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UNITED STATES-SINGAPORE FREE TRADE AGREEMENT IMPLEMENTATION ACT

JULY 22, 2003.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2739]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2739) to implement the United States-Singapore Free Trade Agreement, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

PURPOSE AND SUMMARY

On May 6, 2003, United States and Singapore entered into a bilateral Free Trade Agreement ("FTA"), concluding a negotiation process that began in December 2000.[1] H.R. 2739 approves the U.S.-Singapore FTA submitted to Congress on July 15, 2003 and makes changes to United States law necessary to ensure compliance with the agreement. The legislation contains four titles: Title I, "Approval of, and General Provisions to, Relating the Agreement;" Title II, "Customs Provisions;" Title III, "Relief from Imports;" and Title IV, "Temporary Entry of Business Persons." The Committee's consideration of H.R. 2739 was limited to title IV of the legislation. Title IV establishes 5,400 annual professional worker visas for Singaporean citizens to enter the United States on a temporary basis.

H.R. 2739 was considered pursuant to the Bipartisan Trade Promotion Authority Act of 2002[2] and the Trade Act of 1974.[3] As a result, the legislation was considered on an expedited basis which did not permit committees of jurisdiction to amend the legislation after its formal introduction. However, the Committee made several changes to draft implementing legislation transmitted to the Committee for a pre-introduction ″mock markup" on July 10, 2003. These changes were substantially reflected in H.R. 2739.

BACKGROUND AND NEED FOR THE LEGISLATION

U.S.-SINGAPORE FREE TRADE AGREEMENT

Background

On May 6, 2003, the United States and Singapore entered into a bilateral FTA, concluding a 14-round negotiation process that began in December 2000.[4] Singapore is America's largest trading partner in Southeast Asia with bilateral trade of $31.0 billion and a U.S. bilateral merchandise trade surplus in 2002 of $1.4 billion. Singapore is the 11th largest export market for the United States with $16.2 billion in merchandise exports in 2002. It is the 16th largest source for goods imported into the United States with $14.8 billion in 2002. The United States is Singapore's second largest trading partner. The United States runs surpluses with Singapore in aircraft; electrical machinery; plastic; mineral fuel; instruments; miscellaneous chemical products; aluminum; dyes, paints, putty; and iron and steel products. The U.S. incurs deficits with Singapore in machinery; organic chemicals; knit apparel; fish and seafood; woven apparel; and books and newspapers.[5]

Last month, the U.S. International Trade Commission (ITC) released the results of its investigation into the probable economic effects of a U.S.-Singapore FTA. The ITC Report concluded that the economy-wide effects on U.S. trade, production, and economic welfare of the FTA tariff reductions are likely to be negligible to very

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[1] *Full text of the U.S.-Singapore Free Trade Agreement* available at: <http://www.ustr.gov/new/fta/Singapore/final/textpercent20final.PDF>.

[2] 19 U.S.C. § 3805 *et. seq.* (2002).

[3] 19 U.S.C. § 2191 *et. seq.* (2003).

[4] The full text of the U.S.-Singapore FTA is available at: <http://www.ustr.gov/new/fta/Singapore. htm>.

[5] *See generally,* Dick K. Nanto, CRS Report for Congress, *The U.S.-Singapore Free Trade Agreement*, June 26, 2003.

small. The report explained that this is not an unexpected finding given the current open trade relationship between the U.S. and Singapore, the relatively small trade and bilateral investment flows relative to U.S. trade and investment worldwide, and Singapore's small economy relative to that of the United States. At the sectoral level, the report concluded that some sectors of the U.S. economy likely would experience increased import competition from Singapore, while other sectors likely would experience increased export opportunities in Singapore.

Summary of U.S.-Singapore FTA Provisions Pertaining to the Jurisdiction of the Committee on the Judiciary

Although the Committee's formal legislative consideration of H.R. 2739 was limited to title IV of the legislation, which implemented changes to United States immigration law, the U.S.-Singapore FTA also contained intellectual property and competition chapters that fall within the jurisdiction of the Committee.

Intellectual Property Rights (IPR)

Chapter 16 of the U.S.-Singapore FTA contains several provisions which enhance protections for IPR. The FTA requires Singapore to more aggressively enforce laws prohibiting piracy of intellectual property and establishes that non-discrimination obligations apply for all types of intellectual property. The FTA ensures government involvement in resolving disputes between trademarks and Internet domain names (important to prevent "cyber-squatting" of trademarked domain names). It also applies the principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names) applied to products.

The Agreement streamlines the trademark filing process by allowing applicants to use their own national patent/trademark offices for filing trademark applications. The FTA ensures that only authors, composers, and other copyright owners have the right the make their works available online. Copyright owners maintain rights to temporary copies of their works on computers. (This was aimed at protecting music, videos, software, or text from widespread unauthorized sharing via the Internet). Copyrighted works and phonograms are protected for extended terms, consistent with U.S. standards and international trends. The FTA also contains anti-circumvention provisions aimed at preventing the tampering with technologies (such as embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet. It also ensures that governments use only legitimate computer software (in order to set a positive example for private users). Singapore is to prohibit the production of optical discs (CDs, DVDs or software) without a source identification code unless authorized by the copyright holder in writing.

Under the FTA, protection for encrypted program-carrying satellite signals extends to the signals themselves as well as the programming. This is designed to prevent piracy of satellite television programming. Both sides agreed to criminalize unauthorized reception and re-distribution of satellite signals. The Agreement also contains limited liability for Internet Service Providers (ISPs)—reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the infringement of

copyrights. In essence, both sides are to provide immunity to Internet service providers for complying with notification and take-down procedures when material suspected to be infringing on copyright is hosted on their servers. The FTA provides for a patent term to be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice. The grounds for revoking a patent are limited to the same grounds required to originally refuse a patent.

In addition, the Agreement requires the government of Singapore to establish criminal penalties for pirated copies from legitimate products. The Singaporean government guarantees that it has authority to seize, forfeit, and destroy counterfeit and pirated goods and the equipment used to produce them. IPR laws are to be enforced against traded goods, including transshipments, to deter violators from using U.S. or Singaporean ports or free-trade zones to traffic in pirated products. The FTA mandates both statutory and actual damages under Singaporean law for IPR violations (as a deterrent to piracy) and provides that monetary damages be awarded even if actual economic harm (retail value, plus the profits made by violators) cannot be determined. Singapore is to cooperate in preventing pirated and counterfeit goods from being imported into the United States. The FTA sharply restricts Singapore from using compulsory licenses to copy patented drugs and establishes barriers to the import of patented drugs sold at lower prices in third countries.[6]

Competition Policy/Antitrust

Chapter 12 of the U.S.-Singapore FTA commits Singapore to enact a law regulating anti-competitive business conduct and to create a competition commission by January 2005. Specific conduct guarantees are imposed to ensure that commercial enterprises in which the Singapore government has effective influence will operate on the basis of commercial considerations and that such enterprises will not discriminate in their treatment of U.S. firms. Singapore thus commits to maintain its existing policy of not interfering with the commercial decisions of Government Linked Companies (GLCs) and to provide annual information on GLCs with substantial revenues or assets. This requirement is particularly important because GLCs comprise a relatively large part (nearly 40 percent) of Singapore's economy. A summary of provisions related to competition and antitrust contained in the U.S.-Singapore FTA is set forth below.

Chapter 12 of the Agreement helps ensure that the opportunities created by trade liberalization are supported by healthy competitive domestic markets, allowing the firms of each country to compete freely and unhampered by anticompetitive business conduct in either country's territory. Firms that are subject to antitrust enforcement action will be guaranteed basic procedural safeguards. Since these protections already exist in the United States, no changes to United States law are necessary. While state monopolies and state enterprises do not account for a significant portion of either country's economy, the provisions governing these entities

[6] *See Id.*

will help eliminate the potential for either party to favor domestic firms in the sale or purchase of goods and services.

Specifically, Chapter 12 ensures that both countries:

- Enforce domestic antitrust law that prohibits anticompetitive business conduct;
- Cooperate in the enforcement of antitrust law;
- Ensure that any private or public monopolies designated by either country, and any state enterprises, be subject to disciplinary action for abusing their status or otherwise discriminating in a manner that harms the interests of the other country.
- Explicitly recognize that anticompetitive conduct threatens the free flow of bilateral trade and investment, and seeks to secure the benefits of the FTA by prohibiting such conduct, encouraging economically sound competition policies, and furthering transparency and cooperation;
- Expand previous competition provisions by affirming that antitrust laws be enforced in a neutral manner that does discriminate on the basis of nationality;
- Ensure basic procedural rights for firms that are subject to antitrust enforcement actions: each country will provide a right to be heard and to present evidence before imposing a sanction or remedy;
- Provide for consultations and further transparency by allowing either country to request from the other specific public information regarding antitrust enforcement activity, official monopolies and state enterprises, and any exemptions from their antitrust laws.

Finally, it is important to note that the provisions regarding antitrust law and enforcement are not subject to dispute settlement under the Agreement.

Temporary Entry

Title IV of the U.S.-Singapore Free Trade Agreement draft implementing legislation forwarded to the Committee by the Administration for its July 10, 2003 "mock markup" reflected U.S. commitments under Chapter 14 of the U.S.-Singapore FTA pertaining to the temporary entry of business persons. However, this draft legislation was considerably amended during the Committee's "mock markup" on July 10, 2003. These Committee recommendations were subsequently incorporated into the introduced version of H.R. 2739. These changes are highlighted in the 'Pre-Introduction 'Mock Markup' of U.S.-Singapore FTA Implementing Legislation and Committee Amendments Incorporated Into H.R. 2739" section of this report.

In general, Chapter 14 is consistent with existing provisions of the Immigration and Nationality Act ("INA"). The four categories of persons eligible for admission under the Agreement's expedited procedures correspond to existing INA nonimmigrant and related classifications.

To provide for the admission of the first two categories, business visitors and intra-company transferees, no changes in U.S. statutes are required. Limited technical changes are needed to provide for

the admission of traders and investors and professionals. Legislation is also required to implement article 14.3(2) of the Agreement regarding labor disputes.

Traders and Investors

Under Section B of Annex 14.3 of the Agreement, citizens of Singapore are eligible for temporary entry as traders and investors. This category provides for admission under requirements identical to those governing admission under INA § 101(a)(15)(E) (8 U.S.C. § 1101(a)(15)(E)), which permits entry for persons to carry on substantial trade in goods or services or to develop and direct investment operations.

Section 101(a)(15)(E) currently conditions admission into the United States upon authorization pursuant to a treaty of commerce and navigation. Since the Agreement is not a treaty of commerce and navigation, and no such treaty exists between the United States and Singapore, legislation is necessary to accord treaty trader and investor status to Singaporean citizens qualifying for entry under Section B.

Section 401 of the draft legislation would not have amended section 101(a)(15)(E). Instead, it relied on a mechanism similar to that provided in § 341(a) of the North American Free Trade Agreement Implementation Act, which in turn was based upon the Act of June 18, 1954 (68 Stat. 264, 8 U.S.C. § 1184(a)). The Act of June 18, 1954 conferred treaty trader and investor status upon nationals of the Philippines on a reciprocal basis secured by an agreement entered into by the President of the United States and the President of the Philippines.

Professionals

Section 402(a) of the draft bill would have amended § 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)), which defines categories of persons entitled to enter the United States as nonimmigrants. Section 402(a) of the draft bill would have inserted a new subparagraph (W) at the end of INA § 101(a)(15). Subparagraph (W) would have established a new category of aliens entitled to enter the United States temporarily as nonimmigrants. These aliens would have been citizens of countries with which the United States has entered into free trade agreements and who sought to come to the United States temporarily to engage in business activities at the professional level. Entry into the United States under subparagraph (W) would have been subject to regulations issued by the Secretary of Homeland Security implementing numerical limitations provided for in the applicable agreement, as set forth in new paragraph (8) of INA § 214(g), as added by the bill. The Department of Labor would have issued regulations governing temporary entry of professionals under this proposed provision of law. This amendment to the INA would have implemented Section D of Annex 14.3 of the Agreement.

New INA § 101(a)(15)(W) also would have provided for the entry of spouses and children accompanying or following to join business persons entering under this category. The purpose of this provision was to grant express authorization for current Immigration and Naturalization Service practice, which is to admit such persons, but

not allow them to be employed in the United States unless they independently met all applicable INA requirements.

Persons seeking temporary entry into the United States under § 101(a)(15)(W) would have been:

- considered to be seeking nonimmigrant status;
- subject to general requirements relating to admission of nonimmigrants, including those pertaining to the issuance of entry documents and the presumption set out in INA § 214(b) (8 U.S.C. § 1184(b)); and
- accorded nonimmigrant status on admission.

It should be noted that while there are many similarities in the way professionals would have been treated under § 101(a)(15)(W) of the INA, as proposed by the draft bill and the way H-IB professionals are treated, a determination of admissibility under subparagraph (W) would have neither foreclosed nor established eligibility for entry as an H-1B professional. Further, § 101(a)(15)(W) would not have authorized a professional to establish a business or practice in the United States in which the professional will be self-employed.

Numerical Limitations

Paragraph six of Section D of Annex 14.3 of the Agreement permits the United States to establish an annual numerical limit on temporary entries under the Agreement of Singaporean professionals. Under the proposed new paragraph (8) of INA § 214(g), that would have been added by § 402(a) of the bill, the Secretary of Homeland Security will issue regulations establishing an annual limit of up to 5,400 new temporary entry applications from Singaporean professionals, as provided in Appendix 14.3(D)(6) of the Agreement.

Labor Attestations

Under § (D)(5) of Annex 14.3 of the Agreement, the United States may require that an attestation of compliance with labor and immigration laws be made a condition for the temporary entry of Singaporean professionals. This provision allows U.S. labor and immigration officials to ensure that U.S. employers are not hiring Singaporean professionals as a way to put pressure on U.S. employees to accept lower wages or less favorable terms and conditions of employment.

Section 402(b) of the draft legislation would have implemented the attestation requirement under the Agreement. Section 402(b) of the draft bill would have amended § 212 of the INA (8 U.S.C. § 1182) by adding a new subsection (s) to the end of that section. INA § 212(s)(1), which would have been added by § 402(b) of the bill, required a U.S. employer seeking a temporary entry visa for a Singaporean professional to file an attestation with the Secretary of Labor. The attestation would have consisted of four core elements similar to those required for attestations under the "H-1B" visa program. See 8 U.S.C. § 1182(n)(1)(A)–(C). Thus, an employer would have attested that:

- It would pay the employee the higher of: (a) the actual wage paid to all other individuals with similar experience and

qualifications for the specific employment in question, or (b) the prevailing wage level for the occupational classification in the area of employment;

- It would provide working conditions for the employee that would not adversely affect the working conditions of workers similarly employed;
- There was no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment;
- The employer had provided notice of its attestation to its employees' bargaining representative in the occupational classification in the area for which the employee was sought or, absent such a representative, has otherwise notified its employees.

The remainder of the proposed new INA § 212(s) contained provisions for enforcing the labor attestation requirement. Like the contents of the attestation itself, the enforcement requirements were based on requirements under the "H-1B" visa program. INA § 212(s)(2)(A) required an employer to make copies of labor attestations (and such accompanying documents as are necessary) available for public examination at the employer's principal place of business or worksite. INA § 212(s)(2)(B) required the Secretary of Labor to compile a list of all labor attestations filed including, with respect to each attestation, the wage rate, number of alien professionals sought for employment, period of intended employment, and date of need. INA § 212(s)(2)(C) provided that the Secretary of Labor would accept a labor attestation within 7 days of filing and issue the certification necessary for an alien to enter the United States as a nonimmigrant under INA § 101(a)(15)(W), unless the attestation was incomplete or obviously inaccurate.

INA § 212(s)(3)(A) required the Secretary of Labor to establish a process for the receipt, investigation, and disposition of complaints respecting an employer's failure to meet a condition specified in a labor attestation or an employer's misrepresentation of material facts in such an attestation. Section 212(s)(3) also set forth penalties that may be imposed for violation of the labor attestation requirements, including monetary fines and denial of applications for visas under INA section 101(a)(15)(W) for specified periods. INA § 212(s)(4) defined certain terms used in INA § 212(s).

Labor Disputes

Article 14.3(2) of the Agreement establishes an important safeguard for the domestic labor forces of the United States and Singapore, respectively. It permits either government to refuse to issue an immigration document authorizing employment where the temporary entry of a business person might affect adversely the settlement of a labor dispute or the employment of a person involved in such dispute. Article 14.3(2) thus allows the United States to deny temporary entry to a Singaporean business person whose activities in the United States require employment authorization if admission might interfere with an ongoing labor dispute. If the United States invokes article 14.3(2), it must inform the business person in writing of the reasons for its action and notify Singapore.

Section 403 of the draft bill implemented article 14.3(2) of the Agreement by amending INA § 214(j) (8 U.S.C. § 1184(j)), designating current subsection (j) as paragraph (1) and inserting a new paragraph (2). New paragraph (2) of INA § 214(j) provided authority to refuse nonimmigrant classification under specified circumstances to a Singaporean business person seeking to enter the United States pursuant to the Agreement. In particular, nonimmigrant would have been refused if there was a strike or lockout affecting the relevant occupational classification at the Singaporean business person's place of employment or intended place of employment in the United States, unless that person established, pursuant to regulations issued by the Secretary of Homeland Security after consultations with the Secretary of Labor, that the business person's entry would not have adversely affected the settlement of the strike or lockout or the employment of any person involved in the strike or lockout.

New paragraph (2) also required the provision of notice to the affected Singaporean business persons and to Singapore of a determination to deny nonimmigrant classification, as required under article 14.3(3) of the Agreement. INA § 214(j)(2) as inserted by the draft legislation applies only to requests for temporary entry by traders and investors, intra-company transferees, and professionals—*i.e.,* the categories of nonimmigrants that require employment authorization under U.S. law (corresponding to Sections B, C, and D of Annex 14.3 of the Agreement). Employment in the U.S. labor market would not have been permitted for business visitors, as defined in INA § 101(a)(15)(B) (8 U.S.C. 1101(a)(15)(B)) (corresponding to Section A of Annex 14.3 of the Agreement); violations of status under that provision that involve labor disputes are fully redressable under existing law.

Section 214(j)(2) would have been similar to existing INA provisions that prohibit admission in certain circumstances where interference with a labor dispute may result. For example, under INA § 212(n)(1)(B) (8 U.S.C. § 1182(n)(1)(B)), the U.S. employer sponsoring an alien for admission must certify that there is no strike or lockout in the occupational classification at the place of employment. Additionally, § 214(j)(2) would have supplemented INA § 237(a)(1)(C) (8 U.S.C. 1227(a)(1)(C)) and related INA provisions that now authorize deportation of an alien admitted under a particular nonimmigrant category if the alien ceased to perform the type of work permitted under that category or misrepresented the nature of the work at the time of admission. The Department of Labor would have provided strike certifications to the Department of Homeland Security, as it has provided them to the Immigration and Naturalization Service under existing provisions, pursuant to 8 C.F.R. 214.2(h)(17).

Administrative Action

Singapore would have been added to the list of countries, maintained by the Department of State, whose citizens are eligible for treaty trader and treaty investor status under INA § 101(a)(15)(E). With respect to professionals provided for under Section D of Annex 14.3 of the Agreement, in all cases where a state license is required to engage in a particular activity in the United States, such professionals would have been required to obtain the appro-

priate state license. Pursuant to INA § 101(a)(15)(W) as proposed by section 402(a) of the draft bill, the Secretary of Homeland Security would have issued regulations implementing the numerical limits set forth in Appendix 14.3(D)(6) of the Agreement. The Secretary of Labor would have issued regulations implementing the labor attestation provisions in new subsection (s) of INA § 212. The administrative agencies responsible for administering the other amendments to the INA described above would have promulgated regulations to implement those amendments.

Pre-Introduction "Mock Markup" of U.S.-Singapore FTA Implementing Legislation and Committee Amendments Incorporated Into H.R. 2739

On July 10, 2003, the Committee held a pre-introduction "mock markup" of draft implementing legislation submitted by the Administration to the Committee. The Committee's consideration of this draft legislation was limited to title IV of the draft implementing legislation. During this meeting, Chairman Sensenbrenner, Ranking Member Conyers, and several Members of the Committee made it clear that they opposed the inclusion of immigration provisions in H.R. 2739 and that they would not support any future FTA that included substantive changes to United States immigration law.

Judiciary Committee Amendments to Draft Implementing Legislation

The Committee reported several amendments to the immigration provisions by voice vote. The amendments were reflected in H.R. 2739.

First, the Committee reported an amendment by Representative King to transfer the new "W" professional worker visa category for citizens of Singapore to section 101(a)(15)(H)(i)(b)(1) of the Immigration and Nationality Act, rather than 101(a)(15)(W) as provided for in the draft implementing legislation. Representative King's amendment also ensured that in future years, the national H-1B visa cap will be reduced in two situations. First, the number of H-1B visas available in a fiscal year will be reduced by the number of Singaporean citizens granted extensions of H-1B1 status in that fiscal year after having previously been granted five or more consecutive prior extensions. Second, the number of H-1B visas available in a fiscal year will be reduced by the number of H-1B1 visas allocated (5,400 for citizens of Singapore). However, if at the end of a fiscal year, the 6,800 slots reserved for citizens of Singapore have not been exhausted, the number of H-1B visas available for that fiscal year will be adjusted upwards by the number of unused Singapore visas. These newly available H-1B visas may be issued within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

The Committee also reported an amendment offered by Representatives Berman and Conyers requiring that an application for every second extension for an H-1B1 visa be accompanied by a new employer attestation. This will have the effect of requiring the employer to update the prevailing wage determination at such time. The amendment also requires that an employer pay a fee when H-

1B1 status is initially granted and after every second extension of that status. The fee shall be the same as the fee an employer must pay when petitioning for an H-1B visa. However, if no fee is being assessed under the H-1B program, no fee shall be imposed under the H-1B1 program.

Finally, the implementing legislation now clarifies that an employer generally cannot sponsor an alien for an E, L, or H-1B1 visa if there is any labor dispute occurring in the occupational classification at the place of employment, regardless of whether the labor dispute is classified as a strike or lockout. In this regard, worker protections in H.R. 2739 are broader than those contained in the H-1B visa category.

HEARINGS

No hearings were held on H.R. 2739 before the Committee on the Judiciary.

COMMITTEE CONSIDERATION

On July 16, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 2739 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 2739.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2739, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 21, 2003.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2739, a bill to implement the United States-Singapore Free Trade Agreement.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Annabelle Bartsch, who can be reached at 226–2680.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 2739—A bill to implement the United States-Singapore Free Trade Agreement.

SUMMARY

H.R. 2739 would approve the free trade agreement (FTA) between the government of the United States and the government of Singapore that was entered into on May 6, 2003. It would provide for tariff reductions and other changes in law related to implementation of the agreement, such as provisions dealing with dispute settlement, rules of origin, and safeguard measures for textile and apparel industries. The bill also would allow the temporary entry of certain business persons into the United States.

The Congressional Budget Office estimates that enacting the bill would reduce revenues by $55 million in 2004, by $410 million over the 2004–2008 period, and by about $1 billion over the 2004–2013 period, net of income and payroll tax offsets. The bill would not have a significant effect on direct spending or spending subject to appropriation. CBO has determined that H.R. 2739 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2739 is shown in the following table.

	By Fiscal Year, in Millions of Dollars				
	2004	2005	2006	2007	2008
CHANGES IN REVENUES [a]					
Estimated Revenues	-55	-80	-86	-92	-98

a. H.R. 2739 also would affect direct spending and discretionary spending, but the amounts of those changes would be less than $500,000 a year.

BASIS OF ESTIMATE

Revenues

Under the United States-Singapore agreement, all tariffs on U.S. imports from Singapore would be phased out over time. The tariffs would be phased out for individual products at varying rates according to one of several different timetables ranging from immediate elimination to partial elimination over 10 years. According to the U.S. International Trade Commission, the U.S. collected $88 million in customs duties in 2002 on about $14.1 billion of imports from Singapore. Of the imports, only $1.3 billion faced non-zero tariff rates. These dutiable imports from Singapore consist mostly of certain electrical machinery, knitted or crocheted apparel, mineral fuels and oils, surgical and precision instruments, and certain nuclear reactor components. Based on these data, CBO estimates that phasing out tariff rates as outlined in the U.S.-Singapore agreement would reduce revenues by $55 million in 2004, by $410 million over the 2004–2008 period, and by about $1 billion over the 2004–2013 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from Singapore that would result from the reduced prices of imported products in the United States, reflecting the lower tariff rates. It is likely that some of the increase in U.S. imports from Singapore would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Singapore would displace imports from other countries.

Based on current law, H.R. 2739 would not provide for the assessment of civil monetary penalties on employers for violations of the labor attestation process with respect to certain workers from Singapore. However, if H.R. 2738, a bill to implement the United States-Chile FTA, were to be enacted prior to this bill, H.R. 2739 would allow the Secretary of Labor to assess such penalties. CBO expects that any additional revenues collected as a result would amount to less than $500,000 in any year.

Direct Spending

Title IV of H.R. 2739 would permit certain traders and investors from Singapore, and their spouses and children, to enter the United States as nonimmigrants. The Bureau of Citizenship and Immigration Services (BCIS) would charge fees of about $100 to provide nonimmigrant visas, so CBO estimates that the agency could collect several million dollars annually in offsetting receipts (a credit against direct spending). The agency is authorized to spend such fees without further appropriation, so the net impact on BCIS spending would not be significant.

However, if H.R. 2738 (a bill to implement the United States-Chile FTA) were to be enacted prior to this bill, title IV would establish a new nonimmigrant category for certain professional workers from Singapore. The legislation would limit the number of annual entries under this category to 5,400, plus spouses and children. The BCIS would charge fees of about $100 to provide nonimmigrant visas, so CBO estimates that the agency would collect less than $3 million annually in offsetting receipts. Again, the

agency is authorized to spend such fees without further appropriation, so the net impact on BCIS spending would not be significant.

Under current law, the Department of State also collects $100 application fee for nonimmigrant visas. These collections are spent on border security and consular functions. CBO estimates that the net budgetary impact would be less than $500,000 a year.

Spending Subject to Appropriation

Title I of H.R. 2739 would authorize the appropriation the necessary funds for the Department of Commerce to pay the United States' share of the costs of the dispute settlement procedures established by the agreement. Based on information from the agency, CBO estimates that implementing this provision would cost $100,000 in 2004, and $250,000 in each of the following years, subject to the availability of appropriated funds.

Title III would require the International Trade Commission (ITC) to investigate claims of injury to domestic industries as a result of the FTA. The ITC would have 120 days to determine whether a domestic industry has been injured, and if so, would recommend the necessary amount of import relief. The ITC would also submit a report on its determination to the President. According to the ITC, similar FTAs have resulted in only a handful of cases each year, at an average cost of about $200,000 per investigation. Based on this information, CBO estimates the bill would have no significant effect on spending subject to appropriation.

SUMMARY OF EFFECT ON REVENUES AND DIRECT SPENDING

The overall effects of H.R. 2739 on revenues and direct spending are shown in the following table.

	By Fiscal Year, In Millions of Dollars										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in receipts	0	-55	-80	-86	-92	-98	-104	-110	-117	-124	-132
Changes in outlays	*	*	*	*	*	*	*	*	*	*	*

SOURCE: The Congressional Budget Office.

* = Less than $500,000.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of State, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Revenues: Annabelle Bartsch (226–2680)
Federal Spending:
  Dispute Settlements—Melissa Zimmerman (226–2860)
  Immigration—Mark Grabowicz (226–2860), Christi Hawley-Sadoti (226–2820), and Sunita D'Monte (226–2840)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)

Impact on the Private Sector: Paige Piper/Bach (226–0207)

ESTIMATE APPROVED BY:

G. Thomas Woodward
Assistant Director for Tax Analysis
Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

H.R. 2739 does not authorize funding. Therefore, clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section-by-section analysis describes the sections of H.R. 2739 within the rule X jurisdiction of the Committee on the Judiciary.

TITLE IV. TEMPORARY ENTRY FOR BUSINESS PERSONS

It should be emphasized that all grounds of inadmissibility found at section 212(a) of the Immigration and Nationality Act (INA), as the section currently exists or as it may be modified in the future, shall apply to any applicant for admission pursuant to title IV.

Sec. 401. Nonimmigrant Traders and Investors.

"E" nonimmigrant visas are available for treaty traders and investors. A visa is available to an alien who:

> is entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national, or ii) solely to develop and direct the operations of an enterprise in which he has invested . . . a substantial amount of capital[.]
>
> *INA section 101(a)(15)(E).*

Section 401 of the bill provides that nationals of Singapore (along with spouses and children, if accompanying or following to join), may, if otherwise eligible for a visa and admissible into the U.S., be considered to be classifiable as "E" nonimmigrants if entering solely for a purpose specified in clause (i) or (ii) of INA section 101(a)(15)(E). H.R. 2739 contains a similar provision for nationals of Singapore.

Sec. 402. Nonimmigrant Professionals.

Section 402 of the bill makes nationals of Singapore eligible for the the "H-1B1 nonimmigrant visa program created by H.R. 2738 to implement the U.S.-Chile Free Trade Agreement. The total number of approvals of initial applications for admission by Singaporeans is 5,400 in any fiscal year.

For a description of the H-1B1 visa program, see the accompanying Judiciary Committee Report for H.R. 2738.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * * * *

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

* * * * * * *

SECTION 592 OF THE TARIFF ACT OF 1930

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) * * *

* * * * * * *

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

(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.

* * * * * * *

SECTION 202 OF THE TRADE ACT OF 1974

SEC. 202. INVESTIGATIONS, DETERMINATIONS, AND RECOMMENDATIONS BY COMMISSION.

(a) PETITIONS AND ADJUSTMENT PLANS.—

(1) * * *

* * * * * * *

(8) The procedures concerning the release of confidential business information set forth in section 332(g) of the Tariff Act of 1930 shall apply with respect to information received by the Commission in the course of investigations conducted under this chapter, part 1 of title III of the North American Free Trade Agreement Implementation Act, [and] title II of the United States-Jordan Free Trade Area Implementation Act*, and title III of the United States-Singapore Free Trade Agreement Implementation Act*. The Commission may request that parties providing confidential business information furnish nonconfidential summaries thereof or, if such parties indicate that the information in the submission cannot be summarized, the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

* * * * * * *

SECTION 214 OF THE IMMIGRATION AND NATIONALITY ACT

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

(g)(1) * * *

* * * * * * *

[The purported changes made to paragraph (8) of section 214(g) by this bill are shown below. Section 402(a)(2)(B) of H.R. 2738 inserts at the end of subsection (g) a new paragraph (8), which is presumed to take effect prior to the execution of these amendments.]

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

(8)(A) The agreements referred to in section 101(a)(15)(H)(i)(b1) are—

(i) the United States-Chile Free Trade Agreement; and

(ii) the United States-Singapore Free Trade Agreement.

(B)(i) * * *

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

(ii) The annual numerical limitations described in clause (i) shall not exceed—

(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and

(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.

* * * * * * *

AGENCY CORRESPONDENCE

ONE HUNDRED EIGHTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–3951
http://www.house.gov/judiciary

July 10, 2003

The Honorable Robert B. Zoellick
Ambassador
United States Trade Representative
600 17th St., N.W.
Washington, DC 20508

Dear Ambassador Zoellick:

We have long been concerned about the practice of the Office of the United States Trade Representative of negotiating changes to the Immigration and Nationality Act with foreign countries during talks on free trade agreements. This reached its nadir with the North American Free Trade Agreement and then with 1994 General Agreement on Trade in Services. In NAFTA, the USTR negotiated a major new professional worker visa category for Mexicans and Canadians that contains few of the safeguards for American workers built into the longstanding H-1B visa category available to nationals of all countries. Not only did this process usurp Congress' Constitutional role in creating immigration law, but it forever bans Congress from making modifications to, or repealing, this new visa program. Even worse, in GATS, the USTR negotiated standards for the H-1B program itself, permanently barring Congress from making many modifications to the program. While you were of course not responsible for these acts by previous Administrations and previous Trade Representatives, we want to urge you in the strongest possible terms to never again agree to negotiate immigration provisions in bilateral or multilateral free trade agreements.

Article I, section 8, clause 4 of the Constitution provides that Congress shall have power to "establish an uniform Rule of Naturalization." The Supreme Court has long found that this provision of the Constitution grants Congress plenary power over immigration policy. As the Court found in Galvan v. Press, 347 U.S. 522, 531 (1954), "the formulation of policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." And, as the Court found in Kleindienst v. Mandel, 408 U.S. 753, 766 (1972) (quoting Boutilier v. INS, 387 U.S. 118, 123 (1967)), "[t]he Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.'"

We appreciate the increased level of consultation with Congress that you have provided during your term over that provided by previous Trade Representatives, especially regarding the negotiations over the Chile and Singapore Free Trade Agreements. However, in the future, even heightened consultation will not alter our fundamental opposition to the inclusion of immigration matters in free trade agreements. First, such inclusion degrades Congress' ability to exercise its plenary power. Second, fast track authority takes away Congress' ability to subject immigration proposals to the debate and amendment process so vital to creating sound immigration law. And third, immigration provisions in free trade agreements cannot later be modified by Congress without placing the United States in violation of those agreements, despite fundamentally changed national circumstances. These factors seriously impair our ability to do the jobs we were elected to do – to legislate an immigration law that is in the best interests of our constituents.

Therefore, we urge you to no longer entertain proposals to modify U.S. immigration law in future free trade agreements. We also urge you to make this position clear to the foreign governments you are currently negotiating free trade agreements with, including but not limited to the negotiations pursuant to the Doha round of the General Agreement on Trade in Services, the proposed Central American Free Trade Agreement, and the proposed free trade accord with Australia.

Should immigration provisions be included in future free trade agreements, those of us who have supported trade promotion authority and free trade agreements in the past will be put in the troubling position of having to consider opposing future extensions of trade promotion authority or future trade agreements themselves. Of course, whenever the Administration would like to propose legislative changes to the Immigration and Nationality Act, we would be happy to give the proposals the most serious consideration through the regular legislative process.

We thank you for continuing to consult with us and look forward to working with you and the President to craft the best trade policy for America.

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

JOHN CONYERS, JR.
Ranking Member

Congress of the United States
House of Representatives
Washington, DC 20515

July 18, 2003

The Honorable Robert B. Zoellick
Ambassador
United States Trade Representative
600 17th St., N.W.
Washington, D.C. 20508

Dear Ambassador Zoellick:

The Constitution grants the legislative branch of the federal government plenary power over immigration law. As the Supreme Court ruled in Galvan v. Press, 347 U.S. 522, 531 (1954), "that the formulation of [immigration] policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." The United States Trade Representative's practice of proposing new immigration law in the context of bilateral or multilateral trade negotiations cannot be reconciled with Congress's constitutional prerogative. Even worse, when combined with the grant of "fast track" or "trade promotion authority" eliminating the legislature's ability to amend such proposals, USTR's practice has effectively stolen this plenary power away from Congress. We cannot allow this to continue and must thus insist that you never again agree to include immigration provisions in trade agreements.

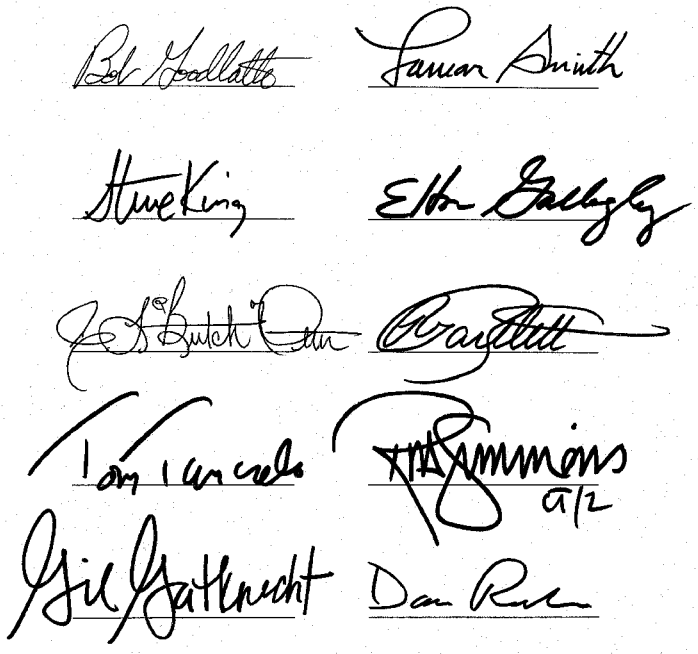
It would be unfair and inaccurate to allege that this practice began with your tenure. The most grievous indignities to Article I, section 8, clause 4 of the Constitution took place during the negotiations over the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services (GATS). In NAFTA, the Clinton Administration USTR agreed to a limitless professional worker visa category containing not even a prevailing wage requirement. In GATS, the USTR divested from future Congresses the ability to make possibly crucial modifications to the H-1B visa program. Given the outrage many of our constituents have expressed over abuses of the H-1B program, we will not soon forget this emasculation.

However, you did recently agree to a new professional worker visa category in negotiating free trade agreements with the governments of Chile and Singapore. Not only was this not your prerogative, but it seems obvious that the Chile and Singapore agreements were going to be used as precedent for future trade agreements. We must insist in the strongest of terms that you do not agree to include immigration provisions in future free trade agreements. We must insist with equal fervor that you do not agree to any additional immigration provisions in any multilateral trade negotiations, including but not limited to the ongoing Doha Round of the General Agreement on Trade in

Services. "Temporary entry" of an alien for whatever purpose is just as much within the confines of Congress's plenary power as is permanent residence or naturalization.

Many of us have supported trade promotion authority in the past. However, without a clear statement from the USTR that immigration will not be a part of future trade agreements, our support for future extensions of this authority will be put in doubt. And we would of course find it very difficult to support any future trade agreements that contain any immigration provisions.

Sincerely,



W. Todd Akin

Jo Ann Hostettler

Ed Royce

Nathan Deal

Julia Brown

Tim Huelskamp

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 16, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up H.R. 2739, the implementing legislation for the U.S.-Singapore Free Trade Agreement and move its favorable recommendation to the House.

The same explanation that I have previously given with respect to the Chile legislation applies to the Singapore legislation, and again only the immigration provisions of the agreement require implementing legislation.

Without objection, H.R. 2739 will be considered as read.

[The bill, H.R. 2739, follows:]

I

108TH CONGRESS
1ST SESSION

H. R. 2739

To implement the United States-Singapore Free Trade Agreement.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2003

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

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A BILL

To implement the United States-Singapore Free Trade Agreement.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''United States-Singapore Free Trade Agreement Implementation Act''.

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

SEC. 2. PURPOSES.

The purposes of this Act are—

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

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

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

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

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term ''Agreement'' means the United States-Singapore Free Trade Agreement approved by Congress under section 101(a).

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

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

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

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

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

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

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Singapore has taken measures necessary to bring it into compliance with those provisions of the Agreement that take effect on the date on which the Agreement enters into force, the President is authorized to exchange notes with the Government of Singapore providing for the entry

into force, on or after January 1, 2004, of the Agreement for the United States.

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

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

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

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

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

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

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

United States for the purpose of declaring such law or application invalid.

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

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

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

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

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

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

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

(a) CONSULTATION AND LAYOVER REQUIREMENTS.—If a provision of this Act provides that the imple-

mentation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

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

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974; and

(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days beginning on the first day on which the requirements of paragraphs (1) and (2) have been met has expired; and

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

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

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

(a) IMPLEMENTING ACTIONS.—

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

(A) the President may proclaim such actions, and

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

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effective date earlier than the date of entry into force.

(2) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction in section 103(b) on the taking effect

of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

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

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. Such office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2003 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CERTAIN CLAIMS.

(a) SUBMISSION OF CERTAIN CLAIMS.—The United States is authorized to resolve any claim against the United States covered by article 15.15.1(a)(i)(C) or article 15.15.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section C of chapter 15 of the Agreement.

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

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

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

(b) EXCEPTIONS.—

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

(2) Section 205 takes effect on the date on which the textile and apparel provisions of the Agreement take effect pursuant to article 5.10 of the Agreement.

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

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—The President may proclaim—

(1) such modifications or continuation of any duty,

(2) such continuation of duty-free or excise treatment, or

(3) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 2.2, 2.5, 2.6, and 2.12 and Annex 2B of the Agreement.

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

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with Singapore regarding the staging of any duty treatment set forth in Annex 2B of the Agreement,

(3) such continuation of duty-free or excise treatment, or

(4) such additional duties,

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

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States set forth in Annex 2B of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. RULES OF ORIGIN.

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

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

(2) each nonoriginating material used in the production of the good—

(A) undergoes an applicable change in tariff classification set out in Annex 3A of the Agreement as a result of production occurring entirely in the territory of Singapore, the United States, or both; or

(B) if no change in tariff classification is required, the good otherwise satisfies the applicable requirements of such Annex; or

(3) the good itself, as imported, is listed in Annex 3B of the Agreement and is imported into the territory of the United States from the territory of Singapore.

(b) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided for in paragraphs (2) and (3), a good shall be considered to be an originating good if—

(A) the value of all nonoriginating materials used in the production of the good that do not undergo the required change in tariff classi-

fication under Annex 3A of the Agreement does not exceed 10 percent of the adjusted value of the good;

(B) if the good is subject to a regional value-content requirement, the value of such nonoriginating materials is taken into account in calculating the regional value-content of the good; and

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

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 of the HTS that is used in the production of a good provided for in chapter 4 of the HTS.

(B) A nonoriginating material provided for in chapter 4 of the HTS or in subheading 1901.90 of the HTS that is used in the production of a good provided for in heading 2105 or in any of subheadings 1901.10, 1901.20, 1901.90, 2106.90, 2202.90, and 2309.90 of the HTS.

(C) A nonoriginating material provided for in heading 0805, or any of subheadings 2009.11.00 through 2009.39, of the HTS, that is used in the production of a good provided for in any of subheadings 2009.11.00 through 2009.39 or in subheading 2106.90 or 2202.90 of the HTS.

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

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

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

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

provided for in heading 2207 or 2208 of the HTS.

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

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

(A) IN GENERAL.—Except as provided in subparagraph (B), a good provided for in any of chapters 50 through 63 of the HTS that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 3A of the Agreement shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(B) CERTAIN TEXTILE OR APPAREL GOODS.—

(i) TREATMENT AS ORIGINATING GOOD.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of Singapore or the United States.

(ii) DEFINITION OF TEXTILE OR APPAREL GOOD.—For purposes of this subparagraph, the term ''textile or apparel good'' means a product listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

(c) ACCUMULATION.—

(1) ORIGINATING GOODS INCORPORATED IN GOODS OF OTHER COUNTRY.—Originating materials from the territory of either Singapore or the United States that are used in the production of a good in the territory of the other country shall be considered to originate in the territory of the other country.

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of Singapore, the United

States, or both, by 1 or more producers is an originating good if the good satisfies the requirements of subsection (a) and all other applicable requirements of this section.

(d) REGIONAL VALUE-CONTENT.—

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

(2) BUILD-DOWN METHOD.—

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

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

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

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

(ii) The term ''AV'' means the adjusted value.

(iii) The term ''VNM'' means the value of nonoriginating materials that are acquired and used by the producer in the production of the good.

(3) BUILD-UP METHOD.—

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

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

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

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

(ii) The term ''AV'' means the adjusted value.

(iii) The term ''VOM'' means the value of originating materials that are acquired or self-produced and are used by the producer in the production of the good.

(e) VALUE OF MATERIALS.—

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

(A) in the case of a material imported by the producer of the good, the adjusted value of the material;

(B) in the case of a material acquired in the territory in which the good is produced, except for a material to which subparagraph (C) applies, the adjusted value of the material; or

(C) in the case of a material that is self-produced, or in a case in which the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, including a material obtained without charge, the sum of—

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

(ii) an amount for profit.

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

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

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

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

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

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

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

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

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

(iv) The cost of processing incurred in the territory of Singapore or the United States in the production of the nonoriginating material.

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

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

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

(A) be treated as originating goods if the good is an originating good; and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo an applicable change in tariff classification set out in Annex 3A of the Agreement.

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

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

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

(C) if the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(g) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

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

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

(i) averaging;

(ii) ''last-in, first-out'';

(iii) ''first-in, first-out''; or

(iv) any other method—

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

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for particular fungible goods or

materials shall continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

(h) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 3A of the Agreement and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

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

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

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

(j) INDIRECT MATERIALS.—An indirect material shall be considered to be an originating material without regard to where it is produced, and its value shall be the cost registered in the accounting records of the producer of the good.

(k) THIRD COUNTRY OPERATIONS.—A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of subsection (a) if, subsequent to that production, the good undergoes further production or any other operation outside the territories of Singapore and the United States, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of Singapore or the United States.

(l) SPECIAL RULE FOR APPAREL GOODS LISTED IN CHAPTER 61 OR 62 OF THE HTS.—

(1) IN GENERAL.—An apparel good listed in chapter 61 or 62 of the HTS shall be considered to be an originating good if it is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Singapore, the United States, or both, from fabric or yarn, regardless of origin, designated in the manner described in paragraph (2) as fabric or yarn

not available in commercial quantities in a timely manner in the United States.

(2) DESIGNATION OF CERTAIN FABRIC AND YARN.—The designation referred to in paragraph (1) means a designation made in a notice published in the Federal Register on or before November 15, 2002, identifying apparel goods made from fabric or yarn eligible for entry into the United States under subheading 9819.11.24 or 9820.11.27 of the HTS. For purposes of this subsection, a reference in the notice to fabric or yarn formed in the United States is deemed to include fabric or yarn formed in Singapore.

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

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

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

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term ''adjusted value'' means the value of a good determined under articles 1 through 8, article 15, and the corresponding interpretative notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, except that such value may be adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the good from the country of exportation to the place of importation.

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

(3) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term ''generally accepted accounting principles'' means the recognized consensus or substantial authoritative support in the territory of Singapore or the United States, as the case may be, with respect to the recording of revenues, expenses, costs, and assets and liabilities, the disclosure of in-

formation, and the preparation of financial statements. The standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

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

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

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

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

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

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

(F) goods produced exclusively from products referred to in subparagraph (E) on board factory ships registered or recorded with Singapore or the United States and flying the flag of that country;

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

(H) goods taken from outer space, if the goods are obtained by Singapore or the United States or a person of Singapore or the United States and not processed in the territory of a country other than Singapore or the United States;

(I) waste and scrap derived from—

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

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

(J) recovered goods derived in the territory of Singapore, the United States, or both, from used goods; or

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

(i) from goods referred to in any of subparagraphs (A) through (I); or

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

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

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

(A) fuel and energy;

(B) tools, dies, and molds;

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

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

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

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

(G) catalysts and solvents; and

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

(7) MATERIAL.—The term ''material'' means a good that is used in the production of another good.

(8) MATERIAL THAT IS SELF-PRODUCED.—The term ''material that is self-produced'' means a material, such as a part or ingredient, produced by a producer of a good and used by the producer in the production of another good.

(9) NONORIGINATING MATERIAL.—The term ''nonoriginating material'' means a material that does not qualify as an originating good under the rules set out in this section.

(10) PREFERENTIAL TARIFF TREATMENT.—The term ''preferential tariff treatment'' means the

customs duty rate that is applicable to an originating good pursuant to chapter 2 of the Agreement.

(11) PRODUCER.—The term ''producer'' means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles, or disassembles a good.

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

(13) RECOVERED GOODS.—

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

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

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

paragraph, in the production of a remanufactured good described in Annex 3C of the Agreement.

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

(14) REMANUFACTURED GOOD.—The term ''remanufactured good'' means an industrial good assembled in the territory of Singapore or the United States, that is listed in Annex 3C of the Agreement, and—

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

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

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

(15) TERRITORY.—The term ''territory'' has the meaning given that term in Annex 1A of the Agreement.

(16) USED.—The term ''used'' means used or consumed in the production of goods.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

(A) the provisions set out in Annexes 3A, 3B, and 3C of the Agreement; and

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

(2) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 103(a), the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than—

(i) the provisions of Annex 3B of the Agreement; and

(ii) provisions of chapters 50 through 63 of the HTS, as included in Annex 3A of the Agreement.

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

(i) modifications to the provisions proclaimed under the authority of paragraph (1)(A) that are necessary to implement an

agreement with Singapore pursuant to article 3.18.4(c) of the Agreement; and

(ii) before the 1st anniversary of the date of enactment of this Act, modifications to correct any typographical, clerical, or other nonsubstantive technical error regarding the provisions of chapters 50 through 63 of the HTS, as included in Annex 3A of the Agreement.

SEC. 203. CUSTOMS USER FEES.

Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is amended by inserting after paragraph (12) the following:

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

SEC. 204. DISCLOSURE OF INCORRECT INFORMATION.

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

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph:

''(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.''.

SEC. 205. ENFORCEMENT RELATING TO TRADE IN TEXTILE AND APPAREL GOODS.

(a) DENIAL OF PERMISSION TO CONDUCT SITE VISITS.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary of the Treasury proposes to conduct a site visit at an enterprise registered under article 5.3 of the Agreement, and responsible officials of the enterprise do not consent to the proposed visit, the President may exclude from the customs territory of the United States textile and apparel goods produced or exported by that enterprise.

(2) TERMINATION OF EXCLUSION.—An exclusion of textile and apparel goods produced or exported by an enterprise under paragraph (1) shall terminate when the President determines that the enterprise's production of, and capability to produce, the goods are consistent with statements by the enterprise that textile or apparel goods the enterprise produces or has produced are originating goods or products of Singapore, as the case may be.

(b) KNOWING OR WILLFUL CIRCUMVENTION.—

(1) IN GENERAL.—If the President finds that an enterprise of Singapore has knowingly or willfully engaged in circumvention, the President may exclude from the customs territory of the United States tex-

tile and apparel goods produced or exported by the enterprise. An exclusion under this paragraph may be imposed on the date beginning on the date a finding of knowing or willful circumvention is made and shall be in effect for a period not longer than the applicable period described in paragraph (2).

(2) TIME PERIODS.—

(A) FIRST FINDING.—With respect to a first finding under paragraph (1), the applicable period is 6 months.

(B) SECOND FINDING.—With respect to a second finding under paragraph (1), the applicable period is 2 years.

(C) THIRD AND SUBSEQUENT FINDING.—With respect to a third or subsequent finding under paragraph (1), the applicable period is 2 years. If, at the time of a third or subsequent finding, an exclusion is in effect as a result of a previous finding, the 2-year period applicable to the third or subsequent finding shall begin on the day after the day on which the previous exclusion terminates.

(c) CERTAIN OTHER INSTANCES OF CIRCUMVENTION.—If the President consults with Singapore pursuant to article 5.8 of the Agreement, the consultations fail to

result in a mutually satisfactory solution to the matters at issue, and the President presents to Singapore clear evidence of circumvention under the Agreement, the President may—

(1) deny preferential tariff treatment to the goods involved in the circumvention; and

(2) deny preferential tariff treatment, for a period not to exceed 4 years from the date on which consultations pursuant to article 5.8 of the Agreement conclude, to—

(A) textile and apparel goods produced by the enterprise found to have engaged in the circumvention, including any successor of such enterprise; and

(B) textile and apparel goods produced by any other entity owned or operated by a principal of the enterprise, if the principal also is a principal of the other entity.

(d) DEFINITIONS.—In this section:

(1) GENERAL DEFINITIONS.—The terms ''circumvention'', ''preferential tariff treatment'', ''principal'', and ''textile and apparel goods'' have the meanings given such terms in chapter 5 of the Agreement.

(2) ENTERPRISE.—The term ''enterprise'' has the meaning given that term in article 1.2.3 of the Agreement.

SEC. 206. REGULATIONS.

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

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

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

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

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

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

(2) SINGAPOREAN ARTICLE.—The term ''Singaporean article'' means an article that qualifies as an originating good under section 202(a) of this Act.

(3) SINGAPOREAN TEXTILE OR APPAREL ARTICLE.—The term ''Singaporean textile or apparel article'' means an article—

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

(B) that is a Singaporean article.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—

(1) IN GENERAL.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(2) PROVISIONAL RELIEF.—An entity filing a petition under this subsection may request that provisional relief be provided as if the petition had been filed under section 202(a) of the Trade Act of 1974 (19 U.S.C. 2252(a)).

(3) CRITICAL CIRCUMSTANCES.—Any allegation that critical circumstances exist shall be included in the petition.

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

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

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

(2) Subsection (c).

(3) Subsection (d).

(4) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any Singaporean article if, after the date that the Agreement enters into force, import relief has been provided with respect to that Singaporean article under—

(1) this subtitle;

(2) subtitle B;

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

(4) article 6 of the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)); or

(5) article 5 of the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).

SEC. 312. COMMISSION ACTION ON PETITION.

(a) DETERMINATION.—Not later than 120 days (180 days if critical circumstances have been alleged) after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section.

(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.

1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

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

rate views regarding what action, if any, should be taken to remedy or prevent the injury.

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

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

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

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

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

SEC. 313. PROVISION OF RELIEF.

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

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

(c) NATURE OF RELIEF.—

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

(A) The suspension of any further reduction provided for under Annex 2B of the Agreement in the duty imposed on such article.

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

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

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

(C) In the case of a duty applied on a seasonal basis to such article, an increase in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles for the immediately preceding corresponding season; or

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

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 7.28 of the Agreement) of such relief at regular intervals during the period of its application.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), the import relief that the President is authorized to provide under this section may not exceed 2 years.

(2) EXTENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the President, after receiving an affirmative determination from the Commission under subparagraph (B), may extend the effective period of any import relief provided under this section if the President determines that—

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

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

(B) ACTION BY COMMISSION.—

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

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

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

(C) PERIOD OF IMPORT RELIEF.—The effective period of any import relief imposed under this section, including any extensions thereof, may not, in the aggregate, exceed 4 years.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on any article that has been subject to import relief, after the entry into force of the Agreement, under—

(1) this subtitle;

(2) subtitle B;

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

(4) article 6 of the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)); or

(5) article 5 of the Agreement on Agriculture referred to in section 101(d)(2) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(2)).

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

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

(b) EXCEPTION.—Import relief may be provided under this subtitle in the case of a Singaporean article after the date on which such relief would, but for this subsection, terminate under subsection (a), if the President determines that Singapore has consented to such relief.

SEC. 315. COMPENSATION AUTHORITY.

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

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

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

(1) by striking ''and''; and

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

Subtitle B—Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

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

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

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.—Pursuant to a request made by an interested party, the President shall determine whether, as a result of the reduction or elimination of a duty under the Agreement, a Singaporean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article constitute a substantial cause of serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

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

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

(B) shall not consider changes in technology or consumer preference as factors sup-

porting a determination of serious damage or actual threat thereof.

(3) SUBSTANTIAL CAUSE.—For purposes of this subsection, the term ''substantial cause'' means a cause that is important and not less than any other cause.

(b) PROVISION OF RELIEF.—

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

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is—

(A) the suspension of any further reduction provided for under Annex 2B of the Agreement in the duty imposed on the article; or

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

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

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

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), the import relief that the President is authorized to provide under section 322 may not exceed 2 years.

(b) EXTENSION.—

(1) IN GENERAL.—Subject to paragraph (2), the President may extend the effective period of any import relief provided under this subtitle if the President determines that—

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

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

(2) LIMITATION.—The effective period of any action under this subtitle, including any extensions thereof, may not, in the aggregate, exceed 4 years.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

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

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief, on the date the relief terminates.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to an article after the date that is 10 years after the date on which the provisions of the Agreement relating to trade in textile and apparel goods take effect pursuant to article 5.10 of the Agreement.

SEC. 327. COMPENSATION AUTHORITY.

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

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

The President may not release information which the President considers to be confidential business information unless the party submitting the confidential business

information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent business confidential information is provided, a nonconfidential version of the information shall also be provided, in which the business confidential information is summarized or, if necessary, deleted.

Subtitle C—Cases Under Title II of the Trade Act of 1974

SEC. 331. FINDINGS AND ACTION ON GOODS FROM SINGAPORE.

(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the Commission shall also find (and report to the President at the time such injury determination is submitted to the President) whether imports of the article from Singapore are a substantial cause of serious injury or threat thereof.

(b) PRESIDENTIAL DETERMINATION REGARDING SINGAPOREAN IMPORTS.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President shall determine

whether imports from Singapore are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is in the negative, may exclude from such action imports from Singapore.

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS.

SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

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

SEC. 402. NONIMMIGRANT PROFESSIONALS.

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

(1) by amending subparagraph (A) to read as follows:

''(8)(A) The agreements referred to in section 101(a)(15)(H)(i)(b1) are—

''(i) the United States-Chile Free Trade Agreement; and

''(ii) the United States-Singapore Free Trade Agreement.''; and

(2) by amending subparagraph (B)(ii) to read as follows:

''(ii) The annual numerical limitations described in clause (i) shall not exceed—

''(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and

''(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.''.

○

Chairman SENSENBRENNER. Without objection, the transcript of the mock markup held on this legislation last week will be inserted into the record following opening statements.

And I will not use any additional time to repeat myself.

[The prepared statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

H.R. 2738, the "U.S.-Chile Free Trade Agreement Implementation Act," and H.R. 2739, the "U.S.-Singapore Free Trade Agreement Implementation Act" were referred to the Judiciary Committee for consideration of provisions that fall within the Committee's jurisdiction.

As we were all reminded last week, Trade Promotion Authority (TPA) requires the Administration to actively consult with Congress when initiating, negotiating, and implementing trade agreements. TPA also provides that legislation to implement free trade agreements may not be amended by committees of jurisdiction and may only receive an up or down vote on the floor of the House.

The U.S.-Chile and U.S.-Singapore Free Trade Agreements contain several issues within the purview of this Committee. Both agreements contain competition clauses that ensure antitrust laws are applied in a neutral, transparent, nondiscriminatory manner while safeguarding basic procedural rights. The agreements also contain robust intellectual property protections, requiring the governments of Chile and Singapore to take affirmative steps to eradicate the piracy of trademarks, patents, satellite television signals, and other forms of intellectual property.

While the antitrust and intellectual property provisions within these agreements are critical, they do not require any substantive changes to U.S. law. As a result, our consideration of H.R. 2738 and H.R. 2739 must be confined to Title IV of each bill, which pertains to "Temporary Entry of Business Persons."

I have long expressed concern about substantive changes to U.S. law contained in free trade agreements. Before passage of Trade Promotion Authority, immigration provisions were included in earlier free trade agreements such as NAFTA, without any consultation with this Committee. This practice unfortunately created precedent for subsequent trade agreements, such as those we consider today, and immigration provisions were included in the Chile and Singapore Free Trade Agreements before passage of TPA last year.

At last week's mock markup, Members of this Committee spoke with a united bipartisan voice that immigration provisions in future free trade agreements will not receive the support of this Committee. In addition, the implementing legislation we consider today contains a number of modifications recommended by the Committee at last week's mock markup.

While the draft implementing legislation created a separate visa category for skilled workers from Chile and Singapore, the bills we consider today amend the Immigration and Nationality Act to ensure that these visas—6,800 in total—are deducted from the national H-1B cap when they are issued or when a Chilean or Singaporean citizen is granted an extension after five or more consecutive prior extensions.

In addition, the implementing legislation now provides that after every second extension of H-1B1 status for a citizen of Chile or Singapore, an application for a further extension must be accompanied by a new employer attestation. This will have the effect of requiring the employer to update the prevailing wage determination at such time.

Moreover, the legislation provides that an employer will have to pay a fee in order for an alien to be initially granted H-1B1 status and after every second extension of that status. The fee shall be the same as the fee an employer must pay when petitioning for an H-1B visa. However, if no fee is being assessed under the H-1B program, no fee shall be imposed under the H-1B1 program.

Finally, the legislation now clarifies that an employer generally cannot sponsor an alien for an E, L, or H-1B1 visa if there is any labor dispute occurring in the occupational classification at the place of employment, regardless of whether the labor dispute is classified as a strike or lockout. In this regard, the implementing language provides greater worker protections than those contained in the current H-1B program.

The legislation we consider today is a considerable improvement over the draft implementing legislation we considered last week. The Committee's bipartisan commitment to ensuring that our recommendations were incorporated into these bills reaffirms the constitutional prerogative of Congress and this Committee's commitment to ensuring that future free trade agreements are not used to substantively

alter United States immigration law. It is my hope and expectation that our actions over the last week will not go unnoticed by this and future Administrations.

These implementing bills as the result of extensive negotiation and cooperation between the USTR and Members of this Committee, both majority and minority. They represent true bipartisan compromise. Several concerns of the minority were addressed and are represented in the legislation before us. In recognition of the diligent work by the Committee and the USTR to improve the implementing legislation, and in light of the fact that our limited jurisdictional referral requires the Committee to consider only provisions within our jurisdiction, I would urge all members who support our work on the immigration sections in Title IV of both bills to support reporting this legislation today. For members who do not support portions of the implementing legislation outside of this Committee's jurisdiction or the underlying trade agreements themselves, I encourage you to vote to report the legislation and then submit supplemental views to the committee report outlining your position on the broader implementing legislation.

I now recognize the Ranking Member for his remarks.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

I have serious reservations about the actions the U.S. Trade Representative (USTR) has taken with respect to the temporary entry provisions in the Chile and Singapore Free Trade Agreements. In my opinion, they have overstepped their bounds and usurped this Committee's jurisdiction. The negotiating objectives that Congress laid out for USTR in the Trade Act of 2002 (TPA) do not include even one word on temporary entry. There is no specific authority in TPA to negotiate new visa categories or impose new requirements on our temporary entry system, yet that is exactly what USTR has done in the Chile and Singapore FTAs.

The Singapore and Chile FTAs create a new visa classification for the temporary admission of nonimmigrant professionals that is similar in many respects to the existing H-1B nonimmigrant classification. The new nonimmigrant visa classification, however, would differ from the existing H-1B program in significant ways.

Both agreements include caps on the number of professionals that can be granted entry each year (1,400 for Chile and 5,400 for Singapore).

The provisions for the new nonimmigrant visa permit an unlimited number of extensions in 1-year increments. This makes it possible to transform a temporary entry program into a permanent program. In effect, employers would have the power to keep permanent workers in a temporary legal status. In contrast, under the H-1B program, workers are granted a three-year visa that can be renewed only once.

The Labor Certification Attestation (LCA) is one of the few safeguards we have in our H-1B system for ensuring that employers do not abuse temporary workers to undermine the domestic labor market. The implementing legislation contains some, but not all, of the LCA requirements that apply in our H-1B programs.

The implementing legislation completely omits the category of H-1B dependent employers and the additional LCA requirements that apply to them. H-1B dependent employers are required to attest that new entrants will not displace U.S. workers and demonstrate that they have tried to recruit U.S. workers. The implementing legislation should have a similar provision.

In addition, the H-1B program authorizes the Secretary of Labor to initiate her own investigations and enforcement proceedings based on credible information that an employer is violating the rules of the H-1B program. No such authority is granted in the administration of the Chile and Singapore visa programs.

The Singapore and Chile FTAs require permanent changes to our immigration system, but for now these changes are limited to two countries. Unfortunately, we may see these programs expanded to dozens of additional countries in future free trade agreements. The administration is currently negotiating additional FTAs with Australia, Morocco, five countries in Southern Africa, five countries in Central America, and the 34 countries of the Western Hemisphere.

Immigration policy is a sensitive, political matter. Changes in immigration policy have traditionally been the result of intense, open negotiations between workers, employers, immigration advocates, and Members of Congress. These issues simply do not belong in fast-tracked trade agreements negotiated by executive agencies.

Chairman SENSENBRENNER. Are there further opening statements?

If not, without objection, the previous question is ordered on reporting the bill because a reporting quorum is not present.

[Intervening business.]

A reporting quorum being present, the unfinished business is the question on the motion to report favorably the bill H.R. 2739, upon which the previous question was ordered.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it, the ayes have it, the motion to report favorably is agreed to and all Members will be given 2 days, as provided by House rules, in which to submit additional dissenting supplemental or minority views.

MOCK MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, JULY 10, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:49 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. The next item on the agenda is the consideration of the draft implementing legislation for the U.S.-Singapore Free Trade Agreement, and without objection, the draft implementing legislation will be considered as read and open for amendment at any point.

[The legislation follows:]

Draft Implementing Legislation for the United States-Singapore Free Trade Agreement

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS.

SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

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

SEC. 402. NONIMMIGRANT PROFESSIONALS.

Section 214(g)(8) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(8)) is amended by amending subparagraphs (A) and (B) to read as follows:

''(8)(A) The agreements referred to in section 101(a)(15)(W)(i)(I) are—

''(i) the United States-Chile Free Trade Agreement; and

''(ii) the United States-Singpore Free Trade Agreement.

''(B) The Secretary of Homeland Security shall establish annual numerical limits on approvals of initial applications by aliens for admission under section 101(a)(15)(W)(i), which shall not exceed—

''(i) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement); and

''(ii) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singpore Free Trade Agreement).''.

Chairman SENSENBRENNER. The gentleman from Iowa, Mr. King, has to offer his amendment as amended by Mr. Conyers and Mr. Berman's amendment as modified. Do you do so?

Mr. KING. Mr. Chairman, I do so. I'm not aware that that amendment is printed and ready to be presented to the Committee. I could speak to the issue.

Chairman SENSENBRENNER. It's the same amendment.

[The amendments follows:]

Amendment to draft implementing legislation for the United States-Singapore Free Trade Agreement
Offered by Mr. [redacted]ner King

Page 2, line 2, strike "101(a)(15)(W)(i)(I)" and replace with "101(H)(i)(b)(ii)".

Page 2, strike lines 7 through 16 and insert the following:

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

"(ii) The annual numerical limit described in clause (i) shall not exceed --

"(I) 1,400 in any fiscal year for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement): and

5,400 (II) [redacted] for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement).

"(iii) The numerical limit described in paragraph (1)(A) for a fiscal year shall be reduced by one for each alien issued a visa or otherwise provided nonimmigrant status during such year under section 101(1)(15)(H)(i)(b)(ii). For any fiscal year, if the numerical limit described in paragraph (1)(A) has been reached or exceeded, taking into account any reduction required by the preceding sentence or otherwise, no alien may be issued a visa or otherwise provided nonimmigrant status during the remainder of such year under section 101(a)(15)(H)(i)(b)(ii).

H.L.C.

AMENDMENT TO DRAFT IMPLEMENTING

LEGISLATION

FOR THE UNITED STATES-~~CHILE~~ Singapore FREE TRADE

AGREEMENT

OFFERED BY Mr. Conyers

(Page & line nos. refer to Chile.002)

Page 3, line 23, strike the quotation marks and the final period at the end.

Page 3, after line 23, insert the following:

"(D) The numerical limit described in ~~subparagraph~~ section 214 ~~(g)(1)(B)~~ (g)(1)(A) ~~(B)~~ for a fiscal year shall be reduced by one for each alien granted an extention under subparagraph (C) during such year who has obtained ~~4~~ 5 or more consecutive prior extensions.".

Chairman SENSENBRENNER. Without objection, the King amendment as amended by Berman-Conyers modified is agreed to.

Are there further amendments?

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. I ask unanimous consent—we just discovered—to make this——

Chairman SENSENBRENNER. Hold on. Are there further amendments? If not, the question is on agreeing to the draft implementing legislation as amended by the King amendment. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the draft implementing legislation as amended is agreed to.

Without objection, the staff is permitted to make technical and conforming changes.

The Chair would like to thank all Members for their cooperation on this. I believe we accomplished something that is in the public interest during today's session, and the Committee is adjourned.

[Whereupon, at 12:08 p.m., the Committee was adjourned.]

MINORITY VIEWS

We write these views to explain that, as a general proposition we oppose efforts by the Administration to distort our immigration laws by offering new visa categories to specific nations as a bargaining chip in trade negotiations. This should not have been done as part of the North American Free Trade Agreement and it should not have been done as part of the Singapore Free Trade Agreement.

We would note that Article I, section 8, clause 4 of the Constitution provides that Congress shall have the power to "establish an uniform Rule of Naturalization." The Supreme Court has long found that this provision of the Constitution grants Congress plenary power over immigration policy.[1] Moreover, the Court has found that "the formulation of policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become firmly imbedded in the legislative and judicial tissues of our body politics as any aspect of our government."[2] Nonetheless the Administration has negotiated a new visa program in the U.S.-Singapore FTA; usurping Congress' clear constitutional role in creating immigration law.

Having stated that, we do appreciate the efforts of the Majority to work with us in improving the implementing language with regard to immigration as best we could, given the unfortunate constraints of the underlying agreement. For example, the initial draft of the legislation we received contained several major loopholes and flaws. It would have created 5,400 new visas for persons to come into this country from Singapore. There was no requirement that employers pay any fees when such temporary workers were brought in. There was no requirement that employers certify that they were unable to find American workers before they hired these foreign workers. And there was no real limitation on the ability of these individuals to stay in this country indefinitely.

Many of these problems were mitigated as a result of this Committee's input in the process. We enacted language which would insure that several H-1b requirements apply to these new visas.[3] We also enacted a requirement that the new visas not go beyond the current H-1b limits.

We would note that we have a significant remaining concern that the Administration was unwilling to include in the text of the implementing legislation. First and foremost, the Singapore implementing bill provides no overall limitation on how many times professional visas can be renewed. While the implementing language

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[1] See: *Kleindienst* v. *Mandel*, 408 U.S. 753, 766 (1972) and *Boutilier* v. *INS*, 387 U.S. 118, 123 (1967)

[2] *Galvan* v. *Press,* 347 U.S. 522,531(1954)

[3] Although the amount of the fee was specified, the implementing legislation fails to include the requirement in INA section 212(n)(2)(C)(vi)(II) that forbids the employer from requiring the employee to pay the fee.

included the Conyers/Berman language insuring that renewals beyond 6 years count against the overall H-1b cap, it does not include language present in the current H-1b provisions that limits authorized admission to 6 years. Thus, it is possible that employers could renew their employees' visas each and every year under the Singapore agreement, with no limits, while also bringing in new entrants to fill up the annual numerical limit for new visas. This would rob the program of its supposedly temporary nature and harm American workers.

In addition we are concerned that the implementing legislation does not contain all of the Labor Condition Application requirements that apply in the current H-1b programs. Most importantly, the implementing legislation completely omits the category of H-1b dependent employers present in existing law that requires employers to demonstrate that they have tried to recruit U.S. workers and attest that new entrants will not displace U.S. workers.[4] In addition, the implementing legislation does not grant the authority given to Secretary of Labor in the H-1b to initiate her own investigations based on credible information that the employer is violating the rules of employment of the H-1b program. USTR has argued that these provisions expire in October 1, 2003 and that should Congress extend or modify provisions of the H-1b program, it may make corresponding modifications to the amendments to the INA made by the implementing bill. However, omission of these important worker protections sets a dangerous precedent for inclusion in future agreements.

Finally, we strongly object to any notion that the U.S.-Singapore Free Trade Agreement will be used as a model for future FTAs. We have been informed by the Majority that the Administration will not seek immigration in future possible free trade agreements, such as the Central American Free Trade Agreement, and this is spelled out in the letter from Chairman Sensenbrenner and Ranking Member Conyers to Ambassador Zoellick. It is critical that the administration interpret the inherent problems in the new visa program not as a precedent for future agreements, but rather as a sign that immigration has no place in trade agreements.

JOHN CONYERS, JR.
JERROLD NADLER.
ROBERT C. SCOTT.
SHEILA JACKSON LEE.
MARTIN T. MEEHAN.
WILLIAM D. DELAHUNT.
TAMMY BALDWIN.
LINDA T. SÁNCHEZ.

○

[4] The implementing language also omits H-1b dependent requirement in 212(n)(2)(E) that the H-1b dependent employer not place the H-1b worker with a third employer that is displacing U.S. workers.