that certification of origin for a period of at least 5 years after the date on which the certification is issued.

(1) PENALTIES.—Any person who fails to retain records and supporting documents required by subsection (f), (g), (h), (i), (j), or (k) or the regulations issued to implement any such 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.

SEC. 509. [19 U.S.C. 1509] EXAMINATION OF BOOKS AND WITNESSES.

(a) AUTHORITY.—In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees, fees and taxes due or duties, fees, fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may—

(1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that—

(A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and

(B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g);

(2) summon, upon reasonable notice—

(A) the person who—

(i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

(ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 2(4) of the North American Free

Trade Agreement Implementation Act) or to Canada during such time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada,

(iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or

(iv) filed a declaration, entry, or drawback claim with the Customs Service;

(B) any officer, employee, or agent of any person described in subparagraph (A);

(C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or

(D) any other person he may deem proper;

to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (d)(1)(A), and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(3) take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry.

(b) REGULATORY AUDIT PROCEDURES.—

(1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.

(2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.

(3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the officer designated pursuant to regulations, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.

(4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the officer

designated pursuant to regulations provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, United States Code, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.

(5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.

(6)(A) If during the course of any audit concluded under this subsection, the Customs Service identifies overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit that the Customs Service has defined, then in calculating the loss of revenue or monetary penalties under section 592, the Customs Service shall treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or underdeclarations also identified on finally liquidated entries, if such overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law.

(B) Nothing in this paragraph shall be construed to authorize a refund not otherwise authorized under section 520.

(c) SERVICE OF SUMMONS.—A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.

(d) SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.—(1) FOR PURPOSES OF THIS SUBSECTION—

(A) The term “records” includes those—

(i) required to be kept under section 508; or

(ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited.

(B) The term “summons” means any summons issued under subsection (a) of this section which requires the production of records or the giving of testimony relating to records. Such term does not mean any summons issued to aid in the collection of the liability of any person against whom an assessment has been made or judgment rendered.

(C) The term “third-party recordkeeper” means—

(i) any customhouse broker, unless such customhouse is the importer of record on an entry;

- (ii) any attorney; and
- (iii) any accountant.

(2) If—

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the transactions described in section 508 of any person (other than the person summoned) who is identified in the description of the records contained in such summons;

then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

(3) Any notice required under paragraph (2) of this subsection shall be sufficient if such notice is served in the manner provided in subsection (b) of this section upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person.

(4) Paragraph (2) of this subsection shall not apply to any summons—

(A) served on the person with respect to whose liability for duties, fees, or taxes the summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the transactions described in section 508 of an identified person have been made or kept.

(5) Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under paragraph (2) of this subsection shall have the right—

(A) to intervene in any proceeding with respect to the enforcement of such summons under section 510 of this Act; and

(B) to stay compliance with the summons if, not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given—

(i) notice in writing is given to the person summoned not to comply with the summons; and

(ii) a copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in paragraph (2) of this subsection.

(6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (2) of this subsection may be made—

(A) before the expiration of the period allowed for the notice not to comply under paragraph (5)(B) of this subsection, or

(B) if the requirements of such paragraph (5)(B) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.

(7) The provisions of paragraphs (2) and (5) of this subsection shall not apply with respect to any summons if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(e) LIST OF RECORDS AND INFORMATION.—The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A).

(f) RECORDKEEPING COMPLIANCE PROGRAM.—

(1) IN GENERAL.—After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 508(a) may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

(2) CERTIFICATION.—A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it—

(A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

(C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.

(g) PENALTIES.—

(1) DEFINITION.—For purposes of this subsection, the term “information” means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A).

(2) EFFECTS OF FAILURE TO COMPLY WITH DEMAND.—Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) the following provisions apply:

(A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise—

(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 514 or 520, at the applicable column 1 general rate of duty; except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

(3) AVOIDANCE OF PENALTY.—No penalty may be assessed under this subsection if the person can show—

(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

(4) PENALTIES NOT EXCLUSIVE.—Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for—

(A) a penalty imposed under section 592 for a material omission of the demanded information, or

(B) disciplinary action taken under section 641.

(5) REMISSION OR MITIGATION.—A penalty imposed under this section may be remitted or mitigated under section 618.

(6) CUSTOMS SUMMONS.—Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

(7) ALTERNATIVES TO PENALTIES.—

(A) IN GENERAL.—When a recordkeeper who—

(i) has been certified as a participant in the recordkeeping compliance program under subsection (f); and

(ii) is generally in compliance with the appropriate procedures and requirements of the program;

does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(B) CONTENTS OF NOTICE.—A notice of violation issued under subparagraph (A) shall—

(i) state that the recordkeeper has violated the recordkeeping requirements;

(ii) indicate the record of information which was demanded; and

(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.

(C) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(D) REGULATIONS.—The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.

SEC. 510. [19 U.S.C. 1510] JUDICIAL ENFORCEMENT.

(a) ORDER OF COURT.—If any person summoned under section 509 of this Act does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such

court as a contempt thereof and such court may assess a monetary penalty.

(b) SANCTIONS.—(1) For so long as any person, after being adjudged guilty of contempt for neglecting or refusing to obey a lawful summons issued under section 509 of this Act and for refusing to obey the order of the court, remains in contempt, the Secretary may—

(A) prohibit that person from importing merchandise into the customs territory of the United States directly or indirectly or for his account, and

(B) instruct the appropriate customs officers to withhold delivery of merchandise imported directly or indirectly by that person or for his account.

(2) If any person remains in contempt for more than one year after the date on which the Secretary issues instructions under paragraph (1)(B) with respect to that person, the appropriate customs officers shall cause all merchandise held in customs custody pursuant to such instructions to be sold at public auction or otherwise disposed of under the customs laws.

(3) The sanctions which may be imposed under paragraphs (1) and (2) are in addition to any punishment which may be imposed by the court for contempt.

SEC. 511. [Repealed.]

SEC. 512. [19 U.S.C. 1512] DEPOSIT OF DUTY RECEIPTS.

All moneys paid to any customs officer for unascertained duties or for duties paid under protest against the rate or amount of duties charged shall be deposited to the credit of the Treasury of the United States and shall not be held by the customs officers to await any ascertainment of duties or the result of any litigation in relation to the rate or amount of duties legally chargeable and collectible in any case where money is so paid.

SEC. 513. [19 U.S.C. 1513] CUSTOMS OFFICER'S IMMUNITY.

No customs officer shall be liable in any way to any person for or on account of—

(1) any ruling or decision regarding the appraisement or the classification of any imported merchandise or regarding the duties, fees, and taxes charged thereon,

(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

(3) any other matter of thing as to which any person might under this Act be entitled to protest or appeal from the decision of such officer.

SEC. 514. [19 U.S.C. 1514] PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.

(a) FINALITY OF DECISIONS.—Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties), section 520 (relating to refunds), and section 6501 of the Internal Revenue Code of 1986 (but only with respect to taxes imposed under chapters 51 and 52 of such Code), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and, decisions of the Cus-

toms Service, including the legality of all orders and findings entering into the same, as to—

- (1) the appraised value of merchandise;
- (2) the classification and rate and amount of duties chargeable;
- (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;
- (4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;
- (5) the liquidation or reliquidation of an entry, or reconciliation as to the issues contained therein, or any modification thereof, including the liquidation of an entry, pursuant to either section 500 or section 504;
- (6) the refusal to pay a claim for drawback; or
- (7) the refusal to reliquidate an entry under subsection (d) of section 520 of this act;

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the Customs Service, which shall take action accordingly.

(b) With respect to determinations made under section 303 of this Act of title VII of this Act which are reviewable under section 516A of this title, determinations of the Customs Service are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement.

(c) PROTESTS.—

(1) IN GENERAL.—A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—

- (A) each decision described in subsection (a) as to which protest is made;
- (B) each category of merchandise affected by each decision set forth under paragraph (1);
- (C) the nature of each objection and the reasons therefor; and
- (D) any other matter required by the Secretary by regulation.

Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise, or with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, that is the subject of a protest are deemed to be part of a single protest. Unless a request for accelerated disposition is filed under section 515(b), a protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 515 of this Act at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 485(d) and 557(b) of this Act, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by—

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback;

(E) with respect to a determination of origin under section 202 of the North American Free Trade Agreement Implementation Act, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a NAFTA Certificate of Origin covering the merchandise; or

(F) any authorized agent of any of the persons described in clauses (A) through (E).

(3) TIME FOR FILING.—A protest of a decision, order, or finding described in subsection (a) shall be filed with the Customs Service within 180 days after but not before—

(A) date of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 180 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

(d) LIMITATION ON PROTEST OF RELIQUIDATION.—The reliquidation of an entry shall not open such entry so that a protest may

be filed against the decision of the Customs Service upon any question not involved in such reliquidation.

(e) **ADVANCE NOTICE OF CERTAIN DETERMINATIONS.**—Except as provided in subsection (f), an exporter or producer referred to in subsection (c)(2)(E) shall be provided notice in advance of an adverse determination of origin under section 202 of the North American Free Trade Agreement Implementation Act. The Secretary may, by regulations, prescribe the time period in which such advance notice shall be issued and authorize the Customs Service to provide in the notice the entry number and any other entry information considered necessary to allow the exporter or producer to exercise the rights provided by this section.

(f) **DENIAL OF PREFERENTIAL TREATMENT.**—If the Customs Service finds indications of a pattern of conduct by an exporter or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act—

(1) the Customs Service, in accordance with regulations issued by the Secretary, may deny preferential tariff treatment to entries of identical goods exported or produced by that person; and

(2) the advance notice requirement in subsection (e) shall not apply to that person;

until the person establishes to the satisfaction of the Customs Service that its representations are in conformity with section 202.

(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.

(h) **DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES 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, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until the Bureau of Cus-

toms and Border Protection determines that representations of that person are in conformity with such section 203.

(i) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES-PERU TRADE PROMOTION AGREEMENT.—If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Peru Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

(j) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES-KOREA FREE TRADE AGREEMENT.—If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 202 of the United States-Korea Free Trade Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Korea Free Trade Agreement Implementation Act to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 202.

(k) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT.—If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States-Colombia Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

(l) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE UNITED STATES-PANAMA TRADE PROMOTION AGREEMENT.—If U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement of the Department of Homeland Security finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin provided for in section 203 of the United States-

Panama Trade Promotion Agreement Implementation Act, U.S. Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the United States–Panama Trade Promotion Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until U.S. Customs and Border Protection determines that representations of that person are in conformity with such section 203.

SEC. 515. [19 U.S.C. 1515] REVIEW OF PROTESTS.—

(a) ADMINISTRATIVE REVIEW AND MODIFICATION OF DECISIONS.—Unless a request for an accelerated disposition of a protest is filed in accordance with subsection (b) of this section the appropriate customs officer, within two years from the date a protest was filed in accordance with section 514 of this Act, shall review the protest and shall allow or deny such protest in whole or in part. Thereafter, any duties, charge, or exaction found to have been assessed or collected in excess shall be remitted or refunded and any drawback found due shall be paid. Upon the request of the protesting party, filed within the time allowed for the filing of a protest under section 514 of this Act, a protest may be subject to further review by another appropriate customs officer, under the circumstances and in the form and manner that may be prescribed by the Secretary in regulations, but subject to the two-year limitation prescribed in the first sentence of this subsection. Within 30 days from the date an application for further review is filed, the appropriate customs officer shall allow or deny the application and, if allowed, the protest shall be forwarded to the customs officer who will be conducting the further review. Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary.

(b) REQUEST FOR ACCELERATED DISPOSITION OF PROTEST.—A request for accelerated disposition of a protest filed in accordance with section 514 of this Act may be mailed by certified or registered mail to the appropriate customs officer any time concurrent with or following the filing of such protest. For purposes of section 1581 of title 28 of the United States Code, a protest which has not been allowed or denied in whole or in part within thirty days following the date of mailing by certified or registered mail of a request for accelerated disposition shall be deemed denied on the thirtieth day following mailing of such request.

(c) If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Customs a written request that the denial of the application for further review be set aside. Such request must be filed within 60 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 60 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28, United States Code. If an action

is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.

(d) If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate port director within 90 days after the date of the protest denial, void the denial of the protest.

SEC. 516. [19 U.S.C. 1516] PETITIONS BY DOMESTIC INTERESTED PARTIES.

(a) **REQUEST FOR CLASSIFICATION AND RATE OF DUTY; PETITION.**—(1) The Secretary shall, upon written request by an interested party furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

- (A) a description of the merchandise,
- (B) the appraised value, the classification, or the rate of duty that it believes proper, and
- (C) the reasons for its belief.

Such notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of his right to file a civil action contesting the denial of a protest under section 514 of the Tariff Act of 1930.

(2) As used in this section, the term “interested party” means a person who is—

- (A) a manufacturer, producer, or wholesaler in the United States;
- (B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or
- (C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States,

of goods of the same class or kind as the designated imported merchandise. Such term includes an association, a majority of whose members is composed of persons described in subparagraph (A), (B), or (C).

(3) Any producer of a raw agricultural product who is considered under section 771(4)(E) to be part of the industry producing a processed agricultural product of the same class or kind as the designated imported merchandise shall, for purposes of this section, be treated as an interested party producing such processed agricultural product.

(b) **DETERMINATION ON PETITION.**—If, after receipt and consideration of a petition filed by such an interested party, the Secretary determines that the appraised value, the classification, or rate of duty is not correct, he shall determine the proper appraised value, classification, or rate of duty and shall notify the petitioner of his determination. All such merchandise entered for consumption or

withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the Secretary's determination.

(c) CONTEST BY PETITIONER OF APPRAISED VALUE, CLASSIFICATION, OR RATE OF DUTY.—If the Secretary determines that the appraised value, classification, or rate of duty with respect to which a petition was filed pursuant to subsection (a) of this section is correct, he shall notify the petitioner. If dissatisfied with the determination of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of the notification, notice that it desires to contest the appraised value, classification, or rate of duty. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his determination as to the proper appraised value, classification, or rate of duty and of the petitioner's desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the determination of the Secretary, at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value, classification, or rate of duty imposed upon such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate customs officer at such ports to immediately notify the petitioner by mail when the first of such entries is liquidated.

(d) Notwithstanding the filing of an action pursuant to chapter 169 of title 28 of the United States Code, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

(e) The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Court of International Trade.

(f) If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouses for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, shall be subject to appraisal, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the

final decision. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(g) Regulations shall be prescribed by the Secretary to implement the procedures required under this section.

SEC. 516A. [19 U.S.C. 1516a] JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTI-DUMPING DUTY PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

(1) REVIEW OF CERTAIN DETERMINATIONS.—Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under 702(c) or 732(c) of this Act, not to initiate an investigation,

(B) a determination by the Commission, under section 751(b) of this Act, not to review a determination based upon changed circumstances,

(C) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication or material injury, threat of material injury, or material retardation, or

(D) a final determination by the administering authority or the Commission under section 751(c)(3),
an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) REVIEW OF DETERMINATIONS ON RECORD.—

(A) IN GENERAL.—Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), (v), or (viii) of subparagraph (B),

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(III) notice of the implementation of any determination described in clause (vii) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the Commission under section 705 or 735 of this Act, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 705 or 735 of this Act, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 751 of this Act.

(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net countervailable subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(vii) A determination by the administering authority or the Commission under section 129 of the Uruguay Round Agreements Act concerning a determination under title VII of the Tariff Act of 1930.

(viii) A determination by the Commission under section 753(a)(1).

(3) EXCEPTION.—Notwithstanding the limitation imposed by paragraph (2)(A)(i)(II) of this subsection, a final affirmative determination by the administering authority under section 705 or 735 of this Act may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 705 or 735 of this Act.

(4) PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of title 28, United States Code, apply to an action under this section.

(5) TIME LIMITS IN CASES INVOLVING MERCHANDISE FROM FREE TRADE AREA COUNTRIES.—Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to

run, until the day specified in whichever of the following subparagraphs applies:

(A) For a determination described in paragraph (1)(B) or clause (i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

(B) For a determination described in clause (vi) of paragraph (2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.

(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8), the day after the date as of which—

(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and

(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this subsection has provided timely notice under subsection (g)(3)(B).

If such an interested party files a summons and complaint under this subsection after dismissal by the binational panel, and if a request for an extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss—

(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and

(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel decision to dismiss.

(D) For a determination for which review by the United States Court of International Trade is provided for—

(i) under subsection (g)(12)(B), the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or

(ii) under subsection (g)(12)(D), the day after the date that notice of settlement is published in the Federal Register.

(E) For a determination described in clause (vii) of paragraph (2)(B), the 31st day after the date on which notice of the implementation of the determination is published in the Federal Register.

(b) STANDARDS OF REVIEW.—

(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

(A) in an action brought under subparagraph (A), (B), or (C) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B)(i) in an action brought under paragraph (2) of subsection (a), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law, or

(ii)¹ in an action brought under paragraph (1)(D) of subsection (a), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) RECORD FOR REVIEW.—

(A) IN GENERAL.—For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 777(a)(3); and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(3) EFFECT OF DECISIONS BY NAFTA OR UNITED STATES-CANADA BINATIONAL PANELS.—In making a decision in any action brought under subsection (a), a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the NAFTA or of the Agreement.

(c) LIQUIDATION OF ENTRIES.—

(1) LIQUIDATION IN ACCORDANCE WITH DETERMINATION.—Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) INJUNCTIVE RELIEF.—In the case of a determination described in paragraph (2) of subsection (a) by the Secretary, the administering authority, or the Commission, the United States

¹Margin so in law.

Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances.

(3) REMAND FOR FINAL DISPOSITION.—If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, an appropriate, for disposition consistent with the final disposition of the court.

(d) STANDING.—Any interested party who was a party to the proceeding under section 303 of this Act or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.

(e) LIQUIDATION IN ACCORDANCE WITH FINAL DECISION.—If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit—

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2),

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

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

(1) ADMINISTERING AUTHORITY.—The term “administering authority” means the administering authority described in section 771(1) of this Act.

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

(3) INTERESTED PARTY.—The term “interested party” means any person described in section 771(9) of this Act.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(5) AGREEMENT.—The term “Agreement” means the United States-Canada Free-Trade Agreement.

(6) UNITED STATES SECRETARY.—The term “United States Secretary” means—

(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

(7) **RELEVANT FTA SECRETARY.**—The term “relevant FTA Secretary” means the Secretary—

(A) referred to in article 1908 of the NAFTA, or

(B) provided for in paragraph 5 of article 1909 of the Agreement,
of the relevant FTA country.

(8) **NAFTA.**—The term “NAFTA” means the North American Free Trade Agreement.

(9) **RELEVANT FTA COUNTRY.**—The term “relevant FTA country” means the free trade area country to which an anti-dumping or countervailing duty proceeding pertains.

(10) **FREE TRADE AREA COUNTRY.**—The term “free trade area country” means the following:

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

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

(C) Canada for such time as—

(i) it is not a free trade area country under subparagraph (A); and

(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.

(g) **REVIEW OF COUNTERVAILING DUTY AND ANTIDUMPING DUTY DETERMINATIONS INVOLVING FREE TRADE AREA COUNTRY MERCHANDISE.**—

(1) **DEFINITION OF DETERMINATION.**—For purposes of this subsection, the term “determination” means a determination described in—

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (ii), (iii), (vi), or (vii) or paragraph (2)(B) of subsection (a),

if made in connection with a proceeding regarding a class or kind of free trade area country merchandise, as determined by the administering authority.

(2) **EXCLUSIVE REVIEW OF DETERMINATION BY BINATIONAL PANELS.**—If binational panel review of a determination is requested pursuant to article 1904 of the NAFTA or of the Agreement, then, except as provided in paragraphs (3) and (4)—

(A) the determination is not reviewable under subsection (a), and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) **EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW.**—

(A) **IN GENERAL.**—A determination is reviewable under subsection (a) if the determination sought to be reviewed is—

(i) a determination as to which neither the United States nor the relevant FTA country requested review by a binational panel pursuant to article 1904 of the NAFTA or of the Agreement.

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States nor the relevant FTA country requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force of the NAFTA or of the Agreement,

(iv) a determination which a binational panel has determined is not reviewable by the binational panel,

(v) a determination as to which binational panel review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA, or

(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

(B) SPECIAL RULE.—A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) of this section only if the party seeking to commence review has provided timely notice of its intent to commence such review to—

(i) the United States Secretary and the relevant FTA Secretary;

(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

(iii) the administering authority or the Commission, as appropriate.

Such notice is timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) EXCEPTION TO EXCLUSIVE BINATIONAL PANEL REVIEW FOR CONSTITUTIONAL ISSUES.—

(A) CONSTITUTIONALITY OF BINATIONAL PANEL REVIEW SYSTEM.—An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or the United States-Canada Free-Trade Agreement Implementation Act of 1988 implementing the binational panel dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Ap-

peals for the District of Columbia Circuit, which shall have jurisdiction of such action.

(B) OTHER CONSTITUTIONAL REVIEW.—Review is available under subsection (a) with respect to a determination solely concerning a constitutional issue (other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) COMMENCEMENT OF REVIEW.—Notwithstanding the time limits in subsection (a), within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) TRANSFER OF ACTIONS TO APPROPRIATE COURT.—Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) FRIVOLOUS CLAIMS.—Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28, United States Code, and the Federal Rules of Civil Procedure.

(F) SECURITY.—

(i) SUBPARAGRAPH (A) ACTIONS.—The security requirements of rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) SUBPARAGRAPH (B) ACTIONS.—No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) PANEL RECORD.—The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) APPEAL TO SUPREME COURT OF COURT ORDERS ISSUED IN SUBPARAGRAPH (A) ACTIONS.—Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) LIQUIDATION OF ENTRIES.—

(A) APPLICATION.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).

(B) GENERAL RULE.—In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) SUSPENSION OF LIQUIDATION.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) NOTICE.—At the same time as the interested party makes its request to the administering authority under clause (i), that party shall serve a copy of its request on the United States Secretary, the relevant FTA Secretary, and all interested parties who were

parties to the proceeding in connection with which the matter arises.

(iii) APPLICATION OF SUSPENSION.—If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E) or (F) of section 771(9), the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the NAFTA or of the Agreement.

(iv) JUDICIAL REVIEW.—Any action taken by the administering authority or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(6) INJUNCTIVE RELIEF.—Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the provisions of subsection (c)(2) shall not apply.

(7) IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS UNDER ARTICLE 1904 OF THE NAFTA OR THE AGREEMENT.—

(A) ACTION UPON REMAND.—If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) APPLICATION IF SUBPARAGRAPH (A) HELD UNCONSTITUTIONAL.—In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commis-

sion within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) REQUESTS FOR BINATIONAL PANEL REVIEW.—

(A) INTERESTED PARTY REQUESTS FOR BINATIONAL PANEL REVIEW.—

(i) GENERAL RULE.—An interested party who was a party to the proceeding in which a determination is made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A), (B), or (E) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the NAFTA or of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(ii) SUSPENSION OF TIME TO REQUEST BINATIONAL PANEL REVIEW UNDER THE NAFTA.—Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.

(B) SERVICE OF REQUEST FOR BINATIONAL PANEL REVIEW.—

(i) SERVICE BY INTERESTED PARTY.—If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) SERVICE BY UNITED STATES SECRETARY.—If an interested party to the proceeding requests binational panel review of a determination by filing a request with the relevant FTA Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) LIMITATION ON REQUEST FOR BINATIONAL PANEL REVIEW.—Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review of a determination under article 1904 of the NAFTA or the Agreement.

(9) REPRESENTATION IN PANEL PROCEEDINGS.—In the case of binational panel proceedings convened under chapter 19 of the NAFTA or of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) NOTIFICATION OF CLASS OR KIND RULINGS.—In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.

(11) SUSPENSION AND TERMINATION OF SUSPENSION OF ARTICLE 1904 OF THE NAFTA.—

(A) SUSPENSION OF ARTICLE 1904.—If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.

(B) TERMINATION OF SUSPENSION OF ARTICLE 1904.—If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

(12) JUDICIAL REVIEW UPON TERMINATION OF BINATIONAL PANEL OR COMMITTEE REVIEW UNDER THE NAFTA.—

(A) NOTICE OF SUSPENSION OR TERMINATION OF SUSPENSION OF ARTICLE 1904.—

(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in

the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

(B) TRANSFER OF FINAL DETERMINATIONS FOR JUDICIAL REVIEW UPON SUSPENSION OF ARTICLE 1904.—If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA—

(i) upon the request of an authorized person described in subparagraph (C), any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a); or

(ii) in a case in which—

(I) a binational panel review was completed fewer than 30 days before the suspension, and

(II) extraordinary challenge committee review has not been requested,

upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

(C) PERSONS AUTHORIZED TO REQUEST TRANSFER OF FINAL DETERMINATIONS FOR JUDICIAL REVIEW.—A request that a final determination be transferred to the Court of International Trade under subparagraph (B) may be made by—

(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 8(a) of article 1905 of the NAFTA—

(I) the government of the relevant country described in subsection (f)(10)(A) or (B),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or

(ii) if a country described in subsection (f)(10)(A) or (B) made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA—

(I) the government of that country,

(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

(D) TRANSFER FOR JUDICIAL REVIEW UPON SETTLEMENT.—(i) If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

(ii) A request referred to in clause (i) is a request made by—

(I) the country referred to in clause (i),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

[SECS. 517, 518, and 519. Repealed.]

SEC. 520. [19 U.S.C. 1520] REFUNDS AND ERRORS.

(a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

(1) EXCESS DEPOSITS.—Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid.

(2) FEES, CHARGES, AND EXACTIONS.—Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected.

(3) FINES, PENALTIES, AND FORFEITURES.—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

(4) PRIOR TO LIQUIDATION.—Prior to the liquidation of an entry or reconciliation, whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid.

(b) The necessary moneys to make such refunds are hereby authorized to be appropriated annually from the general fund of the Treasury.

[(c) Repealed.]

(d) GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.—Notwithstanding the fact that a valid protest was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, section 202 of the United States–Chile Free Trade Agreement Implementation Act, section 203 of the Dominican Republic–Central America–United States Free Trade Agreement Implementation Act, section 202 of the United States–Oman Free Trade Agreement Implementation Act, section 203 of the United States–Peru Trade Promotion Agreement Implementation Act, section 202 of the United States–Korea Free Trade Agreement Implementation Act, section 203 of the United States–Columbia Free Trade Promotion Agreement Implementation Act, or section 203 of the United States–Panama Trade Promotion Agreement Implementation Act for which¹ no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) a written declaration that the good qualified under the applicable rules at the time of importation;

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1)), or other certificates or certifications of origin, as the case may be; and

(3) such other documentation and information relating to the importation of the goods as the Customs Service may require.

SEC. 521. [Repealed.]

SEC. 522. [Repealed.]

SEC. 523. [19 U.S.C. 1523] EXAMINATION OF ACCOUNTS.

The Secretary of the Treasury or such officer or employee as he shall designate, shall, under regulations and instructions prescribed by the Secretary—

(1) examine the customs' officers accounts of receipts and disbursements of money and receipts and disposition of merchandise; and

(2) verify, to such extent as the Secretary of the Treasury shall direct, assessments of duties and taxes and allowances of drawback.

SEC. 524. [19 U.S.C. 1524] DEPOSIT OF REIMBURSABLE CHARGES.

Receipts for any reimbursable charges or expenses which have been paid for out of any appropriation for collecting the revenue from customs shall be deposited as a refund to such appropriation instead of being covered into the Treasury as miscellaneous receipts, as provided by the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal

¹References to Korea, Columbia, and Panama in the matter preceding paragraph (1) of subsection (d) were carried out as amended by Public Laws 112–41 through 112–43. Section 107(a) of each of such Public Laws provides that "[e]xcept as provided in subsection (b), this Act and the amendments made by this Act take effect on the date on which the Agreement enters into force", which these amendments shown above are subject to such Agreement entering into force.

year ending June 30, 1908, and for other purposes”, approved March 4, 1907.

SEC. 525. [Repealed.]

SEC. 526. [19 U.S.C. 1526] MERCHANDISE BEARING AMERICAN TRADE-MARK.

(a) **IMPORTATION PROHIBITED.**—Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trade-mark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent Office by a person domiciled in the United States, under the provisions of the Act entitled “An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same,” approved February 20, 1905, as amended, and if a copy of the certificate of registration of such trade-mark is filed with the Secretary of the Treasury, in the manner provided in section 27 of such Act, unless written consent of the owner of such trade-mark is produced at the time of making entry.

(b) **SEIZURE AND FORFEITURE.**—Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

(c) **INJUNCTION AND DAMAGES.**—Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade-mark and shall be liable for the same damages and profits provided for wrongful use of a trade-mark, under the provisions of such Act of February 20, 1905, as amended.

(d) **EXEMPTIONS.**—(1) The trademark provisions of this section and section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1294), do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trademarked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trade-mark laws under this subsection is sold within one year after the date of importation, such articles, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the

estate of a decedent is not subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may obliterate the trademark where feasible and dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise, or

(3) more than 90 days after the date of forfeiture, by sale by the Customs Service at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2).

(f) CIVIL PENALTIES.—(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) shall be subject to a civil fine.

(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

(4) The imposition of a fine under this subsection shall be within the discretion of the Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.

SEC. 527. [19 U.S.C. 1527] IMPORTATION OF WILD MAMMALS AND BIRDS IN VIOLATION OF FOREIGN LAW.

(a) IMPORTATION PROHIBITED.—If the laws or regulations of any country, dependency, province, or other subdivision of government restrict the taking, killing, possession, or exportation to the United States, of any wild mammal or bird, alive or dead, or restrict the exportation to the United States of any part or product of any wild mammal or bird, whether raw or manufactured, no such mammal or bird, or part or product thereof, shall, after the

expiration of ninety days after the enactment of this Act, be imported into the United States from such country, dependency, province, or other subdivision of government, directly or indirectly, unless accompanied by a certification of the United States consul, for the consular district in which is located the port or place from which such mammal or bird, or part or product thereof, was exported from such country, dependency, province, or other subdivision of government, that such mammal or bird, or part or product thereof, has not been acquired or exported in violation of the laws or regulations of such country, dependency, province, or other subdivision of government.

(b) **FORFEITURE.**—Any mammal or bird, alive or dead, or any part or product thereof, whether raw or manufactured, imported into the United States in violation of the provisions of the preceding subdivision shall be subject to seizure and forfeiture under the customs laws. Any such article so forfeited may, in the discretion of the Secretary of the Treasury and under such regulations as he may prescribe, be placed with the departments or bureaus of the Federal or State Governments, or with societies or museums, for exhibition or scientific or educational purposes, or destroyed, or (exempt in the case of heads or horns of wild mammals) sold in the manner provided by law.

(e) **SECTION NOT TO APPLY IN CERTAIN CASES.**—The provisions of this section shall not apply in the case of—

(1) **PROHIBITED IMPORTATIONS.**—Articles the importation of which is prohibited under the provisions of this Act, or of section 241 of the Criminal Code, or of any other law;

(2) **SCIENTIFIC OR EDUCATIONAL PURPOSES.**—Wild mammals or birds, alive or dead, or parts or products thereof, whether raw or manufactured, imported for scientific or educational purposes;

(3) **CERTAIN MIGRATORY GAME BIRDS.**—Migratory game birds (for which an open season is provided by the laws of the United States and any foreign country which is a party to a treaty with the United States, in effect on the date of importation, relating to the protection of such migratory game birds) brought into the United States by bona fide sportsmen returning from hunting trips in such country, if at the time of importation the possession of such birds is not prohibited by the laws of such country or of the United States.

SEC. 528. [19 U.S.C. 1528] TAXES TO BE CONSTRUED AS DUTIES.

No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws. Nothing in this section shall be construed to limit or restrict the jurisdiction of the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit.

SEC. 529. [19 U.S.C. 1529] COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.

The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government agency for any reason.

Part IV—Transportation in Bond and Warehousing of Merchandise**SEC. 551. [19 U.S.C. 1551] BONDING OF CARRIERS.**

Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe—

(1) any common carrier or merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States,

(2) any contract carrier authorized to operate as such by any agency of the United States, and

(3) any freight forwarder authorized to operate as such by any agency of the United States,

upon application may, in the discretion of the Secretary, be designated as a carrier of bonded merchandise for the final release of which from customs custody a permit has not been issued. A private carrier, upon application, may, in the discretion of the Secretary, be designated under the preceding sentence as a carrier of bonded merchandise, subject to such regulations and, in the case of each applicant, to such special terms and conditions as the Secretary may prescribe to safeguard the revenues of the United States with respect to the transportation of bonded merchandise by such applicant.

SEC. 552. [19 U.S.C. 1552] ENTRY FOR IMMEDIATE TRANSPORTATION.

Any merchandise, other than explosives and merchandise the importation of which is prohibited, arriving at a port of entry in the United States may be entered, under such rules and regulations as the Secretary of the Treasury may prescribe, for transportation in bond without appraisement to any other port of entry designated by the consignee, or his agent, and by such bonded carrier as he designates, there to be entered in accordance with the provisions of this Act.

SEC. 553. [19 U.S.C. 1553] ENTRY FOR TRANSPORTATION AND EXPORTATION.

(a) Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe, and any baggage or personal effects not containing merchandise the importation of which is prohibited arriving in the United States destined to a foreign country may, upon the request of the owner or carrier having the same in possession for transportation, be entered for transportation in bond through the United States by a bonded carrier without appraise-

ment or the payment of duty, under such regulations as the Secretary of the Treasury may prescribe. In places where no bonded common-carrier facilities are reasonably available, such merchandise may be so transported otherwise than by a bonded common carrier under such regulations as the Secretary of the Treasury shall prescribe.

(b) Notwithstanding subsection (a), the entry for transportation in bond through the United States of any lottery ticket, printed paper that may be used as a lottery ticket, or any advertisement of any lottery, that is printed in Canada, shall be permitted without appraisal or the payment of duties under such regulations as the Secretary of the Treasury may prescribe, except that such regulations shall not permit the transportation of lottery materials in the personal baggage of a traveler.

SEC. 553A. [19 U.S.C. 1553-1] REPORT ON IN-BOND CARGO.¹

(a) REPORT.—Not later than June 30, 2007, the Commissioner shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Finance of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Ways and Means of the House of Representatives that includes—

- (1) a plan for closing in-bond entries at the port of arrival;
- (2) an assessment of the personnel required to ensure 100 percent reconciliation of in-bond entries between the port of arrival and the port of destination or exportation;
- (3) an assessment of the status of investigations of overdue in-bond shipments and an evaluation of the resources required to ensure adequate investigation of overdue in-bond shipments;
- (4) a plan for tracking in-bond cargo within the Automated Commercial Environment (ACE);
- (5) an assessment of whether any particular technologies should be required in the transport of in-bond cargo;
- (6) an assessment of whether ports of arrival should require any additional information regarding shipments of in-bond cargo;
- (7) an evaluation of the criteria for targeting and examining in-bond cargo; and
- (8) an assessment of the feasibility of reducing the transit time for in-bond shipments, including an assessment of the impact of such a change on domestic and international trade.

(b) DEFINITION.—In this section, the term “Commissioner” means the Commissioner responsible for the United States Customs and Border Protection in the Department of Homeland Security.

SEC. 553A. [19 U.S.C. 1553a] RECORDKEEPING FOR MERCHANDISE TRANSPORTED BY PIPELINE.

Merchandise in Customs custody that is transported by pipeline may be accounted for on a quantitative basis, based on the bill

¹ There are two sections designated as section 553A. The first one is the result of the amendment made by section 406 of Public Law 109-347 (120 Stat. 1931).

of lading, or equivalent document of receipt, issued by the pipeline carrier. Unless the Customs Service has reasonable cause to suspect fraud, the Customs Service may accept the bill of lading, or equivalent document of receipt, issued by the pipeline carrier to the shipper and accepted by the consignee to maintain identity. The shipper, pipeline operator, and consignee shall be subject to the recordkeeping requirements of sections 508 and 509.

SEC. 554. [19 U.S.C. 1554] TRANSPORTATION THROUGH CONTIGUOUS COUNTRIES.

With the consent of the proper authorities, imported merchandise, in bond or duty-paid, and products and manufactures of the United States may be transported from one port to another in the United States through contiguous countries, under such regulations as the Secretary of the Treasury shall prescribe, unless such transportation is in violation of section 4347 of the Revised Statutes, as amended, section 27 of the Merchant Marine Act, 1920, or section 588 of this Act.

SEC. 555. [19 U.S.C. 1555] BONDED WAREHOUSES.

(a) Subject to subsection (b), buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the appropriate customs officer, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this Act, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse.

(b) DUTY-FREE SALES ENTERPRISES.—

(1) Duty-free sales enterprises may sell and deliver for export from the customs territory duty-free merchandise in accordance with this subsection and such regulations as the Secretary may prescribe to carry out this subsection.

(2) A duty-free sales enterprise may be located anywhere within—

(A) the same port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), from which a purchaser of duty-free merchandise departs the customs territory; or

(B) 25 statute miles from the exit point through which the purchaser of duty-free merchandise will depart the customs territory; or

(C) a port of entry, as established under section 1 of the Act of August 24, 1912 (37 Stat. 434), or within 25 statute miles of a staffed port of entry if reasonable assurance can be provided that duty-free merchandise sold by the enterprise will be exported by individuals departing from the customs territory through an international airport located within the customs territory.

(3) Each duty-free sales enterprise—

(A) shall establish procedures to provide reasonable assurance that duty-free merchandise sold by the enterprise will be exported from the customs territory;

(B) if the duty-free sales enterprise is an airport store, shall establish and enforce, in accordance with such regulations as the Secretary may prescribe, restrictions on the sale of duty-free merchandise to any one individual to personal use quantities;

(C) shall display in prominent places within its place of business notices which state clearly that any duty-free merchandise purchased from the enterprise—

(i) has not been subject to any Federal duty or tax,

(ii) if brought back into the customs territory, must be declared and is subject to Federal duty and tax, and

(iii) is subject to the customs laws and regulation of any foreign country to which it is taken;

(D) shall not be required to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate that the items were sold by a duty-free sales enterprise, unless the Secretary finds a pattern in which such items are being brought back into the customs territory without declaration;

(E) may unpack merchandise into saleable units after it has been entered for warehouse and placed in a duty-free sales enterprise, without requirement of further permits; and

(F) shall deliver duty-free merchandise—

(i) in the case of a duty-free sales enterprise that is an airport store—

(I) to the purchaser (or a family member or companion traveling with the purchaser) in an area that is within the airport and to which access to passengers is restricted to those departing from the customs territory;

(II) to the purchaser (or a family member or companion traveling with the purchaser) at the exit point of a specific departing flight;

(III) by placing the merchandise within the aircraft on which the purchaser will depart for carriage as passenger baggage; or

(IV) if the duty-free sales enterprise has made a good faith effort to effect delivery for exportation through one of the methods described in subclause (I), (II), or (III) but is unable to do so, by any other reasonable method to effect delivery; or

(ii) in the case of a duty-free sales enterprise that is a border store—

(I) at a merchandise storage location at or beyond the exit point; or

(II) at any location approved by the Secretary before the date of enactment of the Omnibus Trade Act of 1987.

(4) If a State or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to or through such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary that the concession or approval required for the enterprise has been obtained.

(5) This subsection does not prohibit a duty-free sales enterprise from offering for sale and delivering to, or on behalf of, individuals departing from the customs territory merchandise other than duty-free merchandise, except that such other merchandise may not be stored in a bonded warehouse facility other than a bonded facility used for retail sales.

(6)(A) Except as provided in subparagraph (B), merchandise that is purchased in a duty-free sales enterprise is not eligible for exemption from duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States if such merchandise is brought back to the customs territory.

(B) Except in the case of travel involving transit to, from, or through an insular possession of the United States, merchandise described in subparagraph (A) that is purchased by a United States resident shall be eligible for exemption from duty under subheadings 9804.00.65, 9804.00.70, and 9804.00.72 of the Harmonized Tariff Schedule of the United States upon the United States resident's return to the customs territory of the United States, if the resident meets the eligibility requirements for the exemption claimed. Notwithstanding any other provision of law, such merchandise shall be considered to be an article acquired abroad as an incident of the journey from which the resident is returning, for purposes of determining eligibility for any such exemption.

(7) The Secretary shall by regulation establish a separate class of bonded warehouses for duty-free sales enterprises. Regulations issued to carry out this paragraph shall take into account the unique characteristics of the different types of duty-free sales enterprises.

(8) For purposes of this subsection—

(A) The term “airport store” means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory from an international airport located within the customs territory.

(B) The term “border store” means a duty-free sales enterprise which delivers merchandise to, or on behalf of, individuals departing from the customs territory through a land or water border by a means of conveyance other than an aircraft.

(C) The term “customs territory” means the customs territory of the United States and foreign trade zones.

(D) The term “duty-free sales enterprise” means a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory.

(E) The term “duty-free merchandise” means merchandise sold by a duty-free sales enterprise on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory.

(F) The term “exit point” means the area in close proximity to an actual exit for departing from the customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that duty-free merchandise delivered in the gate holding area will be exported from the customs territory.

(G) The term “personal use quantities” means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others.

(c) INTERNATIONAL TRAVEL MERCHANDISE.—

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

(A) the term “international travel merchandise” means duty-free or domestic merchandise which is placed on board aircraft on international flights for sale to passengers, but which is not merchandise incidental to the operation of a duty-free sales enterprise;

(B) the term “staging area” is an area controlled by the proprietor of a bonded warehouse outside of the physical parameters of the bonded warehouse in which manipulation of international travel merchandise in carts occurs;

(C) the term “duty-free merchandise” means merchandise on which the liability for payment of duty or tax imposed by reason of importation has been deferred pending exportation from the customs territory;

(D) the term “manipulation” means the repackaging, cleaning, sorting, or removal from or placement on carts of international travel merchandise; and

(E) the term “cart” means a portable container holding international travel merchandise on an aircraft for exportation.

(2) **BONDED WAREHOUSE FOR INTERNATIONAL TRAVEL MERCHANDISE.**—The Secretary shall by regulation establish a separate class of bonded warehouse for the storage and manipulation of international travel merchandise pending its placement on board aircraft departing for foreign destinations.

(3) **RULES FOR TREATMENT OF INTERNATIONAL TRAVEL MERCHANDISE AND BONDED WAREHOUSES AND STAGING AREAS.**—(A) The proprietor of a bonded warehouse established for the storage and manipulation of international travel merchandise shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. The warehouse proprietor’s bond shall also secure the manipulation of international travel merchandise in a staging area.

(B) A transfer of liability from the international carrier to the warehouse proprietor occurs when the carrier assigns custody of international travel merchandise to the warehouse proprietor for purposes of entry into warehouse or for manipulation in the staging area.

(C) A transfer of liability from the warehouse proprietor to the international carrier occurs when the bonded warehouse proprietor assigns custody of international travel merchandise to the carrier.

(D) The Secretary is authorized to promulgate regulations to require the proprietor and the international carrier to keep records of the disposition of any cart brought into the United States and all merchandise on such cart.

SEC. 556. [19 U.S.C. 1556] SAME—REGULATIONS FOR ESTABLISHING.

The Secretary of the Treasury shall from time to time establish such rules and regulations as may be necessary for the establishment of bonded warehouses and to protect the interests of the Government in the conduct, management, and operation of such warehouses and in the withdrawal of and accounting for merchandise deposited therein.

SEC. 557. [19 U.S.C. 1557] ENTRY FOR WAREHOUSE—WAREHOUSE PERIOD—DRAWBACK.

(a)(1) Any merchandise subject to duty (including international travel merchandise), with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner purchaser, importer, or consignee. Such merchandise may be withdrawn, at any time within 5-years from the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, for con-

sumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port; except that—

(A) the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown; and

(B) turbine fuel may be withdrawn for use under section 309 without the payment of duty if an amount equal to the quantity of fuel withdrawn is shown to be used within 30 days after the day of withdrawal, but duties (together with interest payable from the date of the withdrawal at the rate of interest established under section 6621 of title 26, United States Code) shall be deposited by the 40th day after the day of withdrawal on fuel that was withdrawn in excess of the quantity shown to have been so used during such 30-day period.

(2) Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within 5 years after the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

(b) The right to withdraw any merchandise entered in accordance with subsection (a) of this section for the purposes specified in such subsection may be transferred upon compliance with regulations prescribed by the Secretary of the Treasury and upon the filing by the transferee of a bond in such amount and containing such conditions as the Secretary of the Treasury shall prescribe. The bond shall include an obligation to pay, with respect to the merchandise the subject of the transfer, all unpaid regular, increased, and additional duties, all unpaid taxes imposed upon or by reason of importation, and all unpaid charges and exactions. Such transfers shall be irrevocable, shall relieve the transferor from all customs liability with respect to obligations assumed by the transferee under the bond herein provided for, and shall confer upon the transferee all rights to the privileges provided for in this section and in sections 562 and 563 of this Act which were vested in the

transferor prior to the transfer. The transferee shall also have the right to receive all lawful refunds of money paid by him to the United States with respect to the merchandise the subject of the transfer, and shall have the right to file a protest under section 514 of this Act to the same extent that such right would have been available to the transferor. Notice of liquidation shall be given to the transferee in the form and manner prescribed by the Secretary of the Treasury. A transferee may further transfer the right to withdraw merchandise, subject to the provisions of this subsection relating to original transfers.

(c) Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded.

(d) WITHDRAWAL BEFORE PAYMENT.—Merchandise may be withdrawn for consumption without the payment of the duty thereon if the importer of record or transferee is permitted to pay duty at a later time pursuant to regulations prescribed by the Secretary under section 505 of this Act.

SEC. 558. [19 U.S.C. 1558] NO REMISSION OR REFUND AFTER RELEASE OF MERCHANDISE.

(a) No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

(1) When articles are exported with respect to which a drawback of duties is expressly provided for by law;

(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe; and

(3) When articles entered under bond, under any provision of law, are destroyed within the bonded period as provided for in section 557 of this Act, or are destroyed within the bonded period by death, accidental fire, or other casualty, and proof of such destruction is furnished which shall be satisfactory to the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied.

(b) When articles are exported or destroyed under customs supervision after once having been released from customs custody, as provided for in subsection (h) of section 304 of this Act, such exportation or destruction shall not exempt such articles from the payment of duties other than the marking duty provided for in such subsection (h).

SEC. 559. [19 U.S.C. 1559] WAREHOUSE GOODS DEEMED ABANDONED AFTER THREE YEARS.

Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse beyond three years from the date of

importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, shall be regarded as abandoned to the Government and shall be sold under such regulations as the Secretary of the Treasury shall prescribe, and the proceeds of sale paid into the Treasury, as in the case of unclaimed merchandise covered by section 493 of this Act, subject to the payment to the owner or consignee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond three years from the date of importation, or such longer period of time as the Bureau of Customs and Border Protection may at its discretion permit upon proper request being filed and good cause shown, shall be held to be no longer in the custody or control of the officers of the customs.

SEC. 560. [19 U.S.C. 1560] LEASING OF WAREHOUSES.

The Secretary of the Treasury may cause to be set aside any available space in a building used as a customhouse for the storage of bonded merchandise or may lease premises for the storage of unclaimed merchandise or other imported merchandise required to be stored by the Government, and set aside a portion of such leased premises for the storage of bonded merchandise: *Provided*, That no part of any premises owned or leased by the Government may be used for the storage of bonded merchandise at any port at which a public bonded warehouse has been established and is in operation. All the premises so leased shall be leased on public account and the storage and other charges shall be deposited and accounted for as customs receipts, and the rates therefor shall not be less than the charges for storage and similar services made at such port of entry by commercial concerns for the storage and handling of merchandise. No officer of the customs shall own, in whole or in part, any bonded warehouse or enter into any contract or agreement for the lease or use of any building to be thereafter erected as a public store or warehouse. No lease of any building to be so used shall be taken for a longer period than three years, nor shall rent for any such premises be paid, in whole or in part, in advance.

SEC. 561. [19 U.S.C. 1561] PUBLIC STORES.

Any premise owned or leased by the Government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued shall be known as a "public store."

SEC. 562. [19 U.S.C. 1562]¹ MANIPULATION IN WAREHOUSE.

Merchandise shall only be withdrawn from a bonded warehouse in such quantity and in such condition as the Secretary of

¹This section was amended by section 203(b)(4) of the North American Free Trade Agreement Implementation Act (P.L. 103-182). The amendments instructions were to the second sentence by striking "without payment of duties—" and inserting a dash and by striking out paragraphs (1), (2), and (3) and inserting new paragraphs (1) through (5). The third sentence is also amended by striking out "paragraph (1) of the preceding sentence" and inserting "paragraph (4) of the preceding sentence". Section 213(c) of such Act provides an effective date as follows:

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

(1) with respect to exports from the United States to Canada—
(A) on January 1, 1996, if Canada is a NAFTA country on that date, and

Continued

the Treasury shall by regulation prescribe. Upon permission being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom—

(1) without payment of duties for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the merchandise is of a kind described in any of paragraphs (1) through (8) of section 203(a) of that Act;

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

(A) 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 change in condition, and

(B) duty shall be paid on the merchandise 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 merchandise, the customs duty 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 paid or owed on the merchandise on importation into the United States, or

(ii) the total amount of customs duties paid on the merchandise to the NAFTA country;

(3) without payment of duties for exportation to any foreign country other than to Chile, to a NAFTA country, or to Canada when exports to that country are subject to paragraph (4);

(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise that—

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

(B) is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988;

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

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

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

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

(5) without payment of duties for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam; and

(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.

Merchandise may be withdrawn from bonded warehouse for consumption, or for exportation to Canada if the duty exemption under paragraph (4) of the preceding sentence does not apply, upon the payment of duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse.

SEC. 563. [19 U.S.C. 1563] ALLOWANCE FOR LOSS—ABANDONMENT OF WAREHOUSE GOODS.

(a) ALLOWANCE.—In no case shall there be any abatement or allowance made in the duties for any injury, deterioration, loss, or

damage sustained by any merchandise while remaining in customs custody, except that the Secretary of the Treasury is authorized, upon production of proof satisfactory to him of the loss or theft of any merchandise while in the appraiser's stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the appraiser's stores, or while in transportation under bond, or while in the custody of the officers of the customs, although not in bond, or while within the limits of any port of entry and before having been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, the duties upon such merchandise, in whole or in part, and to pay any such refund out of any moneys in the Treasury not otherwise appropriated, and to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be, but no abatement or refund shall be made in respect of injury or destruction of any merchandise in bonded warehouse occurring after the expiration of three years from the date of importation. The decision of the Secretary of the Treasury as to the abatement or refund of the duties on any such merchandise shall be final and conclusive upon all persons.

The Secretary of the Treasury is authorized to prescribe such regulations as he may deem necessary to carry out the provisions of this subdivision and he may by such regulations limit the time within which proof of loss, theft, injury, or destruction shall be submitted, and may provide for the abatement or refund of duties, as authorized herein, by appropriate customs officer in cases in which the amount of the abatement or refund claimed is less than \$25 and in which the importer has agreed to abide by the decision of the customs officer. The decision of the customs officer in any such case shall be final and conclusive upon all persons.

Any case pending before the United States Customs Court upon the effective date of this Act, under the provisions of section 563 of the Tariff Act of 1922, may, with the consent of the parties and the permission of the court, be transferred to the Secretary of the Treasury, or to the collector, for consideration and final determination in accordance with the provisions of this subdivision.

(b) ABANDONMENT.—Under such regulations as the Secretary of the Treasury may prescribe and subject to any conditions imposed thereby the consignee may at any time within three years from the date of original importation, abandon to the Government any merchandise in bonded warehouse, whereupon any duties on such merchandise may be remitted or refunded as the case may be, but any merchandise so abandoned shall not be less than an entire package and shall be abandoned in the original package without having been repacked while in a bonded warehouse (other than a bonded manipulating warehouse).

SEC. 564. [19 U.S.C. 1564] LIENS.

Whenever a customs office shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehousing or taken possession of by him, he shall refuse to permit delivery thereof from public store or bonded warehouse until proof shall be produced that the

said lien has been satisfied or discharged. The rights of the United States shall not be prejudiced or affected by the filing of such lien, nor shall the United States or its officers be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom. The provisions of this section shall apply to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.

SEC. 565. [19 U.S.C. 1565] CARTAGE.

The cartage of merchandise entered for warehouse shall be done by—

- (1) cartmen appointed and licensed by the Customs Services; or
- (2) carriers designated under section 551 to carry bonded merchandise;

who shall give bond, in a penal sum to be fixed by the Customs Service, for the protection of the Government against any loss of, or damage to, the merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the customs officer as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe.

Part V—Enforcement Provisions

SEC. 581. [19 U.S.C. 1581] BOARDING VESSELS.

(a) Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs-enforcement area established under the Anti-Smuggling Act, or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.

(b) Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within the customs waters and hail, stop, and board such vessel in the enforcement of the navigation laws and arrest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

(c) Any master of a vessel being examined as herein provided, who presents any forged, altered, or false document or paper to the examining officer, knowing the same to be forged, altered, or false

and without revealing the fact shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than \$5,000 nor less than \$500.

(d) Any vessel or vehicle which, at any authorized place, is directed to come to a stop by any officer of the customs, or is directed to come to a stop by signal made by any vessel employed in the service of the customs and displaying proper insignia, shall come to a stop, and upon failure to comply a vessel or vehicle so directed to come to a stop shall become subject to pursuit and the master, owner, operator, or person in charge thereof shall be liable to a penalty of not more than \$5,000 nor less than \$1,000.

(e) If upon the examination of any vessel or vehicle it shall appear that a breach of the laws of the United States is being or has been committed so as to render such vessel or vehicle, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel or vehicle, liable to forfeiture or to secure any fine or penalty, the same shall be seized and any person who has engaged in such breach shall be arrested.

(f) It shall be the duty of the several officers of the customs to seize and secure any vessel, vehicle, or merchandise which shall become liable to seizure, and to arrest any person who shall become liable to arrest, by virtue of any law respecting the revenue, as well without as within their respective districts, and to use all necessary force to seize or arrest the same.

(g) Any vessel, within or without the customs waters, from which any merchandise is being, or has been, unlawfully introduced into the United States by means of any boat belonging to, or owned, controlled, or managed in common with, said vessel, shall be deemed to be employed within the United States and, as such, subject to the provisions of this section.

(h) The provisions of this section shall not be construed to authorize or require any officer of the United States to enforce any law of the United States upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon said vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government.

SEC. 582. [19 U.S.C. 1582] SEARCH OF PERSONS AND BAGGAGE—REGULATIONS.

The Secretary of the Treasury may prescribe regulations for the search of persons and baggage and he is authorized to employ female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government under such regulations.

SEC. 583. [19 U.S.C. 1583] EXAMINATION OF OUTBOUND MAIL.

(a) EXAMINATION.—

(1) IN GENERAL.—For purposes of ensuring compliance with the Customs laws of the United States and other laws enforced by the Customs Service, including the provisions of law described in paragraph (2), a Customs officer may, subject to

the provisions of this section, stop and search at the border, without a search warrant, mail of domestic origin transmitted for export by the United States Postal Service and foreign mail transiting the United States that is being imported or exported by the United States Postal Service.

(2) PROVISIONS OF LAW DESCRIBED.—The provisions of law described in this paragraph are the following:

(A) Section 5316 of title 31, United States Code (relating to reports on exporting and importing monetary instruments).

(B) Sections 1461, 1463, 1465, and 1466, and chapter 110 of title 18, United States Code (relating to obscenity and child pornography).

(C) Section 1003 of the Controlled Substances Import and Export Act (relating to exportation of controlled substances) (21 U.S.C. 953).

(D) The Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.).

(E) Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(F) The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(b) SEARCH OF MAIL NOT SEALED AGAINST INSPECTION AND OTHER MAIL.—Mail not sealed against inspection under the postal laws and regulations of the United States, mail which bears a Customs declaration, and mail with respect to which the sender or addressee has consented in writing to search, may be searched by a Customs officer.

(c) SEARCH OF MAIL SEALED AGAINST INSPECTION WEIGHING IN EXCESS OF 16 OUNCES.—

(1) IN GENERAL.—Mail weighing in excess of 16 ounces sealed against inspection under the postal laws and regulations of the United States may be searched by a Customs officer, subject to paragraph (2), if there is reasonable cause to suspect that such mail contains one or more of the following:

(A) Monetary instruments, as defined in section 1956 of title 18, United States Code.

(B) A weapon of mass destruction, as defined in section 2332a(b) of title 18, United States Code.

(C) A drug or other substance listed in schedule I, II, III, or IV in section 202 of the Controlled Substances Act (21 U.S.C. 812).

(D) National defense and related information transmitted in violation of any of sections 793 through 798 of title 18, United States Code.

(E) Merchandise mailed in violation of section 1715 or 1716 of title 18, United States Code.

(F) Merchandise mailed in violation of any provision of chapter 71 (relating to obscenity) or chapter 110 (relating to sexual exploitation and other abuse of children) of title 18, United States Code.

(G) Merchandise mailed in violation of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.).

(H) Merchandise mailed in violation of section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(I) Merchandise mailed in violation of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(J) Merchandise mailed in violation of the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

(K) Merchandise subject to any other law enforced by the Customs Service.

(2) LIMITATION.—No person acting under the authority of paragraph (1) shall read, or authorize any other person to read, any correspondence contained in mail sealed against inspection unless prior to so reading—

(A) a search warrant has been issued pursuant to rule 41 of the Federal Rules of Criminal Procedure; or

(B) the sender or addressee has given written authorization for such reading.

(d) SEARCH OF MAIL SEALED AGAINST INSPECTION WEIGHING 16 OUNCES OR LESS.—Notwithstanding any other provision of this section, subsection (a)(1) shall not apply to mail weighing 16 ounces or less sealed against inspection under the postal laws and regulations of the United States.

SEC. 584. [19 U.S.C. 1584] FALSITY OR LACK OF MANIFEST—PENALTIES.

(a) GENERAL RULE.—(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer (whether of the Customs Service or the Coast Guard) demanding the same shall be liable to a penalty of \$1,000, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest” immediately after “or the owner of such vessel or vehicle shall be liable to a penalty equal to the lesser of \$10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be subject to a penalty of \$1,000: *Provided*, That if the Customs Service shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason or clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the term “clerical error” means a non-negligent, inadvertent, or typographical mistake in the preparation;

assembly, or submission (electronically or otherwise) of the manifest.

(2) If any of such merchandise so found consists of heroin, morphine, or cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine; isonipecaine, or opiate being in such merchandise shall be liable to a penalty of \$1,000 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise shall be liable to a penalty of \$500 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of \$200 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 594 of this Act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the Customs Service, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms "opiate" and "marihuana" shall have the same meaning given those terms by sections 102(18) and 102(16), respectively, of the Controlled Substances Act (21 U.S.C. 802(18) and 802(16)).

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited.

(b) PROCEDURES.—(1) If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a)(1) and determines that further proceedings are warranted, the Customs Service shall issue or electronically transmit to the person concerned a notice of intent to issue or electronically transmit a claim for a monetary penalty. Such notice shall—

- (A) describe the merchandise;
- (B) set forth the details of the error in the manifest;
- (C) specify all laws and regulations allegedly violated;

(D) disclose all the material facts which establish the alleged violation;

(E) state the estimated loss of lawful duties, if any, and, taking into account all of the circumstances, the amount of the proposed monetary penalty; and

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

No notice is required under this subsection for any violation of subsection (a)(1) for which the proposed penalty is \$1,000 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violations of subsection (a)(1), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue or electronically transmit a statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, the Customs Service shall issue or electronically transmit a penalty claim to such person. The penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

SEC. 585. [Repealed.]

SEC. 586. [19 U.S.C. 1586] UNLAWFUL UNLADING OR TRANSSHIPMENT

(a) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$10,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

(b) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transshipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise by not less than \$10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(c) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) destined to the United States, the importation

of which into the United States is prohibited, or which consists, of any spirits, wines, or other alcoholic liquors, to be unlade without permit to unlade, at any place upon the high seas adjacent to the customs water of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(d) If any merchandise (including sea stores) unladen in violation of the provisions of this section is transshipped to or placed in or received on any other vessel, the master of the vessel on which such merchandise is placed, and any person aiding or assisting therein, shall be liable to a penalty equal to twice the value of the merchandise, but not less than \$10,000, and such vessel, and its cargo and such merchandise, shall be seized and forfeited.

(e) Whoever, at any place, if a citizen of the United States, or at any place in the United States or within customs waters, if a foreign national, shall engage or aid or assist in any unloading or transshipment of any merchandise in consequence of which any vessel becomes subject to forfeiture under the provisions of this section shall, in addition to any other penalties provided by law, be liable to imprisonment for not more than 15 years.

(f) Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify the Customs Service at the district within which such unloading or transshipment has occurred, or the Customs Service at the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unloading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the Customs Service is satisfied that the unloading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred.

SEC. 587. [19 U.S.C. 1587] EXAMINATION OF HOVERING VESSELS

(a) Any hovering vessel, or any vessel which fails (except for unavoidable cause), at any place within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act, to display lights as required by law, or which has become subject to pursuit as provided in section 581 of this Act, or which, being a foreign vessel to which subsection (h) of said section 581 applies, is permitted by special arrangement with a foreign government to be so examined without the customs waters of the United States, may at any time be boarded and examined by any officer of the customs, and the provisions of said section 581 shall apply thereto, as well without as within his district, and in examining the same, any such officer may also examine the master upon oath respecting the cargo and voyage of the vessel, and may also bring the vessel into the most convenient port of the United States

to examine the cargo, and if the master of said vessel refuses to comply with the lawful directions of such officer or does not truly answer such questions as are put to him respecting the vessel, its cargo, or voyage, he shall be liable to a penalty of not more than \$5,000 nor less than \$500. If, upon the examination of any such vessel or its cargo by any officer of the customs, any dutiable merchandise destined to the United States is found, or discovered to have been, on board thereof, the vessel and its cargo shall be seized and forfeited. It shall be presumed that any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, so found, or discovered to have been, on board thereof, is destined to the United States.

(b) If any vessel laden with cargo be found at any place in the United States or within the customs waters or within a customs-enforcement area established under the Anti-Smuggling Act and such vessel afterwards is found light or in ballast or having discharged its cargo or any part thereof, and the master is unable to give a due account of the port or place at which the cargo, or any part thereof, consisting of any merchandise the importation of which into the United States is prohibited or any spirits, wines, or other alcoholic liquors, was lawfully discharged, the vessel shall be seized and forfeited.

(c) Nothing contained in this section shall be construed to render any vessel liable to forfeiture which is bona fide bound from one foreign port to another foreign port, and which is pursuing her course, wind and weather permitting.

SEC. 588. [19 U.S.C. 1588] TRANSPORTATION BETWEEN AMERICAN PORTS VIA FOREIGN PORTS.

If any merchandise is laden at any port or place in the United States upon any vessel belonging wholly or in part to a subject of a foreign country, and is taken thence to a foreign port or place to be reladen and reshipped to any other port in the United States, either by the same or by another vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port or place of the United States to another port or place of the United States in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port or place, be seized and forfeited to the United States, and the vessel shall pay a tonnage duty of 50 cents per net ton.

SEC. 589. [19 U.S.C. 1589a] ENFORCEMENT AUTHORITY OF CUSTOMS OFFICERS.

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

- (1) carry a firearm;
- (2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;
- (3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has rea-

sonable grounds to believe that the person to be arrested has committed or is committing a felony; and

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

SEC. 590. [19 U.S.C. 1590] AVIATION SMUGGLING.¹

(a) **IN GENERAL.**—It is unlawful for the pilot of any aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing, or intending, that the merchandise will be introduced into the United States contrary to law.

(b) **SEA TRANSFERS.**—It is unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

(1) either—

(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act) (19 U.S.C. 1703(b)), or

(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

(c) **CIVIL PENALTIES.**—Any person who violates any provision of this section is liable for a civil penalty equal to twice the value of the merchandise involved in the violation, but not less than \$10,000. The value of any controlled substance included in the merchandise shall be determined in accordance with section 497(b).

(d) **CRIMINAL PENALTIES.**—In addition to being liable for a civil penalty under subsection (c), any person who intentionally commits, or attempts or conspires to commit, a violation of any provision of this section is, upon conviction—

(1) liable for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved was a controlled substance; or

(2) liable for a fine of not more than \$250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

(e) **SEIZURE AND FORFEITURE.**—

(1) Except as provided in paragraph (2), a vessel or aircraft used in connection with, or in aiding or facilitating, any violation of this section, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with the customs laws.

(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier.

(f) **DEFINITION OF MERCHANDISE.**—As used in this section, the term “merchandise” means only merchandise the importation of which into the United States is prohibited or restricted.

(g) **DEFINITION OF AIRCRAFT.**—In this section, the term “aircraft”—

¹For effective date of the amendments made by section 2 of Public Law 112–93 to section 590, see section 2(c) of such Public Law.

(1) has the meaning given that term in section 40102 of title 49, United States Code; and

(2) includes a vehicle described in section 103.1 of title 14, Code of Federal Regulations.

(h) INTENT OF TRANSFER OF MERCHANDISE.—For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (e) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to identify correctly—

(A) the vessel by name or country of registration, or

(B) the aircraft by registration number and country of registration, when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.

SEC. 591. [Repealed.]

SEC. 592. [19 U.S.C. 1592] PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) PROHIBITION.—

(1) GENERAL RULE.—Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax, or fee thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or

- (ii) any omission which is material, or
 - (B) may aid or abet any other person to violate subparagraph (A).
- (2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.
- (b) PROCEDURES.—
- (1) PRE-PENALTY NOTICE.—
- (A) IN GENERAL.—If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, it shall issue to the person concerned a written notice of its intention to issue a claim for a monetary penalty. Such notice shall—
- (i) describe the merchandise;
 - (ii) set forth the details of entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;
 - (iii) specify all laws and regulations allegedly violated;
 - (iv) disclose all the material facts which establish the alleged violation;
 - (v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;
 - (vi) state the estimated loss of lawful duties, taxes, and fees if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and
 - (vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.
- (B) EXCEPTIONS.—The preceding subparagraph shall not apply if—
- (i) the importation with respect to which the violation of subsection (a) occurs is noncommercial in nature, or
 - (ii) the amount of the penalty in the penalty claim issued under paragraph (2) is \$1,000 or less.
- (2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, it shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, it shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and

written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) MAXIMUM PENALTIES.—

(1) FRAUD.—A fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

(2) GROSS NEGLIGENCE.—A grossly negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) NEGLIGENCE.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) PRIOR DISCLOSURE.—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties, taxes, and fees of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties, taxes, and fees of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after

notice by the Customs Service of its calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) PRIOR DISCLOSURE REGARDING NAFTA CLAIMS.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim for preferential tariff treatment under section 202 of the North American Free Trade Agreement Implementation Act if the importer—

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 508(b)(1)) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(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.

(7) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-SINGAPORE FREE TRADE AGREEMENT.—

(A) 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-Singapore Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim that a good qualifies as an originating good.

(8) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT.—

(A) IN GENERAL.—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 203 of the United States-Australia Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) TIME PERIODS FOR MAKING CORRECTIONS.—In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.

(9) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES 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 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing.

(10) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-PERU TRADE PROMOTION 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 203 of the United States-Peru Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(11) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-KOREA 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-Korea Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(12) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-COLOMBIA TRADE PROMOTION 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 203 of the United States-Colombia Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(13) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-PANAMA TRADE PROMOTION AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an origi-

nating good under section 203 of the United States–Panama Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.

(14) SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

(d) DEPRIVATION OF LAWFUL DUTIES, TAXES, OR FEES.—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a), the Customs Service shall require that such lawful duties, taxes and fees be restored, whether or not a monetary penalty is assessed.

(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

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

(1) IN GENERAL.—Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 508(b)(1)) that a good to be exported to a NAFTA country (as defined in section 2(4) of the North American Free Trade

Agreement Implementation Act) qualifies under the rules of origin set out in section 202 of that Act.

(2) APPLICABLE PROVISIONS.—The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of paragraph (1), except that—

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

(B) subsection (c)(5) applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(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 NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

(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

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

(h) FALSE CERTIFICATIONS OF ORIGIN UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES 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 CAFTA-DR certification of origin (as defined in section 508(g)(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 203 of the Dominican Republic

lic-Central America-United States 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) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CAFTA–DR certification of origin has reason to believe that such certification 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 certification 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 CAFTA–DR certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(i) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES-PERU TRADE PROMOTION 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 PTPA certification of origin (as defined in section 508(h)(1)(B) of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion 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) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a PTPA certification of origin has reason to believe that such certification 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 certification was issued.

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

(A) the information was correct at the time it was provided in a PTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(j) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES-KOREA 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 KFTA certification of origin (as defined in section 508 of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin

provided for in section 202 of the United States–Korea 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) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a KFTA certification of origin has reason to believe that such certification 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 certification was issued.

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

(A) the information was correct at the time it was provided in a KFTA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(k) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES–COLOMBIA TRADE PROMOTION 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 CTPA certification of origin (as defined in section 508 of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States–Colombia Trade Promotion 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) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CTPA certification of origin has reason to believe that such certification 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 certification was issued.

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

(A) the information was correct at the time it was provided in a CTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(l) FALSE CERTIFICATIONS OF ORIGIN UNDER THE UNITED STATES–PANAMA TRADE PROMOTION 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 Panama TPA certification of origin (as defined in section 508 of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin

provided for in section 203 of the United States–Panama Trade Promotion 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) **PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.**—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a Panama TPA certification of origin has reason to believe that such certification 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 certification was issued.

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

(A) the information was correct at the time it was provided in a Panama TPA certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

SEC. 592A. [19 U.S.C. 1592a] SPECIAL PROVISIONS REGARDING CERTAIN VIOLATIONS.

(a) **PUBLICATION OF NAMES OF CERTAIN VIOLATORS.**—

(1) **PUBLICATION.**—The Secretary of the Treasury is authorized to publish in the Federal Register a list of the name of any producer, manufacturer, supplier, seller, exporter, or other person located outside the customs territory of the United States—

(A) against whom the Customs Service has issued a penalty claim under section 592, and

(B) if a petition with respect to that claim has been filed under section 618, against whom a final decision has been issued under such section after exhaustion of administrative remedies,

citing any of the violations of the customs laws referred to in paragraph (2). Such list shall be published not later than March 31 and September 30 of each year.

(2) **VIOLATIONS.**—The violations of the customs laws referred to in paragraph (1) are the following:

(A) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products.

(B) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products.

(C) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labelled as to country of origin or source.

(D) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

(3) REMOVAL FROM LIST.—Any person whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person has not committed any violations described in paragraph (2) for a period of not less than 3 years after the date on which the person's name was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (1).

(4) REASONABLE CARE REQUIRED FOR SUBSEQUENT IMPORTS.—

(A) RESPONSIBILITY OF IMPORTERS AND OTHERS.—After the name of a person has been published under paragraph (1), the Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labelling that are accurate as to its origin. Such reasonable care shall not include reliance solely on a source of information which is the named person.

(B) FAILURE TO EXERCISE REASONABLE CARE.—If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 484(a).

(b) LIST OF HIGH RISK COUNTRIES.—

(1) LIST.—The President or his designee, upon the advice of the Secretaries of Commerce and Treasury, and the heads of other appropriate departments and agencies, is authorized to publish a list of countries in which illegal activities have occurred involving transshipped textile or apparel products or activities designed to evade quotas of the United States on textile or apparel products, if those countries fail to demonstrate a good faith effort to cooperate with United States authorities in ceasing such activities. Such list shall be published in the Federal Register not later than March 31 of each year. Any country that is on the list and that subsequently demonstrates a good faith effort to cooperate with United States authorities in ceasing illegal activities described in the first sentence shall be removed from the list, and such removal shall be published in the Federal Register as soon as practicable.

(2) REASONABLE CARE REQUIRED FOR SUBSEQUENT IMPORTS.—

(A) RESPONSIBILITY OF IMPORTERS OF RECORD.—The Secretary of the Treasury shall require any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products indicated, on the documentation, packaging, or labelling accompanying such products, to be from any country on the list published under paragraph (1) to show, to the satisfaction of the Secretary, that such importer, consignee, or purchaser has exercised reasonable care to ascertain the true country of origin of the textile or apparel products.

(B) FAILURE TO EXERCISE REASONABLE CARE.—If the Customs Service determines that merchandise is not from the country claimed on the documentation accompanying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 484(a).

(3) DEFINITION.—For purposes of this subsection, the term “country” means a foreign country or territory, including any overseas dependent territory or possession of a foreign country.

SEC. 593. [Repealed.]

SEC. 593A. [19 U.S.C. 1593a] PENALTIES FOR FALSE DRAWBACK CLAIMS.

(a) PROHIBITION.—

(1) GENERAL RULE.—No person, by fraud, or negligence—

(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

(ii) any omission which is material; or

(B) may aid or abet any other person to violate subparagraph (A).

(2) EXCEPTION.—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere noninternational repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) PROCEDURES.—

(1) PREPENALTY NOTICE.—

(A) IN GENERAL.—If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, the Customs Service shall issue to the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall—

(i) identify the drawback claim;

(ii) set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, induc-

ing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud or negligence;

(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) EXCEPTIONS.—The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is \$1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

(C) PRIOR APPROVAL.—No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

(c) MAXIMUM PENALTIES.—

(1) FRAUD.—A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) NEGLIGENCE.—

(A) IN GENERAL.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

(B) REPETITIVE VIOLATIONS.—If the Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in an amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

(3) PRIOR DISCLOSURE.—

(A) IN GENERAL.—Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1986 on the amount of actual revenue of which the United States is or may be deprived during the period that—

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.

(B) CONDITION AFFECTING PENALTY LIMITATIONS.—The limitations in subparagraph (A) on the amount of the monetary penalty to be assessed under subsection (c) apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

(C) BURDEN OF PROOF.—The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(4) COMMENCEMENT OF INVESTIGATION.—For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) EXCLUSIVITY.—Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection (a).

(d) DEPRIVATION OF LAWFUL REVENUE.—Notwithstanding section 514, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a), the Customs Service shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(e) DRAWBACK COMPLIANCE PROGRAM.—

(1) IN GENERAL.—After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

(2) CERTIFICATION.—A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for compliance under the program and whose duties include maintaining familiarity with the drawback requirements of Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or record-keeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

(f) ALTERNATIVES TO PENALTIES.—

(1) IN GENERAL.—When a party that—

(A) has been certified as a participant in the drawback compliance program under subsection (e); and

(B) is generally in compliance with the appropriate procedures and requirements of the program; commits a violation of subsection (a), the Customs Service, shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the

issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(2) CONTENTS OF NOTICE.—A notice of violation issued under paragraph (1) shall—

(A) state that the party has violated subsection (a);

(B) explain the nature of the violation; and

(C) warn the party that future violations of subsection

(a) may result in the imposition of monetary penalties.

(3) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(g) REPETITIVE VIOLATIONS.—

(1) A party who has been issued a written notice under subsection (f)(1) and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

(A) 2D VIOLATION.—An amount not to exceed 20 percent of the loss of revenue.

(B) 3D VIOLATION.—An amount not to exceed 50 percent of the loss of revenue.

(C) 4TH AND SUBSEQUENT VIOLATIONS.—An amount not to exceed 100 percent of the loss of revenue.

(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) commits an alleged violation which was not repetitive, the party shall be issued a “warning letter”, and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

(h) REGULATION.—The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify that for purposes of subsections (c) and (g), a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

(i) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence; and

(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.

SEC. 594. [19 U.S.C. 1594] SEIZURE OF CONVEYANCES.

(a) IN GENERAL.—Whenever—

(1) any vessel, vehicle, or aircraft; or

(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft;

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

(b)(1) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure and forfeiture under the customs laws for violations relating to merchandise contained—

(A) on the person;

(B) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

(C) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

(2) Except as provided in paragraph (1) or subsection (c), no vessel, vehicle, or aircraft is subject to forfeiture to the extent of an interest of an owner for a drug-related offense established by that owner to have been committed or omitted without the knowledge, consent, or willful blindness of the owner.

(c) PROHIBITED MERCHANDISE ON CONVEYANCE.—If any merchandise the importation of which is prohibited is found to be, or to have been—

(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

(A) that are not manifested (or not shown on bills of lading or airway bills); or

(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it is established that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such merchandise was on board.

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

(1) The term “owner or operator” includes—

(A) a lessee or person operating a conveyance under a rental agreement or charter party; and

(B) the officers and directors of a corporation;

(C) station managers and similar supervisory ground personnel employed by airlines;

(D) one or more partners of a partnership;

(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

(F) and other persons with similar responsibilities.

(2) The term "master" and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.

(e) COSTS AND EXPENSES OF SEIZURE.—When a common carrier has been seized in accordance with the provisions of subsection (c) and it is subsequently determined that a violation of such subsection occurred but that the vessel will be released, the conveyance is liable for the costs and expenses of the seizure and detention.

SEC. 595. [19 U.S.C. 1595] SEARCHES AND SEIZURES.

(a) WARRANT.—(1) If any officer or person authorized to make searches and seizures has probable cause to believe that—

(A) any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States unlawfully;

(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service; or

(C) any document, container, wrapping, or other article which is evidence of a violation of section 592 involving fraud or of any other law enforced or administered by the United States Customs Service,

is in any dwelling house, store, or other building or place, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise or other article described in the warrant.

(2) If any house, store, or other building or place, in which any merchandise or other article subject to forfeiture is found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof that is within the United States may be taken down or removed.

(b) ENTRY UPON PROPERTY OF OTHERS.—Any person authorized by this Act to make searches and seizures, or any person assisting him or acting under his directions, may, if deemed necessary by him or them, enter into or upon or pass through the lands, inclosures, and buildings, other than the dwelling house, of any person whomsoever, in the discharge of his official duties.

SEC. 596. [19 U.S.C. 1595a] AIDING UNLAWFUL IMPORTATION.

(a) Except as specified in subsection (b) or (c) of section 594 of this Act, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be

introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, may be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.

(b) Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced.

(c) Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

(1) The merchandise shall be seized and forfeited if it—

(A) is stolen, smuggled, or clandestinely imported or introduced;

(B) is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law;

(C) is a contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. App. 781); or

(D) is a plastic explosive, as defined in section 841(q) of title 18, United States Code, which does not contain a detection agent, as defined in section 841(p) of such title.

(2) The merchandise may be seized and forfeited if—

(A) its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;

(B) its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;

(C) it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 42, 43, or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125, or 1127), section 506 or 509 of title 17, United States Code, or section 2318 or 2320 of title 18, United States Code);

(D) it is trade dress merchandise involved in the violation of a court order citing section 43 of such Act of July 5, 1946 (15 U.S.C. 1125);

(E) it is merchandise which is marked intentionally in violation of section 304; or

(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been marked in violation of section 304.

(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement,

the merchandise shall be subject to detention in accordance with section 499 unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license, or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification of value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 592.

(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—

(A) remit the forfeiture under section 618, or

(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

(d) Merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending of such merchandise, the attempted exporting or sending of such merchandise, or the receipt, purchase, transportation, concealment, or sale of such merchandise prior to exportation shall be seized and forfeited to the United States.

SEC. 597. [Repealed.]

SEC. 598. [Repealed.]

SEC. 599. [19 U.S.C. 1599] OFFICERS NOT TO BE INTERESTED IN VESSELS OR CARGO.

No person employed under the authority of the United States, in the collection of duties and imports or tonnage, shall own, either in whole or in part, any vessel (other than a yacht or other pleasure boat), or act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of, any merchandise for sale into the United States. Every person who violates this section shall be liable to a penalty of \$500.

SEC. 600. ¹[19 U.S.C. 1600] Application of the customs laws to other seizures by customs officers

The procedures set forth in sections 602 through 619 of this Act (19 U.S.C. 1602 through 1619) shall apply to seizures to any property effected by customs officers under any law enforced or administered by the Customs Service unless such law specifies different procedures.

¹ Heading so in law.

SEC. 601. [Repealed.]**SEC. 602. [19 U.S.C.1602] SEIZURE—REPORT TO CUSTOMS OFFICER.**

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such collector any vessel, vehicle, aircraft, merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.

SEC. 603. [19 U.S.C. 1603] SEIZURE; WARRANTS AND REPORTS.

(a) Any property which is subject to forfeiture to the United States for violation of the customs laws and which is not subject to search and seizure in accordance with the provisions of section 595 of this Act, may be seized by the appropriate officer or person upon process issued in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure. This authority is in addition to any seizure authority otherwise provided by law.

(b) Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the appropriate customs officer to report promptly such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction.

SEC. 604. [19 U.S.C. 1604] SAME—PROSECUTION.

It shall be the duty of the Attorney General of the United States immediately to inquire into the facts of cases reported to him by customs officers and the laws applicable thereto, and if it appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court or the Court of International Trade is necessary, forthwith to cause the proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless, upon inquiry and examination, the Attorney General decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises.

SEC. 605. [19 U.S.C. 1605] SAME—CUSTODY.

All vessels, vehicles, aircraft, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the dis-

trict in which the seizure was made to await disposition according to law.

Pending such disposition, the property shall be stored in such place as, in the customs officer's opinion, is most convenient and appropriate with due regard to the expense involved, whether or not the place of storage is within the judicial district or the customs collection district in which the property was seized; and storage of the property outside the judicial district or customs collection district in which it was seized shall in no way affect the jurisdiction of the court which would otherwise have jurisdiction over such property.

SEC. 606. [19 U.S.C. 1606] SAME—APPRAISEMENT.

The appropriate customs officer shall determine the domestic value, at the time and place of appraisal, of any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws.

SEC. 607. [19 U.S.C. 1607.] SEIZURE; VALUE \$500,000 OR LESS, PROHIBITED MERCHANDISE, TRANSPORTING CONVEYANCES.

(a) If—

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed \$500,000;

(2) such seized merchandise is merchandise the importation of which is prohibited;

(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance or listed chemical; or

(4) such seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of title 31 of the United States Code;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) As used in this section, the terms "controlled substance" and "listed chemical" have the meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(c) The Commissioner of Customs shall submit to the Congress, by no later than February 1 of each fiscal year, a report on the total dollar value of uncontested seizures of monetary instruments having a value of over \$100,000 which, or the proceeds of which, have not been deposited into the Customs Forfeiture Fund under section 613A within 120 days of seizure, as of the end of the previous fiscal year.

SEC. 608. [19 U.S.C. 1608] SEIZURE; CLAIMS; JUDICIAL CONDEMNATION.

Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of \$5,000 or 10 percent of the value of the claimed

property, whichever is lower, but not less than \$250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

SEC. 609. [19 U.S.C. 1609] SEIZURE; SUMMARY FORFEITURE AND SALE.

(a) **IN GENERAL.**—If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and shall deposit the proceeds of sale, after deducting the expenses described in section 613, into the Customs Forfeiture Fund.

(b) **EFFECT.**—A declaration of forfeiture under this section shall have the same force and effect as a final decree and order of forfeiture in a judicial forfeiture proceeding in a district court of the United States. Title shall be deemed to vest in the United States free and clear of any liens or encumbrances (except for first preferred ship mortgages pursuant to subsection O of section 30 of the Ship Mortgage Act, 1920 (46 U.S.C. App. 961) or any corresponding revision, consolidation, and enactment of such subsection in title 46, United States Code) from the date of the act for which the forfeiture was incurred. Officials of the various States, insular possessions, territories, and commonwealths of the United States shall, upon application of the appropriate customs officer accompanied by a certified copy of the declaration of forfeiture, remove any recorded liens or encumbrances which apply to such property and issue or reissue the necessary certificates of title, registration certificates, or similar documents to the United States or to any transferee of the United States.

SEC. 610. [19 U.S.C. 1610] SEIZURE; JUDICIAL FORFEITURE PROCEEDINGS.

If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

SEC. 611. [19 U.S.C.1611] SAME—SALE UNLAWFUL.

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any

vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, aircraft, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

SEC. 612. [19 U.S.C. 1612] SEIZURE; SUMMARY SALE.

(a) Whenever it appears to the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 607, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, the Customs Service shall proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607, the Customs Service shall forthwith transmit its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the Customs Service or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.

SEC. 613. [19 U.S.C. 1613] DISPOSITION OF PROCEEDS OF FORFEITED PROPERTY.

(a) Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, aircraft, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this Act, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Secretary of Commerce if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the pro-

ceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury or the Secretary of Commerce may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury or the Secretary of Commerce, the proceeds of sale shall be disposed of as follows:

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and¹

(3) The residue shall be deposited in the Customs Forfeiture Fund.

(3) The residue shall be deposited in the general fund of the Treasury of the United States.²

(b) If merchandise is forfeited under section 592 of this Act, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section or subsection (a)(1), (a)(3), or (a)(4) of section 613A of this Act incurred in such sale shall be returned to the person against whom the penalty was assessed.

(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under law enforced or administered by the Customs Service, or otherwise acquired under section 605, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.

¹So in law.

²The amendment made by P.L. 98-573 to the second (a)(3) shown above was enacted as if (3) had not been amended by P.L. 98-473, which amended the text of (3), completely to read as above, except ending with "deposited in the Customs Forfeiture Fund."

SEC. 613A. [19 U.S.C.1613b] CUSTOMS FORFEITURE FUND.

(a) IN GENERAL.—

(1) There is established in the Treasury of the United States a fund to be known as the “Customs Forfeiture Fund” (hereafter in this section referred to as the “Fund”), which shall be available to the United States Customs Service, subject to appropriation, with respect to seizures and forfeitures by the United States Customs Service and the United States Coast Guard under any law enforced or administered by those agencies for payment, or for reimbursement to the appropriation from which payment was made, for—

(A) all proper expenses of the seizure (including investigative costs incurred by the United States Customs Service leading to seizures) or the proceedings of forfeiture and sale, including, but not limited to, the expenses of inventory, security, and maintenance of custody of the property, advertisement and sale of the property, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(B) awards of compensation to informers under section 619;

(C) satisfaction of—

(i) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law, and

(ii) other liens against forfeited property;

(D) amounts authorized by law with respect to remission and mitigation;

(E) claims of parties in interest to property disposed of under section 612(b), in the amounts applicable to such claims at the time of seizure; and

(F) equitable sharing payments made to other Federal agencies, State and local law enforcement agencies, and foreign countries under the authority of section 616(c) of this Act or section 981 of title 18, United States Code.

(2)(A) Any payment made under subparagraph (C) or (D) of paragraph (1) with respect to a seizure or a forfeiture of property shall not exceed the value of the property at the time of the seizure.

(B) Any payment made under subparagraph (F) of paragraph (1) with respect to a seizure or forfeiture of property shall not exceed the value of the property at the time of disposition.

(3) In addition to the purposes described in paragraph (1), the Fund shall be available for—

(A) purchases by the United States Customs Service of evidence of—

(i) smuggling of controlled substances, and

(ii) violations of the currency and foreign transaction reporting requirements of chapter 51 of title 31, United States Code, if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances;

(B) equipment for any vessel, vehicle, or aircraft available for official use by the United States Customs Service to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(C) the reimbursement, at the discretion of the Secretary, of private persons for expenses incurred by such persons in cooperating with the United States Customs Service in investigations and undercover law enforcement operations;

(D) publication of the availability of awards under section 619;

(E) equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Customs Service; and

(F) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Customs Service.

(b) UNITED STATES COAST GUARD.—The Commissioner of Customs shall make available to the United States Coast Guard, from funds appropriated under subsection (f)(2) in excess of \$10,000,000 for a fiscal year, proceeds in the Fund derived from seizures by the Coast Guard. Funds made available under this subsection may be used for—

(1) equipment for any vessel, vehicle, or aircraft available for official use by the United States Coast Guard to enable the vessel, vehicle, or aircraft to assist in law enforcement functions;

(2) equipment for any vessel, vehicle, equipment, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Coast Guard;

(3) payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Coast Guard; and

(4) expenses incurred in bringing vessels into compliance with applicable environmental laws prior to disposal by sinking.

(c) DEPOSITS.—There shall be deposited into the Fund all forfeited currency and proceeds from forfeiture under any law enforced or administered by the United States Customs Service or the United States Coast Guard and all income from investments made under subsection (d).

(d) INVESTMENT.—Amounts in the Fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) ANNUAL REPORTS; AUDITS.—

(1) The Commissioner of Customs shall transmit to the Congress, by no later than February 1 of each fiscal year the following detailed reports:

(A) a report on—

(i) the estimated total value of property forfeited under any law enforced or administered by the United States Customs Service or the United States Coast Guard with respect to which funds were not deposited in the Fund during the previous fiscal year, and

(ii) the estimated total value of all such property transferred to any State or local law enforcement agency;

(B) a report on—

(i) the balance of the Fund at the beginning of the preceding fiscal year;

(ii) liens and mortgages paid and amount of money shared with State and local law enforcement agencies during the previous fiscal year;

(iii) the net amount realized from the operations of the Fund during the previous fiscal year, the amount of seized cash being held as evidence, and the amount of money that has been carried over to the current fiscal year;

(iv) any defendant's equity in property valued at \$1,000,000 or more;

(v) the balance of the Fund at the end of the previous fiscal year; and

(C) a report containing, for the previous fiscal year—

(i) a complete set of audited financial statements (including a balance sheet, income statement, and cash flow analysis) prepared in a manner consistent with the requirements of the Comptroller General, and

(ii) an analysis of income and expenses showing the revenue received or lost—

(I) by property category (general property, vehicles, vessels, aircraft, cash, and real property) and

(II) by type of disposition (sales, remissions, cancellations, placed into official use, sharing with State and local agencies, and destructions).

(2) The Fund shall be subject to audits conducted by the Comptroller General of the United States, under such conditions as the Comptroller General determines appropriate.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) There are hereby appropriated from the Fund such sums as may be necessary to carry out the purposes set forth in subsection (a)(1).

(2)(A) Subject to subparagraph (B), there are authorized to be appropriated from the Fund not to exceed \$20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) for such fiscal year.

(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following, shall be available to carry out the purposes set forth in subsection (a)(3):

(i) \$14,855,000 for fiscal year 1991.

(ii) \$15,598,000 for fiscal year 1992.

(3) At the end of each fiscal year, any unobligated amount in excess of \$15,000,000 remaining in the Fund shall be deposited into the general fund of the Treasury of the United States.

SEC. 614. [19 U.S.C.1614] RELEASE OF SEIZED PROPERTY.

If any person claiming an interest in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this Act offers to pay the value of such vessel, vehicle, aircraft, merchandise, or baggage, as determined under section 606 of this Act, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Secretary of Commerce if under the navigation laws, accept such offer and release the vessel, vehicle, aircraft, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 613 of this Act.

SEC. 615. [19 U.S.C.1615] BURDEN OF PROOF IN FORFEITURE PROCEEDINGS.

In all suits or actions (other than those arising under section 592 of this Act) brought for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, aircraft, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs, who has boarded or required to come to a stop or seized a vessel, vehicle, or aircraft, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.

SEC. 616. [19 U.S.C.1616a] TRANSFER OF FORFEITED PROPERTY.

(a) The Secretary of the Treasury may discontinue forfeiture proceedings under this Act in favor of forfeiture under State law. If a complaint for forfeiture is filed under this Act, the Attorney

General may seek dismissal of the complaint in favor of forfeiture under State law.

(b) If forfeiture proceedings are discontinued or dismissed under this section—

(1) the United States may transfer the seized property to the appropriate State or local official, and

(2) notice of the discontinuance or dismissal shall be provided to all known interested parties.

(c)(1) The Secretary of the Treasury may apply property forfeited under this Act in accordance with subparagraph (A) or (B), or both:

(A) Retain any of the property for official use.

(B) Transfer any of the property to any—

(i) other Federal agency;

(ii) any State or local law enforcement agency that participated directly or indirectly in the seizure or forfeiture of the property; or

(iii) the Civil Air Patrol.

(2) The Secretary may transfer any forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer—

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 490(b) of the Foreign Assistance Act of 1961.

(3) Aircraft may be transferred to the Civil Air Patrol under paragraph (1)(B)(iii) in support of air search and rescue and other emergency services and, pursuant to a memorandum of understanding entered into with a Federal agency, illegal drug traffic surveillance. Jet-powered aircraft may not be transferred to the Civil Air Patrol under the authority of paragraph (1)(B)(iii).

(d) The United States shall not be liable in any action relating to property transferred under this section if such action is based on an act or omission occurring after the transfer.

SEC. 617. [19 U.S.C. 1617] COMPROMISE OF GOVERNMENT CLAIMS BY SECRETARY OF TREASURY.

Upon a report by a customs officer, district attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is hereby authorized to compromise such claim, if such action shall be recommended by the Solicitor of the Treasury.

SEC. 618. [19 U.S.C.1618] REMISSION OR MITIGATION OF PENALTIES.

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this Act, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Secretary of Commerce if under the navigation laws, before the sale of such vessel, vehicle, aircraft,

merchandise, or baggage a petition for the remission or willful mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred, without negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs agent to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

[SEC. 619.]

(a)¹ [19 U.S.C. 1619] IN GENERAL.—If—

(1) any person who is not an employee or officer of the United States—

(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

(i) any fraud upon the customs revenue, or

(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person; and

(2) such detection and seizure or such information leads to a recovery of—

(A) any duties withheld, or

(B) any fine, penalty, or forfeiture of property incurred;

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

(b) FORFEITED PROPERTY NOT SOLD.—If—

(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

(A) destroyed under the customs or navigation laws, or

(B) delivered to any governmental agency for official use, and

(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property, the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

(c) DOLLAR LIMITATION.—The amount awarded and paid to any person under this section may not exceed \$250,000 for any case.

¹When P.L. 99-570, §3125, amended §619 to read as follows, it left out the section heading.

(d) SOURCE OF PAYMENT.—Unless otherwise provided by law, any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

(e) RECOVERY OF BAIL BOND.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.

SEC. 620. [19 U.S.C.1620] SAME—UNITED STATES OFFICERS.

Any officer of the United States who directly or indirectly receives, accepts, or contracts for any portion of the money which may accrue to any person making such detection and seizure, or furnishing such information, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both, and shall be thereafter ineligible to any office of honor, trust, or emolument. Any such person who pays to any such officer, or to any person for the use of such officer, any portion of such money, or anything of value for or because of such money, shall have a right of action against such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so said or the thing of value so given.

SEC. 621. [19 U.S.C. 1621] LIMITATION OF ACTIONS.

No suit or action to recover any duty under section 593A(d), or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later; except that—

(1) in the case of an alleged violation of section 592 or 593A, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and

(2) the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.

SEC. 622. [19 U.S.C. 1622] FOREIGN LANDING CERTIFICATES.

The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue, or to comply with international obligations.

SEC. 623. [19 U.S.C.1623] BONDS AND OTHER SECURITY.

(a) In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize customs officers to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Sec-

retary of the Treasury or the Customs Service may be authorized to enforce.

(b) Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: *Provided*, That in the case of an alleged violation of section 592 of this Act arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: *Provided further*, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

(2) Provide for the approval of the sureties on such bond, without regard to any general provision of law.

(3) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over such period of time, not to exceed one year, or such longer period as he may fix when in his opinion special circumstances existing in a particular instance require such longer period.

(4) Authorize, to the extent that he may deem necessary, the taking of a consolidated bond (single entry or term), in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce. A consolidated bond taken pursuant to the authority contained in this subsection shall have the same force and effect in respect of every provision of law, regulation, or instruction for the purposes for which it is required as though separate bonds had been taken to assure compliance with each such provision.

(c) The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Secretary of the Treasury shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

(d) No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond. Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall

have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.

(e) The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce.

SEC. 624. [19 U.S.C. 1624] GENERAL REGULATIONS.

In addition to the specific powers conferred by this Act, the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 625. [19 U.S.C. 1625] INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.

(a) PUBLICATION.—Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this Act with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

(b) APPEALS.—A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.

(c) MODIFICATION AND REVOCATION.—A proposed interpretive ruling or decision which would—

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

(d) PUBLICATION OF CUSTOMS DECISIONS THAT LIMIT COURT DECISIONS.—A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

(e) PUBLIC INFORMATION.—The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives,

memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5, United States Code.

SEC. 626. [19 U.S.C. 1626] (a) In order to monitor and enforce export measures required by a foreign government or customs union, pursuant to an international arrangement with the United States, the Secretary of the Treasury may, upon receipt of a request by the President of the United States and by a foreign government or customs union, require the presentation of a valid export license or other documents issued by such foreign government or customs union as a condition for entry into the United States of steel mill products specified in the request. The Secretary may provide by regulation for the terms and conditions under which such merchandise attempted to be entered without an accompanying valid export license or other documents may be denied entry into the United States.

(b) This section applies only to requests by the Secretary of the Treasury prior to January 1, 1983, and for the duration of the arrangements.

SEC. 627. [19 U.S.C. 1627a] UNLAWFUL IMPORTATION OR EXPORTATION OF CERTAIN VEHICLES; INSPECTIONS.

(a)(1) Whoever knowingly imports, exports, or attempts to import or export—

(A) ¹Any stolen self-propelled vehicle, vessel, aircraft, or part of a self-propelled vehicle, vessel, or aircraft; or

(B) any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered;

shall be subject to a civil penalty in an amount determined by the Secretary, not to exceed \$10,000 for each violation.

(2) Any violation of this subsection shall make such self-propelled vehicle, vessel, aircraft, or part thereof subject to seizure and forfeiture under this Act.

(b) A person attempting to export a used self-propelled vehicle shall present, pursuant to regulations prescribed by the Secretary, to the appropriate customs officer both the vehicle and a document describing such vehicle which includes the vehicle identification number, before lading if the vehicle is to be transported by vessel or aircraft, or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with the regulations of the Secretary shall subject such person to a civil penalty of not more than \$500 for each violation.

(c) For purposes of this section—

(1) the term “self-propelled vehicle” includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail;

¹ So in original.

(2) the term “aircraft” has the meaning given it in section 101(5) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(5));

(3) the term “used” refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser; and

(4) the term “ultimate purchaser” means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

(d) Customs officers may cooperate and exchange information concerning motor vehicles, off-highway mobile equipment, vessels, or aircraft, either before exportation or after exportation or importation, with such Federal, State, local, and foreign law enforcement or government authorities, and with such organizations engaged in theft prevention activities, as may be designated by the Secretary.

SEC. 628. [19 U.S.C. 1628] EXCHANGE OF INFORMATION.

(a) **IN GENERAL.**—The Secretary may by regulation authorize customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

(1) insure compliance with any law or regulation enforced or administered by the Customs Service;

(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; and

(4) an action comparable to any of those described in paragraphs (1) through (4) undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b) **NONDISCLOSURE AND USES OF INFORMATION PROVIDED.**—

(1) Information may be provided to foreign customs and law enforcement agencies under subsection (a) only if the Secretary obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Secretary.

(2) No information may be provided under subsection (a) to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (1).

(c)¹ The Secretary may authorize customs officers to exchange information with any government agency of a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if the Secretary—

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

¹This subsection was added by section 209 of the North American Free Trade Agreement Implementation Act (P.L. 103–182). Section 213(b) of such Act provides the amendments made by sections 204 through 209 take effect on the date the Agreement enters into force with respect to the United States.

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

SEC. 629. [19 U.S.C. 1629] INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

(a) **IN GENERAL.**—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in, or subsequent to their exit from, the United States.

(b) **FUNCTIONS AND DUTIES.**—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

(c) **COMPLIANCE.**—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation or exportation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station is a port of entry or exit within the customs territory of the United States.

(d) **SEIZURES.**—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory to the United States to be proceeded against under the customs law.

(e) **STATIONING OF FOREIGN CUSTOMS AND AGRICULTURE INSPECTION OFFICERS IN THE UNITED STATES.**—The Secretary of State, in coordination with the Secretary and the Secretary of Agriculture, may enter into agreements with any foreign country authorizing the stationing in the United States of customs and agriculture inspection officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of ensuring that persons and merchandise going directly to that country from the United States, or that have gone directly from that country to the United States, comply with the customs and other laws of that country governing the importation or exportation of merchandise. Any foreign customs or agriculture inspection official stationed in the United States under this subsection may exercise such functions, perform such duties, and enjoy such privileges and immunities as United States officials may be authorized to perform or are afforded in that foreign country by treaty, agreement, or law.

(f) **APPLICATION OF CERTAIN LAWS.**—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

(1) sections 111 and 1114 of title 18, United States Code, shall apply as if the officials were designated in those sections; and

(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully

falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, is liable for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both.

(g) PRIVILEGES AND IMMUNITIES.—Any person designated to perform the duties of an officer of the Customs Service pursuant to section 401(i) of this Act shall be entitled to the same privileges and immunities as an officer of the Customs Service with respect to any actions taken by the designated person in the performance of such duties.

(h) CUSTOMS PROCEDURES AND COMMITMENTS.—

(1) IN GENERAL.—The Secretary of Homeland Security, the United States Trade Representative, and other appropriate Federal officials shall work through appropriate international organizations including the World Customs Organization (WCO), the World Trade Organization (WTO), the International Maritime Organization, and the Asia-Pacific Economic Cooperation, to align, to the extent practicable, customs procedures, standards, requirements, and commitments in order to facilitate the efficient flow of international trade.

(2) UNITED STATES TRADE REPRESENTATIVE.—

(A) IN GENERAL.—The United States Trade Representative shall seek commitments in negotiations in the WTO regarding the articles of GATT 1994 that are described in subparagraph (B) that make progress in achieving—

(i) harmonization of import and export data collected by WTO members for customs purposes, to the extent practicable;

(ii) enhanced procedural fairness and transparency with respect to the regulation of imports and exports by WTO members;

(iii) transparent standards for the efficient release of cargo by WTO members, to the extent practicable; and

(iv) the protection of confidential commercial data.

(B) ARTICLES DESCRIBED.—The articles of the GATT 1994 described in this subparagraph are the following:

(i) Article V (relating to transit).

(ii) Article VIII (relating to fees and formalities associated with importation and exportation).

(iii) Article X (relating to publication and administration of trade regulations).

(C) GATT 1994.—The term “GATT 1994” means the General Agreement on Tariff and Trade annexed to the WTO Agreement.

(3) CUSTOMS.—The Secretary of Homeland Security, acting through the Commissioner and in consultation with the United States Trade Representative, shall work with the WCO to facilitate the efficient flow of international trade, taking into account existing international agreements and the negotiating objectives of the WTO. The Commissioner shall work to—

(A) harmonize, to the extent practicable, import data collected by WCO members for customs purposes;

(B) automate and harmonize, to the extent practicable, the collection and storage of commercial data by WCO members;

(C) develop, to the extent practicable, transparent standards for the release of cargo by WCO members;

(D) develop and harmonize, to the extent practicable, standards, technologies, and protocols for physical or non-intrusive examinations that will facilitate the efficient flow of international trade; and

(E) ensure the protection of confidential commercial data.

(4) DEFINITION.—In this subsection, the term “Commissioner” means the Commissioner responsible for the United States Customs and Border Protection in the Department of Homeland Security.

SEC. 630. [19 U.S.C.1630] AUTHORITY TO SETTLE CLAIMS.

(a) IN GENERAL.—With respect to a claim that cannot be settled under chapter 171 of title 28, United States Code, the Secretary may settle, for not more than \$50,000 in any one case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Customs Service and acting within the scope of his or her employment.

(b) LIMITATIONS.—The Secretary may not pay a claim under subsection (a) that—

(1) concerns commercial property;

(2) is presented to the Secretary more than 1 year after it occurs; or

(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

(c) FINAL SETTLEMENT.—A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.

SEC. 631. [19 U.S.C.1631] USE OF PRIVATE COLLECTION AGENCIES.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.

(b) CONTRACT REQUIREMENTS.—Any contract entered into under subsection (a) shall provide that—

(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to—

(A) section 552a of title 5, United States Code, to the extent provided in subsection (m) as such section; and

(B) laws and regulations of the United States Government and State governments related to debt collection practices.

(c) PAYMENT OF COSTS.—The debtor shall be assessed and pay any and all costs associated with collection efforts pursuant to this section. Notwithstanding section 3302(b) of title 31, United States Code, any sum so collected shall be used to pay the costs of debt collection services.

Part VI—Miscellaneous Provisions

SEC. 641. [19 U.S.C.1941] CUSTOMS BROKERS.

(a) DEFINITIONS.—As used in this section:

(1) The term “customs broker” means any person granted a customs broker’s license by the Secretary under subsection (b).

(2) The term “customs business” means those activities involving transaction with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

(3) The term “Secretary” means the Secretary of the Treasury.

(b) CUSTOM BROKER’S LICENSES.—

(1) IN GENERAL.—No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker’s license issued by the Secretary under paragraph (2) or (3).

(2) LICENSES FOR INDIVIDUALS.—The Secretary may grant an individual a customs broker’s license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to show any facts deemed necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifications of an applicant, the Secretary may conduct an examination to determine the applicant’s knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters.

(3) LICENSES FOR CORPORATIONS, ETC.—The Secretary may grant a customs broker’s license to any corporation, association, or partnership that is organized or existing under the laws of any of the several States of the United States if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker’s license granted under paragraph (2).

(4) DUTIES.—A customs broker shall exercise responsible supervision and control over the customs business that it conducts.

(5) LAPSE OF LICENSE.—The failure of a customs broker that is licensed as a corporation, association, or partnership under paragraph (3) to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed under paragraph (2) shall, in addition to causing the broker to be subject to any other sanction under this section (including paragraph (6)), result in the revocation by operation of law of its license.

(6) PROHIBITED ACTS.—Any person who intentionally transacts customs business, other than solely on the behalf of that person, without holding a valid customs broker's license granted to that person under this subsection shall be liable to the United States for a monetary penalty not to exceed \$10,000 for each such transaction as well as for each violation of any other provision of this section. This penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in subsection (d)(2)(A).

(c) CUSTOMS BROKER'S PERMITS.—

(1) IN GENERAL.—Each person granted a customs broker's license under subsection (b) shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.

(2) EXCEPTION.—If a person granted a customs broker's license under subsection (b) can demonstrate to the satisfaction of the Secretary that—

(A) he regularly employs in the region in which that district is located at least one individual who is licensed under subsection (b)(2), and

(B) that sufficient procedures exist within the company for the person employed in that region to exercise responsible supervision and control over the customs business conducted by that person in that district, the Secretary may waive the requirement in paragraph (1)(B).

(3) LAPSE OF PERMIT.—The failure of a customs broker granted a permit under paragraph (1) to employ, for any continuous period of 180 days, at least one individual who is licensed under subsection (b)(2) within the district or region (if paragraph (2) applies) for which a permit was issued shall, in addition to causing the broker to be subject to any other sanction under this section (including any in subsection (d)), result in the revocation by operation of law of the permit.

(4) APPOINTMENT OF SUBAGENTS.—Notwithstanding subsection (c)(1), upon the implementation by the Secretary under section 413(b)(2) of the component of the National Customs Automation Program referred to in section 411(a)(2)(B), a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.

(d) DISCIPLINARY PROCEEDINGS.—

(1) GENERAL RULE.—The Secretary may impose a monetary penalty in all cases with the exception of the infractions described in clause (iii) of subparagraph (B) of this subsection, or revoke or suspend a license or permit of any customs broker, if it is shown that the broker—

(A) has made or caused to be made in any application for any license or permit under this section, or report filed with the Customs Service, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein;

(B) has been convicted at any time after the filing of an application for license under subsection (b) of any felony or misdemeanor which the Secretary finds—

(i) involved the importation or exportation of merchandise;

(ii) arose out of the conduct of its customs business; or

(iii) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(C) has violated any provision of any law enforced by the Customs Service or the rules or regulations issued under any such provision;

(D) has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by the Customs Service, or the rules or regulations issued under any such provision;

(E) has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary; or

(F) has, in the course of its customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client.

(2) PROCEDURES.—

(A) MONETARY PENALTY.—Unless action has been taken under subparagraph (B), the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty not to exceed \$30,000 in total for a violation or violations of this section. The notice shall advise the customs broker of the allegations or complaints against him and shall explain that the broker has a right to respond to the allegations or complaints in writing within 30 days of the date of the notice. Before imposing a monetary penalty, the customs officer shall consider the allegations or complaints and any timely response made by the customs broker and issue a written decision. A customs broker against whom a monetary penalty has been issued under this section shall have a reasonable opportunity under section 618 to make representations seeking remission or mitigation of the monetary penalty. Following the conclusion of any proceeding under section 618, the appropriate customs officer shall provide to the customs broker a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(B) REVOCATION OR SUSPENSION.—The Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or the Customs Service determines that the revocation or suspension is still warranted, it shall notify the customs broker in writing of a hearing to be held within 30 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5, United States Code, who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to the Customs Service and the customs broker; which shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with the findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based

solely on the record, setting forth the findings of fact and the reasons for the decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed \$30,000, then was contained in the notice to show cause.

(3) SETTLEMENT AND COMPROMISE.—The Secretary may settle and compromise any disciplinary proceeding which has been instituted under this subsection according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

(4) LIMITATION OF ACTIONS.—Notwithstanding section 621, no proceeding under this subsection or subsection (b)(6) shall be commenced unless such proceeding is instituted by the appropriate service of written notice within 5 years from the date the alleged violation was committed; except that if the alleged violation consists of fraud, the 5-year period of limitation shall commence running from the time such alleged violation was discovered.

(e) JUDICIAL APPEAL.—

(1) IN GENERAL.—A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c), or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B), by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B), after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28, United States Code.

(2) CONSIDERATION OF OBJECTIONS.—The court shall not consider any objection to the decision or order of the Secretary, or to the introduction of evidence or testimony, unless that objection was raised before the hearing officer in suspension or revocation proceedings unless there were reasonable grounds for failure to do so.

(3) CONCLUSIVENESS OF FINDINGS.—The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) ADDITIONAL EVIDENCE.—If any party applies to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that reasonable grounds existed for the failure to present the evidence in the proceedings before the hearing officer, the court may order the additional evidence to be taken before the hearing officer and to be presented in a manner and upon the terms and conditions prescribed in a manner and upon the terms and con-

ditions prescribed by the court. The Secretary may modify the findings of facts on the basis of the additional evidence presented. The Secretary shall then file with the court any new or modified findings of fact which shall be conclusive if supported by substantial evidence, together with a recommendation, if any, for the modification or setting aside of the original decision or order.

(5) EFFECT OF PROCEEDINGS.—The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the decision of the Secretary except in the case of a denial of a license or permit.

(6) FAILURE TO APPEAL.—If an appeal is not filed within the time limits specified in this section, the decision by the Secretary shall be final and conclusive. In the case of a monetary penalty imposed under subsection (d)(2)(B) of this section, if the amount is not tendered within 60 days after the decision becomes final, the license shall automatically be suspended until payment is made to the Customs Service.

(f) REGULATIONS BY THE SECRETARY.—The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

(g) TRIENNIAL REPORTS BY CUSTOMS BROKERS.—

(1) IN GENERAL.—On February 1, 1985, and on February 1 of each third year thereafter, each person who is licensed under subsection (b) shall file with the Secretary of the Treasury a report as to—

(A) whether such person is actively engaged in business as a customs broker; and

(B) the name under, and the address at, which such business is being transacted.

(2) SUSPENSION AND REVOCATION.—If a person licensed under subsection (b) fails to file the required report by March 1 of the reporting year, the license is suspended, and may be thereafter revoked subject to the following procedures:

(A) The Secretary shall transmit written notice of suspension to the licensee no later than March 31 of the reporting year.

(B) If the licensee files the required report within 60 days of receipt of the Secretary's notice, the license shall be reinstated.

(C) In the event the required report is not filed within the 60-day period, the license shall be revoked without prejudice to the filing of an application for a new license.

(h) FEES AND CHARGES.— The Secretary may prescribe reasonable fees and charges to defray the costs of the Customs Service in carrying out the provisions of this section, including, but not limited to, a fee for licenses issued under subsection (b) and fees for any test administered by him or under his direction; except that no separate fees shall be imposed to defray the costs of an individual audit or of individual disciplinary proceedings of any nature.

SEC. 642. [Omitted.]

SEC. 643. [19 U.S.C. 1643] APPLICATION OF CUSTOMS REORGANIZATION ACT.

The rights, privileges, powers, and duties vested in or imposed upon the Secretary of the Treasury by this Act shall be subject to the provisions of subdivision (a) of section 3 of the Act entitled "An Act to create a Bureau of Customs and a Bureau of Prohibition in the Department of the Treasury," approved March 3, 1927.

SEC. 644.¹ [19 U.S.C. 1644] Application of the Federal Aviation Act and section 1518(d) of title 33

(a) The authority vested by section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. 1509) in the Secretary of the Treasury, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, shall extend to the application in like manner of any of the provisions of this Act, or of the Anti-Smuggling Act of 1935, or of any regulations promulgated hereunder.

(b) For purposes of section 1518(d) of title 33, the term "customs laws administered by the Secretary of the Treasury" shall mean this chapter and any other provisions of law classified to this title.

SEC. 645. [19 U.S.C. 1645] TRAVEL AND SUBSISTENCE.

(a) TRANSFERS IN FOREIGN COUNTRIES.—The expense of transporting the remains of customs officers and employees who die while in or in transit to foreign countries in the discharge of their official duties, to their former homes in this country for interment, and the ordinary and necessary expenses for such interment, at their posts of duty or at home, are hereby authorized to be paid upon the written order of the Secretary of the Treasury. The expenses authorized by this subdivision shall be paid from the appropriation for the collection of the revenue from customs.

(b) TRANSFER OF HOUSEHOLD AND PERSONAL EFFECTS.—So much of the Act entitled "An Act to provide the necessary organization of the Customs Service for an adequate administration and en-

¹ So in law.

forcement of the Tariff Act of 1922 and all other customs revenue laws", approved March 4, 1923, as amended, as limits the amount of household effects and other personal property of customs officers and employees for which expenses may be allowed upon transfer from one official station to another is hereby repealed.

(c) TRANSPORTATION ON FOREIGN SHIPS.—Notwithstanding the provisions of section 601 of the Merchant Marine Act, 1928, or of any other law, any allowance, within the limitations prescribed by law, for travel or shipping expenses incurred on a foreign ship by any officer or employee of the Bureau of Customs or the Customs Service, shall be credited if the Secretary of the Treasury certifies to the Comptroller General that transportation on such foreign ship was necessary to protect the revenue.

SEC. 646. [19 U.S.C. 1646a] CUSTOMS SUPERVISION.

Wherever in this Act any action or thing is required to be done or maintained under the supervision of customs officers, such supervision may be direct and continuous or by occasional verification as may be required by regulations of the Secretary of the Treasury, or, in the absence of such regulations for a particular case, as the principal customs officer concerned shall direct.

SEC. 646A. [19 U.S.C. 1646b] RANDOM CUSTOMS INSPECTIONS FOR STOLEN AUTOMOBILES BEING EXPORTED.

The Commissioner of Customs shall direct customs officers to conduct at random inspections of automobiles, and of shipping containers that may contain automobiles that are being exported, for purposes of determining whether such automobiles were stolen.

SEC. 646B. [19 U.S.C. 1646c] EXPORT REPORTING REQUIREMENT.

The Commissioner of Customs shall require all persons or entities exporting used automobiles, including automobiles exported for personal use, by air or ship to provide to the Customs Service, at least 72 hours before the export, the vehicle identification number of each such automobile and proof of ownership of such automobile. The Commissioner shall establish specific criteria for randomly selecting used automobiles scheduled to be exported, consistent with the risk of stolen automobiles being exported and shall check the vehicle identification number of each automobile selected pursuant to such criteria against the information in the National Crime Information Center to determine whether such automobile has been reported stolen. At the request of the Director of the Federal Bureau of Investigation, the Commissioner shall make available to the Director all vehicle identification numbers obtained under this section.

SEC. 647. [Repealed.]

SEC. 648. [19 U.S.C. 1648] UNCERTIFIED CHECKS, UNITED STATES NOTES, AND NATIONAL BANK NOTES RECEIVABLE FOR CUSTOMS DUTIES.

Collectors of Customs may receive uncertified checks, United States notes, and circulating notes of national banking associations in payment of duties on imports, during such time and under such rules and regulations as the Secretary of the Treasury shall prescribe; but if a check so received is not paid the person by whom such check has been tendered shall remain liable for the payment

of the duties and for all legal penalties and additions to the same extent as if such check had not been tendered.

SEC. 649. [19 U.S.C. 1649] CHANGE IN DESIGNATION OF CUSTOMS ATTACHÉS.

Hereafter customs attachés shall be known as “Treasury attachés”.

SEC. 650.¹ [19 U.S.C. 1650] APPOINTMENT OF DEPUTY COMMISSIONER OF CUSTOMS.

The Secretary of the Treasury is authorized to appoint, in accordance with the civil service laws, a deputy commissioner in the Bureau of Customs, in addition to the deputy commissioners now authorized by law.

SEC. 651. [19 U.S.C. 1651] REPEALS.

(a) **SPECIFIC REPEALS.**—The following Acts and parts of Acts are repealed, subject to the limitations provided in subdivision (c):

(1) The Tariff Act of 1922, except that the repeal of sections 304 and 482 (relating to marking of imported articles and to certified invoices, respectively) shall take effect sixty days after the enactment of this Act;

(2) Section 16 of the Act entitled “An Act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes,” approved June 26, 1884, as amended (relating to supplies for certain vessels);

(3) The Joint Resolution entitled “Joint Resolution Authorizing certain customs officials to administer oaths,” approved April 2, 1928; and

(4) Section 2804 of the Revised Statutes, as amended (relating to limitations on importation packages of cigars).

(b) **GENERAL REPEAL.**—All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed.

(c) **RIGHTS AND LIABILITIES UNDER ACTS REPEALED OR MODIFIED.**—The repeal of existing laws or modifications or reenactments thereof embraced in this Acts shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal, modifications, or reenactments, but all liabilities under such laws shall continue and may be enforced in the same manner as if such repeal, modifications, or reenactments had not been made. All offenses committed and all penalties, under any statute embraced in, or changed, modified, or repealed by this Act, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed. No Acts of limitation now in force, whether applicable to civil causes and proceedings, or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in, modified, changed, or repealed by this Act shall be affected thereby so far as they affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the taking effect of this Act, which may be com-

¹This section was transferred in the United States Code from 19 U.S.C. 1650 to 19 U.S.C. 2072.

menced and prosecuted within the same time and with the same effect as if this Act had not been passed.

(d) CERTAIN ACTS NOT AFFECTED.—Nothing in this Act shall be construed to amend or repeal any of the following provisions of law:

(1) Subsections 1, 2, and 3 of paragraph J. of Section IV of the Act entitled “An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes,” approved October 3, 1913 (relating to restrictions on importations in foreign vessels or through contiguous countries), as modified by the Act of March 4, 1915, chapter 171;

(2) Subsection 2 of paragraph N of Section IV of such Act on October 3, 1913 (relating to the manufacture of alcohol for denaturization only);

(3) Section 30 of the Act entitled “An Act to simplify the laws in relation to the collection of the revenues,” approved June 10, 1890, as amended (providing for an Assistant Attorney General in charge of customs matters);

(4) The Act entitled “An Act relating to the use or disposal of vessels or vehicles forfeited to the United States for violation of the customs laws or the National Prohibition Act, and for other purposes,” approved March 3, 1925; nor

(5) The Antidumping Act, 1921.

SEC. 652. [19 U.S.C. 1652] SEPARABILITY OF PROVISIONS.

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 653. [19 U.S.C. 1653] EFFECTIVE DATE OF ACT.

Except as otherwise provided, this Act shall take effect on the day following the date of its enactment.

SEC. 654. [19 U.S.C. 1654] SHORT TITLE.

This Act may be cited as the “Tariff Act of 1930.”

TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

Subtitle A—Imposition of Countervailing Duties

- Sec. 701. Countervailing duties imposed.
- Sec. 702. Procedures for initiating a countervailing duty investigation.
- Sec. 703. Preliminary determinations.
- Sec. 704. Termination or suspension of investigation.
- Sec. 705. Final determinations.
- Sec. 706. Assessment of duty.
- Sec. 707. Treatment of difference between deposit of estimated countervailing duty and final assessed duty under countervailing duty order.
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Subtitle B—Imposition of Antidumping Duties

- Sec. 731. Antidumping duties imposed.
- Sec. 732. Procedures for initiating an antidumping duty investigation.
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- Sec. 738. Conditional payment of antidumping duty.
- Sec. 739. Establishment of product categories for short life cycle merchandise.

Subtitle C—Reviews; Other Actions Regarding Agreements

Chapter 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

- Sec. 751. Administrative review of determinations.
- Sec. 752. Special rules for section 751(b) and 751(c) reviews.
- Sec. 753. Special rules for injury investigations for certain section 303 countervailing duty orders and investigations.

Chapter 2—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

- Sec. 761. Required consultations.
- Sec. 762. Required determinations.

Subtitle D—General Provisions

- Sec. 771. Definitions; special rules.
- Sec. 771A. Upstream subsidies.
- Sec. 771B. Calculation of countervailable subsidies on certain processed agricultural products.
- Sec. 772. Export price and constructed export price.
- Sec. 773. Normal value.
- Sec. 773A. Currency conversion.
- Sec. 774. Hearings.
- Sec. 775. Countervailable subsidy practices discovered during a proceeding.
- Sec. 776. Determinations on the basis of the facts available.
- Sec. 777. Access to information.
- Sec. 777A. Sampling and averaging; determination of weighted average dumping margin and countervailable subsidy rate.
- Sec. 778. Interest on certain overpayments and underpayment.
- Sec. 779. Drawback treatment.
- Sec. 780. Downstream product monitoring.

- Sec. 781. Prevention of circumvention of antidumping and countervailing duty orders.
 Sec. 782. Conduct of investigations and administrative reviews.
 Sec. 783. Antidumping petitions by third countries.

Subtitle A—Imposition of Countervailing Duties

SEC. 701. [19 U.S.C. 1671] COUNTERVAILING DUTIES IMPOSED.

(a) GENERAL RULE.—If—

(1) the administering authority determines that the government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) in the case of merchandise imported from a Subsidies Agreement country, the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net countervailable subsidy. For purposes of this subsection and section 705(b)(1), a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(b) SUBSIDIES AGREEMENT COUNTRY.—For purposes of this title, the term “Subsidies Agreement country” means—

(1) a WTO member country,

(2) a country which the President has determined has assumed obligations with respect to the United States which are substantially equivalent to the obligations under the Subsidies Agreement, or

(3) a country with respect to which the President determines that—

(A) there is an agreement in effect between the United States and that country which—

(i) was in force on the date of the enactment of the Uruguay Round Agreements Act, and

(ii) requires unconditional most-favored-nation treatment with respect to articles imported into the United States, and

(B) the agreement described in subparagraph (A) does not expressly permit—

(i) actions required or permitted by the GATT 1947 or GATT 1994, as defined in section 2(1) of the Uruguay Round Agreements Act, or required by the Congress, or

(ii) nondiscriminatory prohibitions or restrictions on importation which are designed to prevent deceptive or unfair practices.

(c) **COUNTERVAILING DUTY INVESTIGATIONS INVOLVING IMPORTS NOT ENTITLED TO A MATERIAL INJURY DETERMINATION.**—In the case of any article or merchandise imported from a country which is not a Subsidies Agreement country—

(1) no determination by the Commission under section 703(a), 704, or 705(b) shall be required,

(2) an investigation may not be suspended under section 704(c) or 704(l),

(3) no determination as to the presence of critical circumstances shall be made under section 703(e) or 705(a)(2),

(4) section 706(c) shall not apply,

(5) any reference to a determination described in paragraph (1) or (3), or to the suspension of an investigation under section 704(c) or 704(l), shall be disregarded, and

(6) section 751(c) shall not apply.

(d) **TREATMENT OF INTERNATIONAL CONSORTIA.**—For purposes of this subtitle, if the members (or other participating entities) of an international consortium that is engaged in the production of subject merchandise receive countervailable subsidies from their respective home countries to assist, permit, or otherwise enable their participation in that consortium through production or manufacturing operations in their respective home countries, then the administering authority shall cumulate all such countervailable subsidies, as well as countervailable subsidies provided directly to the international consortium, in determining any countervailing duty upon such merchandise.

(e) **UPSTREAM SUBSIDY.**—Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 771A(a)(1), is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 771A(a)(3).

(f)¹ **APPLICABILITY TO PROCEEDINGS INVOLVING NONMARKET ECONOMY COUNTRIES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the merchandise on which countervailing duties shall be imposed under subsection (a) includes a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States from a nonmarket economy country.

(2) **EXCEPTION.**—A countervailing duty is not required to be imposed under subsection (a) on a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into

¹ Section 1(a) of Public Law 112-99 adds a new subsection (f) to section 701. Subsection (b) of such Public Law provides:

(b) **EFFECTIVE DATE.**—Subsection (f) of section 701 of the Tariff Act of 1930, as added by subsection (a) of this section, applies to—

(1) all proceedings initiated under subtitle A of title VII of that Act (19 U.S.C. 1671 et seq.) on or after November 20, 2006;

(2) all resulting actions by U.S. Customs and Border Protection; and

(3) all civil actions, criminal proceedings, and other proceedings before a Federal court relating to proceedings referred to in paragraph (1) or actions referred to in paragraph (2).

the United States from a nonmarket economy country if the administering authority is unable to identify and measure subsidies provided by the government of the nonmarket economy country or a public entity within the territory of the nonmarket economy country because the economy of that country is essentially comprised of a single entity.

SEC. 702. [19 U.S.C. 1671a] PROCEDURES FOR INITIATING A COUNTERVAILING DUTY INVESTIGATION.

(a) **INITIATION BY ADMINISTERING AUTHORITY.**—A countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 701(a) exist.

(b) **INITIATION BY PETITION.**—

(1) **PETITION REQUIREMENTS.**—A countervailing duty proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 701(a), and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) **SIMULTANEOUS FILING WITH COMMISSION.**—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) **PETITION BASED UPON A DEROGATION OF AN INTERNATIONAL UNDERTAKING ON OFFICIAL EXPORT CREDITS.**—If the sole basis of a petition filed under paragraph (1) is the derogation of an international undertaking on official export credits, the administering authority shall immediately notify the Secretary of the Treasury who shall, in consultation with the administering authority, within 5 days after the date on which the administering authority initiates an investigation under subsection (c), determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

(4) **ACTION WITH RESPECT TO PETITIONS.**—

(A) **NOTIFICATION OF GOVERNMENTS.**—Upon receipt of a petition filed under paragraph (1), the administering authority shall—

(i) notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country; and

(ii) provide the government of any exporting country named in the petition that is a Subsidies Agreement country an opportunity for consultations with respect to the petition.

(B) **ACCEPTANCE OF COMMUNICATIONS.**—The administering authority shall not accept any unsolicited oral or written communication from any person other than an in-

terested party described in section 771(9) (C), (D), (E), (F), or (G) before the administering authority makes its decision whether to initiate an investigation, except as provided in subparagraph (A)(ii) and subsection (c)(4)(D), and except for inquiries regarding the status of the administering authority's consideration of the petition.

(C) NONDISCLOSURE OF CERTAIN INFORMATION.—The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) PETITION DETERMINATION.—

(1) IN GENERAL.—

(A) TIME FOR INITIAL DETERMINATION.—Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 701(a) and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) EXTENSION OF TIME.—In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting “a maximum of 40 days” for “20 days”.

(C) TIME LIMITS WHERE PETITION INVOLVES SAME MERCHANDISE AS AN ORDER THAT HAS BEEN REVOKED.—If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) a countervailing duty order that was revoked under section 751(d) in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 751(d) in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) AFFIRMATIVE DETERMINATIONS.—If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether a countervailable subsidy is being provided with respect to the subject merchandise.

(3) NEGATIVE DETERMINATIONS.—If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the

proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) DETERMINATION OF INDUSTRY SUPPORT.—

(A) GENERAL RULE.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) CERTAIN POSITIONS DISREGARDED.—

(i) PRODUCERS RELATED TO FOREIGN PRODUCERS.—

In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of a countervailing duty order.

(ii) PRODUCERS WHO ARE IMPORTERS.—The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(C) SPECIAL RULE FOR REGIONAL INDUSTRIES.—If the petition alleges that the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) POLLING THE INDUSTRY.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) COMMENTS BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect

to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—

For purposes of this subsection, the term “domestic producers or workers” means those interested parties who are eligible to file a petition under subsection (b)(1).

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the class or kind of merchandise that is the subject of the investigation and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 705(a), the investigation is terminated, or the administering authority withdraws the request.

SEC. 703. [19 U.S.C. 1671b] PRELIMINARY DETERMINATIONS.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

(1) GENERAL RULE.—Except in the case of a petition dismissed by the administering authority under section 702(c)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) TIME FOR COMMISSION DETERMINATION.—The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 702(b)—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 702(c)(1)(B), within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 702(a), within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b)(1) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—Within 65 days after the date on which the administering authority initiates an investigation under section 702(c)¹, or an investigation is initiated under section 702(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a countervailable subsidy is being provided with respect to the subject merchandise.

(2) Notwithstanding paragraph (1), when the petition is one subject to section 702(b)(3), the administering authority shall, taking into account the nature of the countervailable subsidy concerned, make the determination required by paragraph (1) on an expedited basis and within 65 days after the date on which the administering authority initiates an investigation under section 702(c) unless the provisions of subsection (c) of this section apply.

(3) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made

¹ Section 212(b)(1)(C)(i)(I) of P.L. 103-465 amended this paragraph by striking “85 days after the date on which the petition is filed under section 702(b)” and inserting “65 days after the date on which the administering authority initiates an investigation under section 702(c)”. The amendment probably should have been to strike “85 days after the date on which a petition is filed under section 702(b)”.

on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

(4)¹ DE MINIMIS COUNTERAVAILABLE SUBSIDY.—

(A) GENERAL RULE.—In making a determination under this subsection, the administering authority shall disregard any de minimis countervailable subsidy. For purposes of the preceding sentence, a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies is less than 1 percent ad valorem or the equivalent specific rate for the subject merchandise.

(B) EXCEPTION FOR DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country (other than a country to which subparagraph (C) applies) designated by the Trade Representative as a developing country in accordance with section 771(36), a countervailable subsidy is de minimis if the administering authority determines that the aggregate of the net countervailable subsidies does not exceed 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(C) CERTAIN OTHER DEVELOPING COUNTRIES.—In the case of subject merchandise imported from a Subsidies Agreement country that is—

(i) a least developed country, as determined by the Trade Representative in accordance with section 771(36), or

(ii) a developing country with respect to which the Trade Representative has notified the administering authority that the country has eliminated its export subsidies on an expedited basis within the meaning of Article 27.11 of the Subsidies Agreement, subparagraph (B) shall be applied by substituting “3 percent” for “2 percent”.

(D) LIMITATIONS ON APPLICATION OF SUBPARAGRAPH (C).—

(i) IN GENERAL.—In the case of a country described in subparagraph (C)(i), the provisions of subparagraph (C) shall not apply after the date that is 8 years after the date the WTO Agreement enters into force.

(ii) SPECIAL RULE FOR SUBPARAGRAPH (C)(ii) COUNTRIES.—In the case of a country described in subparagraph (C)(ii), the provisions of subparagraph (C) shall not apply after the earlier of—

¹ Indentation so in law.

(I) the date that is 8 years after the date the WTO Agreement enters into force, or

(II) the date on which the Trade Representative notifies the administering authority that such country is providing an export subsidy.

(5)¹ NOTIFICATION OF ARTICLE 8 VIOLATION.—If the only subsidy under investigation is a subsidy with respect to which the administering authority received notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement, paragraph (1) shall be applied by substituting “60 days” for “65 days”.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination,

then the administering authority may postpone making the preliminary determination under subsection (b) until not later than the 130th day after the date on which the administering authority initiates an investigation under section 702(c), or an investigation is initiated under section 702(a).

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement. Notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1)(A) shall—

(i) determine an estimated individual countervailable subsidy rate for each exporter and producer individually

¹ Indentation so in law.

investigated, and, in accordance with section 705(c)(5), an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 751(a)(2)(B), or

(ii) if section 777A(e)(2)(B) applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable,

(2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this subtitle) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

(g) TIME PERIOD WHERE UPSTREAM SUBSIDIZATION INVOLVED.—

(1) IN GENERAL.—Whenever the administering authority concludes prior to a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 702(b) or initiation of an investigation under section 702(a) (310 days in cases declared extraordinarily complicated under section 703(c)), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) EXCEPTIONS.—Whenever the administering authority concludes, after a preliminary determination under section 703(b), that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 705(a)(1); or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 751 of any eventual countervailing duty order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 or 225 days, as appropriate, under section 705(a)(1), as appropriate, except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a Countervailing Duty Order under section 706(a).

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.

SEC. 704. [19 U.S.C. 1671c] TERMINATION OR SUSPENSION OF INVESTIGATION.

(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

(1) IN GENERAL.—

(A) WITHDRAWAL OF PETITION.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 702(a).

(B) REFILEING OF PETITION.—If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the countervailable subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) PUBLIC INTEREST FACTORS.—In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) PRIOR CONSULTATIONS.—Before making a decision under subparagraph (A) regarding the public interest, the

administering authority shall, to the extent practicable, consult with—

- (i) potentially affected consuming industries; and
- (ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 703(b).

(b) AGREEMENTS TO ELIMINATE OR OFFSET COMPLETELY A COUNTERAVAILABLE SUBSIDY OR TO CEASE EXPORTS OF SUBJECT MERCHANDISE.—The administering authority may suspend an investigation if the government of the country in which the countervailable subsidy practice is alleged to occur agrees, or exporters who account for substantially all of the imports of the subject merchandise agree—

(1) to eliminate the countervailable subsidy completely or to offset completely the amount of the net countervailable subsidy, with respect to that merchandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, or

(2) to cease exports of that merchandise to the United States within 6 months after the date on which the investigation is suspended.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement from a government described in subsection (b), or from exporters described in subsection (b), if the agreement will eliminate completely the injurious effect of exports to the United States of the subject merchandise.

(2) CERTAIN ADDITIONAL REQUIREMENTS.—Except in the case of an agreement by a foreign government to restrict the volume of imports of the subject merchandise into the United States, the administering authority may not accept an agreement under this subsection unless—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) at least 85 percent of the net countervailable subsidy will be offset.

(3) QUANTITATIVE RESTRICTIONS AGREEMENTS.—The administering authority may accept an agreement with a foreign government under this subsection to restrict the volume of imports of subject merchandise into the United States, but it may not accept such an agreement with exporters.

(4) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term “extraordinary circumstances” means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term “complex” means—

(i) there are a large number of alleged countervailable subsidy practices and the practices are complicated,

(ii) the issues raised are novel, or

(iii) the number of exporters involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—

(1) PUBLIC INTEREST; MONITORING.—The administering authority shall not accept an agreement under subsection (b) or (c) unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon. In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c), the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B) (i), (ii), and (iii) as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C) (i) and (ii).

(2) EXPORTS OF MERCHANDISE TO UNITED STATES NOT TO INCREASE DURING INTERIM PERIOD.—The administering authority may not accept any agreement under subsection (b) unless that agreement provides a means of ensuring that the quantity of the merchandise covered by that agreement exported to the United States during the period provided for elimination or offset of the countervailable subsidy or cessation of exports does not exceed the quantity of such merchandise exported to the United States during the most recent representative period determined by the administering authority.

(3) REGULATIONS GOVERNING ENTRY OR WITHDRAWALS.—In order to carry out an agreement concluded under subsection (b) or (c), the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of subject merchandise.

(e) SUSPENSION OF INVESTIGATION PROCEDURE.—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced (including any action required of foreign governments), and of how the agreement will meet the requirements of subsections (b) and (d), or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) EFFECTS OF SUSPENSION OF INVESTIGATION.—

(1) IN GENERAL.—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 703(b) with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) LIQUIDATION OF ENTRIES.—

(A) CESSATION OF EXPORTS; COMPLETE ELIMINATION OF NET COUNTERAVAILABLE SUBSIDY.—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 703(d)(2),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 703(d)(1)(B).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), then the liquidation of entries of the subject merchandise shall be suspended under section 703(d)(2), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 703(d)(1)(B) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commis-

sion continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 705 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue a countervailing duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d) or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the countervailable subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 703(b) had been made on that date.

(3) SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.—The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of the affirmative de-

termination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(2), and

(B) release any bond or other security, and refund any cash deposit, required under section 703(d)(1)(B).

(i) VIOLATION OF AGREEMENT.—

(1) IN GENERAL.—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 703(d)(2) of unliquidated entries of the merchandise made on or after the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption.

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination under section 703(b) were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue a countervailing duty order under section 706(a) effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedure, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 705, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall

consider all of the subject merchandise, without regard to the effect of any agreement under subsection (b) or (c).

(k) **TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.**—The administering authority may terminate any investigation initiated by the administering authority under section 702(a) after providing notice of such termination to all parties to the investigation.

(l) **SPECIAL RULE FOR REGIONAL INDUSTRY INVESTIGATIONS.**—

(1) **SUSPENSION AGREEMENTS.**—If the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b) or (c).

(2) **REQUIREMENTS FOR SUSPENSION AGREEMENTS.**—Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b) or (c), except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under section 705(b) but not in the preliminary affirmative determination under section 703(a), any agreement described in paragraph (1) may be accepted within 60 days after the countervailing duty order is published under section 706.

(3) **EFFECT OF SUSPENSION AGREEMENT ON COUNTERVAILING DUTY ORDER.**—If an agreement described in paragraph (1) is accepted after the countervailing duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 703(d)(1)(B), and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to countervailing duties.

SEC. 705. [19 U.S.C. 1671d] FINAL DETERMINATIONS.

(a) **FINAL DETERMINATIONS BY ADMINISTERING AUTHORITY.**—

(1) **IN GENERAL.**—Within 75 days after the date of the preliminary determination under section 703(b), the administering authority shall make a final determination of whether or not a countervailable subsidy is being provided with respect to the subject merchandise; except that when an investigation under this subtitle is initiated simultaneously with an investigation under subtitle B, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under subtitle B.

(2) **CRITICAL CIRCUMSTANCES DETERMINATIONS.**—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether—

(A) the countervailable subsidy is inconsistent with the Subsidies Agreement, and
(B) there have been massive imports of the subject merchandise over a relatively short period.
Such findings may be affirmative even though the preliminary determination under section 703(e)(1) was negative.

(3) DE MINIMIS COUNTERVAILOABLE SUBSIDY.—In making a determination under this subsection, the administering authority shall disregard any countervailable subsidy that is de minimis as defined in section 703(b)(4).

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a). If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 703(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 703(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(2) is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(2) are likely to undermine seriously the remedial

effect of the countervailing duty order to be issued under section 706.

(ii) FACTORS TO CONSIDER.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,
(II) any rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the countervailing duty order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of that merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine an estimated individual countervailable subsidy rate for each exporter and producer individually investigated, and, in accordance with paragraph (5), an estimated all-others rate for all exporters and producers not individually investigated and for new exporters and producers within the meaning of section 751(a)(2)(B), or

(II) if 777A(e)(2)(B)¹ applies, determine a single estimated country-wide subsidy rate, applicable to all exporters and producers,

(ii) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 703(b) was neg-

¹ So in original. Probably should read "if section 777A(e)(2)(B) applies".

ative, the administering authority shall order the suspension of liquidation under paragraph (2) of section 703(d).

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue a countervailing duty order under section 706(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(2), and

(B) release any bond or other security and refund any cash deposit required under section 703(d)(1)(B).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(2) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 703(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 703(d)(1)(B) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 703(e)(2).

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION 2).—If the determination of the administering authority under subsection (a)(2) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 703(b) and 703(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 703(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 703(b) was affirmative, but the preliminary determination under section 703(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 703(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 703(b) and was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 705(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) METHOD FOR DETERMINING THE ALL-OTHERS RATE AND THE COUNTRY-WIDE SUBSIDY RATE.—

(A) ALL-OTHERS RATE.—

(i) GENERAL RULE.—For purposes of this subsection and section 703(d), the all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely under section 776.

(ii) EXCEPTION.—If the countervailable subsidy rates established for all exporters and producers individually investigated are zero or de minimis rates, or are determined entirely under section 776, the administering authority may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually investigated.

(B) COUNTRY-WIDE SUBSIDY RATE.—The administering authority may calculate a single country-wide subsidy rate, applicable to all exporters and producers, if the administering authority limits its examination pursuant to section 777A(e)(2)(B). The estimated country-wide rate determined under section 703(d)(1)(A)(ii) or paragraph (1)(B)(i)(II) of this subsection shall be based on industry-wide data regarding the use of subsidies determined to be countervailable.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term “ministerial error” includes errors in addition, subtraction or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

SEC. 706. [19 U.S.C. 1671e] ASSESSMENT OF DUTY.

(a) PUBLICATION OF COUNTERVAILING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 705(b), the administering authority shall publish a countervailing duty order which—

(1) directs customs officers to assess a countervailing duty equal to the amount of the net countervailable subsidy deter-

mined or estimated to exist, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption,

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTIES.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a).

(2) SPECIAL RULE.—If the Commission, in its final determination under section 705(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then merchandise subject to a countervailing duty order which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 705(b) shall be subject to the imposition of countervailing duties under section 701(a), and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SPECIAL RULE FOR REGIONAL INDUSTRIES.—

(1) IN GENERAL.—In an investigation under this subtitle in which the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that exported the subject merchandise for sale in the region concerned during the period of investigation.

(2) EXCEPTION FOR NEW EXPORTERS AND PRODUCERS.—After publication of the countervailing duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 751(a)(2)(B).

SEC. 707. [19 U.S.C. 1671f] TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED COUNTERVAILING DUTY AND FINAL ASSESSED DUTY UNDER COUNTERVAILING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 703(d)(1)(B).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated countervailing duty under section 703(d)(1)(B) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED COUNTERVAILING DUTY UNDER SECTION 706(a)(3).—If the amount of an estimated countervailing duty deposited under section 706(a)(3) is different from the amount of the countervailing duty determined under a countervailing duty order issued under section 706, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 705(b) is published shall be—

(1) collected, to the extent that the deposit under section 706(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 706(a)(3) is higher than the duty determined under the order, together with interest as provided by section 778.

SEC. 708. [19 U.S.C. 1671g] EFFECT OF DEROGATION OF EXPORT-IMPORT BANK FINANCING.

Nothing in this title shall be interpreted as superseding the provisions of section 1912 of the Export-Import Bank Act Amendments of 1978, except that in the event of an assessment of duty based on a derogation under section 706 or action under section 703(d)(1)(B), the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits to competing United States sellers pursuant to section 1912 of such Act.

SEC. 709. [19 U.S.C. 1671h] CONDITIONAL PAYMENT OF COUNTERVAILING DUTY.

(a) IN GENERAL.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this subtitle,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this subtitle on that merchandise.

Subtitle B—Imposition of Antidumping Duties

SEC. 731. [19 U.S.C. 1673] ANTIDUMPING DUTIES IMPOSED.

If—

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation, then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise. For purposes of this subsection and section 735(b)(1), a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

SEC. 732. [19 U.S.C. 1673a] PROCEDURES FOR INITIATING AN ANTI-DUMPING DUTY INVESTIGATION.

(a) INITIATION BY ADMINISTERING AUTHORITY.—

(1) IN GENERAL.—An antidumping duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 731 exist.

(2) CASES INVOLVING PERSISTENT DUMPING.—

(A) MONITORING.—The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to initiate¹ a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately commence¹ such an investigation.

(C) DEFINITION.—For purposes of this paragraph, the term “additional supplier country” means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) EXPEDITIOUS ACTION.—The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this subtitle undertaken as a result of a formal investigation initiated under subparagraph (B).

(b) INITIATION BY PETITION.—

(1) PETITION REQUIREMENTS.—An antidumping proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 731, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) ACTION WITH RESPECT TO PETITIONS.—

(A) NOTIFICATION OF GOVERNMENTS.—Upon receipt of a petition filed under paragraph (1), the administering authority shall notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country.

(B) ACCEPTANCE OF COMMUNICATIONS.—The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 771(9) (C), (D), (E), (F), or (G) before the administering authority makes its decision whether to initiate an investigation, except as provided in subsection (c)(4)(D), and except for inquiries regarding the status of the administering authority’s consideration of the petition.

¹Section 233(a)(6)(C) of P.L. 103–465 amended this subparagraph by striking “commence” and inserting “initiate”. The word “commence” appears twice, but executed the first place such term appears.

(C) NONDISCLOSURE OF CERTAIN INFORMATION.—The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) PETITION DETERMINATION.—

(1) IN GENERAL.—

(A) TIME FOR INITIAL DETERMINATION.—Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall—

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 731 and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) EXTENSION OF TIME.—In any case in which the administering authority is required to poll or otherwise determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting “a maximum of 40 days” for “20 days”.

(C) TIME LIMITS WHERE PETITION INVOLVES SAME MERCHANDISE AS AN ORDER THAT HAS BEEN REVOKED.—If a petition is filed under this section with respect to merchandise that was the subject merchandise of—

(i) an antidumping duty order or finding that was revoked under section 751(d) in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 751(d) in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) AFFIRMATIVE DETERMINATIONS.—If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(3) NEGATIVE DETERMINATIONS.—If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) DETERMINATION OF INDUSTRY SUPPORT.—

(A) GENERAL RULE.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if—

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) CERTAIN POSITIONS DISREGARDED.—

(i) PRODUCERS RELATED TO FOREIGN PRODUCERS.—

In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 771(4)(B)(ii), unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order.

(ii) PRODUCERS WHO ARE IMPORTERS.—The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(C) SPECIAL RULE FOR REGIONAL INDUSTRIES.—If the petition alleges the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) POLLING THE INDUSTRY.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall—

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) COMMENTS BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—

For purposes of this subsection, the term “domestic producers or workers” means those interested parties who are eligible to file a petition under subsection (b)(1).

(d) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) INFORMATION REGARDING CRITICAL CIRCUMSTANCES.—If, at any time after the initiation of an investigation under this subtitle, the administering authority finds a reasonable basis to suspect that—

(1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or

(2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value,

the administering authority may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of Customs shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 735(a), the investigation is terminated, or the administering authority withdraws the request.

SEC. 733. [19 U.S.C. 1673b] PRELIMINARY DETERMINATIONS.

(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

(1) GENERAL RULE.—Except in the case of a petition dismissed by the administering authority under section 732(c)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) TIME FOR COMMISSION DETERMINATION.—The Commission shall make the determination described in paragraph (1)—

(A) in the case of a petition filed under section 732(b)—

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 732(c)(1)(B), within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 732(a), within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) PERIOD OF ANTIDUMPING DUTY INVESTIGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), within 140 days after the date on which the administering authority initiates an investigation under section 732(c), or an investigation is initiated under section 732(a), but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise is being sold, or is likely to be sold at less than fair value.

(B) IF CERTAIN SHORT LIFE CYCLE MERCHANDISE INVOLVED.—If a petition filed under section 732(b), or an investigation initiated under section 732(a), concerns short life cycle merchandise that is included in a product category established under section 739(a), subparagraph (A) shall be applied—

(i) by substituting “100 days” for “140 days” if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

(ii) by substituting “80 days” for “140 days” if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(C) DEFINITIONS OF OFFENDERS.—For purposes of subparagraph (B)—

(i) the term “second offender” means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of section 739) as the manufacturer of short life cycle merchandise that is—

(I) specified in both such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(ii) the term “multiple offender” means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 739) as the manufacturer of short life cycle merchandise that is—

(I) specified in each of such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(2) PRELIMINARY DETERMINATION UNDER WAIVER OF VERIFICATION.—Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available non-confidential information and all other information which is disclosed pursuant to section 777. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the initiation of the investigation on the basis of the record established during the first 60 days after the investigation was initiated.

(3) DE MINIMIS DUMPING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis. For purposes of the preceding sentence, a weighted average dumping margin is de minimis if the administering authority determines that it is less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES.—

(1) IN GENERAL.—If—

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that—

(i) the case is extraordinarily complicated by reason of—

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and
(ii) additional time is necessary to make the preliminary determination,
then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiates an investigation under section 732(c), or an investigation is initiated under section 732(a). No extension of a determination date may be made under this paragraph for any investigation in which a determination date provided for in subsection (b)(1)(B) applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

(2) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority—

(1)(A) shall—

(i) determine an estimated weighted average dumping margin for each exporter and producer individually investigated, and

(ii) determine, in accordance with section 735(c)(5), an estimated all-others rate for all exporters and producers not individually investigated, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable,

(2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order,

of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months, except that the administering authority may, at the request of exporters representing a significant proportion of exports of the subject merchandise, extend that 4-month period to not more than 6 months.

(e) CRITICAL CIRCUMSTANCES DETERMINATIONS.—

(1) IN GENERAL.—If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this subtitle) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) is applied.

(2) SUSPENSION OF LIQUIDATION.—If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of—

(A) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

SEC. 734. [19 U.S.C. 1673c] TERMINATION OR SUSPENSION OF INVESTIGATION.**(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—****(1) IN GENERAL.—**

(A) WITHDRAWAL OF PETITION.—Except as provided in paragraphs (2) and (3), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 732(a).

(B) REFILEING OF PETITION.—If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) SPECIAL RULES FOR QUANTITATIVE RESTRICTION AGREEMENTS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) PUBLIC INTEREST FACTORS.—In making a decision under subparagraph (A) regarding the public interest the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) PRIOR CONSULTATIONS.—Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise,

including producers and workers not party to the investigation.

(3) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 733(b).

(b) AGREEMENTS TO ELIMINATE COMPLETELY SALES AT LESS THAN FAIR VALUE OR TO CEASE EXPORTS OF MERCHANDISE.—The administering authority may suspend an investigation if the exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree—

(1) to cease exports of the merchandise to the United States within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the normal value of the merchandise which is the subject of the agreement exceeds the export price (or the constructed export price) of that merchandise.

(c) AGREEMENTS ELIMINATING INJURIOUS EFFECT.—

(1) GENERAL RULE.—If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the subject merchandise who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if—

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) DEFINITION OF EXTRAORDINARY CIRCUMSTANCES.—

(A) EXTRAORDINARY CIRCUMSTANCES.—For purposes of this subsection, the term “extraordinary circumstances” means circumstances in which—

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) COMPLEX.—For purposes of this paragraph, the term “complex” means—

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) ADDITIONAL RULES AND CONDITIONS.—The administering authority may not accept an agreement under subsection (b) or (c) unless—

(1) it is satisfied that suspension of the investigation is in the public interest, and

(2) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent possible, an opportunity to submit comments thereon.

(e) **SUSPENSION OF INVESTIGATION PROCEDURE.**—Before an investigation may be suspended under subsection (b) or (c) the administering authority shall—

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all interested parties described in section 771(9) to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) **EFFECTS OF SUSPENSION OF INVESTIGATION.**—

(1) **IN GENERAL.**—If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then—

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 733(b) with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) **LIQUIDATION OF ENTRIES.**—

(A) **CESSATION OF EXPORTS; COMPLETE ELIMINATION OF DUMPING MARGIN.**—If the agreement accepted by the administering authority is an agreement described in subsection (b), then—

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 733(d)(2),

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 733(d)(1)(B).

(B) OTHER AGREEMENTS.—If the agreement accepted by the administering authority is an agreement described in subsection (c), the liquidation of entries of the subject merchandise shall be suspended under section 733(d)(2), or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 733(d)(1)(B) may be adjusted to reflect the effect of the agreement.

(3) WHERE INVESTIGATION IS CONTINUED.—If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then—

(A) if the final determination by the administering authority or the Commission under section 735 is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as—

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) INVESTIGATION TO BE CONTINUED UPON REQUEST.—If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the subject merchandise, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) REVIEW OF SUSPENSION.—

(1) IN GENERAL.—Within 20 days after the suspension of an investigation under subsection (c), an interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) COMMISSION INVESTIGATION.—Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, deter-

mine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 733(b) had been made on that date.

(3) **SUSPENSION OF LIQUIDATION TO CONTINUE DURING REVIEW PERIOD.**—The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of the investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall—

(A) terminate the suspension of liquidation under section 733(d)(2), and

(B) release any bond or other security, and refund any cash deposit, required under section 733(d)(1)(B).

(i) **VIOLATION OF AGREEMENT.**—

(1) **IN GENERAL.**—If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall—

(A) suspend liquidation under section 733(d)(2) of unliquidated entries of the merchandise made on the later of—

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets the requirements of subsections (b) and (d) or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue an antidumping duty order under section 736(a) effective with respect to entries of merchandise liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) INTENTIONAL VIOLATION TO BE PUNISHED BY CIVIL PENALTY.—Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a fraudulent violation of section 592(a) of this Act.

(j) DETERMINATION NOT TO TAKE AGREEMENT INTO ACCOUNT.—In making a final determination under section 735, or in conducting a review under section 751, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the subject merchandise, without regard to the effect of any agreement under subsection (b) or (c).

(k) TERMINATION OF INVESTIGATION INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 732(a) after providing notice of such termination to all parties to the investigation.

(l) SPECIAL RULE FOR NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that—

(A) such agreement satisfies the requirements of subsection (d), and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) FAILURE OF AGREEMENTS.—If the administering authority determines that an agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (i) shall apply.

(m) SPECIAL RULE FOR REGIONAL INDUSTRY INVESTIGATIONS.—

(1) SUSPENSION AGREEMENTS.—If the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b), (c), or (l).

(2) REQUIREMENTS FOR SUSPENSION AGREEMENTS.—Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b), (c), or (l), except that if the Commission makes a regional industry determination described in paragraph (1) in the final affirmative determination under sec-

tion 735(b) but not in the preliminary affirmative determination under section 733(a), any agreement described in paragraph (1) may be accepted within 60 days after the antidumping order is published under section 736.

(3) EFFECT OF SUSPENSION AGREEMENT ON ANTIDUMPING DUTY ORDER.—If an agreement described in paragraph (1) is accepted after the antidumping duty order is published, the administering authority shall rescind the order, refund any cash deposit and release any bond or other security deposited under section 733(d)(1)(B), and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to antidumping duties.

SEC. 735. [19 U.S.C. 1673d] FINAL DETERMINATIONS.

(a) FINAL DETERMINATION BY ADMINISTERING AUTHORITY.—

(1) GENERAL RULE.—Within 75 days after the date of its preliminary determination under section 733(b), the administering authority shall make a final determination of whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(2) EXTENSION OF PERIOD FOR DETERMINATION.—The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 733(b) if a request in writing for such a postponement is made by—

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 733(b) was negative.

(3) CRITICAL CIRCUMSTANCES DETERMINATIONS.—If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 733(e), shall also contain a finding of whether—

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(4) DE MINIMIS DUMPING MARGIN.—In making a determination under this subsection, the administering authority shall

disregard any weighted average dumping margin that is de minimis as defined in section 733(b)(3).

(b) FINAL DETERMINATION BY COMMISSION.—

(1) IN GENERAL.—The Commission shall make a final determination of whether—

(A) an industry in the United States—

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1). If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 733(b), or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 733(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) CERTAIN ADDITIONAL FINDINGS.—

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(3) is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(3) are likely to undermine seriously the remedial effect of the antidumping duty order to be issued under section 736.

(ii) FACTORS TO CONSIDER.—In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) a rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of the merchandise.

(c) EFFECT OF FINAL DETERMINATIONS.—

(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then—

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall—

(I) determine the estimated weighted average dumping margin for each exporter and producer individually investigated, and

(II) determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated, and

(ii) the administering authority shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 733(b) was negative, the administering authority shall order the suspension of liquidation under section 733(d)(2).

(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an antidumping duty order under section 736(a). If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall—

(A) terminate the suspension of liquidation under section 703(d)(2), and

(B) release any bond or other security and refund any cash deposit, required under section 733(d)(1)(B).

(3) EFFECT OF NEGATIVE DETERMINATIONS UNDER SUBSECTIONS (a)(3) AND (b)(4)(A).—If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 733(e)(2), and

(B) release any bond or other security, and refund any cash deposit required, under section 733(d)(1)(B) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2).

(4) EFFECT OF AFFIRMATIVE DETERMINATION UNDER SUBSECTION (a)(3).—If the determination of the administering authority under subsection (a)(3) is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 733(b) and 733(e)(1) were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 733(e)(2);

(B) in cases where the preliminary determination by the administering authority under section 733(b) was affirmative, but the preliminary determination under section 733(e)(1) was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 733(d) to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 733(b) was negative, shall apply any suspension of liquidation and security requirement ordered under subsection 735(c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) METHOD FOR DETERMINING ESTIMATED ALL-OTHERS RATE.—

(A) GENERAL RULE.—For purposes of this subsection and section 733(d), the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 776.

(B) EXCEPTION.—If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and

producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.

(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term “ministerial error” includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

SEC. 736. [19 U.S.C. 1673e] ASSESSMENT OF DUTY.

(a) PUBLICATION OF ANTIDUMPING DUTY ORDER.—Within 7 days after being notified by the Commission of an affirmative determination under section 735(b), the administering authority shall publish an antidumping duty order which—

(1) directs customs officers to assess an antidumping duty equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise, within 6 months after the date on which the administering authority receives satisfactory information upon which the assessment may be based, but in no event later than—

(A) 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption, or

(B) in the case of merchandise not sold prior to its importation into the United States, 12 months after the end of the annual accounting period of the manufacturer or exporter within which it is sold in the United States to a person who is not the exporter of that merchandise,

(2) includes a description of the subject merchandise, in such detail as the administering authority deems necessary, and

(3) requires the deposit of estimated antidumping duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

(b) IMPOSITION OF DUTY.—

(1) GENERAL RULE.—If the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation

under section 733(d)(2) would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section 733(d)(2), shall be subject to the imposition of antidumping duties under section 731.

(2) SPECIAL RULE.—If the Commission, in its final determination under section 735(b), finds threat of material injury, other than threat of material injury described in paragraph (1), or material retardation of the establishment of an industry in the United States, then subject merchandise which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of notice of an affirmative determination of the Commission under section 735(b) shall be subject to the assessment of antidumping duties under section 731, and the administering authority shall release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before that date.

(c) SECURITY IN LIEU OF ESTIMATED DUTY PENDING EARLY DETERMINATION OF DUTY.—

(1) CONDITIONS FOR WAIVER OF DEPOSIT OF ESTIMATED DUTIES.—The administering authority may permit, for not more than 90 days after the date of publication of an order under subsection (a), the posting of a bond or other security in lieu of the deposit of estimated antidumping duties required under subsection (a)(3) if—

(A) the investigation has not been designated as extraordinarily complicated by reason of—

- (i) the number and complexity of the transactions to be investigated or adjustments to be considered,
- (ii) the novelty of the issues presented, or
- (iii) the number of firms whose activities must be investigated,

(B) the final determination in the investigation has not been postponed under section 735(a)(2)(A);

(C) on the basis of information presented to the administering authority by any manufacturer, producer, or exporter in such form and within such time as the administering authority may require, the administering authority is satisfied that a determination will be made, within 90 days after the date of publication of an order under subsection (a), of the normal value and the export price (or the constructed export price) for all merchandise of such manufacturer, producer, or exporter described in that order which was entered, or withdrawn from warehouse, for consumption on or after the date of publication of—

- (i) an affirmative preliminary determination by the administering authority under section 733(b), or
- (ii) if its determination under section 733(b) was negative, an affirmative final determination by the administering authority under section 735(a),

and before the date of publication of the affirmative final determination by the Commission under section 735(b);

(D) the party described in subparagraph (C) provides credible evidence that the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is significantly less than the amount of such excess specified in the antidumping duty order published under subsection (a); and

(E) the data concerning the normal value and the export price (or the constructed export price) apply to sales in the usual commercial quantities and in the ordinary course of trade and the number of such sales are sufficient to form an adequate basis for comparison.

(2) NOTICE; HEARING.—If the administering authority permits the posting of a bond or other security in lieu of the deposit of estimated antidumping duties under paragraph (1), it shall—

(A) publish notice of its action in the Federal Register, and

(B) upon the request of any interested party, hold a hearing in accordance with section 774 before determining the normal value and the export price (or the constructed export price) of the merchandise.

(3) DETERMINATIONS TO BE BASIS OF ANTIDUMPING DUTY.—The administering authority shall publish notice in the Federal Register of the results of its determination of normal value and export price (or the constructed export price), and that determination shall be the basis for the assessment of antidumping duties on entries of merchandise to which the notice under this subsection applies and also shall be the basis for the deposit of estimated antidumping duties on future entries of merchandise of manufacturers, producers, or exporters described in paragraph (1) to which the order issued under subsection (a) applies.

(4) PROVISION OF BUSINESS PROPRIETARY INFORMATION; WRITTEN COMMENTS.—Before determining whether to permit the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties, the administering authority shall—

(A) make all business proprietary information supplied to the administering authority under paragraph (1) available under a protective order in accordance with section 777(c) to all interested parties described in subparagraph (C), (D), (E), (F), or (G) of section 771(9), and

(B) afford all interested parties an opportunity to file written comments on whether the posting of bond or other security under paragraph (1) in lieu of the deposit of estimated antidumping duties should be permitted.

(d) SPECIAL RULE FOR REGIONAL INDUSTRIES.—

(1) IN GENERAL.—In an investigation in which the Commission makes a regional industry determination under section 771(4)(C), the administering authority shall, to the maximum extent possible, direct that duties be assessed only on the subject merchandise of the specific exporters or producers that ex-

ported the subject merchandise for sale in the region concerned during the period of investigation.

(2) EXCEPTION FOR NEW EXPORTERS AND PRODUCERS.—After publication of the antidumping duty order, if the administering authority finds that a new exporter or producer is exporting the subject merchandise for sale in the region concerned, the administering authority shall direct that duties be assessed on the subject merchandise of the new exporter or producer consistent with the provisions of section 751(a)(2)(B).

SEC. 737. [19 U.S.C. 1673f] TREATMENT OF DIFFERENCE BETWEEN DEPOSIT OF ESTIMATED ANTIDUMPING DUTY AND FINAL ASSESSED DUTY UNDER ANTIDUMPING DUTY ORDER.

(a) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 733(d)(1)(B).—If the amount of a cash deposit, or the amount of any bond or other security, required as security for an estimated antidumping duty under section 733(d)(1)(B) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption before notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) disregarded, to the extent that the cash deposit, bond, or other security is lower than the duty under the order, or

(2) refunded or released, to the extent that the cash deposit, bond, or other security is higher than the duty under the order.

(b) DEPOSIT OF ESTIMATED ANTIDUMPING DUTY UNDER SECTION 736(a)(3).—If the amount of an estimated antidumping duty deposited under section 736(a)(3) is different from the amount of the antidumping duty determined under an antidumping duty order published under section 736, then the difference for entries of merchandise entered, or withdrawn from warehouse, for consumption after notice of the affirmative determination of the Commission under section 735(b) is published shall be—

(1) collected, to the extent that the deposit under section 736(a)(3) is lower than the duty determined under the order, or

(2) refunded, to the extent that the deposit under section 736(a)(3) is higher than the duty determined under the order, together with interest as provided by section 778.

SEC. 738. [19 U.S.C. 1373g] CONDITIONAL PAYMENT OF ANTIDUMPING DUTY.

(a) GENERAL RULE.—For all entries, or withdrawals from warehouse, for consumption of merchandise subject to an antidumping duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirements of subsection (b) and deposits with the appropriate customs officer an estimated antidumping duty in an amount determined by the administering authority.

(b) IMPORTER REQUIREMENTS.—In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for determining the export price (or the constructed export price) of the merchandise imported by or for the account of that person, and such other information as the administering authority deems necessary for ascertaining any antidumping duty to be imposed under this title;

(2) maintain and furnish to the customs officer such records concerning the sale of the merchandise as the administering authority, by regulation, requires;

(3) state under oath before the customs officer that he is not an exporter, or if he is an exporter, declare under oath at the time of entry the constructed export price of the merchandise to the customs officer if it is then known, or, if not, so declare within 30 days after the merchandise has been sold, or has been made the subject of an agreement to be sold, in the United States; and

(4) pay, or agree to pay on demand, to the customs officer the amount of antidumping duty imposed under section 731 on that merchandise.

SEC. 739. [19 U.S.C. 1673h] ESTABLISHMENT OF PRODUCT CATEGORIES FOR SHORT LIFE CYCLE MERCHANDISE.

(a) ESTABLISHMENT OF PRODUCT CATEGORIES.—

(1) PETITIONS.—

(A) IN GENERAL.—An eligible domestic entity may file a petition with the Commission requesting that a product category be established with respect to short life cycle merchandise at any time after the merchandise becomes the subject of 2 or more affirmative dumping determinations.

(B) CONTENTS.—A petition filed under subparagraph (A) shall—

(i) identify the short life cycle merchandise that is the subject of the affirmative dumping determinations,

(ii) specify the short life cycle merchandise that the petitioner seeks to have included in the same product category as the merchandise that is subject to the affirmative dumping determinations,

(iii) specify any short life cycle merchandise the petitioner particularly seeks to have excluded from the product category,

(iv) provide reasons for the inclusions and exclusions specified under clauses (ii) and (iii), and

(v) identify such merchandise in terms of the designations used in the Harmonized Tariff Schedule of the United States.

(2) DETERMINATIONS ON SUFFICIENCY OF PETITION.—Upon receiving a petition under paragraph (1), the Commission shall—

(A) request the administering authority to confirm promptly the affirmative determinations on which the petition is based, and

(B) upon receipt of such confirmation, determine whether the merchandise covered by the confirmed affir-

ative determinations is short life cycle merchandise and whether the petitioner is an eligible domestic entity.

(3) NOTICE; HEARINGS.—If the determinations under paragraph (2)(B) are affirmative, the Commission shall—

(A) publish notice in the Federal Register that the petition has been received, and

(B) provide opportunity for the presentation of views regarding the establishment of the requested product category, including a public hearing if requested by any interested person.

(4) DETERMINATIONS.—

(A) IN GENERAL.—By no later than the date that is 90 days after the date on which a petition is filed under paragraph (1), the Commission shall determine the scope of the product category into which the short life cycle merchandise that is the subject of the affirmative dumping determinations identified in such petition shall be classified for purposes of this section.

(B) MODIFICATIONS NOT REQUESTED BY PETITION.—

(i) IN GENERAL.—The Commission may, on its own initiative, make a determination modifying the scope of any product category established under subparagraph (A) at any time.

(ii) NOTICE AND HEARING.—Determinations may be made under clause (i) only after the Commission has—

(I) published in the Federal Register notice of the proposed modification, and

(II) provided interested parties an opportunity for a hearing, and a period for the submission of written comments, on the classification of merchandise into the product categories to be affected by such determination.

(C) BASIS OF DETERMINATIONS.—In making determinations under subparagraph (A) or (B), the Commission shall ensure that each product category consists of similar short life cycle merchandise which is produced by similar processes under similar circumstances and has similar uses.

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

(1) ELIGIBLE DOMESTIC ENTITY.—The term “eligible domestic entity” means a manufacturer or producer in the United States, or a certified union or recognized union or group of workers which is representative of an industry in the United States, that manufactures or produces short life cycle merchandise that is—

(A) like or directly competitive with other merchandise that is the subject of 2 or more affirmative dumping determinations, or

(B) is similar enough to such other merchandise as to be considered for inclusion with such merchandise in a product monitoring category established under this section.

(2) AFFIRMATIVE DUMPING DETERMINATION.—The term “affirmative dumping determination” means—

(A) any affirmative final determination made by the administering authority under section 735(a) during the 8-year period preceding the filing of the petition under this section that results in the issuance of an antidumping duty order under section 736 which requires the deposit of estimated antidumping duties at a rate of not less than 15 percent ad valorem, or

(B) any affirmative preliminary determination that—

(i) is made by the administering authority under section 733(b) during the 8-year period preceding the filing of the petition under this section in the course of an investigation for which no final determination is made under section 735 by reason of a suspension of the investigation under section 734, and

(ii) includes a determination that the estimated average amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise is not less than 15 percent ad valorem.

(3) SUBJECT OF AFFIRMATIVE DUMPING DETERMINATION.—

(A) IN GENERAL.—Short life cycle merchandise of a manufacturer shall be treated as being the subject of an affirmative dumping determination only if the administering authority—

(i) makes a separate determination of the amount by which the normal value of such merchandise of the manufacturer exceeds the export price (or the constructed export price) of such merchandise of the manufacturer, and

(ii) specifically identifies the manufacturer by name with such amount in the affirmative dumping determination or in an antidumping duty order issued as a result of the affirmative dumping determination.

(B) EXCLUSION.—Short life cycle merchandise of a manufacturer shall not be treated as being the subject of an affirmative dumping determination if—

(i) such merchandise of the manufacturer is part of a group of merchandise to which the administering authority assigns (in lieu of making separate determinations described in subparagraph (A)(i)(I)) an amount determined to be the amount by which the normal value of the merchandise in such group exceeds the export price (or the constructed export price) of the merchandise in such group, and

(ii) the merchandise and the manufacturer are not specified by name in the affirmative dumping determination or in any antidumping duty order issued as a result of such affirmative dumping determination.

(4) SHORT LIFE CYCLE MERCHANDISE.—That term “short life cycle merchandise” means any product that the Commission determines is likely to become outmoded within 4 years, by reason of technological advances, after the product is commercially available. For purposes of this paragraph, the term “out-

moded” refers to a kind of style that is no longer state-of-the-art.

(c) TRANSITIONAL RULES.—

(1) For purposes of this section and section 733(b)(1) (B) and (C), all affirmative dumping determinations described in subsection (b)(2)(A) that were made after December 31, 1980, and before the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, and all affirmative dumping determinations described in subsection (b)(2)(B) that were made after December 31, 1984, and before the date of enactment of such Act, with respect to each category of short life cycle merchandise of the same manufacturer shall be treated as one affirmative dumping determination with respect to that category for that manufacturer which was made on the date on which the latest of such determinations was made.

(2) No affirmative dumping determination that—

(A) is described in subsection (b)(2)(A) and was made before January 1, 1981, or

(B) is described in subsection (b)(2)(B) and was made before January 1, 1985,
may be taken into account under this section or section 733(b)(1) (B) and (C).

Subtitle C—Reviews; Other Actions Regarding Agreements

CHAPTER 1—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 751. [19 U.S.C. 1675] ADMINISTRATIVE REVIEW OF DETERMINATIONS.

(a) PERIODIC REVIEW OF AMOUNT OF DUTY.—

(1) IN GENERAL.—At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this title or under section 303 of this Act, an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

(A) review and determine the amount of any net countervailable subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy or dumping margin involved in the agreement,

and shall publish in the Federal Register the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

(2) DETERMINATION OF ANTIDUMPING DUTIES.—

(A) IN GENERAL.—For the purpose of paragraph (1)(B), the administering authority shall determine—

(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and

(ii) the dumping margin for each such entry.

(B) DETERMINATION OF ANTIDUMPING OR COUNTERVAILING DUTIES FOR NEW EXPORTERS AND PRODUCERS.—

(i) IN GENERAL.—If the administering authority receives a request from an exporter or producer of the subject merchandise establishing that—

(I) such exporter or producer did not export the merchandise that was the subject of an antidumping duty or countervailing duty order to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation, and

(II) such exporter or producer is not affiliated (within the meaning of section 771(33)) with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during that period,

the administering authority shall conduct a review under this subsection to establish an individual weighted average dumping margin or an individual countervailing duty rate (as the case may be) for such exporter or producer.

(ii) TIME FOR REVIEW UNDER CLAUSE (i).—The administering authority shall commence a review under clause (i) in the calendar month beginning after—

(I) the end of the 6-month period beginning on the date of the countervailing duty or antidumping duty order under review, or

(II) the end of any 6-month period occurring thereafter,

if the request for the review is made during that 6-month period.

(iii)¹ POSTING BOND OR SECURITY.—The administering authority shall, at the time a review under this subparagraph is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(iv) TIME LIMITS.—The administering authority shall make a preliminary determination in a review conducted under this subparagraph within 180 days after the date on which the review is initiated, and a

¹ Section 1632(a) of Public Law 109–280 (120 Stat. 1165) provides as follows:

(a) SUSPENSION OF THE AVAILABILITY OF BONDS TO NEW SHIPPERS.—Clause (iii) of section 751(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)(iii)) shall not be effective during the period beginning on April 1, 2006, and ending on June 30, 2009.

final determination within 90 days after the date the preliminary determination is issued, except that if the administering authority concludes that the case is extraordinarily complicated, it may extend the 180-day period to 300 days and may extend the 90-day period to 150 days.

(C) RESULTS OF DETERMINATIONS.—The determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(3) TIME LIMITS.—

(A) PRELIMINARY AND FINAL DETERMINATIONS.—The administering authority shall make a preliminary determination under subparagraph (A), (B), or (C) of paragraph (1) within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested, and a final determination under paragraph (1) within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days and may extend that 120-day period to 180 days. The administering authority may extend the time for making a final determination without extending the time for making a preliminary determination, if such final determination is made not later than 300 days after the date on which the preliminary determination is published.

(B) LIQUIDATION OF ENTRIES.—If the administering authority orders any liquidation of entries pursuant to a review under paragraph (1), such liquidation shall be made promptly and, to the greatest extent practicable, within 90 days after the instructions to Customs are issued. In any case in which liquidation has not occurred within that 90-day period, the Secretary of the Treasury shall, upon the request of the affected party, provide an explanation thereof.

(C) EFFECT OF PENDING REVIEW UNDER SECTION 516A.—In a case in which a final determination under paragraph (1) is under review under section 516A and a liquidation of entries covered by the determination is enjoined under section 516A(c)(2) or suspended under section 516A(g)(5)(C), the administering authority shall, within 10 days after the final disposition of the review under section 516A, transmit to the Federal Register for publication the final disposition and issue instructions to the Customs Service with respect to the liquidation of entries pursuant to the review. In such a case, the 90-day period referred to in subparagraph (B) shall begin on the day on which the administering authority issues such instructions.

(4) ABSORPTION OF ANTIDUMPING DUTIES.—During any review under this subsection initiated 2 years or 4 years after

the publication of an antidumping duty order under section 736(a), the administering authority, if requested, shall determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. The administering authority shall notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a review under subsection (c).

(b) **REVIEWS BASED ON CHANGED CIRCUMSTANCES.**—

(1) **IN GENERAL.**—Whenever the administering authority or the Commission receives information concerning, or a request from an interested party for a review of—

(A) a final affirmative determination that resulted in an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or in a countervailing duty order under this title or section 303,

(B) a suspension agreement accepted under section 704 or 734, or

(C) a final affirmative determination resulting from an investigation continued pursuant to section 704(g) or 734(g),

which shows changed circumstances sufficient to warrant a review of such determination or agreement, the administering authority or the Commission (as the case may be) shall conduct a review of the determination or agreement after publishing notice of the review in the Federal Register.

(2) **COMMISSION REVIEW.**—In conducting a review under this subsection, the Commission shall—

(A) in the case of a countervailing duty order or antidumping duty order or finding, determine whether revocation of the order or finding is likely to lead to continuation or recurrence of material injury,

(B) in the case of a determination made pursuant to section 704(h)(2) or 734(h)(2), determine whether the suspension agreement continues to eliminate completely the injurious effects of imports of the subject merchandise, and

(C) in the case of an affirmative determination resulting from an investigation continued under section 704(g) or 734(g), determine whether termination of the suspended investigation is likely to lead to continuation or recurrence of material injury.

(3) **BURDEN OF PERSUASION.**—During a review conducted by the Commission under this subsection—

(A) the party seeking revocation of an order or finding described in paragraph (1)(A) shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such revocation, and

(B) the party seeking termination of a suspended investigation or a suspension agreement shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such termination.

(4) LIMITATION ON PERIOD FOR REVIEW.—In the absence of good cause shown—

(A) the Commission may not review a determination made under section 705(b) or 735(b), or an investigation suspended under section 704 or 734, and

(B) the administering authority may not review a determination made under section 705(a) or 735(a), or an investigation suspended under section 704 or 734, less than 24 months after the date of publication of notice of that determination or suspension.

(c) FIVE-YEAR REVIEW.—

(1) IN GENERAL.—Notwithstanding subsection (b) and except in the case of a transition order defined in paragraph (6), 5 years after the date of publication of—

(A) a countervailing duty order (other than a countervailing duty order to which subparagraph (B) applies or which was issued without an affirmative determination of injury by the Commission under section 303), an antidumping duty order, or a notice of suspension of an investigation, described in subsection (a)(1),

(B) a notice of injury determination under section 753 with respect to a countervailing duty order, or

(C) a determination under this section to continue an order or suspension agreement, the administering authority and the Commission shall conduct a review to determine, in accordance with section 752, whether revocation of the countervailing or antidumping duty order or termination of the investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

(2) NOTICE OF INITIATION OF REVIEW.—Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection and request that interested parties submit—

(A) a statement expressing their willingness to participate in the review by providing information requested by the administering authority and the Commission,

(B) a statement regarding the likely effects of revocation of the order or termination of the suspended investigation, and

(C) such other information or industry data as the administering authority or the Commission may specify.

(3) RESPONSES TO NOTICE OF INITIATION.—

(A) NO RESPONSE.—If no interested party responds to the notice of initiation under this subsection, the administering authority shall issue a final determination, within 90 days after the initiation of a review, revoking the order or terminating the suspended investigation to which such notice relates. For purposes of this paragraph, an interested party means a party described in section 771(9) (C), (D), (E), (F), or (G).

(B) INADEQUATE RESPONSE.—If interested parties provide inadequate responses to a notice of initiation, the administering authority, within 120 days after the initiation of the review, or the Commission, within 150 days after such initiation, may issue, without further investigation, a final determination based on the facts available, in accordance with section 776.

(4) WAIVER OF PARTICIPATION BY CERTAIN INTERESTED PARTIES.—

(A) IN GENERAL.—An interested party described in section 771(9) (A) or (B) may elect not to participate in a review conducted by the administering authority under this subsection and to participate only in the review conducted by the Commission under this subsection.

(B) EFFECT OF WAIVER.—In a review in which an interested party waives its participation pursuant to this paragraph, the administering authority shall conclude that revocation of the order or termination of the investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.

(5) CONDUCT OF REVIEW.—

(A) TIME LIMITS FOR COMPLETION OF REVIEW.—Unless the review has been completed pursuant to paragraph (3) or paragraph (4) applies, the administering authority shall make its final determination pursuant to section 752 (b) or (c) within 240 days after the date on which a review is initiated under this subsection. If the administering authority makes a final affirmative determination, the Commission shall make its final determination pursuant to section 752(a) within 360 days after the date on which a review is initiated under this subsection.

(B) EXTENSION OF TIME LIMIT.—The administering authority or the Commission (as the case may be) may extend the period of time for making their respective determinations under this subsection by not more than 90 days, if the administering authority or the Commission (as the case may be) determines that the review is extraordinarily complicated. In a review in which the administering authority extends the time for making a final determination, but the Commission does not extend the time for making a determination, the Commission's determination shall be made not later than 120 days after the date on which the final determination of the administering authority is published.

(C) EXTRAORDINARILY COMPLICATED.—For purposes of this subsection, the administering authority or the Commission (as the case may be) may treat a review as extraordinarily complicated if—

- (i) there is a large number of issues,
- (ii) the issues to be considered are complex,
- (iii) there is a large number of firms involved,
- (iv) the orders or suspended investigations have been grouped as described in subparagraph (D), or

(v) it is a review of a transition order.

(D) GROUPED REVIEWS.—The Commission, in consultation with the administering authority, may group orders or suspended investigations for review if it considers that such grouping is appropriate and will promote administrative efficiency. Where orders or suspended investigations have been grouped, the Commission shall, subject to subparagraph (B), make its final determination under this subsection not later than 120 days after the date that the administering authority publishes notice of its final determination with respect to the last order or agreement in the group.

(6) SPECIAL TRANSITION RULES.—

(A) SCHEDULE FOR REVIEWS OF TRANSITION ORDERS.—

(i) INITIATION.—The administering authority shall begin its review of transition orders in the 42d calendar month after the date such orders are issued. A review of all transition orders shall be initiated not later than the 5th anniversary after the date such orders are issued.

(ii) COMPLETION.—A review of a transition order shall be completed not later than 18 months after the date such review is initiated. Reviews of all transition orders shall be completed not later than 18 months after the 5th anniversary of the date such orders are issued.

(iii) SUBSEQUENT REVIEWS.—The time limits set forth in clauses (i) and (ii) shall be applied to all subsequent 5-year reviews of transition orders by substituting “date of the determination to continue such orders” for “date such orders are issued”.

(iv) REVOCATION AND TERMINATION.—No transition order may be revoked under this subsection before the date that is 5 years after the date the WTO Agreement enters into force with respect to the United States.

(B) SEQUENCE OF TRANSITION REVIEWS.—The administering authority, in consultation with the Commission, shall determine such sequence of review of transition orders as it deems appropriate to promote administrative efficiency. To the extent practicable, older orders shall be reviewed first.

(C) DEFINITION OF TRANSITION ORDER.—For purposes of this section, the term “transition order” means—

(i) a countervailing duty order under this title or under section 303,

(ii) an antidumping duty order under this title or a finding under the Antidumping Act, 1921, or

(iii) a suspension of an investigation under section 704 or 734,

which is in effect on the date the WTO Agreement enters into force with respect to the United States.

(D) ISSUE DATE FOR TRANSITION ORDERS.—For purposes of this subsection, a transition order shall be treated

as issued on the date the WTO Agreement enters into force with respect to the United States, if such order is based on an investigation conducted by both the administering authority and the Commission.

(7) EXCLUSIONS FROM COMPUTATIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), there shall be excluded from the computation of the 5-year period described in paragraph (1) and the periods described in paragraph (6) any period during which the importation of the subject merchandise is prohibited on account of the imposition, under the International Emergency Economic Powers Act or other provision of law, of sanctions by the United States against the country in which the subject merchandise originates.

(B) APPLICATION OF EXCLUSION.—Subparagraph (A) shall apply only with respect to subject merchandise which originates in a country that is not a WTO member.

(d) REVOCATION OF ORDER OR FINDING; TERMINATION OF SUSPENDED INVESTIGATION.—

(1) IN GENERAL.—The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, after review under subsection (a) or (b). The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States which are specifically intended to offset the countervailable subsidy received.

(2) FIVE-YEAR REVIEWS.—In the case of a review conducted under subsection (c), the administering authority shall revoke a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, unless—

(A) the administering authority makes a determination that dumping or a countervailable subsidy, as the case may be, would be likely to continue or recur, and

(B) the Commission makes a determination that material injury would be likely to continue or recur as described in section 752(a).

(3) APPLICATION OF REVOCATION OR TERMINATION.—A determination under this section to revoke an order or finding or terminate a suspended investigation shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.

(e) HEARINGS.—Whenever the administering authority or the Commission conducts a review under this section, it shall, upon the request of an interested party, hold a hearing in accordance with section 774(b) in connection with that review.

(f) DETERMINATION THAT BASIS FOR SUSPENSION NO LONGER EXISTS.—If the determination of the Commission under subsection (b)(2)(B) is negative, the suspension agreement shall be treated as not accepted, beginning on the date of publication of the Commission's determination, and the administering authority and the

Commission shall proceed, under section 704(i) or 734(i), as if the suspension agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

(g) **REVIEWS TO IMPLEMENT RESULTS OF SUBSIDIES ENFORCEMENT PROCEEDING.**—

(1) **VIOLATIONS OF ARTICLE 8 OF THE SUBSIDIES AGREEMENT.**—If—

(A) the administering authority receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement,

(B) the administering authority has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement, and

(C) no review pursuant to subsection (a)(1) is in progress,

the administering authority shall conduct a review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement. If the administering authority determines that the subject merchandise is benefiting from the subsidy or subsidy program, it shall make appropriate adjustments in the estimated duty to be deposited or appropriate revisions to the terms of the suspension agreement.

(2) **WITHDRAWAL OF SUBSIDY OR IMPOSITION OF COUNTERMEASURES.**—If the Trade Representative notifies the administering authority that, pursuant to Article 4 or Article 7 of the Subsidies Agreement—

(A)(i) the United States has imposed countermeasures, and

(ii) such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order, or

(B) a WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order,

the administering authority shall conduct a review to determine if the amount of the estimated duty to be deposited should be adjusted or the order should be revoked.

(3) **EXPEDITED REVIEW.**—The administering authority shall conduct reviews under this subsection on an expedited basis, and shall publish the results of such reviews in the Federal Register.

(h) **CORRECTION OF MINISTERIAL ERRORS.**—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term “ministerial error” includes errors in addition, subtraction, or other

arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

SEC. 752. [19 U.S.C. 1675a] SPECIAL RULES FOR SECTION 751(b) AND 751(c) REVIEWS.

(a) DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY.—

(1) IN GENERAL.—In a review conducted under section 751 (b) or (c), the Commission shall determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission shall consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated. The Commission shall take into account—

(A) its prior injury determinations, including the volume, price effect, and impact of imports of the subject merchandise on the industry before the order was issued or the suspension agreement was accepted,

(B) whether any improvement in the state of the industry is related to the order or the suspension agreement,

(C) whether the industry is vulnerable to material injury if the order is revoked or the suspension agreement is terminated, and

(D) in an antidumping proceeding under section 751(c), the findings of the administering authority regarding duty absorption under section 751(a)(4).

(2) VOLUME.—In evaluating the likely volume of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether the likely volume of imports of the subject merchandise would be significant if the order is revoked or the suspended investigation is terminated, either in absolute terms or relative to production or consumption in the United States. In so doing, the Commission shall consider all relevant economic factors, including—

(A) any likely increase in production capacity or existing unused production capacity in the exporting country,

(B) existing inventories of the subject merchandise, or likely increases in inventories,

(C) the existence of barriers to the importation of such merchandise into countries other than the United States, and

(D) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.

(3) PRICE.—In evaluating the likely price effects of imports of the subject merchandise if the order is revoked or the suspended investigation is terminated, the Commission shall consider whether—

(A) there is likely to be significant price underselling by imports of the subject merchandise as compared to domestic like products, and

(B) imports of the subject merchandise are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like products.

(4) IMPACT ON THE INDUSTRY.—In evaluating the likely impact of imports of the subject merchandise on the industry if the order is revoked or the suspended investigation is terminated, the Commission shall consider all relevant economic factors which are likely to have a bearing on the state of the industry in the United States, including, but not limited to—

(A) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(B) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and

(C) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.

The Commission shall evaluate all relevant economic factors described in this paragraph within the context of the business cycle and the conditions of competition that are distinctive to the affected industry.

(5) BASIS FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to consider under this subsection shall not necessarily give decisive guidance with respect to the Commission's determination of whether material injury is likely to continue or recur within a reasonably foreseeable time if the order is revoked or the suspended investigation is terminated. In making that determination, the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.

(6) MAGNITUDE OF MARGIN OF DUMPING AND NET COUNTERAVAILABLE SUBSIDY; NATURE OF COUNTERAVAILABLE SUBSIDY.—In making a determination under section 751 (b) or (c), the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy. If a countervailable subsidy is involved the Commission shall consider information regarding the nature of the countervailable subsidy and whether the subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement.

(7) CUMULATION.—For purposes of this subsection, the Commission may cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which reviews under section 751 (b) or (c) were initiated on the same day, if such imports would be likely to compete with each other and with domestic like products in the United States market. The Commission shall not cumulatively assess the volume and effects of imports of the subject mer-

chandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry.

(8) SPECIAL RULE FOR REGIONAL INDUSTRIES.—In a review under section 751 (b) or (c) involving a regional industry, the Commission may base its determination on the regional industry defined in the original investigation under this title, another region that satisfies the criteria established in section 771(4)(C), or the United States as a whole. In determining if a regional industry analysis is appropriate for the determination in the review, the Commission shall consider whether the criteria established in section 771(4)(C) are likely to be satisfied if the order is revoked or the suspended investigation is terminated.

(b) DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF A COUNTERAVAILABLE SUBSIDY.—

(1) IN GENERAL.—In a review conducted under section 751(c), the administering authority shall determine whether revocation of a countervailing duty order or termination of a suspended investigation under section 704 would be likely to lead to continuation or recurrence of a countervailable subsidy. The administering authority shall consider—

(A) the net countervailable subsidy determined in the investigation and subsequent reviews, and

(B) whether any change in the program which gave rise to the net countervailable subsidy described in subparagraph (A) has occurred that is likely to affect that net countervailable subsidy.

(2) CONSIDERATION OF OTHER FACTORS.—If good cause is shown, the administering authority shall also consider—

(A) programs determined to provide countervailable subsidies in other investigations or reviews under this title, but only to the extent that such programs—

(i) can potentially be used by the exporters or producers subject to the review under section 751(c), and

(ii) did not exist at the time that the countervailing duty order was issued or the suspension agreement was accepted, and

(B) programs newly alleged to provide countervailable subsidies but only to the extent that the administering authority makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the review.

NET COUNTERAVAILABLE SUBSIDY.—The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751.

(4) SPECIAL RULE.—

(A) TREATMENT OF ZERO AND DE MINIMIS RATES.—A net countervailable subsidy described in paragraph (1)(A) that is zero or de minimis shall not by itself require the

administering authority to determine that revocation of a countervailing duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of a countervailable subsidy.

(B) APPLICATION OF DE MINIMIS STANDARDS.—For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b)(1) of section 751.

(c) DETERMINATION OF LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING.—

(1) IN GENERAL.—In a review conducted under section 751(c), the administering authority shall determine whether revocation of an antidumping duty order or termination of a suspended investigation under section 734 would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value. The administering authority shall consider—

(A) the weighted average dumping margins determined in the investigation and subsequent reviews, and

(B) the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order or acceptance of the suspension agreement.

(2) CONSIDERATION OF OTHER FACTORS.—If good cause is shown, the administering authority shall also consider such other price, cost, market, or economic factors as it deems relevant.

(3) MAGNITUDE OF THE MARGIN OF DUMPING.—The administering authority shall provide to the Commission the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated. The administering authority shall normally choose a margin that was determined under section 735 or under subsection (a) or (b)(1) of section 751.

(4) SPECIAL RULE.—

(A) TREATMENT OF ZERO OR DE MINIMIS MARGINS.—A dumping margin described in paragraph (1)(A) that is zero or de minimis shall not by itself require the administering authority to determine that revocation of an antidumping duty order or termination of a suspended investigation would not be likely to lead to continuation or recurrence of sales at less than fair value.

(B) APPLICATION OF DE MINIMIS STANDARDS.—For purposes of this paragraph, the administering authority shall apply the de minimis standards applicable to reviews conducted under subsections (a) and (b) of section 751.

SEC. 753. [19 U.S.C. 1675b] SPECIAL RULES FOR INJURY INVESTIGATIONS FOR CERTAIN SECTION 303 OR SECTION 701(c) COUNTERVAILING DUTY ORDERS AND INVESTIGATIONS.

(a) IN GENERAL.—

(1) INVESTIGATION BY THE COMMISSION UPON REQUEST.—In the case of a countervailing duty order described in paragraph (2), which—

(A) applies to merchandise that is the product of a Subsidies Agreement country, and
(B)(i) is in effect on the date on which such country becomes a Subsidies Agreement country, or
(ii) is issued on a date that is after the date described in clause (i) pursuant to a court order in an action brought under section 516A,

the Commission, upon receipt of a request from an interested party described in section 771(9) (C), (D), (E), (F), or (G) for an injury investigation with respect to such order, shall initiate an investigation and shall determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked.

(2) DESCRIPTION OF COUNTERVAILING DUTY ORDERS.—A countervailing duty order described in this paragraph is an order issued under section 303 or section 701(c) with respect to which the requirement of an affirmative determination of material injury was not applicable at the time such order was issued.

(3) REQUIREMENTS OF REQUEST FOR INVESTIGATION.—A request for an investigation under this subsection shall be submitted—

(A) in the case of an order described in paragraph (1)(B)(i), within 6 months after the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), within 6 months after the date the order is issued.

(4) SUSPENSION OF LIQUIDATION.—With respect to entries of subject merchandise made on or after—

(A) in the case of an order described in paragraph (1)(B)(i), the date on which the country described in paragraph (1)(A) becomes a Subsidies Agreement country, or

(B) in the case of an order described in paragraph (1)(B)(ii), the date on which the order is issued,
liquidation shall be suspended at the cash deposit rate in effect on the date described in subparagraph (A) or (B) (whichever is applicable).

(b) INVESTIGATION PROCEDURE AND SCHEDULE.—

(1) COMMISSION PROCEDURE.—

(A) IN GENERAL.—Except as otherwise provided in this section, the provisions of this title regarding evidence in and procedures for investigations conducted under subtitle A shall apply to investigations conducted by the Commission under this section.

(B) TIME FOR COMMISSION DETERMINATION.—Except as otherwise provided in subparagraph (C), the Commission shall issue its determination under subsection (a)(1), to the extent possible, not later than 1 year after the date on which the investigation is initiated under this section.

(C) SPECIAL RULE TO PERMIT ADMINISTRATIVE FLEXIBILITY.—In the case of requests for investigations received under this section within 1 year after the date on which

the WTO Agreement enters into force with respect to the United States, the Commission may, after consulting with the administering authority, initiate its investigations in a manner that results in determinations being made in all such investigations during the 4-year period beginning on such date.

(2) NET COUNTERAVAILABLE SUBSIDY; NATURE OF SUBSIDY.—

(A) NET COUNTERAVAILABLE SUBSIDY.—The administering authority shall provide to the Commission the net countervailable subsidy that is likely to prevail if the order which is the subject of the investigation is revoked. The administering authority normally shall choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751. If the Commission considers the magnitude of the net countervailable subsidy in making its determination under this section, the Commission shall use the net countervailable subsidy provided by the administering authority.

(B) NATURE OF SUBSIDY.—The administering authority shall inform the Commission of, and the Commission, in making its determination under this section, shall consider, the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

(3) EFFECT OF COMMISSION DETERMINATION.—

(A) AFFIRMATIVE DETERMINATION.—Upon being notified by the Commission that it has made an affirmative determination under subsection (a)(1)—

(i) the administering authority shall order the termination of the suspension of liquidation required pursuant to subsection (a)(4), and

(ii) the countervailing duty order shall remain in effect until revoked, in whole or in part, under section 751(d).

For purposes of section 751(c), a countervailing duty order described in this section shall be treated as issued on the date of publication of the Commission's determination under this subsection.

(B) NEGATIVE DETERMINATION.—

(i) IN GENERAL.—Upon being notified by the Commission that it has made a negative determination under subsection (a)(1), the administering authority shall revoke the countervailing duty order, and shall refund, with interest, any estimated countervailing duties collected during the period liquidation was suspended pursuant to subsection (a)(4).

(ii) LIMITATION ON NEGATIVE DETERMINATION.—A determination by the Commission that revocation of the order is not likely to result in material injury to an industry by reason of imports of the subject merchandise shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of the subject merchandise to the United States

that were specifically intended to offset the countervailable subsidy received.

(4) COUNTERVAILING DUTY ORDERS WITH RESPECT TO WHICH NO REQUEST FOR INJURY INVESTIGATION IS MADE.—If, with respect to a countervailing duty order described in subsection (a), a request for an investigation is not made within the time required by subsection (a)(3), the Commission shall notify the administering authority that a negative determination has been made under subsection (a) and the provisions of paragraph (3)(B) shall apply with respect to the order.

(c) PENDING AND SUSPENDED COUNTERVAILING DUTY INVESTIGATIONS.—If, on the date on which a country becomes a Subsidies Agreement country, there is a countervailing duty investigation in progress or suspended under section 303 or section 701(c) that applies to merchandise which is a product of that country and with respect to which the requirement of an affirmative determination of material injury was not applicable at the time the investigation was initiated, the Commission shall—

(1) in the case of an investigation in progress, make a final determination under section 705(b) within 75 days after the date of an affirmative final determination, if any, by the administering authority,

(2) in the case of a suspended investigation to which section 704(i)(1)(B) applies, make a final determination under section 705(b) within 120 days after receiving notice from the administering authority of the resumption of the investigation pursuant to section 704(i), or within 45 days after the date of an affirmative final determination, if any, by the administering authority, whichever is later, or

(3) in the case of a suspended investigation to which section 704(i)(1)(C) applies, treat the countervailing duty order issued pursuant to such section as if it were—

(A) an order issued under subsection (a)(1)(B)(ii) for purposes of subsection (a)(3); and

(B) an order issued under subsection (a)(1)(B)(i) for purposes of subsection (a)(4).

(d) PUBLICATION IN FEDERAL REGISTER.—The administering authority or the Commission, as the case may be, shall publish in the Federal Register a notice of the initiation of any investigation, and a notice of any determination or revocation, made pursuant to this section.

(e) REQUEST FOR SIMULTANEOUS EXPEDITED REVIEW UNDER SECTION 751(c).—

(1) GENERAL RULE.—

(A) REQUESTS FOR REVIEWS.—Notwithstanding section 751(c)(6)(A) and except as provided in subparagraph (B), an interested party may request a review of an order under section 751(c) at the same time the party requests an investigation under subsection (a), if the order involves the same or comparable subject merchandise. Upon receipt of such request, the administering authority, after consulting with the Commission, shall initiate a review of the order under section 751(c). The Commission shall combine such review with the investigation under this section.

(B) EXCEPTION.—If the administering authority determines that the interested party who requested an investigation under this section is a related party or an importer within the meaning of section 771(4)(B), the administering authority may decline a request by such party to initiate a review of an order under section 751(c) which involves the same or comparable subject merchandise.

(2) CUMULATION.—If a review under section 751(c) is initiated under paragraph (1), such review shall be treated as having been initiated on the same day as the investigation under this section, and the Commission may, in accordance with section 771(7)(G), cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which such investigations are treated as initiated on the same day.

(3) TIME AND PROCEDURE FOR COMMISSION DETERMINATION.—The Commission shall render its determination in the investigation conducted under this section at the same time as the Commission's determination is made in the review under section 751(c) that is initiated pursuant to this subsection. The Commission shall in all other respects apply the procedures and standards set forth in section 751(c) to such section 751(c) reviews.

CHAPTER 2—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

SEC. 761. [19 U.S.C. 1676] REQUIRED CONSULTATIONS.

(a) AGREEMENTS IN RESPONSE TO COUNTERAVAILABLE SUBSIDIES.—Within 90 days after the administering authority accepts a quantitative restriction agreement under section 704(a)(2) or (c)(3), the President shall enter into consultations with the government that is party to the agreement for purposes of—

- (1) eliminating the countervailable subsidy completely, or
- (2) reducing the net countervailable subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) MODIFICATION OF AGREEMENTS ON BASIS OF CONSULTATIONS.—At the direction of the President, the administering authority shall modify a quantitative restriction agreement as a result of consultations entered into under subsection (a).

(c) SPECIAL RULE REGARDING AGREEMENTS UNDER SECTION 704(c)(3).—This chapter shall cease to apply to a quantitative restriction agreement described in section 704(c)(3) at such time as that agreement ceases to have force and effect under section 704(f) or violation is found under section 704(i).

SEC. 762. [19 U.S.C. 1676a] REQUIRED DETERMINATIONS.

(a) IN GENERAL.—Before the expiration date, if any, of a quantitative restriction agreement accepted under section 704(a)(2) or 704(c)(3) (if suspension of the related investigation is still in effect)—

- (1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any

countervailable subsidy is being provided with respect to the subject merchandise and, if being so provided, the net countervailable subsidy; and

(2) if the administering authority initiates a proceeding under paragraph (1), the Commission shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the United States or materially retard the establishment of such an industry.

(b) DETERMINATIONS.—The determinations required to be made by the administering authority and the Commission under subsection (a) shall be made under such procedures as the administering authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 705 for purposes of judicial review under section 516A. If the determinations by each are affirmative, the administering authority shall—

(1) issue a countervailing duty order under section 706 effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(2) order the suspension of liquidation of all entries of subject merchandise which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(c) HEARINGS.—The determination proceedings required to be prescribed under subsection (b) shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 774 on the issues involved.

Subtitle D—General Provisions

SEC. 771. [19 U.S.C. 1677] DEFINITIONS; SPECIAL RULES.

For purposes of this title—

(1) ADMINISTERING AUTHORITY.—The term “administering authority” means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

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

(3) COUNTRY.—The term “country” means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of anti-dumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) INDUSTRY.—

(A) IN GENERAL.—The term “industry” means the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product

constitutes a major proportion of the total domestic production of the product.

(B) RELATED PARTIES.—

(i) If a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be excluded from the industry.

(ii) For purposes of clause (i), a producer and an exporter or importer shall be considered to be related parties, if—

(I) the producer directly or indirectly controls the exporter or importer,

(II) the exporter or importer directly or indirectly controls the producer,

(III) a third party directly or indirectly controls the producer and the exporter or importer, or

(IV) the producer and the exporter or importer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

(C) REGIONAL INDUSTRIES.—In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—

(i) the producers within such market sell all or almost all of their production of the domestic like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefiting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefiting from a countervailable subsidy.

The term "regional industry" means the domestic producers within a region who are treated as a separate industry under this subparagraph.

(D) **PRODUCT LINES.**—The effect of dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed in relation to the United States production of a domestic like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the domestic like product has no separate identity in terms of such criteria, then the effect of the dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed by the examination of the production of the narrowest group or range of products, which includes a domestic like product, for which the necessary information can be provided.

(E) **INDUSTRY PRODUCING PROCESSED AGRICULTURAL PRODUCTS.**—

(i) **IN GENERAL.**—Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if—

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) **PROCESSING.**—For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if—

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) **RELEVANT ECONOMIC FACTORS.**—For purposes of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall—

(I) if price is taken into account, consider the degree of correlation between the price of the raw

agricultural product and the price of the processed agricultural product; and

(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) RAW AGRICULTURAL PRODUCT.—For purposes of this subparagraph, the term “raw agricultural product” means any farm or fishery product.

(v) TERMINATION OF THIS SUBPARAGRAPH.—This subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(5) COUNTERAVAILABLE SUBSIDY.—

(A) IN GENERAL.—Except as provided in paragraph (5B), a countervailable subsidy is a subsidy described in this paragraph which is specific as described in paragraph (5A).

(B) SUBSIDY DESCRIBED.—A subsidy is described in this paragraph in the case in which an authority—

(i) provides a financial contribution,

(ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or

(iii) makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments,

to a person and a benefit is thereby conferred. For purposes of this paragraph and paragraphs (5A) and (5B), the term “authority” means a government of a country or any public entity within the territory of the country.

(C) OTHER FACTORS.—The determination of whether a subsidy exists shall be made without regard to whether the recipient of the subsidy is publicly or privately owned and without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise. The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph.

(D) FINANCIAL CONTRIBUTION.—The term “financial contribution” means—

(i) the direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees,

(ii) foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income,

(iii) providing goods or services, other than general infrastructure, or

(iv) purchasing goods.

(E) BENEFIT CONFERRED.—A benefit shall normally be treated as conferred where there is a benefit to the recipient, including—

(i) in the case of an equity infusion, if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made,

(ii) in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,

(iii) in the case of a loan guarantee, if there is a difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority, and

(iv) in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration, and in the case where goods are purchased, if such goods are purchased for more than adequate remuneration.

For purposes of clause (iv), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

(F) CHANGE IN OWNERSHIP.—A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

(5A) SPECIFICITY.—

(A) IN GENERAL.—A subsidy is specific if it is an export subsidy described in subparagraph (B) or an import substitution subsidy described in subparagraph (C), or if it is determined to be specific pursuant to subparagraph (D).

(B) EXPORT SUBSIDY.—An export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.

(C) **IMPORT SUBSTITUTION SUBSIDY.**—An import substitution subsidy is a subsidy that is contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions.

(D) **DOMESTIC SUBSIDY.**—In determining whether a subsidy (other than a subsidy described in subparagraph (B) or (C)) is a specific subsidy, in law or in fact, to an enterprise or industry within the jurisdiction of the authority providing the subsidy, the following guidelines shall apply:

(i) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law.

(ii) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if—

(I) eligibility is automatic,

(II) the criteria or conditions for eligibility are strictly followed, and

(III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.

For purposes of this clause, the term “objective criteria or conditions” means criteria or conditions that are neutral and that do not favor one enterprise or industry over another.

(iii) Where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In evaluating the factors set forth in subclauses (I), (II), (III), and (IV), the administering authority shall take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has been in operation.

(iv) Where a subsidy is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy, the subsidy is specific.

For purposes of this paragraph and paragraph (5B), any reference to an enterprise or industry is a reference to a foreign enterprise or foreign industry and includes a group of such enterprises or industries.

(5B) CATEGORIES OF NONCOUNTERAVAILABLE SUBSIDIES.—

(A) IN GENERAL.—Notwithstanding the provisions of paragraphs (5) and (5A), in the case of merchandise imported from a Subsidies Agreement country, a subsidy shall be treated as noncountervailable if the administering authority determines in an investigation under subtitle A or a review under subtitle C that the subsidy meets all of the criteria described in subparagraph (B), (C), or (D), as the case may be, or the provisions of subparagraph (E)(i) apply.

(B) RESEARCH SUBSIDY.—

(i) IN GENERAL.—Except for a subsidy provided on the manufacture, production, or export of civil aircraft, a subsidy for research activities conducted by a person, or by a higher education or research establishment on a contract basis with a person, shall be treated as noncountervailable, if the subsidy covers not more than 75 percent of the costs of industrial research or not more than 50 percent of the costs of precompetitive development activity, and such subsidy is limited exclusively to—

(I) the costs of researchers, technicians, and other supporting staff employed exclusively in the research activity,

(II) the costs of instruments, equipment, land, or buildings that are used exclusively and permanently (except when disposed of on a commercial basis) for the research activity,

(III) the costs of consultancy and equivalent services used exclusively for the research activity, including costs for bought-in research, technical knowledge, and patents,

(IV) additional overhead costs incurred directly as a result of the research activity, and

(V) other operating costs (such as materials and supplies) incurred directly as a result of the research activity.

(ii) DEFINITIONS.—For purposes of this subparagraph—

(I) INDUSTRIAL RESEARCH.—The term “industrial research” means planned search or critical investigation aimed at the discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes, or services, or in bringing about a significant improvement to existing products, processes, or services.

(II) PRECOMPETITIVE DEVELOPMENT ACTIVITY.—The term “precompetitive development activity” means the translation of industrial research

findings into a plan, blueprint, or design for new, modified, or improved products, processes, or services, whether intended for sale or use, including the creation of a first prototype that would not be capable of commercial use. The term also may include the conceptual formulation and design of products, processes, or services alternatives and initial demonstration or pilot projects, if these same projects cannot be converted or used for industrial application or commercial exploitation. The term does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, or other ongoing operations even if those alterations may represent improvements.

(iii) CALCULATION RULES.—

(I) IN GENERAL.—In the case of a research activity that spans both industrial research and precompetitive development activity, the allowable level of the noncountervailable subsidy shall not exceed 62.5 percent of the costs set forth in subclauses (I), (II), (III), (IV), and (V) of clause (i).

(II) TOTAL ELIGIBLE COSTS.—The allowable level of a noncountervailable subsidy described in clause (i) shall be based on the total eligible costs incurred over the duration of a particular project.

(C) SUBSIDY TO DISADVANTAGED REGIONS.—

(i) IN GENERAL.—A subsidy provided, pursuant to a general framework of regional development, to a person located in a disadvantaged region within a country shall be treated as noncountervailable, if it is not specific (within the meaning of paragraph (5A)) within eligible regions and if the following conditions are met:

(I) Each region identified as disadvantaged within the territory of a country is a clearly designated, contiguous geographical area with a definable economic and administrative identity.

(II) Each region is considered a disadvantaged region on the basis of neutral and objective criteria indicating that the region is disadvantaged because of more than temporary circumstances, and such criteria are clearly stated in the relevant statute, regulation, or other official document so as to be capable of verification.

(III) The criteria described in subclause (II) include a measurement of economic development.

(IV) Programs provided within a general framework of regional development include ceilings on the amount of assistance that can be granted to a subsidized project. Such ceilings are differentiated according to the different levels of development of assisted regions, and are expressed in terms of investment costs or costs of job creation. Within such ceilings, the distribution of

assistance is sufficiently broad and even to avoid the predominant use of a subsidy by, or the provision of disproportionately large amounts of a subsidy to, an enterprise or industry as described in paragraph (5A)(D).

(ii) MEASUREMENT OF ECONOMIC DEVELOPMENT.—

For purposes of clause (i), the measurement of economic development shall be based on one or more of the following factors:

(I) Per capita income, household per capita income, or per capita gross domestic product that does not exceed 85 percent of the average for the country subject to investigation or review.

(II) An unemployment rate that is at least 110 percent of the average unemployment rate for the country subject to investigation or review.

The measurement of economic development shall cover a 3-year period, but may be a composite measurement and may include factors other than those set forth in this clause.

(iii) DEFINITIONS.—For purposes of this subparagraph—

(I) GENERAL FRAMEWORK OF REGIONAL DEVELOPMENT.—The term “general framework of regional development” means that the regional subsidy programs are part of an internally consistent and generally applicable regional development policy, and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

(II) NEUTRAL AND OBJECTIVE CRITERIA.—The term “neutral and objective criteria” means criteria that do not favor certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy.

(D) SUBSIDY FOR ADAPTATION OF EXISTING FACILITIES TO NEW ENVIRONMENTAL REQUIREMENTS.—

(i) IN GENERAL.—A subsidy that is provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation, and that result in greater constraints and financial burdens on the recipient of the subsidy, shall be treated as noncountervailable, if the subsidy—

(I) is a one-time nonrecurring measure,
(II) is limited to 20 percent of the cost of adaptation,

(III) does not cover the cost of replacing and operating the subsidized investment, a cost that must be fully borne by the recipient,

(IV) is directly linked and proportionate to the recipient's planned reduction of nuisances and pol-

lution, and does not cover any manufacturing cost savings that may be achieved, and

(V) is available to all persons that can adopt the new equipment or production processes.

(ii) EXISTING FACILITIES.—For purposes of this subparagraph, the term “existing facilities” means facilities that have been in operation for at least 2 years before the date on which the new environmental requirements are imposed.

(E) NOTIFIED SUBSIDY PROGRAM.—

(i) GENERAL RULE.—If a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement, the subsidy shall be treated as noncountervailable and shall not be subject to investigation or review under this title.

(ii) EXCEPTION.—Notwithstanding clause (i), a subsidy shall be treated as countervailable if—

(I) the Trade Representative notifies the administering authority that a determination has been made pursuant to Article 8.4 or 8.5 of the Subsidies Agreement that the subsidy, or the program pursuant to which the subsidy was provided, does not satisfy the conditions and criteria of Article 8.2 of the Subsidies Agreement; and

(II) the subsidy is specific within the meaning of paragraph (5A).

(F) CERTAIN SUBSIDIES ON AGRICULTURAL PRODUCTS.—Domestic support measures that are provided with respect to products listed in Annex 1 to the Agreement on Agriculture, and that the administering authority determines conform fully to the provisions of Annex 2 to that Agreement, shall be treated as noncountervailable. Upon request by the administering authority, the Trade Representative shall provide advice regarding the interpretation and application of Annex 2.

(G) PROVISIONAL APPLICATION.—

(i) Subparagraphs (B), (C), (D), and (E) shall not apply on or after the first day of the month that is 66 months after the WTO Agreement enters into force, unless the provisions of such subparagraphs are extended pursuant to section 282(c) of the Uruguay Round Agreements Act.

(ii) Subparagraph (F) shall not apply to imports from a WTO member country at the end of the 9-year period beginning on January 1, 1995. The Trade Representative shall determine the precise termination date for each WTO member country in accordance with paragraph (i) of Article 1 of the Agreement on Agriculture and such date shall be notified to the administering authority.

(6) NET COUNTERAVAILABLE SUBSIDY.—For the purpose of determining the net countervailable subsidy, the administering

authority may subtract from the gross countervailable subsidy the amount of—

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

(7) MATERIAL INJURY.—

(A) IN GENERAL.—The term “material injury” means harm which is not inconsequential, immaterial, or unimportant.

(B) VOLUME AND CONSEQUENT IMPACT.—In making determinations under sections 703(a), 705(b), 733(a), and 735(b), the Commission in each case—

(i) shall consider—

(I) the volume of imports of the subject merchandise,

(II) the effect of imports of that merchandise on prices in the United States for like products¹, and

(III) the impact of imports of such merchandise on domestic producers of like products¹, but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 705(d) or 735(d), as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

(i) VOLUME.—In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) PRICE.—In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether—

(I) there has been significant price underselling by the imported merchandise as compared with the price of like products¹ of the United States, and

¹Section 233(a)(3)(B) of P.L. 103-465 amends this subclause by striking “like product” and inserting “domestic like product”. The phrase “like product” does not appear.

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) **IMPACT ON AFFECTED DOMESTIC INDUSTRY.**—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment,

(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(V) in a proceeding under subtitle B, the magnitude of the margin of dumping.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

(iv) **CAPTIVE PRODUCTION.**—If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that—

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,

(II) the domestic like product is the predominant material input in the production of that downstream article, and

(III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article, then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

(D) **SPECIAL RULES FOR AGRICULTURAL PRODUCTS.**—

(i) The Commission shall not determine that there is no material injury or threat of material injury to the United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) SPECIAL RULES.—For purposes of this paragraph—

(i) NATURE OF COUNTERAVAILABLE SUBSIDY.—In determining whether there is a threat of material injury, the Commission shall consider information provided to it by the administering authority regarding the nature of the countervailable subsidy granted by a foreign country (particularly whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and the effects likely to be caused by the countervailable subsidy.

(ii) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(F) THREAT OF MATERIAL INJURY.—

(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors—

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

(ii) BASIS FOR DETERMINATION.—The Commission shall consider the factors set forth in clause (i) as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

(iii) EFFECT OF DUMPING IN THIRD-COUNTRY MARKETS.—

(I) IN GENERAL.—In investigations under subtitle B, the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue.

(II) WTO MEMBER MARKET.—For purposes of this clause, the term “WTO member market” means the market of any country which is a WTO member.

(III) EUROPEAN COMMUNITIES.—For purposes of this clause, the European Communities shall be treated as a foreign country.

(G) CUMULATION FOR DETERMINING MATERIAL INJURY.—

(i) IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii), the Commission shall cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which—

(I) petitions were filed under section 702(b) or 732(b) on the same day,

(II) investigations were initiated under section 702(a) or 732(a) on the same day, or

(III) petitions were filed under section 702(b) or 732(b) and investigations were initiated under section 702(a) or 732(a) on the same day, if such imports compete with each other and with domestic like products in the United States market.

(ii) EXCEPTIONS.—The Commission shall not cumulatively assess the volume and effect of imports under clause (i)—

(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those imports before the Commission's final determination is made;

(II) from any country with respect to which the investigation has been terminated;

(III) from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) for purposes of making a determination with respect to that country, except that the volume and effect of imports of the subject merchandise from such country may be cumulatively assessed with imports of the subject merchandise from any other country designated as such a beneficiary country to the extent permitted by clause (i); or

(IV) from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.

(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the volume and effect of imports under clause (i), the Commission shall make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the signifi-

cance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

(iv) REGIONAL INDUSTRY DETERMINATIONS.—In an investigation which involves a regional industry, and in which the Commission decides that the volume and effect of imports should be cumulatively assessed under this subparagraph, such assessment shall be based upon the volume and effect of imports into the region or regions determined by the Commission. The provisions of clause (iii) shall apply to such investigations.

(H) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (G)(ii), for purposes of clause (i)(III) and (IV) of subparagraph (F), the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which—

(i) petitions were filed under section 702(b) or 732(b) on the same day,

(ii) investigations were initiated under section 702(a) or 732(a) on the same day, or

(iii) petitions were filed under section 702(b) or 732(b) and investigations were initiated under section 702(a) or 732(a) on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(I) CONSIDERATION OF POST-PETITION INFORMATION.—The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation under subtitle A or B is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

(8) SUBSIDIES AGREEMENT; AGREEMENT ON AGRICULTURE.—

(A) SUBSIDIES AGREEMENT.—The term "Subsidies Agreement" means the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act.

(B) AGREEMENT ON AGRICULTURE.—The term "Agreement on Agriculture" means the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act.

(9) INTERESTED PARTY.—The term "interested party" means—

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product, and

(G) in any investigation under this title involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either—

(i) processors,

(ii) processors and producers, or

(iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(10) DOMESTIC LIKE PRODUCT.—The term “domestic like product” means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

(11) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission, including a determination under section 751, are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is—

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

(12) ATTRIBUTION OF MERCHANDISE TO COUNTRY OF MANUFACTURE OR PRODUCTION.—For purposes of subtitle A, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to whether it is imported in the same condition as when

exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) [Repealed.]

(14) SOLD OR, IN THE ABSENCE OF SALES, OFFERED FOR SALE.—The term “sold or, in the absence of sales, offered for sale” means sold or, in the absence of sales, offered—

(A) to all purchasers in commercial quantities, or

(B) in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise, without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(15) ORDINARY COURSE OF TRADE.—The term “ordinary course of trade” means the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(A) Sales disregarded under section 773(b)(1).

(B) Transactions disregarded under section 773(f)(2).

(16) FOREIGN LIKE PRODUCT.—The term “foreign like product” means merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made:

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the subject merchandise,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise—

(i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of the investigation,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) USUAL COMMERCIAL QUANTITIES.—The term “usual commercial quantities”, in any case in which the subject merchandise is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the ag-

gregate volume sold at the price or prices for any other quantity.

(18) NONMARKET ECONOMY COUNTRY.—

(A) IN GENERAL.—The term “nonmarket economy country” means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries;

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

(C) DETERMINATION IN EFFECT.—

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

(D) DETERMINATIONS NOT IN ISSUE.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle B.

(E) COLLECTION OF INFORMATION.—Upon request by the administering authority, the Commissioner of Customs shall provide the administering authority a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of Customs that the administering authority considers relevant to proceedings involving merchandise from nonmarket economy countries. The administering authority shall protect proprietary information obtained under this section from public disclosure in accordance with section 777.

(19) EQUIVALENCY OF LEASES TO SALES.—In determining whether a lease is equivalent to a sale for purposes of this title, the administering authority shall consider—

(A) the terms of the lease,

- (B) commercial practice within the industry,
- (C) the circumstances of the transaction,
- (D) whether the product subject to the lease is integrated into the operations of the lessee or importer,
- (E) whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and
- (F) other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

(20) APPLICATION TO GOVERNMENTAL IMPORTATIONS.—

(A) IN GENERAL.—Except as otherwise provided by this paragraph, merchandise imported by, or for the use of, a department or agency of the United States Government (including merchandise provided for under chapter 98 of the Harmonized Tariff Schedule of the United States) is subject to the imposition of countervailing duties or antidumping duties under this title or section 303.

(B) EXCEPTIONS.—Merchandise imported by, or for the use of, the Department of Defense shall not be subject to the imposition of countervailing or antidumping duties under this title if—

(i) the merchandise is acquired by, or for use of, such Department—

(I) from a country with which such Department had a Memorandum of Understanding which was in effect on January 1, 1988, and has continued to have a comparable agreement (including renewals) or superseding agreements, and

(II) in accordance with terms of the Memorandum of Understanding in effect at the time of importation, or

(ii) the merchandise has no substantial non-military use.

(21) UNITED STATES-CANADA AGREEMENT.—The term “United States-Canada Agreement” means the United States-Canada Free-Trade Agreement.

(22) NAFTA.—The term “NAFTA” means the North American Free Trade Agreement.

(23) ENTRY.—The term “entry” includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in section 401(s), that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this title, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

(24) NEGLIGIBLE IMPORTS.—

(A) IN GENERAL.—

(i) LESS THAN 3 PERCENT.—Except as provided in clauses (ii) and (iv), imports from a country of merchandise corresponding to a domestic like product identified by the Commission are “negligible” if such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes—

(I) the filing of the petition under section 702(b) or 732(b), or

(II) the initiation of the investigation, if the investigation was initiated under section 702(a) or 732(a).

(ii) EXCEPTION.—Imports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period.

(iii) DETERMINATION OF AGGREGATE VOLUME.—In determining aggregate volume under clause (ii) or (iv), the Commission shall not consider imports from any country specified in paragraph (7)(G)(ii).

(iv) NEGLIGIBILITY IN THREAT ANALYSIS.—Notwithstanding clauses (i) and (ii), the Commission shall not treat imports as negligible if it determines that there is a potential that imports from a country described in clause (i) will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volumes of imports from all countries described in clause (ii) will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. The Commission shall consider such imports only for purposes of determining threat of material injury.

(B) NEGLIGIBILITY FOR CERTAIN COUNTRIES IN COUNTERVAILING DUTY INVESTIGATIONS.—In the case of an investigation under section 701, subparagraph (A) shall be applied to imports of subject merchandise from developing countries by substituting “4 percent” for “3 percent” in subparagraph (A)(i) and by substituting “9 percent” for “7 percent” in subparagraph (A)(ii).

(C) COMPUTATION OF IMPORT VOLUMES.—In computing import volumes for purposes of subparagraphs (A) and (B), the Commission may make reasonable estimates on the basis of available statistics.

(D) REGIONAL INDUSTRIES.—In an investigation in which the Commission makes a regional industry determination under paragraph (4)(C), the Commission’s examination under subparagraphs (A) and (B) shall be based upon the volume of subject merchandise exported for sale

in the regional market in lieu of the volume of all subject merchandise imported into the United States.

(25) SUBJECT MERCHANDISE.—The term “subject merchandise” means the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this title or section 303, or a finding under the Antidumping Act, 1921.

(26) SECTION 303.—The terms “section 303” and “303” mean section 303 of this Act as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act.

(27) SUSPENSION AGREEMENT.—The term “suspension agreement” means an agreement described in section 704(b), 704(c), 734(b), 734(c), or 734(l).

(28) EXPORTER OR PRODUCER.—The term “exporter or producer” means the exporter of the subject merchandise, the producer of the subject merchandise, or both where appropriate. For purposes of section 773, the term “exporter or producer” includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.

(29) WTO AGREEMENT.—The term “WTO Agreement” means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

(30) WTO MEMBER AND WTO MEMBER COUNTRY.—The terms “WTO member” and “WTO member country” mean a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

(31) GATT 1994.—The term “GATT 1994” means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

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

(33) AFFILIATED PERSONS.—The following persons shall be considered to be “affiliated” or “affiliated persons”:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

(34) DUMPED; DUMPING.—The terms “dumped” and “dumping” refer to the sale or likely sale of goods at less than fair value.

(35) DUMPING MARGIN; WEIGHTED AVERAGE DUMPING MARGIN.—

(A) DUMPING MARGIN.—The term “dumping margin” means the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.

(B) WEIGHTED AVERAGE DUMPING MARGIN.—The term “weighted average dumping margin” is the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.

(C) MAGNITUDE OF THE MARGIN OF DUMPING.—The magnitude of the margin of dumping used by the Commission shall be—

(i) in making a preliminary determination under section 733(a) in an investigation (including any investigation in which the Commission cumulatively assesses the volume and effect of imports under paragraph (7)(G)(i)), the dumping margin or margins published by the administering authority in its notice of initiation of the investigation;

(ii) in making a final determination under section 735(b), the dumping margin or margins most recently published by the administering authority prior to the closing of the Commission’s administrative record;

(iii) in a review under section 751(b)(2), the most recent dumping margin or margins determined by the administering authority under section 752(c)(3), if any, or under section 733(b) or 735(a); and

(iv) in a review under section 751(c), the dumping margin or margins determined by the administering authority under section 752(c)(3).

(36) DEVELOPING AND LEAST DEVELOPED COUNTRY.—

(A) DEVELOPING COUNTRY.—The term “developing country” means a country designated as a developing country by the Trade Representative.

(B) LEAST DEVELOPED COUNTRY.—The term “least developed country” means a country which the Trade Representative determines is—

(i) a country referred to as a least developed country within the meaning of paragraph (a) of Annex VII to the Subsidies Agreement, or

(ii) any other country listed in Annex VII to the Subsidies Agreement, but only if the country has a per capita gross national product of less than \$1,000 per

annum as measured by the most recent data available from the World Bank.

(C) PUBLICATION OF LIST.—The Trade Representative shall publish in the Federal Register, and update as necessary, a list of—

(i) developing countries that have eliminated their export subsidies on an expedited basis within the meaning of Article 27.11 of the Subsidies Agreement, and

(ii) countries determined by the Trade Representative to be least developed or developing countries.

(D) FACTORS TO CONSIDER.—In determining whether a country is a developing country under subparagraph (A), the Trade Representative shall consider such economic, trade, and other factors which the Trade Representative considers appropriate, including the level of economic development of such country (the assessment of which shall include a review of the country's per capita gross national product) and the country's share of world trade.

(E) LIMITATION ON DESIGNATION.—A determination that a country is a developing or least developed country pursuant to this paragraph shall be for purposes of this title only and shall not affect the determination of a country's status as a developing or least developed country with respect to any other law.

SEC. 771A. [19 U.S.C. 1677-1] UPSTREAM SUBSIDIES.

(a) DEFINITION.—The term “upstream subsidy” means any countervailable subsidy, other than an export subsidy, that—

(1) is paid or bestowed by an authority (as defined in section 771(5)) with respect to a product (hereafter in this section referred to as an “input product”) that is used in the same country as the authority in the manufacture or production of merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the countervailable subsidy is provided by the customs union.

(b) DETERMINATION OF COMPETITIVE BENEFIT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(2) ADJUSTMENTS.—If the administering authority has determined in a previous proceeding that a countervailable subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the countervailable subsidy, or (B) select in lieu of that price a price from another source.

(c) INCLUSION OF AMOUNT OF SUBSIDY¹.—If the administering authority decides, during the course of a countervailing duty proceeding that an upstream countervailable subsidy is being or has been paid or bestowed regarding the subject merchandise, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B), except that in no event shall the amount be greater than the amount of the countervailable subsidy determined with respect to the upstream product.

SEC. 771B. [19 U.S.C. 1677-2] CALCULATION OF COUNTERAVAILABLE SUBSIDIES ON CERTAIN PROCESSED AGRICULTURAL PRODUCTS.

In the case of an agricultural product processed from a raw agricultural product in which—

(1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and

(2) the processing operation adds only limited value to the raw commodity,

countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

SEC. 772. [19 U.S.C. 1677a] EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.

(a) EXPORT PRICE.—The term “export price” means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

(b) CONSTRUCTED EXPORT PRICE.—The term “constructed export price” means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

(c) ADJUSTMENTS FOR EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.—The price used to establish export price and constructed export price shall be—

¹Section 270(a)(2)(B) of P.L. 103-465 amended “section 771(A)(c)” in the heading by striking “Subsidy” and inserting “Countervailable Subsidy”. The instructions probably should have amended “section 771A(c)” by striking “SUBSIDY” and inserting “COUNTERAVAILABLE SUBSIDY”.

- (1) increased by—
- (A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States,
- (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and
- (C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy, and
- (2) reduced by—
- (A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and
- (B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).
- (d) **ADDITIONAL ADJUSTMENTS TO CONSTRUCTED EXPORT PRICE.**—For purposes of this section, the price used to establish constructed export price shall also be reduced by—
- (1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—
- (A) commissions for selling the subject merchandise in the United States;
- (B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;
- (C) any selling expenses that the seller pays on behalf of the purchaser; and
- (D) any selling expenses not deducted under subparagraph (A), (B), or (C);
- (2) the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e); and
- (3) the profit allocated to the expenses described in paragraphs (1) and (2).
- (e) **SPECIAL RULE FOR MERCHANDISE WITH VALUE ADDED AFTER IMPORTATION.**—Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using one of the following prices if there is

a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person.

(2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis.

(f) SPECIAL RULE FOR DETERMINING PROFIT.—

(1) IN GENERAL.—For purposes of subsection (d)(3), profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.

(2) DEFINITIONS.—For purposes of this subsection:

(A) APPLICABLE PERCENTAGE.—The term “applicable percentage” means the percentage determined by dividing the total United States expenses by the total expenses.

(B) TOTAL UNITED STATES EXPENSES.—The term “total United States expenses” means the total expenses described in subsection (d) (1) and (2).

(C) TOTAL EXPENSES.—The term “total expenses” means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

(i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.

(iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

(D) TOTAL ACTUAL PROFIT.—The term “total actual profit” means the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph.

SEC. 773. [19 U.S.C. 1677b] NORMAL VALUE.

(a) DETERMINATION.—In determining under this title whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export

price or constructed export price and normal value. In order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as follows:

(1) DETERMINATION OF NORMAL VALUE.—

(A) IN GENERAL.—The normal value of the subject merchandise shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price under section 772(a) or (b).

(B) PRICE.—The price referred to in subparagraph (A) is—

(i) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, or

(ii) in a case to which subparagraph (C) applies, the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if—

(I) such price is representative,

(II) the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and

(III) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price.

(C) THIRD COUNTRY SALES.—This subparagraph applies when—

(i) the foreign like product is not sold (or offered for sale) for consumption in the exporting country as described in subparagraph (B)(i),

(ii) the administering authority determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States, or

(iii) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price.

For purposes of clause (ii), the aggregate quantity (or value) of the foreign like product sold in the exporting country shall normally be considered to be insufficient if such quantity (or value) is less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

(2) FICTITIOUS MARKETS.—No pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount by which the normal value exceeds the export price (or the constructed export price) of the subject merchandise.

(3) EXPORTATION FROM AN INTERMEDIATE COUNTRY.—Where the subject merchandise is exported to the United States from an intermediate country, normal value shall be determined in the intermediate country, except that normal value may be determined in the country of origin of the subject merchandise if—

(A) the producer knew at the time of the sale that the subject merchandise was destined for exportation;

(B) the subject merchandise is merely transshipped through the intermediate country;

(C) sales of the foreign like product in the intermediate country do not satisfy the conditions of paragraph (1)(C); or

(D) the foreign like product is not produced in the intermediate country.

(4) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph (1)(B)(i), then, notwithstanding paragraph (1)(B)(ii), the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(5) INDIRECT SALES OR OFFERS FOR SALE.—If the foreign like product is sold or, in the absence of sales, offered for sale through an affiliated party, the prices at which the foreign like product is sold (or offered for sale) by such affiliated party may be used in determining normal value.

(6) ADJUSTMENTS.—The price described in paragraph (1)(B) shall be—

(A) increased by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States;

(B) reduced by—

(i) when included in the price described in paragraph (1)(B), the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser,

(ii) the amount, if any, included in the price described in paragraph (1)(B), attributable to any additional costs, charges, and expenses incident to bring-

ing the foreign like product from the original place of shipment to the place of delivery to the purchaser, and

(iii) the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product, and

(C) increased or decreased by the amount of any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

(i) the fact that the quantities in which the subject merchandise is sold or agreed to be sold to the United States are greater than or less than the quantities in which the foreign like product is sold, agreed to be sold, or offered for sale,

(ii) the fact that merchandise described in subparagraph (B) or (C) of section 771(16) is used in determining normal value, or

(iii) other differences in the circumstances of sale.

(7) ADDITIONAL ADJUSTMENTS.—

(A) LEVEL OF TRADE.—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price or constructed export price and normal value, if the difference in level of trade—

(i) involves the performance of different selling activities; and

(ii) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

(B) CONSTRUCTED EXPORT PRICE OFFSET.—When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but

not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D).

(8) ADJUSTMENTS TO CONSTRUCTED VALUE.—Constructed value as determined under subsection (e), may be adjusted, as appropriate, pursuant to this subsection.

(b) SALES AT LESS THAN COST OF PRODUCTION.—

(1) DETERMINATION; SALES DISREGARDED.—Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production—

(A) have been made within an extended period of time in substantial quantities, and

(B) were not at prices which permit recovery of all costs within a reasonable period of time, such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

REASONABLE GROUNDS TO BELIEVE OR SUSPECT.—

There are reasonable grounds to believe or suspect that sales of the foreign like product were made at prices that are less than the cost of production of the product, if—

(i) in an investigation initiated under section 732 or a review conducted under section 751, an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) provides information, based upon observed prices or constructed prices or costs, that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of the product; or

(ii) in a review conducted under section 751 involving a specific exporter, the administering authority disregarded some or all of the exporter's sales pursuant to paragraph (1) in the investigation or if a review has been completed, in the most recently completed review.

(B) EXTENDED PERIOD OF TIME.—The term “extended period of time” means a period that is normally 1 year, but not less than 6 months.

(C) SUBSTANTIAL QUANTITIES.—Sales made at prices below the cost of production have been made in substantial quantities if—

(i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or

(ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

(D) RECOVERY OF COSTS.—If prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

(3) CALCULATION OF COST OF PRODUCTION.—For purposes of this subtitle, the cost of production shall be an amount equal to the sum of—

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like product sold for consumption in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation.

(c) NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—If—

(A) the subject merchandise is exported from a non-market economy country, and

(B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under subsection (a), the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of deter-

mining the normal value of subject merchandise under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which merchandise that is—

- (A) comparable to the subject merchandise, and
- (B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, is sold in other countries, including the United States.

(3) FACTORS OF PRODUCTION.—For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to—

- (A) hours of labor required,
 - (B) quantities of raw materials employed,
 - (C) amounts of energy and other utilities consumed,
- and
- (D) representative capital cost, including depreciation.

(4) VALUATION OF FACTORS OF PRODUCTION.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

- (A) at a level of economic development comparable to that of the nonmarket economy country, and
- (B) significant producers of comparable merchandise.

(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

- (1) subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in another country or countries,

- (2) subsection (a)(1)(C) applies, and
- (3) the normal value of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country,

it shall determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the cost of production (including taxes, labor, materials, and overhead) of the foreign like product produced in facilities outside the exporting country and costs of production of the foreign like product produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction. For purposes of this subsection, in determining the normal value of the foreign like product produced in a country outside of the exporting country, the administering authority shall determine its price at the time of exportation from the exporting country and shall make any adjustments required by subsection (a) for the cost of all con-

tainers and coverings and all other costs, charges, and expenses incidental to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the exporting country.

(e) **CONSTRUCTED VALUE.**—For purposes of this title, the constructed value of imported merchandise shall be an amount equal to the sum of—

(1) the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of business;

(2)(A) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(B) if actual data are not available with respect to the amounts described in subparagraph (A), then—

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,

(ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(iii) the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the subject merchandise in condition packed ready for shipment to the United States.

For purposes of paragraph (1), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.

(f) SPECIAL RULES FOR CALCULATION OF COST OF PRODUCTION AND FOR CALCULATION OF CONSTRUCTED VALUE.—For purposes of subsections (b) and (e).—

(1) COSTS.—

(A) IN GENERAL.—Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

(B) NONRECURRING COSTS.—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

(C) STARTUP COSTS.—

(i) IN GENERAL.—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation or review are affected by startup operations.

(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation or review under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation or review. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial produc-

tion that is characteristic of the merchandise, producer, or industry concerned is achieved.

(2) **TRANSACTIONS DISREGARDED.**—A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

(3) **MAJOR INPUT RULE.**—If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

SEC. 773A. [19 U.S.C. 1677b-1] CURRENCY CONVERSION.

(a) **IN GENERAL.**—In an antidumping proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise, except that, if it is established that a currency transaction on forward markets is directly linked to an export sale under consideration, the exchange rate specified with respect to such currency in the forward sale agreement shall be used to convert the foreign currency. Fluctuations in exchange rates shall be ignored.

(b) **SUSTAINED MOVEMENT IN FOREIGN CURRENCY VALUE.**—In an investigation under subtitle B, if there is a sustained movement in the value of the foreign currency relative to the United States dollar, the administering authority shall allow exporters at least 60 days to adjust their export prices to reflect such sustained movement.

SEC. 774. [19 U.S.C. 1677c] HEARINGS.

(a) **INVESTIGATION HEARINGS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 705 or 735.

(2) **EXCEPTION.**—If investigations are initiated under subtitle A and subtitle B regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers

that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

SEC. 775. [19 U.S.C. 1677d] COUNTERAVAILABLE SUBSIDY PRACTICES DISCOVERED DURING A PROCEEDING.

If, in the course of a proceeding under this title, the administering authority discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition, or if the administering authority receives notice from the Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, then the administering authority—

(1) shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding, or

(2) shall transfer the information (other than confidential information) concerning the practice, subsidy, or subsidy program to the library maintained under section 777(a)(1), if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to any other merchandise.

SEC. 776. [19 U.S.C. 1677e] DETERMINATIONS ON THE BASIS OF THE FACTS AVAILABLE.

(a) IN GENERAL.—If—

(1) necessary information is not available on the record, or
(2) an interested party or any other person—

(A) withholds information that has been requested by the administering authority or the Commission under this title,

(B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,

(C) significantly impedes a proceeding under this title,
or

(D) provides such information but the information cannot be verified as provided in section 782(i),

the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

(b) ADVERSE INFERENCES.—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Com-

mission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

- (1) the petition,
- (2) a final determination in the investigation under this title,
- (3) any previous review under section 751 or determination under section 753, or
- (4) any other information placed on the record.

(c) CORROBORATION OF SECONDARY INFORMATION.—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

SEC. 777. [19 U.S.C. 1677f] ACCESS TO INFORMATION.

(a) INFORMATION GENERALLY MADE AVAILABLE.—

(1) PUBLIC INFORMATION FUNCTION.—There shall be established a library of information relating to foreign subsidy practices and countervailing measures. Copies of material in the library shall be made available to the public upon payment of the costs of preparing such copies.

(2) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation of the progress of that investigation.

(3) EX PARTE MEETINGS.—The administering authority and the Commission shall maintain a record of any ex parte meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

(4) SUMMARIES; NON-PROPRIETARY SUBMISSIONS.—The administering authority and the Commission shall disclose—

(A) any proprietary information received in the course of a proceeding if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

- (B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.
- (b) PROPRIETARY INFORMATION.—
- (1) PROPRIETARY STATUS MAINTAINED.—
- (A) IN GENERAL.—Except as provided in subsection (a)(4)(A) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—
- (i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any review under this title covering the same subject merchandise, or
- (ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.
- (B) ADDITIONAL REQUIREMENTS.—The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—
- (i) either—
- (I) a non-proprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or
- (II) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and
- (ii) either—
- (I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or
- (II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.
- (2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party

submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

(3) SECTION 751 REVIEWS.—Notwithstanding the provisions of paragraph (1), information submitted to the administering authority or the Commission in connection with a review under section 751(b) or 751(c) which is designated as proprietary by the person submitting the information may, if the review results in the revocation of an order or finding (or termination of a suspended investigation) under section 751(d), be used by the agency to which the information was originally submitted in any investigation initiated within 2 years after the date of the revocation or termination pursuant to a petition covering the same subject merchandise.

(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during a proceeding. Customer names obtained during any investigation which requires a determination under section 705(b) or 735(b) may not be disclosed by the administering authority under protective order until either an order is published under section 706(a) or 736(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names under protective order during any such investigation until a reasonable time prior to any hearing provided under section 774.

(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

(C) TIME LIMITATION ON DETERMINATIONS.—The administering authority or the Commission, as the case may

be, shall determine whether to make information available under this paragraph—

(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 703(a) or 733(a)) after the date on which the information is submitted, or

(ii) if—

(I) the person that submitted the information raises objection to its release, or

(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 703(a) or 733(a)) after the date on which the information is submitted.

(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date; and

(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

(E) FAILURE TO DISCLOSE.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority denies a request for information under paragraph (1), then application may be made to the United States Customs Court for an order directing the administering authority or the Commission to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order; however, a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

(e) [Repealed.]

(f) DISCLOSURE OF PROPRIETARY INFORMATION UNDER PROTECTIVE ORDERS ISSUED PURSUANT TO THE NORTH AMERICAN FREE TRADE AGREEMENT OR THE UNITED STATES-CANADA AGREEMENT.—

(1) ISSUANCE OF PROTECTIVE ORDERS.—

(A) IN GENERAL.—If binational panel review of a determination under this title is requested pursuant to article 1904 of the NAFTA or the United States-Canada Agreement, or an extraordinary challenge committee is convened under Annex 1904.13 of the NAFTA or the United States-Canada Agreement, the administering authority or the Commission, as appropriate, may make available to authorized persons, under a protective order described in paragraph (2), a copy of all proprietary material in the administrative record made during the proceeding in question. If the administering authority or the Commission claims a privilege as to a document or portion of a document in the administrative record of the proceeding in question and a binational panel or extraordinary challenge committee finds that in camera inspection or limited disclosure of that document or portion thereof is required by United States law, the administering authority or the Commission, as appropriate, may restrict access to such document or portion thereof to the authorized persons identified by the panel or committee as requiring access and may require such persons to obtain access under a protective order described in paragraph (2).

(B) AUTHORIZED PERSONS.—For purposes of this subsection, the term “authorized persons” means—

(i) the members of, and the appropriate staff of, the binational panel or the extraordinary challenge committee, as the case may be, and the Secretariat,

(ii) counsel for parties to such panel or committee proceeding, and employees, and persons under the direction and control, of such counsel,

(iii) any officer or employee of the United States Government designated by the administering authority or the Commission, as appropriate, to whom disclosure is necessary in order to make recommendations to the Trade Representative regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement, and

(iv) any officer or employee of the Government of a free trade area country (as defined in section 516A(f)(10)) designated by an authorized agency of such country to whom disclosure is necessary in order to make decisions regarding the convening of extraordinary challenge committees under chapter 19 of the NAFTA or the Agreement.

(C) REVIEW.—A decision concerning the disclosure or nondisclosure of material under protective order by the administering authority or the Commission shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such decision on any question of law or fact by an action in the nature of mandamus or otherwise.

(2) CONTENTS OF PROTECTIVE ORDER.—Each protective order issued under this subsection shall be in such form and contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall ensure that regulations issued pursuant to this paragraph shall be designed to provide an opportunity for participation in the binational panel proceeding, including any extraordinary challenge, equivalent to that available for judicial review of determinations by the administering authority or the Commission that are not subject to review by a binational panel.

(3) PROHIBITED ACTS.—It is unlawful for any person to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of a protective order issued under this subsection or to violate, to induce the violation of, or knowingly to receive information the receipt of which constitutes a violation of, any provision of an undertaking entered into with an authorized agency of a free trade area country (as defined in section 516A(f)(10)) to protect proprietary material during binational panel or extraordinary challenge committee review pursuant to article 1904 of the NAFTA or the United States-Canada Agreement.

(4) SANCTIONS FOR VIOLATION OF PROTECTIVE ORDERS.—Any person, except a judge appointed to a binational panel or an extraordinary challenge committee under section 402(b) of the North American Free Trade Agreement Implementation Act, who is found by the administering authority or the Commission, as appropriate, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (3)

shall be liable to the United States for a civil penalty and shall be subject to such other administrative sanctions, including, but not limited to, debarment from practice before the administering authority or the Commission, as the administering authority or the Commission determines to be appropriate. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty and other sanctions shall be assessed by the administering authority or the Commission by written notice, except that assessment shall be made by the administering authority for violation, or inducement of a violation or receipt of information with reason to know that such information was disclosed in violation, of an undertaking entered into by any person with an authorized agency of a free trade area country (as defined in section 516A(f)(10)).

(5) REVIEW OF SANCTIONS.—Any person against whom sanctions are imposed under paragraph (4) may obtain review of such sanctions by filing a notice of appeal in the United States Court of International Trade within 30 days from the date of the order imposing the sanction and by simultaneously sending a copy of such notice by certified mail to the administering authority or the Commission, as appropriate. The administering authority or the Commission shall promptly file in such court a certified copy of the record upon which such violation was found or such sanction imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the administering authority or the Commission shall be set aside by the court only if the court finds that such findings and order are not supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(6) ENFORCEMENT OF SANCTIONS.—If any person fails to pay an assessment of a civil penalty or to comply with other administrative sanctions after the order imposing such sanctions becomes a final and unappealable order, or after the United States Court of International Trade has entered final judgment in favor of the administering authority or the Commission, an action may be filed in such court to enforce the sanctions. In such action, the validity and appropriateness of the final order imposing the sanctions shall not be subject to review.

(7) TESTIMONY AND PRODUCTION OF PAPERS.—

(A) AUTHORITY TO OBTAIN INFORMATION.—For the purpose of conducting any hearing and carrying out other functions and duties under this subsection, the administering authority and the Commission, or their duly authorized agents—

(i) shall have access to and the right to copy any pertinent document, paper, or record in the possession of any individual, partnership, corporation, association, organization, or other entity,

(ii) may summon witnesses, take testimony, and administer oaths,

(iii) and may require any individual or entity to produce pertinent documents, books, or records.

Any member of the Commission, and any person so designated by the administering authority, may sign subpoenas, and members and agents of the administering authority and the Commission, when authorized by the administering authority or the Commission, as appropriate, may administer oaths and affirmations, examine witnesses, take testimony, and receive evidence.

(B) WITNESSES AND EVIDENCE.—The attendance of witnesses who are authorized to be summoned, and the production of documentary evidence authorized to be ordered, under subparagraph (A) may be required from any place in the United States at any designated place of hearing. In the case of disobedience to a subpoena issued under subparagraph (A), an action may be filed in any district or territorial court of the United States to require the attendance and testimony of witnesses and the production of documentary evidence. Such court, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpoena issued to any individual, partnership, corporation, association, organization or other entity, issue any order requiring such individual or entity to appear before the administering authority or the Commission, or to produce documentary evidence if so ordered or to give evidence concerning the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

(C) MANDAMUS.—Any court referred to in subparagraph (B) shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this subsection or any order of the administering authority or the Commission made in pursuance thereof.

(D) DEPOSITIONS.—For purposes of carrying out any functions or duties under this subsection, the administering authority or the Commission may order testimony to be taken by deposition. Such deposition may be taken before any person designated by the administering authority or Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under the direction of such person, and shall then be subscribed by the deponent. Any individual, partnership, corporation, association, organization or other entity may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the administering authority or Commission, as provided in this paragraph.

(E) FEES AND MILEAGE OF WITNESSES.—Witnesses summoned before the administering authority or the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(g) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c) or (d), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

(h) OPPORTUNITY FOR COMMENT BY CONSUMERS AND INDUSTRIAL USERS.—The administering authority and the Commission shall provide an opportunity for industrial users of the subject merchandise and, if the merchandise is sold at the retail level, for representative consumer organizations, to submit relevant information to the administering authority concerning dumping or a countervailable subsidy, and to the Commission concerning material injury by reason of dumped or subsidized imports.

(i) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

(1) IN GENERAL.—Whenever the administering authority makes a determination under section 702 or 732 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 703 or 733, a final determination under section 705 or section 735, a preliminary or final determination in a review under section 751, a determination to suspend an investigation under this title, or a determination under section 753, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

(2) CONTENTS OF NOTICE OR DETERMINATION.—The notice or determination published under paragraph (1) shall include, to the extent applicable—

(A) in the case of a determination of the administering authority—

(i) the names of the exporters or producers of the subject merchandise or, when providing such names is impracticable, the countries exporting the subject merchandise to the United States,

(ii) a description of the subject merchandise that is sufficient to identify the subject merchandise for customs purposes,

(iii)(I) with respect to a determination in an investigation under subtitle A or section 753 or in a review of a countervailing duty order, the amount of the countervailable subsidy established and a full explanation of the methodology used in establishing the amount, and

(II) with respect to a determination in an investigation under subtitle B or in a review of an anti-dumping duty order, the weighted average dumping margins established and a full explanation of the methodology used in establishing such margins, and

- (iv) the primary reasons for the determination; and
- (B) in the case of a determination of the Commission—
 - (i) considerations relevant to the determination of injury, and
 - (ii) the primary reasons for the determination.

(3) **ADDITIONAL REQUIREMENTS FOR FINAL DETERMINATIONS.**—In addition to the requirements set forth in paragraph (2)—

(A) the administering authority shall include in a final determination described in paragraph (1) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation or review (as the case may be), concerning the establishment of dumping or a countervailable subsidy, or the suspension of the investigation, with respect to which the determination is made; and

(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation or review (as the case may be) concerning volume, price effects, and impact on the industry of imports of the subject merchandise.

SEC. 777A. [19 U.S.C. 1677f-1] SAMPLING AND AVERAGING; DETERMINATION OF WEIGHTED AVERAGE DUMPING MARGIN AND COUNTERAVAILABLE SUBSIDY RATE.

(a) **IN GENERAL.**—For purposes of determining the export price (or constructed export price) under section 772 or the normal value under section 773, and in carrying out reviews under section 751, the administering authority may—

(1) use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise or a significant number or types of products, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) **SELECTION OF AVERAGES AND SAMPLES.**—The authority to select averages and statistically valid samples shall rest exclusively with the administering authority. The administering authority shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers, or types of products under this section.

(c) **DETERMINATION OF DUMPING MARGIN.**—

(1) **GENERAL RULE.**—In determining weighted average dumping margins under section 733(d), 735(c), or 751(a), the administering authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.

(2) **EXCEPTION.**—If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dump-

ing margins for a reasonable number of exporters or producers by limiting its examination to—

(A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or

(B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

(d) DETERMINATION OF LESS THAN FAIR VALUE.—

(1) INVESTIGATIONS.—

(A) IN GENERAL.—In an investigation under subtitle B, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value—

(i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or

(ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) EXCEPTION.—The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if—

(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

(2) REVIEWS.—In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

(e) DETERMINATION OF COUNTERAVAILABLE SUBSIDY RATE.—

(1) GENERAL RULE.—In determining countervailable subsidy rates under section 703(d), 705(c), or 751(a), the administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.

(2) EXCEPTION.—If the administering authority determines that it is not practicable to determine individual countervailable subsidy rates under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may—

(A) determine individual countervailable subsidy rates for a reasonable number of exporters or producers by limiting its examination to—

(i) a sample of exporters or producers that the administering authority determines is statistically valid based on the information available to the administering authority at the time of selection, or

(ii) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the administering authority determines can be reasonably examined; or

(B) determine a single country-wide subsidy rate to be applied to all exporters and producers.

The individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5).

(f) ADJUSTMENT OF ANTIDUMPING DUTY IN CERTAIN PROCEEDINGS RELATING TO IMPORTS FROM NONMARKET ECONOMY COUNTRIES.—

(1) IN GENERAL.—If the administering authority determines, with respect to a class or kind of merchandise from a nonmarket economy country for which an antidumping duty is determined using normal value pursuant to section 773(c), that—

(A) pursuant to section 701(a)(1), a countervailable subsidy (other than an export subsidy referred to in section 772(c)(1)(C)) has been provided with respect to the class or kind of merchandise,

(B) such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and

(C) the administering authority can reasonably estimate the extent to which the countervailable subsidy referred to in subparagraph (B), in combination with the use of normal value determined pursuant to section 773(c), has increased the weighted average dumping margin for the class or kind of merchandise,

the administering authority shall, except as provided in paragraph (2), reduce the antidumping duty by the amount of the increase in the weighted average dumping margin estimated by the administering authority under subparagraph (C).

(2) MAXIMUM REDUCTION IN ANTIDUMPING DUTY.—The administering authority may not reduce the antidumping duty applicable to a class or kind of merchandise from a nonmarket economy country under this subsection by more than the portion of the countervailing duty rate attributable to a countervailable subsidy that is provided with respect to the class or kind of merchandise and that meets the conditions described in subparagraphs (A), (B), and (C) of paragraph (1).

SEC. 778. [19 U.S.C. 1677g] INTEREST ON CERTAIN OVERPAYMENTS AND UNDERPAYMENTS.

(a) GENERAL RULE.—Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after—

(1) the date of publication of a countervailing or antidumping duty order under this title or section 303, or

(2) the date of a finding under the Antidumping Act, 1921.

(b) RATE.—The rate of interest payable under subsection (a) for any period of time is the rate of interest established under section 6621 of the Internal Revenue Code of 1954 for such period.

SEC. 779. [19 U.S.C. 1677h] DRAWBACK TREATMENT.

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this title shall not be treated as being regular customs duties.

SEC. 780. [19 U.S.C. 1677i] DOWNSTREAM PRODUCT MONITORING.

(a) PETITION REQUESTING MONITORING.—

(1) IN GENERAL.—A domestic producer of an article that is like a component part or a downstream product may petition the administering authority to designate a downstream product for monitoring under subsection (b). The petition shall specify—

(A) the downstream product,

(B) the component product incorporated into such downstream product, and

(C) the reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of such downstream product.

(2) DETERMINATION REGARDING PETITION.—Within 14 days after receiving a petition submitted under paragraph (1), the administering authority shall determine—

(A) whether there is a reasonable likelihood that imports into the United States of the downstream product will increase as an indirect result of any diversion with respect to the component part, and

(B) whether—

(i) the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement (within the meaning of section 804 of the Trade and Tariff Act of 1984),

(ii) merchandise related to the component part and manufactured in the same foreign country in which the component part is manufactured has been the subject of a significant number of investigations suspended under section 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303, or

(iii) merchandise manufactured or exported by the manufacturer or exporter of the component part that is similar in description and use to the component part has been the subject of at least 2 investigations sus-

pending under section 704 or 734 or countervailing or antidumping duty orders issued under this title or section 303.

(3) **FACTORS TO TAKE INTO ACCOUNT.**—In making a determination under paragraph (2)(A), the administering authority may, if appropriate, take into account such factors as—

(A) the value of the component part in relation to the value of the downstream product,

(B) the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product, and

(C) the relationship between the producers of component parts and producers of downstream products.

(4) **PUBLICATION OF DETERMINATION.**—The administering authority shall publish in the Federal Register notice of each determination made under paragraph (2) and, if the determination made under paragraph (2)(A) and a determination made under any subparagraph of paragraph (2)(B) are affirmative, shall transmit a copy of such determinations and the petition to the Commission.

(5) **DETERMINATIONS NOT SUBJECT TO JUDICIAL REVIEW.**—Notwithstanding any other provision of law, any determination made by the administering authority under paragraph (2) shall not be subject to judicial review.

(b) **MONITORING BY THE COMMISSION.**—

(1) **IN GENERAL.**—If the determination made under subsection (a)(2)(A) and a determination made under any clause of subsection (a)(2)(B) with respect to a petition are affirmative, the Commission shall immediately commence monitoring of trade in the downstream product that is the subject of the determination made under subsection (a)(2)(A). If the Commission finds that imports of a downstream product being monitored increased during any calendar quarter by 5 percent or more over the preceding quarter, the Commission shall analyze that increase in the context of overall economic conditions in the product sector.

(2) **REPORTS.**—The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses conducted under paragraph (1). The Commission shall make the reports available to the public.

(c) **ACTION ON BASIS OF MONITORING REPORTS.**—The administering authority shall review the information in the reports submitted by the Commission under subsection (b)(2) and shall—

(1) consider the information in determining whether to initiate an investigation under section 702(a) or 732(a) regarding any downstream product, and

(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.

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

(1) The term “component part” means any imported article that—

(A) during the 5-year period ending on the date on which the petition is filed under subsection (a), has been subject to—

(i) a countervailing or antidumping duty order issued under this title or section 303 that requires the deposit of estimated countervailing or antidumping duties imposed at a rate of at least 15 percent ad valorem, or

(ii) an agreement entered into under section 704, 734, or 303 after a preliminary affirmative determination under section 703(b), 733(b)(1), or 303 was made by the administering authority which included a determination that the estimated net countervailable subsidy was at least 15 percent ad valorem or that the estimated average amount by which the normal value exceeded the export price (or the constructed export price) was at least 15 percent ad valorem, and

(B) because of its inherent characteristics, is routinely used as a major part, component, assembly, subassembly, or material in a downstream product.

(2) The term “downstream product” means any manufactured article—

(A) which is imported into the United States, and

(B) into which is incorporated any component part.

SEC. 781. [19 U.S.C. 1677j] PREVENTION OF CIRCUMVENTION OF ANTI-DUMPING AND COUNTERVAILING DUTY ORDERS.

(a) **MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES.—**

(1) **IN GENERAL.—If—**

(A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of—

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or section 303,

(B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the United States is minor or insignificant, and

(D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

(2) DETERMINATION OF WHETHER PROCESS IS MINOR OR INSIGNIFICANT.—In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the United States,

(B) the level of research and development in the United States,

(C) the nature of the production process in the United States,

(D) the extent of production facilities in the United States, and

(E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States.

(3) FACTORS TO CONSIDER.—In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(b) MERCHANDISE COMPLETED OR ASSEMBLED IN OTHER FOREIGN COUNTRIES.—

(1) IN GENERAL.—If—

(A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of—

(i) an antidumping duty order issued under section 736,

(ii) a finding issued under the Antidumping Act, 1921, or

(iii) a countervailing duty order issued under section 706 or section 303,

(B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(i) is subject to such order or finding, or

(ii) is produced in the foreign country with respect to which such order or finding applies,

(C) the process of assembly or completion in the foreign country referred to in subparagraph (B) is minor or insignificant,

(D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States, and

(E) the administering authority determines that action is appropriate under this paragraph to prevent evasion of such order or finding,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include such imported merchandise within the scope of such order or finding at any time such order or finding is in effect.

(2) DETERMINATION OF WHETHER PROCESS IS MINOR OR INSIGNIFICANT.—In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account—

(A) the level of investment in the foreign country,

(B) the level of research and development in the foreign country,

(C) the nature of the production process in the foreign country,

(D) the extent of production facilities in the foreign country, and

(E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

(3) FACTORS TO CONSIDER.—In determining whether to include merchandise assembled or completed in a foreign country in a countervailing duty order or an antidumping duty order or finding under paragraph (1), the administering authority shall take into account such factors as—

(A) the pattern of trade, including sourcing patterns,

(B) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B) is affiliated with the person who uses the merchandise described in paragraph (1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

(C) whether imports into the foreign country of the merchandise described in paragraph (1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

(c) MINOR ALTERATIONS OF MERCHANDISE.—

(1) IN GENERAL.—The class or kind of merchandise subject to—

(A) an investigation under this title,

(B) an antidumping duty order issued under section 736,

(C) a finding issued under the Antidumping Act, 1921, or

(D) a countervailing duty order issued under section 706 or section 303,

shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered

merchandise within the scope of the investigation, order, or finding.

(d) LATER-DEVELOPED MERCHANDISE.—

(1) IN GENERAL.—For purposes of determining whether merchandise developed after an investigation is initiated under this title or section 303 (hereafter in this paragraph referred to as the “later-developed merchandise”) is within the scope of an outstanding antidumping or countervailing duty order issued under this title or section 303 as a result of such investigation, the administering authority shall consider whether—

(A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the “earlier product”),

(B) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product,

(C) the ultimate use of the earlier product and the later-developed merchandise are the same,

(D) the later-developed merchandise is sold through the same channels of trade as the earlier product, and

(E) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

The administering authority shall take into account any advice provided by the Commission under subsection (e) before making a determination under this subparagraph.

(2) EXCLUSION FROM ORDERS.—The administering authority may not exclude a later-developed merchandise from a countervailing or antidumping duty order merely because the merchandise—

(A) is classified under a tariff classification other than that identified in the petition or the administering authority’s prior notices during the proceeding, or

(B) permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise.

(e) COMMISSION ADVICE.—

(1) NOTIFICATION TO COMMISSION OF PROPOSED ACTION.—Before making a determination—

(A) under subsection (a) with respect to merchandise completed or assembled in the United States (other than minor completion or assembly),

(B) under subsection (b) with respect to merchandise completed or assembled in other foreign countries, or

(C) under subsection (d) with respect to any later-developed merchandise which incorporates a significant technological advance or significant alteration of an earlier product,

with respect to an antidumping or countervailing duty order or finding as to which the Commission has made an affirmative injury determination, the administering authority shall notify the Commission of the proposed inclusion of such merchandise

in such countervailing or antidumping order or finding. Notwithstanding any other provision of law, a decision by the administering authority regarding whether any merchandise is within a category for which notice is required under this paragraph is not subject to judicial review.

(2) **REQUEST FOR CONSULTATION.**—After receiving notice under paragraph (1), the Commission may request consultations with the administering authority regarding the inclusion. Upon the request of the Commission, the administering authority shall consult with the Commission and any such consultation shall be completed within 15 days after the date of the request.

(3) **COMMISSION ADVICE.**—If the Commission believes, after consultation under paragraph (2), that a significant injury issue is presented by the proposed inclusion, the Commission may provide written advice to the administering authority as to whether the inclusion would be inconsistent with the affirmative determination of the Commission on which the order or finding is based. If the Commission decides to provide such written advice, it shall promptly notify the administering authority of its intention to do so, and must provide such advice within 60 days after the date of notification under paragraph (1). For purposes of formulating its advice with respect to merchandise completed or assembled in the United States from parts or components produced in a foreign country, the Commission shall consider whether the inclusion of such parts or components taken as a whole would be inconsistent with its prior affirmative determination.

(f) **TIME LIMITS FOR ADMINISTERING AUTHORITY DETERMINATIONS.**—The administering authority shall, to the maximum extent practicable, make the determinations under this section within 300 days from the date of the initiation of a countervailing duty or antidumping circumvention inquiry under this section.

SEC. 782. [19 U.S.C. 1677m] CONDUCT OF INVESTIGATIONS AND ADMINISTRATIVE REVIEWS.

(a) **TREATMENT OF VOLUNTARY RESPONSES IN COUNTERVAILING OR ANTIDUMPING DUTY INVESTIGATIONS AND REVIEWS.**—In any investigation under subtitle A or B or a review under section 751(a) in which the administering authority has, under section 777A(c)(2) or section 777A(e)(2)(A) (whichever is applicable), limited the number of exporters or producers examined, or determined a single country-wide rate, the administering authority shall establish an individual countervailable subsidy rate or an individual weighted average dumping margin for any exporter or producer not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if—

(1) such information is so submitted by the date specified—

(A) for exporters and producers that were initially selected for examination, or

(B) for the foreign government, in a countervailing duty case where the administering authority has determined a single country-wide rate; and

(2) the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation.

(b) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(c) DIFFICULTIES IN MEETING REQUIREMENTS.—

(1) NOTIFICATION BY INTERESTED PARTY.—If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

(2) ASSISTANCE TO INTERESTED PARTIES.—The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations and reviews under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

(d) DEFICIENT SUBMISSIONS.—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (e), disregard all or part of the original and subsequent responses.

(e) USE OF CERTAIN INFORMATION.—In reaching a determination under section 703, 705, 733, 735, 751, or 753 the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable require-

ments established by the administering authority or the Commission, if—

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

(5) the information can be used without undue difficulties.

(f) NONACCEPTANCE OF SUBMISSIONS.—If the administering authority or the Commission declines to accept into the record any information submitted in an investigation or review under this title, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

(g) PUBLIC COMMENT ON INFORMATION.—Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 705, 735, 751, or 753 shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

(h) TERMINATION OF INVESTIGATION OR REVOCATION OF ORDER FOR LACK OF INTEREST.—The administering authority may—

(1) terminate an investigation under subtitle A or B with respect to a domestic like product if, prior to publication of an order under section 706 or 736, the administering authority determines that producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order; and

(2) revoke an order issued under section 706 or 736 with respect to a domestic like product, or terminate an investigation suspended under section 704 or 734 with respect to a domestic like product, if the administering authority determines that producers accounting for substantially all of the production of that domestic like product, have expressed a lack of interest in the order or suspended investigation.

(i) VERIFICATION.—The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

(2) a revocation under section 751(d), and

(3) a final determination in a review under section 751(a),

if—

(A) verification is timely requested by an interested party as defined in section 771(9)(C), (D), (E), (F), or (G), and

(B) no verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 751(a) of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

SEC. 783. [19 U.S.C. 1677n] ANTIDUMPING PETITIONS BY THIRD COUNTRIES.

(a) **FILING OF PETITION.**—The government of a WTO member may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—

(1) imports from another country are being sold in the United States at less than fair value, and

(2) an industry in the petitioning country is materially injured by reason of those imports.

(b) **INITIATION.**—The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the WTO Council for Trade in Goods, shall determine whether to initiate an investigation described in subsection (a).

(c) **DETERMINATIONS.**—Upon initiation of an investigation under this section, the Trade Representative shall request the following determinations be made according to substantive and procedural requirements specified by the Trade Representative, notwithstanding any other provision of this title:

(1) The administering authority shall determine whether imports into the United States of the subject merchandise are being sold at less than fair value.

(2) The Commission shall determine whether an industry in the petitioning country is materially injured by reason of imports of the subject merchandise into the United States.

(d) **PUBLIC COMMENT.**—An opportunity for public comment shall be provided, as appropriate—

(1) by the Trade Representative, in making the determination required by subsection (b), and

(2) by the administering authority and the Commission, in making the determination required by subsection (c).

(e) **ISSUANCE OF ORDER.**—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c), and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall issue an antidumping duty order in accordance with section 736 and take such other actions as are required by section 736.

(f) **REVIEWS OF DETERMINATIONS.**—For purposes of review under section 516A or review under section 751, if an order is issued under subsection (e), the final determinations of the administering authority and the Commission under this section shall be treated as final determinations made under section 735.

(g) **ACCESS TO INFORMATION.**—Section 777 shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

TITLE VIII—REQUIREMENTS APPLICABLE TO IMPORTS OF CERTAIN CIGARETTES AND SMOKELESS TOBACCO PRODUCTS¹

SEC. 801. [19 U.S.C. 1681] DEFINITIONS.

In this title:

(1) SECRETARY.—Except as otherwise indicated, the term “Secretary” means the Secretary of the Treasury.

(2) PRIMARY PACKAGING.—The term “primary packaging” refers to the permanent packaging inside of the innermost cellophane or other transparent wrapping and labels, if any. Warnings or other statements shall be deemed “permanently imprinted” only if printed directly on such primary packaging and not by way of stickers or other similar devices.

(3) DELIVERY SALE.—The term “delivery sale” means any sale of cigarettes or a smokeless tobacco product to a consumer if—

(A) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(B) the cigarettes or smokeless tobacco product is delivered by use of a common carrier, private delivery service, or the mail, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the delivered cigarettes or smokeless tobacco product.

SEC. 802. [19 U.S.C. 1681a] REQUIREMENTS FOR ENTRY OF CERTAIN CIGARETTES AND SMOKELESS TOBACCO PRODUCTS.

(a) GENERAL RULE.—Except as provided in subsection (b), cigarettes or smokeless tobacco products may be imported into the United States only if—

(1) the original manufacturer of those cigarettes or smokeless tobacco products has timely submitted, or has certified that it will timely submit, to the Secretary of Health and Human Services the lists of the ingredients added to the tobacco in the manufacture of such cigarettes or smokeless tobacco products as described in section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a) or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), as the case may be;

(2) the precise warning statements in the precise format specified in section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) or section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15

¹Section 3301(a) of Public Law 110–246 amends this Act by inserting at the end a new title VIII which appears immediately following this title.

U.S.C. 4402), as the case may be, are permanently imprinted on both—

(A) the primary packaging of all those cigarettes or smokeless tobacco products; and

(B) any other pack, box, carton, or container of any kind in which those cigarettes or smokeless tobacco products are to be offered for sale or otherwise distributed to consumers;

(3) the manufacturer or importer of those cigarettes or smokeless tobacco products is in compliance with respect to those cigarettes or smokeless tobacco products being imported into the United States with a rotation plan approved by the Federal Trade Commission pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c)) or section 3(d) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(d)), as the case may be;

(4) if such cigarettes or smokeless tobacco products bear a United States trademark registered for such cigarettes or smokeless tobacco products, the owner of such United States trademark registration for cigarettes or smokeless tobacco products (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes or smokeless tobacco products into the United States; and

(5) the importer has submitted at the time of entry all of the certificates described in subsection (c).

(b) EXEMPTIONS.—Cigarettes or smokeless tobacco products satisfying the conditions of any of the following paragraphs shall not be subject to the requirements of subsection (a):

(1) PERSONAL-USE CIGARETTES OR SMOKELESS TOBACCO PRODUCTS.—Cigarettes or smokeless tobacco products that are imported into the United States in personal use quantities that are allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. The preceding sentence shall not apply to any cigarettes or smokeless tobacco products sold in connection with a delivery sale.

(2) CIGARETTES OR SMOKELESS TOBACCO PRODUCTS IMPORTED INTO THE UNITED STATES FOR ANALYSIS.—Cigarettes or smokeless tobacco products that are imported into the United States solely for the purpose of analysis in quantities suitable for such purpose, but only if the importer submits at the time of entry a certificate signed, under penalties of perjury, by the consignee (or a person authorized by such consignee) providing such facts as may be required by the Secretary to establish that such consignee is a manufacturer of cigarettes or smokeless tobacco products, a Federal or State government agency, a university, or is otherwise engaged in bona fide research and stating that such cigarettes or smokeless tobacco products will be used solely for analysis and will not be sold in domestic commerce in the United States.

(3) CIGARETTES OR SMOKELESS TOBACCO PRODUCTS INTENDED FOR NONCOMMERCIAL USE, REEXPORT, OR REPACKAGING.—Cigarettes or smokeless tobacco products—

(A) for which the owner of such United States trademark registration for cigarettes or smokeless tobacco products (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes or smokeless tobacco products into the United States; and

(B) for which the importer submits a certificate signed by the manufacturer or export warehouse (or a person authorized by such manufacturer or export warehouse) to which such cigarettes or smokeless tobacco products are to be delivered (as provided in subparagraph (A)) stating, under penalties of perjury, with respect to those cigarettes or smokeless tobacco products, that it will not distribute those cigarettes or smokeless tobacco products into domestic commerce unless prior to such distribution all steps have been taken to comply with paragraphs (1), (2), and (3) of subsection (a), and, to the extent applicable, section 5754(a)(1) (B) and (C) of the Internal Revenue Code of 1986.

For purposes of this section, a trademark is registered in the United States if it is registered in the United States Patent and Trademark Office under the provisions of title I of the Act of July 5, 1946 (popularly known as the "Trademark Act of 1946"), and a copy of the certificate of registration of such mark has been filed with the Secretary. The Secretary shall make available to interested parties a current list of the marks so filed.

(c) CUSTOMS CERTIFICATIONS REQUIRED FOR CIGARETTE OR SMOKELESS TOBACCO PRODUCT¹ IMPORTS.—The certificates that must be submitted by the importer of cigarettes or smokeless tobacco products at the time of entry in order to comply with subsection (a)(5) are—

(1) a certificate signed by the manufacturer of such cigarettes or smokeless tobacco products or an authorized official of such manufacturer stating under penalties of perjury, with respect to those cigarettes or smokeless tobacco products, that such manufacturer has timely submitted, and will continue to submit timely, to the Secretary of Health and Human Services the ingredient reporting information required by section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a) or section 4 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4403), as the case may be;

(2) a certificate signed by such importer or an authorized official of such importer stating under penalties of perjury that—

(A) the precise warning statements in the precise format required by section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) or section 3 of

¹The casing in the heading for subsection (c) so in law. The amendment made by section 401(e)(2)(C)(i) of Public Law 109-432 (division C) provides as follows:

(C) in subsection (c)—

(i) in the heading, by inserting "OR SMOKELESS TOBACCO PRODUCT" after "CIGARETTE";

The amendment probably should have been to insert "OR SMOKELESS TOBACCO PRODUCT" after "CIGARETTE" but was executed to reflect the probable intent of Congress.

the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402), as the case may be, are permanently imprinted on both—

(i) the primary packaging of all those cigarettes or smokeless tobacco products; and

(ii) any other pack, box, carton, or container of any kind in which those cigarettes or smokeless tobacco products are to be offered for sale or otherwise distributed to consumers; and

(B) with respect to those cigarettes or smokeless tobacco products being imported into the United States, such importer has complied, and will continue to comply, with a rotation plan approved by the Federal Trade Commission pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c)) or section 3(d) of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4402(d)), as the case may be; and (3)(A) if such cigarettes or smokeless tobacco products bear a United States trademark registered for cigarettes or smokeless tobacco products, a certificate signed by the owner of such United States trademark registration for cigarettes or smokeless tobacco products (or a person authorized to act on behalf of such owner) stating under penalties of perjury that such owner (or authorized person) consents to the importation of such cigarettes or smokeless tobacco products into the United States; and

(B) a certificate signed by the importer or an authorized official of such importer stating under penalties of perjury that the consent referred to in subparagraph (A) is accurate, remains in effect, and has not been withdrawn.

The Secretary may provide by regulation for the submission of certifications under this section in electronic form if, prior to the entry of any cigarettes or smokeless tobacco products into the United States, the person required to provide such certifications submits to the Secretary a written statement, signed under penalties of perjury, verifying the accuracy and completeness of all information contained in such electronic submissions.

(d) STATE ACCESS TO CUSTOMS CERTIFICATIONS.—A State, through its Attorney General, shall be entitled to obtain copies of any certification required under subsection (c) directly—

(1) upon request to the agency of the United States responsible for collecting such certification; or

(2) upon request to the importer, manufacturer, or authorized official of such importer or manufacturer.

SEC. 803. [19 U.S.C. 1681b] ENFORCEMENT.

(a) CIVIL PENALTY.—Any person who violates a provision of section 802 shall, in addition to the tax and any other penalty provided by law, be liable for a civil penalty for each violation equal to the greater of \$1,000 or 5 times the amount of the tax imposed by chapter 52 of the Internal Revenue Code of 1986 on all cigarettes or smokeless tobacco products that are the subject of such violation.

(b) **FORFEITURES.**—Any tobacco product, cigarette papers, or tube, or any smokeless tobacco product, that was imported into the United States or is sought to be imported into the United States in violation of, or without meeting the requirements of, section 802 shall be forfeited to the United States, or to any State in which such tobacco product, cigarette papers, or tube is found. Notwithstanding any other provision of law, any product forfeited to the United States, or to any State, pursuant to this title shall be destroyed.

TITLE VIII—SOFTWOOD LUMBER

SEC. 801. SHORT TITLE; TABLE OF CONTENTS.

(a) **[19 U.S.C. 1654 note] SHORT TITLE.**—This title may be cited as the “Softwood Lumber Act of 2008”.

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

TITLE VIII—SOFTWOOD LUMBER

- Sec. 801. Short title; table of contents.
- Sec. 802. Definitions.
- Sec. 803. Establishment of softwood lumber importer declaration program.
- Sec. 804. Scope of softwood lumber importer declaration program.
- Sec. 805. Export charge determination and publication.
- Sec. 806. Reconciliation.
- Sec. 807. Verification.
- Sec. 808. Penalties.
- Sec. 809. Reports.

SEC. 802. [19 U.S.C. 1683] DEFINITIONS.

In this title:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(2) **COUNTRY OF EXPORT.**—The term “country of export” means the country (including any political subdivision of the country) from which softwood lumber or a softwood lumber product is exported before entering the United States.

(3) **CUSTOMS LAWS OF THE UNITED STATES.**—The term “customs laws of the United States” means any law or regulation enforced or administered by U.S. Customs and Border Protection.

(4) **EXPORT CHARGES.**—The term “export charges” means any tax, charge, or other fee collected by the country from which softwood lumber or a softwood lumber product, described in section 804(a), is exported pursuant to an international agreement entered into by that country and the United States.

(5) **EXPORT PRICE.**—

(A) **IN GENERAL.**—The term “export price” means one of the following:

(i) In the case of softwood lumber or a softwood lumber product that has undergone only primary processing, the value that would be determined F.O.B. at the facility where the product underwent the last primary processing before export.

(ii)(I) In the case of softwood lumber or a softwood lumber product described in subclause (II), the value that would be determined F.O.B. at the facility where the lumber or product underwent the last primary processing.

(II) Softwood lumber or a softwood lumber product described in this subclause is lumber or a product that underwent the last remanufacturing before export by a manufacturer who—

(aa) does not hold tenure rights provided by the country of export;

(bb) did not acquire standing timber directly from the country of export; and

(cc) is not related to the person who holds tenure rights or acquired standing timber directly from the country of export.

(iii)(I) In the case of softwood lumber or a softwood lumber product described in subclause (II), the value that would be determined F.O.B. at the facility where the product underwent the last processing before export.

(II) Softwood lumber or a softwood lumber product described in this subclause is lumber or a product that undergoes the last remanufacturing before export by a manufacturer who—

(aa) holds tenure rights provided by the country of export;

(bb) acquired standing timber directly from the country of export; or

(cc) is related to a person who holds tenure rights or acquired standing timber directly from the country of export.

(B) RELATED PERSONS.—For purposes of this paragraph, a person is related to another person if—

(i) the person bears a relationship to such other person described in section 152(a) of the Internal Revenue Code of 1986;

(ii) the person bears a relationship to such other person described in section 267(b) of such Code, except that “5 percent” shall be substituted for “50 percent” each place it appears;

(iii) the person and such other person are part of a controlled group of corporations, as that term is defined in section 1563(a) of such Code, except that “5 percent” shall be substituted for “80 percent” each place it appears;

(iv) the person is an officer or director of such other person; or

(v) the person is the employer of such other person.

(C) TENURE RIGHTS.—For purposes of this paragraph, the term “tenure rights” means rights to harvest timber from public land granted by the country of export.

(D) EXPORT PRICE WHERE F.O.B. VALUE CANNOT BE DETERMINED.—

(i) IN GENERAL.—In the case of softwood lumber or a softwood lumber product described in clause (i), (ii), or (iii) of subparagraph (A) for which an F.O.B. value cannot be determined, the export price shall be the market price for the identical lumber or product sold in an arm's-length transaction in the country of export at approximately the same time as the exported lumber or product. The market price shall be determined in the following order of preference:

(I) The market price for the lumber or a product sold at substantially the same level of trade as the exported lumber or product but in different quantities.

(II) The market price for the lumber or a product sold at a different level of trade than the exported lumber or product but in similar quantities.

(III) The market price for the lumber or a product sold at a different level of trade than the exported lumber or product and in different quantities.

(ii) LEVEL OF TRADE.—For purposes of clause (i), “level of trade” shall be determined in the same manner as provided under section 351.412(c) of title 19, Code of Federal Regulations (as in effect on January 1, 2008).

(6) F.O.B.—The term “F.O.B.” means a value consisting of all charges payable by a purchaser, including those charges incurred in the placement of merchandise on board of a conveyance for shipment, but does not include the actual shipping charges or any applicable export charges.

(7) HTS.—The term “HTS” means the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) (as in effect on January 1, 2008).

(8) PERSON.—The term “person” includes any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States.

(9) UNITED STATES.—The term “United States” means the customs territory of the United States, as defined in General Note 2 of the HTS.

SEC. 803. [19 U.S.C. 1683a] ESTABLISHMENT OF SOFTWOOD LUMBER IMPORTER DECLARATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—The President shall establish and maintain an importer declaration program with respect to the importation of softwood lumber and softwood lumber products described in section 804(a). The importer declaration program shall require importers of softwood lumber and softwood lumber products described in section 804(a) to provide the information required under subsection (b) and declare the information

required by subsection (c), and require that such information accompany the entry summary documentation.

(2) ELECTRONIC RECORD.—The President shall establish an electronic record that includes the importer information required under subsection (b) and the declarations required under subsection (c).

(b) REQUIRED INFORMATION.—The President shall require the following information to be submitted by any person seeking to import softwood lumber or softwood lumber products described in section 804(a):

(1) The export price for each shipment of softwood lumber or softwood lumber products.

(2) The estimated export charge, if any, applicable to each shipment of softwood lumber or softwood lumber products as calculated by applying the percentage determined and published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805 to the export price provided in subsection (b)(1).

(c) IMPORTER DECLARATIONS.—Pursuant to procedures prescribed by the President, any person seeking to import softwood lumber or softwood lumber products described in section 804(a) shall declare that—

(1) the person has made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting the determinations published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b); and

(2) to the best of the person's knowledge and belief—

(A) the export price provided pursuant to subsection (b)(1) is determined in accordance with the definition provided in section 802(5);

(B) the export price provided pursuant to subsection (b)(1) is consistent with the export price provided on the export permit, if any, granted by the country of export; and

(C) the exporter has paid, or committed to pay, all export charges due—

(i) in accordance with the volume, export price, and export charge rate or rates, if any, as calculated under an international agreement entered into by the country of export and the United States; and

(ii) consistent with the export charge determinations published by the Under Secretary for International Trade pursuant to section 805(b).

SEC. 804. [19 U.S.C. 1683b] SCOPE OF SOFTWOOD LUMBER IMPORTER DECLARATION PROGRAM.

(a) PRODUCTS INCLUDED IN PROGRAM.—The following products shall be subject to the importer declaration program established under section 803:

(1) IN GENERAL.—All softwood lumber and softwood lumber products classified under subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 of the HTS, including the following softwood lumber, flooring, and siding:

(A) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded, or finger-jointed, of a thickness exceeding 6 millimeters.

(B) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed.

(C) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed.

(D) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed.

(E) Coniferous drilled and notched lumber and angle cut lumber.

(2) PRODUCTS CONTINUALLY SHAPED.—Any product classified under subheading 4409.10.05 of the HTS that is continually shaped along its end or side edges.

(3) OTHER LUMBER PRODUCTS.—Except as otherwise provided in subsection (b) or (c), softwood lumber products that are stringers, radius-cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts classified under subheading 4418.90.46.95, 4421.90.70.40, or 4421.90.97.40 of the HTS.

(b) PRODUCTS EXCLUDED FROM PROGRAM.—The following products shall be excluded from the importer declaration program established under section 803:

(1) Trusses and truss kits, properly classified under subheading 4418.90 of the HTS.

(2) I-joist beams.

(3) Assembled box-spring frames.

(4) Pallets and pallet kits, properly classified under subheading 4415.20 of HTS.

(5) Garage doors.

(6) Edge-glued wood, properly classified under subheading 4421.90.97.40 of the HTS.

(7) Complete door frames.

(8) Complete window frames.

(9) Furniture.

(10) Articles brought into the United States temporarily and for which an exemption from duty is claimed under subchapter XIII of chapter 98 of the HTS.

(11) Household and personal effects.

(c) EXCEPTIONS FOR CERTAIN PRODUCTS.—The following softwood lumber products shall not be subject to the importer declaration program established under section 803:

(1) STRINGERS.—Stringers (pallet components used for runners), if the stringers—

(A) have at least 2 notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades; and

(B) are properly classified under subheading 4421.90.97.40 of the HTS.

(2) BOX-SPRING FRAME KITS.—

(A) IN GENERAL.—Box-spring frame kits, if—

(i) the kits contain—

(I) 2 wooden side rails;

(II) 2 wooden end (or top) rails; and

(III) varying numbers of wooden slats; and

(ii) the side rails and the end rails are radius-cut at both ends.

(B) PACKAGING.—Any kit described in subparagraph

(A) shall be individually packaged, and contain the exact number of wooden components needed to make the box-spring frame described on the entry documents, with no further processing required. None of the components contained in the package may exceed 1 inch in actual thickness or 83 inches in length.

(3) RADIUS-CUT BOX-SPRING FRAME COMPONENTS.—Radius-cut box-spring frame components, not exceeding 1 inch in actual thickness or 83 inches in length, ready for assembly without further processing, if radius cuts are present on both ends of the boards and are substantial cuts so as to completely round 1 corner.

(4) FENCE PICKETS.—Fence pickets requiring no further processing and properly classified under subheading 4421.90.70 of the HTS, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards shall be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring $\frac{3}{4}$ of an inch or more.

(5) UNITED STATES-ORIGIN LUMBER.—Lumber originating in the United States that is exported to another country for minor processing and imported into the United States if—

(A) the processing occurring in another country is limited to kiln drying, planing to create smooth-to-size board, and sanding; and

(B) the importer establishes to the satisfaction of U.S. Customs and Border Protection upon entry that the lumber originated in the United States.

(6) SOFTWOOD LUMBER.—Any softwood lumber or softwood lumber product that originated in the United States, if the importer, exporter, foreign processor, or original United States producer establishes to the satisfaction of U.S. Customs and Border Protection upon entry that the softwood lumber entered and documented as originating in the United States was first produced in the United States.

(7) HOME PACKAGES OR KITS.—

(A) IN GENERAL.—Softwood lumber or softwood lumber products contained in a single family home package or kit, regardless of the classification under the HTS, if the importer declares that the following requirements have been met:

(i) The package or kit constitutes a full package of the number of wooden pieces specified in the plan, design, or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design, or blueprint.

(ii) The package or kit contains—

(I) all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, and connectors; and

(II) if included in the purchase contract, the decking, trim, drywall, and roof shingles specified in the plan, design, or blueprint.

(iii) Prior to importation, the package or kit is sold to a United States retailer that sells complete home packages or kits pursuant to a valid purchase contract referencing the particular home design, plan, or blueprint, and the contract is signed by a customer not affiliated with the importer.

(iv) Softwood lumber products entered as part of the package or kit, whether in a single entry or multiple entries on multiple days, are to be used solely for the construction of the single family home specified by the home design, plan, or blueprint matching the U.S. Customs and Border Protection import entry.

(B) ADDITIONAL DOCUMENTATION REQUIRED FOR HOME PACKAGES AND KITS.—In the case of each entry of products described in clauses (i) through (iv) of subparagraph (A) the following documentation shall be retained by the importer and made available to U.S. Customs and Border Protection upon request:

(i) A copy of the appropriate home design, plan, or blueprint matching the customs entry in the United States.

(ii) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer.

(iii) A listing of all parts in the package or kit being entered into the United States that conforms to the home design, plan, or blueprint for which such parts are being imported.

(iv) If a single contract involves multiple entries, an identification of all the items required to be listed under clause (iii) that are included in each individual shipment.

(d) PRODUCTS COVERED.—For purposes of determining if a product is covered by the importer declaration program, the President shall be guided by the article descriptions provided in this section.

SEC. 805. [19 U.S.C. 1683c] EXPORT CHARGE DETERMINATION AND PUBLICATION.

(a) DETERMINATION.—The Under Secretary for International Trade of the Department of Commerce shall determine, on a monthly basis, any export charges (expressed as a percentage of export price) to be collected by a country of export from exporters of softwood lumber or softwood lumber products described in section 804(a) in order to ensure compliance with any international agreement entered into by that country and the United States.

(b) PUBLICATION.—The Under Secretary for International Trade shall immediately publish any determination made under subsection (a) on the website of the International Trade Administration of the Department of Commerce, and in any other manner the Under Secretary considers appropriate.

SEC. 806. [19 U.S.C. 1683d] RECONCILIATION.

The Secretary of the Treasury shall conduct reconciliations to ensure the proper implementation and operation of international agreements entered into between a country of export of softwood lumber or softwood lumber products described in section 804(a) and the United States. The Secretary of Treasury shall reconcile the following:

(1) The export price declared by a United States importer pursuant to section 803(b)(1) with the export price reported to the United States by the country of export, if any.

(2) The export price declared by a United States importer pursuant to section 803(b)(1) with the revised export price reported to the United States by the country of export, if any.

SEC. 807. [19 U.S.C. 1683e] VERIFICATION.

(a) IN GENERAL.—The Secretary of Treasury shall periodically verify the declarations made by a United States importer pursuant to section 803(c), including by determining whether—

(1) the export price declared by a United States importer pursuant to section 803(b)(1) is the same as the export price provided on the export permit, if any, issued by the country of export; and

(2) the estimated export charge declared by a United States importer pursuant to section 803(b)(2) is consistent with the determination published by the Under Secretary for International Trade pursuant to section 805(b).

(b) EXAMINATION OF BOOKS AND RECORDS.—

(1) IN GENERAL.—Any record relating to the importer declaration program required under section 803 shall be treated as a record required to be maintained and produced under title V of this Act.

(2) EXAMINATION OF RECORDS.—The Secretary of the Treasury is authorized to take such action, and examine such records, under section 509 of this Act, as the Secretary determines necessary to verify the declarations made pursuant to section 803(c) are true and accurate.

SEC. 808. [19 U.S.C. 1683f] PENALTIES.

(a) IN GENERAL.—It shall be unlawful for any person to import into the United States softwood lumber or softwood lumber products in knowing violation of this title.

(b) CIVIL PENALTIES.—Any person who commits an unlawful act as set forth in subsection (a) shall be liable for a civil penalty not to exceed \$10,000 for each knowing violation.

(c) OTHER PENALTIES.—In addition to the penalties provided for in subsection (b), any violation of this title that violates any other customs law of the United States shall be subject to any applicable civil and criminal penalty, including seizure and forfeiture, that may be imposed under such custom law or title 18, United States Code, with respect to the importation of softwood lumber and softwood lumber products described in section 804(a).

(d) FACTORS TO CONSIDER IN ASSESSING PENALTIES.—In determining the amount of civil penalties to be assessed under this section, consideration shall be given to any history of prior violations of this title by the person, the ability of the person to pay the penalty, the seriousness of the violation, and such other matters as fairness may require.

(e) NOTICE.—No penalty may be assessed under this section against a person for violating a provision of this title unless the person is given notice and opportunity to make statements, both oral and written, with respect to such violation.

(f) EXCEPTION.—Notwithstanding any other provision of this title, and without limitation, an importer shall not be found to have violated subsection 803(c) if—

- (1) the importer made an appropriate inquiry in accordance with section 803(c)(1) with respect to the declaration;
- (2) the importer produces records maintained pursuant to section 807(b) that substantiate the declaration; and
- (3) there is not substantial evidence indicating that the importer knew that the fact to which the importer made the declaration was false.

SEC. 809. [19 U.S.C. 1683g] REPORTS.

(a) SEMIANNUAL REPORTS.—Not later than 180 days after the effective date of this title, and every 180 days thereafter, the President shall submit to the appropriate congressional committees a report—

- (1) describing the reconciliations conducted under section 806, and the verifications conducted under section 807;
- (2) identifying the manner in which the United States importers subject to reconciliations conducted under section 806 and verifications conducted under section 807 were chosen;
- (3) identifying any penalties imposed under section 808;
- (4) identifying any patterns of noncompliance with this title; and
- (5) identifying any problems or obstacles encountered in the implementation and enforcement of this title.

(b) SUBSIDIES REPORTS.—Not later than 180 days after the date of the enactment of this title, and every 180 days thereafter, the Secretary of Commerce shall provide to the appropriate congressional committees a report on any subsidies on softwood lumber or softwood lumber products, including stumpage subsidies, provided by countries of export.

(c) GAO REPORTS.—The Comptroller General of the United States shall submit the following reports to the appropriate congressional committees:

(1) Not later than 18 months after the date of the enactment of this title, a report on the effectiveness of the reconciliations conducted under section 806, and verifications conducted under section 807.

(2) Not later than 12 months after the date of the enactment of this title, a report on whether countries that export softwood lumber or softwood lumber products to the United States are complying with any international agreements entered into by those countries and the United States.