108TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 108–224
Part 1

UNITED STATES-CHILE FREE TRADE AGREEMENT IMPLEMENTATION ACT

JULY 21, 2003.—Ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 2738]

[Including cost estimates of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2738) to implement the United States-Chile Free Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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19–006

I. INTRODUCTION

A. Purpose and Summary

H.R. 2738 would implement the June 6, 2003 Agreement establishing a free trade area between the United States and Chile.

B. Background

The United States-Chile Free Trade Agreement (FTA), signed June 6, 2003, is one of the first trade agreements, together with the United States-Singapore FTA, to be considered by the Congress under the "fast-track" procedures outlined in the Bipartisan Trade Promotion Authority Act (TPA), which was approved by the 107th Congress and signed into law in August 2002 as part of the Trade Act of 2002 (P.L. 107–210).

The U.S.-Chile FTA represents an important advance for U.S. interests in South America. It is the first such agreement with a South American country. The Agreement establishes closer economic ties to one of the most open and reformed economies in South America and one of the fastest-growing economies in the world. Over the last two decades, Chile has established a vigorous democracy, a thriving and open economy built on trade, and a free market society. The U.S.-Chile FTA will help Chile continue its impressive record of growth, development, and poverty alleviation. It will help spur progress in the Free Trade Area of the Americas and will send a positive message throughout the world by demonstrating that the United States will work in partnership with those who are committed to free markets. Currently, U.S. companies are at a competitive disadvantage in Chile because other countries, including Canada, Mexico, and the European Union, already have FTAs with Chile. The U.S.-Chile FTA takes away the advantage that these countries have and should expand U.S. gross domestic product by over $4 billion per year.

The possibility of a U.S.-Chile FTA has been discussed for many years. In December 1994, the leaders of the United States, Canada, and Mexico announced their intention to negotiate Chile's accession to the North American Free Trade Agreement (NAFTA). Talks on possible accession for Chile to the NAFTA formally began in June 1995. However, "fast track" authority had lapsed, and the talks stalled. Since that time, Mexico, Canada, and the European Union have concluded bilateral FTAs with Chile, and U.S. exporters have lost business in Chile as a result to competitors from these countries.

Negotiations for a U.S.-Chile FTA began in December 2000. After two years and fourteen rounds of negotiations, the two countries announced on December 11, 2002 that an agreement had been reached between the United States and Chile. Pursuant to requirements established under TPA, President Bush formally notified the Congress on January 30, 2003, of his intention to sign the Agreement. On June 6, 2003, United States Trade Representative Robert Zoellick and Chilean Foreign Minister Soledad Alvear signed the FTA at a ceremony in Miami.

The Committee believes that the Agreement meets the objectives and priorities set forth in the Trade Act of 2002. Specifically, the Agreement benefits key U.S. export sectors including agriculture

and construction equipment, autos and auto parts, computers and other information technology products, medical equipment, and paper products. More than 85 percent of bilateral trade in industrial and consumer products areas will become tariff free immediately, with most remaining tariffs being phased out over four years. As for agricultural products, 75 percent of U.S. farm exports will enter Chile duty free within four years, and all duties and quotas on U.S. agricultural products will be phased out within 12 years after the implementation of the Agreement. Originating textiles and apparel goods will also be duty free immediately.

The FTA is a state of the art agreement in many areas. In the area of services, the Agreement contains groundbreaking transparency rules and utilizes a trade-enhancing "negative list" approach to ensure maximum market access for services providers. The Agreement also provides protections and non-discriminatory treatment for digital products such as U.S. software, music, text, and videos, and also provides protections for U.S. patents, trademarks, and trade secrets that go beyond past trade agreements. The investment section provides strong protections for U.S. investors in Chile; they will be treated fairly and equitably and will have access to meaningful dispute settlement. These protections cover key sectors such as agriculture, manufacturing, and services. In addition, the Agreement makes improvements to the NAFTA investor-state dispute settlement ("Chapter 11") model called for in TPA by providing more transparency, public input into the dispute settlement, mechanisms to improve the investor-state process by eliminating frivolous claims, and a place marker for a future appellate body or similar review mechanism. The Financial Services chapter provides strong protections for existing and future U.S. investors and investments in Chile. The Agreement also contains obligations under which each government commits to enforce its domestic labor and environmental laws.

As noted above, this legislation is being considered under the Bipartisan Trade Promotion Authority Act of 2002. Under TPA, new trade pacts that the President negotiates in close consultation with Congress can be approved and implemented through legislation that Congress considers using streamlined procedures. Pursuant to TPA requirements, the President is required to provide written notice to Congress of the President's intention to enter into the negotiations. Throughout the negotiating process, and prior to entering into an agreement, the President is required to consult with Congress regarding the ongoing negotiations.

The President must notify the Congress of his intent to enter into a trade agreement at least 90 calendar days before the agreement is signed. Within 60 days after entering in the Agreement, the President must submit to the Congress a description of those changes to existing laws that the President considers would be required in order to bring the United States into compliance with the Agreement. After entering into the Agreement, the President must also submit to the Congress the formal legal text of the agreement, draft implementing legislation, a statement of administrative action proposed to implement the Agreement, and other related supporting information as required under section 2105(a) of TPA. Following submission of these documents, the implementing bill is introduced, by request, by the Majority Leader in each chamber. The

House then has up to 60 days to consider implementing legislation for the Agreement (the Senate has up to an additional 30 days). No amendments to the legislation are allowed under TPA requirements.

C. Legislative History

On November 29, 2000, the President first notified Congress of his intent to negotiate an FTA with Chile. The President provided formal notification to Congress of the negotiations with Chile as required under TPA (which was enacted subsequent to the start of the U.S.-Chile FTA negotiations) on August 22, 2002. During and after the negotiations, the President continued his consultations with Congress pursuant to the letter and spirit of the TPA requirements.

Following the June 6, 2003 signing of the U.S.-Chile FTA, in accordance with TPA requirements, President Bush submitted to Congress on July 3, 2003 a description of the changes to existing U.S. laws that would be required to bring the United States into compliance with the agreement.

On June 10, 2003, the Subcommittee on Trade of the Committee on Ways and Means held a hearing on the United States-Chile and United States-Singapore FTAs. The Subcommittee received testimony supporting these Agreements from the Administration and Members of Congress. The Subcommittee also heard testimony from numerous U.S. private sector companies and organizations.

On July 10, 2003, the Committee on Ways and Means considered in an informal markup session draft implementing legislation for the Singapore and Chile FTAs concerning matters within the jurisdiction of the Committee.

On July 15, 2003, President Bush formally transmitted to Congress the formal legal text of the U.S.-Chile FTA, draft implementing legislation, a statement of administrative action proposed to implement the Agreement, and other related supporting information as required under section 2105(a) of TPA. Following this transmittal, on July 15, 2003, Majority Leader DeLay, along with Congressman Rangel, introduced, by request, H.R. 2738 to implement the U.S.-Chile FTA. The bill was referred to the Committee on Ways and Means and the Committee on the Judiciary.

On July 17, 2003, the Committee on Ways and Means formally met to consider H.R. 2738. The Committee ordered H.R. 2738 favorably reported to the House of Representatives by a roll call vote of 33–5. Under the requirements of TPA, amendments were not permitted.

II. SECTION-BY-SECTION SUMMARY

TITLE I: APPROVAL AND GENERAL PROVISIONS

Section 101: Approval and entry into force

Current law

No provision.

Explanation of provision

Section 101 states that Congress approves the U.S.-Chile Free Trade Agreement and the Statement of Administrative Action and

provides that the Agreement enters into force when the President determines that Chile is in compliance with its agreement obligations and has exchanged notes with the United States. Section 101 provides that the date of entry into force will be no sooner than January 1, 2004.

Reason for change

Approval of the Agreement and the Statement of Administrative Action is required under the procedures of section 2103(b)(3) of the Bipartisan Trade Promotion Authority Act of 2002. The remainder of section 101 provides for entry into force of the Agreement.

Section 102: Relationship of the agreement to U.S. and state law

Current law

No provision.

Explanation of provision

Section 102 provides that U.S. law is to prevail in a conflict between the Agreement and such law. It also states that the Agreement does not preempt state law that may conflict with the Agreement. Only the United States is entitled to bring a court action to resolve a conflict between a state law and the Agreement.

Reason for change

Section 102 is necessary to make clear the relationship between the Agreement and federal and state law, respectively.

Section 103: Consultation and layover for proclaimed actions

Current law

No provision.

Explanation of provision

Section 103 provides that where the President is given proclamation authority subject to consultation and layover, he may proclaim action only after he has: obtained advice from the International Trade Commission and the appropriate private sector advisory committees; submitted a report to the House Ways & Means and Senate Finance Committees concerning the reasons for the action; and consulted with the Committees. The President may proclaim the proposed action after 60 days have elapsed.

Reason for change

The bill gives the President certain proclamation authority but requires extensive consultation with Congress before such authority may be exercised. The Committee believes that such consultation is an essential component of the delegation of authority to the President and expects that such consultations will be conducted in a thorough manner.

Section 104: Implementing actions in anticipation of entry into force and initial regulations

Current law

No provision.

Explanation of provision

Section 104(a) provides that after the date of enactment, the President may proclaim actions and agencies may issue regulations as necessary to ensure that any provision of this Act that takes effect on the date that the Agreement enters into force is appropriately implemented, but not before the effective date.

Section 104(b) establishes that regulations necessary or appropriate to carrying out the actions proposed in the Statement of Administrative Action shall, to the maximum extent feasible, be issued within one year of entry into force of the agreement or the effective date of the provision, as the case may be.

Reason for change

Section 104 provides for the issuance of regulations. The Committee strongly believes that regulations should be issued in a timely manner in order to provide maximum clarity to parties claiming benefits under the Agreement. As noted in the Statement of Administrative Action, the regulation-issuing agency will provide a report to Congress not later than thirty days before one year elapses on any regulation that is going to be issued later than one year.

Section 105: Administration of dispute settlement proceedings

Current law

No provision.

Explanation of provision

Section 105 authorizes the President to establish an office within the Commerce Department responsible for providing administrative assistance to any state-to-state dispute settlement panels that may be established under the Agreement and authorizes appropriations for the office and for payment of the U.S. share of expenses.

Reason for change

The Committee believes that the Commerce Department is the appropriate agency to provide administrative assistance to panels.

Section 106: Arbitration of claims

Current law

No provision.

Explanation of provision

Section 106 authorizes the United States to resolve certain claims covered by the investor-state dispute settlement procedures set forth in the Agreements and specifies that all U.S. government contracts are to contain a choice of law provision for resolving any breach of contract claim.

Reason for change

This provision is necessary to meet U.S. obligations under Article 10.21 of the Agreement.

Section 107: Effective dates; effect of termination

Current law

No provision.

Explanation of provision

The effective date of this Act is the date of entry into force of the Agreement. However, sections 1–3 and Title I take effect upon enactment. The Act shall cease to be effective on the date on which the Agreement ceases to be in effect.

Reason for change

Section 107 implements U.S. obligations under the Agreement.

TITLE II: CUSTOMS PROVISIONS

Section 201: Tariff modifications

Current law

No provision.

Explanation of provision

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the Agreement.

Section 201(b) gives the President the authority, subject to consultation and layover procedures, to proclaim further tariff modifications as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Chile provided for by the Agreement.

Section 201(c) allows, in addition to any duty ordinarily collected on Chilean imports, the assessment of a duty on an "agricultural safeguard good" if the unit import price of the good when it enters the United States is less than the trigger price for that good in the Agreement. However, no additional duty may be assessed if the good is subject to a safeguard measure under the Agreement or under Title II of the Trade Act of 1974. The authority to apply such an agriculture safeguard to a good terminates on the earlier of the date on which that good first receives duty-free treatment under the Agreement or twelve years after the Agreement's entry into force.

Reason for change

Section 201(a) is necessary to put the United States in compliance with the market access provisions of the Agreement. Section 201(b) gives the President flexibility to maintain the trade liberalizing nature of the Agreement. The Committee expects the President to comply with the letter and spirit of the consultation and layover provisions of this Act in carrying out this subsection.

Section 201(c) implements the agriculture safeguard provisions of article 3.18 of the Agreement and provides important security to U.S. farmers.

Section 202: Rules of origin

Current law

No provision.

Explanation of provision

Section 202 codifies the rules of origin set out in Chapter 4 of the Agreement. Under the general rules, there are three basic ways for a good of Chile to qualify as an "originating good," and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is "wholly obtained or produced entirely in the territory of Chile, the United States or both"; (2) those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 4.1 of the Agreement; or (3) it is produced entirely in the territory of Chile, the United States, or both exclusively from originating materials.

Under Chapter 4 rules, an apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Chile, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Chile from yarn, or fabric made from yarn, that originates in Chile or the United States. There is a limited amount of apparel that may enter the United States duty free, subject to tariff preference level (TPL) caps if it does not meet the rule of origin.

The remainder of section 202 of the implementing bill sets forth more detailed rules for determining whether a good meets the Agreement's requirements under the second method for qualifying as an originating good. These provisions include rules pertaining to de minimis quantities of non-originating materials that do not undergo a tariff transformation, and the alternative methods for calculating regional value content. Other provisions in section 202 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials.

Reason for change

Rules of origin are needed in order to confine Agreement benefits, such as tariff cuts, to Chilean goods to prevent third-country goods from being transshipped through Chile and claiming benefits under the Agreement. Section 202 puts the United States in compliance with the rules of origin provisions of the agreement.

Section 203: Drawback

Current law

Current law under several sections of the Tariff Act of 1930 and the Foreign Trade Zones Act provides for the availability of duty drawback and other duty refund or deferral mechanisms.

Explanation of provision

Section 203 of the bill implements Article 3.8 of the Agreement, which begins a 3-year, phased elimination of duty drawback and duty deferral programs between the United States and Chile eight

years after the entry into force of the Agreement. Specifically, eight years after the Agreement enters into force, the United States will reduce the refund, waiver, or remission of duties subject to duty drawback or duty deferral programs by the following formula: 75 percent during the first year period; 50 percent in the following year; and 25 percent during the final year. The formula will be applied to drawback claims for duties paid on imported goods that are subsequently exported, as well as duties for which the payment has been deferred because of their introduction into a foreign-trade zone or other duty deferral program.

Section 203(c) of the bill makes clear that no amendment contained in section 203 authorizes the refund, waiver, or reduction of countervailing or antidumping duties imposed on a good imported into the United States. This provision is consistent with Article 3.8(2)(a) of the Agreement and current U.S. law.

Reason for change

The Administration maintains that some free trade agreements should include the elimination of duty drawback to ensure that neither country becomes an “export platform” for materials produced in other regions of the world. Accordingly, the Agreement phases out drawback rights, and section 203 is necessary to put the United States in compliance with those provisions of the agreement. Committee Members, however, have expressed concern about this strategy and note approvingly that the Administration has recently requested public comment on the subject and will seek comments from formal trade advisory committees.

Section 204: Customs user fees

Current law

Section 58c of the Title 19 lays out various user fees applied by customs officials to imports, including the Merchandise Processing Fee, which is applied on an ad valorem basis subject to a cap.

Explanation of provision

Section 204 of the bill implements U.S. commitments under Article 3.12(4) of the Agreement, regarding the exemption of the merchandise processing fee for originating goods. This provision is similar to the one in the implementing legislation for the North American Free Trade Agreement (NAFTA). The provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

Reason for change

As with other free trade agreements, the Agreement eliminates the merchandise processing fee on qualifying goods from Chile. Other customs user fees remain in place. Section 204 is necessary to put the United States in compliance with the user fee elimination provisions of the Agreement. The Committee expects that the President, in his yearly budget request, will take into account the need for funds to pay expenses for entries under the Agreement given that MPF funds will not be available.

Section 205: Disclosure of incorrect information

Current law

No provision.

Explanation of provision

Section 205 of the bill implements Articles 4.16(4) and 4.16(5) of the Agreement. The provision prohibits the imposition of a penalty upon an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to disclose the error. If an importer so acts more than once, falsely or without substantiation, U.S. authorities may suspend preferential treatment with respect to identical goods imported by that importer.

Reason for change

Section 205 is necessary to put the United States into compliance with Articles 4.16(4) and 4.16(5) of the Agreement.

Section 206: Reliquidation of entries

Current law

No provision.

Explanation of provision

Section 206, in accordance with Article 4.12 of the Agreement, provides authority for customs officials to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests within one year of the date of importation. Current law provides similar authority for NAFTA entries.

Reason for change

Article 4.12 of the Agreement anticipates that private parties may err in claiming preferential benefits under the Agreement and provides a one-year period for parties to make such claims for preferential tariff treatment even if the entry of the goods at issue has already been liquidated, i.e., legally finalized by customs officials. Section 206 is necessary to put the United States into compliance with Article 4.12 of the Agreement.

Section 207: Recordkeeping requirements

Current law

No provision.

Explanation of provision

Section 207 of the bill, in accordance with Article 4.14 of the Agreement, provides that an exporter or producer claiming that a good is an originating good for the purposes of the Agreement shall maintain, for a period of five years after the date of issuance of a certificate of origin, a copy of the certificate and other information demonstrating that the good qualifies as originating.

Reason for change

Section 207 is necessary to put the United States in compliance with the recordkeeping requirement provisions of the Agreement at Article 4.14.

Section 208: Enforcement of textile and apparel rules of origin

Current law

No provision.

Explanation of provision

Section 208 of the bill implements the verification provisions of the Agreement at Article 3.21 and authorizes the President to take appropriate action while the verification is being conducted, including suspending the application of preferential tariff treatment to the textile or apparel good for which a claim of origin has been made or for textile or apparel goods exported or produced by the person subject to a verification. If the President is unable to make a determination within 12 months of the date of the request, the President may take appropriate action, including denial of entry to the textile or apparel goods subject to the verification, to similar goods exported or produced by the person that exported or produced the good, or to any textile or apparel goods exported or produced by the person subject to the verification.

Reason for change

In order to avoid textile transshipment, special textile enforcement provisions were included in the Agreement. Section 208 is necessary to authorize these enforcement mechanisms for use by U.S. authorities.

Section 209: Conforming amendments

Current law

No provision.

Explanation of provision

Section 209 makes conforming technical amendments to the Tariff Act of 1930 related to the changes in the drawback statute in section 203.

Reason for change

Section 203 makes various changes to the duty drawback statutes that require conforming technical amendments to existing law. Like section 203, section 209 is thus necessary to put the United States in compliance with the drawback provisions of the Agreement.

Section 210: Regulations

Current law

No provision.

Explanation of provision

Section 210 provides that the Secretary of the Treasury shall issue regulations to carry out provisions of this bill related to duty drawback, rules of origin, and Customs user fees.

Reason for change

Because the implementing bill involves lengthy and complex implementation procedures by customs officials, section 210 is necessary in order to authorize the Secretary of the Treasury to carry out provisions of the implementing bill through regulations.

TITLE III: RELIEF FROM IMPORTS

Subtitle A: Relief From Imports Benefiting From the Agreement (Sections 311–316)

Current law

No provision.

Explanation of provision

Sections 311–316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission, to impose specified import relief when, as a result of the reduction or elimination of a duty under the Agreement, a Chilean product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

Section 311(c) defines "substantial cause" in the same manner as Section 201 of the Trade Act of 1974.

Section 311(d) exempts from investigation under this section Chilean articles that have previously received relief since entry into force under this safeguard or if, at the time the petition is filed, the article is subject to import relief under the global safeguard provisions in section 201 of the Trade Act of 1974.

Under section 312(b), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic or social benefits than costs. Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further tariff reductions for the article; or an increase of tariffs to a level that does not exceed the lesser of the existing most favored nation (MFN)/normal trade relation (NTR) rate or the MFN/NTR rate in effect when the Agreement entered into force. The provision further states that if the President provides relief for greater than one year, the relief must be subject

to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not exceed three years. If the President provided an initial period of relief of less than three years, the President may extend the relief under certain circumstances, but the aggregate period of relief, including extensions, may not exceed three years.

Section 314 provides that no relief may be provided under this subtitle after ten years from the Agreement's entry into force, unless the tariff elimination for the article under the Agreement is twelve years, in which case relief may not be provided for that article after twelve years from entry into force.

Section 315 authorizes the President to provide compensation to Chile consistent with Article 7.4 of the Agreement.

Section 316 provides for the treatment of confidential business information.

Reason for change

The Committee believes that it is important to have in place a temporary, extraordinary mechanism if a U.S. industry experiences injury by reason of increased import competition from Chile in the future, with the understanding that the President is not required to provide relief if the relief will not provide greater economic or social benefits than costs. The Committee intends that administration of this safeguard be consistent with U.S. obligations under Chapter 8 of the Agreement.

Subtitle B: Textile and Apparel Safeguard (Sections 321–328)

Current law

No provision.

Explanation of provision

Section 321 provides that a request for safeguard relief under this subtitle may be filed with the President by an interested party. The President is to review the request and determine whether to commence consideration of the request. If the President determines to commence consideration of the request, he is to publish a notice commencing consideration and seeking comments. The notice is to include the request itself.

Section 322(a) of the Act provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination of a duty provided under the Agreement, a Chilean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 322(a) defines "serious damage," directing the President to examine the effect of increased imports on the domestic industry producing the article that is like, or directly competitive with, the imported article.

Section 322(b) identifies the relief that the President may provide, which generally will be an increase in tariffs to the MFN/NTR

duty rate for the article at the time relief is granted. Section 323 of the bill provides that the initial period of relief will be no longer than three years, although if the initial period for any import relief is less than three years, the President may extend the total relief for a period of up to three years under certain circumstances. Section 324 provides that relief may not be granted to an article under the textile safeguard if relief has previously been granted under Subtitle A of this title safeguard. Under section 325, after the safeguard expires, the article that had been subject to such action shall be subject to duty-free treatment.

Section 326 of the bill states that the authority to provide this safeguard relief expires eight years after the textile and apparel provisions of the Agreement take effect. Section 327 of the Act gives authority to the President to provide compensation to Chile if he orders relief. Section 328 provides for the treatment of business confidential information.

Reason for change

The Committee intends that the provisions of subtitle B be administered in a manner that is in compliance with U.S. obligations under Article 3.19 of the Agreement. In particular, the Committee expects that the President will implement a transparent process that will serve as an example to our trading partners.

III. VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of the bill, H.R. 2738.

MOTION TO REPORT THE BILL

The bill, H.R. 2738, was ordered favorably reported by a roll call vote of 33 yeas to 5 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel	X		
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw	X			Mr. Matsui	X		
Mrs. Johnson	X			Mr. Levin	X		
Mr. Houghton	X			Mr. Cardin	X		
Mr. Herger	X			Mr. McDermott	X		
Mr. McCrery	X			Mr. Kleczka		X	
Mr. Camp	X			Mr. Lewis (GA)		X	
Mr. Ramstad	X			Mr. Neal	X		
Mr. Nussle	X			Mr. McNulty		X	
Mr. Johnson	X			Mr. Jefferson			
Ms. Dunn	X			Mr. Tanner	X		
Mr. Collins	X			Mr. Becerra	X		
Mr. Portman	X			Mr. Doggett			
Mr. English	X			Mr. Pomeroy	X		
Mr. Hayworth	X			Mr. Sandlin	X		
Mr. Weller	X			Ms. Tubbs Jones			
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady							
Mr. Ryan	X						

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Cantor	X	....	....				

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of this bill, H.R. 3009 as reported: The Committee agrees with the estimate prepared by CBO which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that enactment of H.R. 3009 would reduce customs duty receipts due to lower tariffs imposed on goods from Chile.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

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

Hon. WILLIAM "BILL" M. THOMAS,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2738, a bill to implement the United States-Chile 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.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 2738—A bill to implement the United States-Chile Free Trade Agreement

Summary: H.R. 2738 would approve the free agreement (FTA) between the government of the United States and the government of Chile that was entered into on June 6, 2003. It would provide the 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 $5 million in 2004, by $38 million over the 2004–2008 period, and by $109 million 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. 2738 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. 2738 is shown in the following table.

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN REVENUES [1]					
Reductions in Tariff Rates	−5	−7	−8	−9	−10
Civil Penalties for Attestation Violations	*	*	*	*	*
Total	−5	−7	−8	−9	−10

[1] H.R. 2738 also would affect direct spending and spending subject to appropriation, but the amounts of those changes would be less than $500,000 a year.
* = Less than $500,000.

Basis of estimate

Revenues

Under the United States-Chile agreement, all tariffs on U.S. imports from Chile 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 (USITC), the U.S. collected $24 million in customs duties in 2002 on about $3.6 billion of imports from Chile. These imports consist mostly of edible fruits and nuts, articles of wood or copper, fish and crustaceans, and certain organic chemicals. Based on these data, CBO estimates that phasing out tariff rates as outlined in the U.S.-Chile agreement would reduce revenues by $5 million in 2004, by $38 million over the 2004–2008 period, and by $109 million over the 2004–2013 period, net of income and payroll tax offsets.

This estimate includes the effects of increased imports from Chile 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 Chile 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 Chile would displace imports from other countries.

H.R. 2738 would also allow the Secretary of Labor to assess civil monetary penalties on employers for violations of the labor attestation process with respect to certain workers from Chile. 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 the bill would establish a new nonimmigrant category for certain professional workers from Chile. The legislation would limit the number of annual entries under this category to 1,400, plus spouses and children. The Bureau of Citizenship and Immigration Services (BCIS) would charge fees of about $100 to provide nonimmigrant visas, so CBO estimates that the agency would collect less than $1 million annually in offsetting receipts (a credit against direct spending). The agency is authorized to spend such fees without further appropriation, so the new 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. 2738 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 $200,00 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. 2738 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	−5	−7	−8	−9	−10	−11	−13	−14	−16	−18
Changes in outlays	*	*	*	*	*	*	*	*	*	*	*

* = 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. Federal Spending: Dispute Settlements—Melissa Zimmerman; Immigration—Mark Grabowicz, Christi Hawley-Sadoti, and Sunita D'Monte. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis and Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing testimony and information from the Administration, concluded that it is appropriate and timely to consider the bill as reported. In addition, the legislation is governed by procedures of the Trade Agreements Act of 2002.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States.")

VI. 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 italic, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

* * * * * * *

TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

* * * * * * *

SEC. 311. BONDED MANUFACTURING WAREHOUSES.

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in

order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided,* That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided further,* That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

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

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

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

Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the appropriate customs officer of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided,* That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouse under the Act of March 24, 1874, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected by law if such waste or by-products were imported from a foreign country: *Provided,* That all waste material may be destroyed under Government supervision. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

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

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

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

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

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

No article manufactured in a bonded warehouse from materials that are goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, may be withdrawn from warehouse for exportation to a NAFTA country, as defined in section 2(4) of that Act, without assessment of a duty on the materials in their condition and quantity, and at their weight, at the time of importation into the United

States. The duty shall be paid before the 61st day after the date of exportation, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

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

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

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

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

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

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

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

SEC. 312. BONDED SMELTING AND REFINING WAREHOUSES.

(a) * * *

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

(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c); [except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but

upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

[(B) the total amount of customs duties paid to the NAFTA country on the product, or] *except that—*

(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

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

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

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

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

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

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

* * * * * * *

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c), and upon withdrawal from such other warehouse for exportation or domestic consumption the provisions of this section shall apply; [except that in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject

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

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

[(B) the total amount of customs duties paid to the NAFTA country on the product, or] *except that—*

(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, the duties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the duties on the materials may be waived or reduced (subject to section 508(b)(2)(B)) in an amount that does not exceed the lesser of—

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

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

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

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

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

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

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

* * * * * * *

(d) Upon the exportation of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury; [except that in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North

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

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

[(2) the total amount of customs duties paid to the NAFTA country on the product.] *except that—*

(1) in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, charges against the bond shall be paid before the 61st day after the date of exportation; but upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid to the NAFTA country on the product, the bond shall be credited (subject to section 508(b)(2)(B)) in an amount not to exceed the lesser of—

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

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

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

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

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

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

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

* * * * * * *

SEC. 313. DRAWBACK AND REFUNDS.

(a) * * *

* * * * * * *

(j) UNUSED MERCHANDISE DRAWBACK.—

(1) * * *

* * * * * * *

(4)*(A)* Effective upon the entry into force of the North American Free Trade Agreement, the exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, of merchandise that is fungible with and substituted for imported merchandise, other than merchandise described in paragraphs (1) through (8) of section 203(a) of that Act, shall not constitute an exportation for purposes of paragraph (2).

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

* * * * * * *

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

(A) * * *

(B) the terms "NAFTA country" and "good subject to NAFTA drawback" have the same respective meanings that are given such terms in sections 2(4) and 203(a) of the NAFTA Act; 【and】

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

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

* * * * * * *

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

(B) The customs duties referred to in subparagraph (A) may be refunded, waived, or reduced by—

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

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

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

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

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

(A) * * *

* * * * * * *

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

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

(B) imported materials that are used in the construction and equipment of the vessel are goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act,

no customs duties on such materials may be refunded, waived, or reduced, except as provided in paragraph (4).

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

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

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

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

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

* * * * * * *

SEC. 508. RECORDKEEPING.

(a) * * *

(b) 【EXPORTATIONS TO FREE TRADE COUNTRIES.—】 *EXPORTATIONS TO NAFTA COUNTRIES.*—

(1) * * *

(2) EXPORTS TO NAFTA COUNTRIES.—

(A) * * *

(B) CLAIMS FOR CERTAIN WAIVERS, REDUCTIONS, OR REFUNDS OF DUTIES OR FOR CREDIT AGAINST BONDS.—

(i) IN GENERAL.—Any person that claims with respect to an article—

(I) a waiver or reduction of duty under 【the last paragraph of section 311】 *the eleventh paragraph of section 311*, section 312(b)(1) or (4), section 562(2), or 【the last proviso to section 3(a)】 *the proviso preceding the last proviso to section 3(a)* of the Foreign Trade Zones Act;

* * * * * * *

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

(1) DEFINITIONS.—In this subsection:

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

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

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

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

(B) CHILE FTA CERTIFICATE OF ORIGIN.—The term "Chile FTA Certificate of Origin" means the certification, established under article 4.13 of the United States-Chile Free Trade Agreement, that a good qualifies as an originating good under such Agreement.

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

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

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

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

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

* * * * * * *

SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.

(a) * * *

* * * * * * *

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

* * * * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) * * *

* * * * * * *

[(d)**]** *(d) GOODS QUALIFYING UNDER FREE TRADE AGREEMENT RULES OF ORIGIN.*—Notwithstanding the fact that a valid protest

was not filed, the Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act *or section 202 of the United States-Chile Free Trade Agreement Implementation Act* for which no claim for preferential tariff treatment was made at the time of importation if the importer, within 1 year after the date of importation, files, in accordance with those regulations, a claim that includes—

(1) a written declaration that the good qualified under [those] *the applicable* rules at the time of importation;

(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 508(b)(1))*, or other certificates of origin, as the case may be*; and

* * * * * * *

SEC. 562. MANIPULATION IN WAREHOUSE.

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the appropriate customs officer that it is necessary to the safety or preservation of the merchandise to repack or transfer the same; except that upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom—

(1) * * *

* * * * * * *

(3) without payment of duties for exportation to any foreign country other than [to a NAFTA country] *to Chile, to a NAFTA country,* or to Canada when exports to that country are subject to paragraph (4);

(4) without payment of duties for exportation to Canada (if that country ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates), but the exemption from the payment of duties under this paragraph applies only in the case of an exportation during the period such Agreement is in operation of merchandise that—

(A) * * *

(B) is a drawback eligible good under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988[; and]

(5) without payment of duties for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Island, Kingman Reef, Johnston Island or the island of Guam[.]*; and*

(6)(A) without payment of duties for exportation to Chile, if the merchandise is of a kind described in any of paragraphs (1)

through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act; and

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

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

(ii) duty shall be paid on the merchandise before the 61st day after the date of exportation, except that such duties may be waived or reduced by—

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

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

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

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

* * * * * * *

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

(a) * * *

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(c) MAXIMUM PENALTIES.—

(1) * * *

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(6) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-CHILE FREE TRADE AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Chile Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily makes a corrected declaration and pays any duties owing.

【(6)】 *(7)* SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in

the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

* * * * * * *

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

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

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

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

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

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

* * * * * * *

SECTION 3 OF THE ACT OF JUNE 18, 1934

(Commonly known as the "Foreign Trade Zones Act")

SEC. 3. (a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided,* That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign mer-

chandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further,* That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further,* That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further,* That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) * * *

* * * * * * *

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of the Tariff Act of 1930, as amended: *Provided further,* That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807,

chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraph 367 or paragraph 368 of the Tariff Act of 1930, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this Act prior to July 1, 1949: *Provided further,* That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section, may, on such importation, be entered as American goods returned: *Provided further,* That no merchandise that consists of goods subject to NAFTA drawback, as defined in section 203(a) of the North American Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to a NAFTA country, as defined in section 2(4) of that Act, without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that upon the presentation, before such 61st day, of satisfactory evidence of the amount of any customs duties paid or owed to the NAFTA country on the article, the customs duty may be waived or reduced (subject to section 508(b)(2)(B) of the Tariff Act of 1930) in an amount that does not exceed the lesser of (1) the total amount of customs duties paid or owed on the merchandise on importation into the United States, or (2) the total amount of customs duties paid on the article to the NAFTA country: *Provided further,* That if Canada ceases to be a NAFTA country and the suspension of the operation of the United States-Canada Free-Trade Agreement thereafter terminates, with the exception of drawback eligible goods under section 204(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, no article manufactured or otherwise changed in condition (except a change by cleaning, testing or repacking) shall be exported to Canada during the period such Agreement is in operation without the payment of a duty that shall be payable on the article in its condition and quantity, and at its weight, at the time of its exportation to Canada unless the privilege in the first proviso to this subsection was requested**[**.**]***: Provided, further, That no merchandise that consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, that is manufactured or otherwise changed in condition shall be exported to Chile without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condi-*

tion and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that the customs duty may be waived or reduced by (1) 100 percent during the 8-year period beginning on January 1, 2004; (2) 75 percent during the 1-year period beginning on January 1, 2012; (3) 50 percent during the 1-year period beginning on January 1, 2013; and (4) 25 percent during the 1-year period beginning on January 1, 2014.

* * * * * * *

SECTION 13031 OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) * * *

(b) LIMITATIONS ON FEES.—(1) * * *

* * * * * * *

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

* * * * * * *

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-Chile 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.

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IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(H) an alien (i)(b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section [212(n)(1), or (c)] *212(n)(1), or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A), who is engaged in a specialty occupation described in section 214(i)(3), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1), or (c)* who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor

if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

* * * * * * *

TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) * * *

* * * * * * *

(p)(1) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections ⟦(n)(1)(A)(i)(II) and (a)(5)(A)⟧ *(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)* in the case of an employee of—

(A) * * *

* * * * * * *

⟦(p)⟧ *(s)* In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1641(c)).

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

(A) The employer—

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

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

(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the attestation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate; and

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

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

(I) the Secretary of Labor shall notify the Secretary of State and the Secretary of Homeland Security of such finding and may, in addition, impose such other administrative remedies

(including civil monetary penalties in an amount not to exceed $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

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

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

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

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

(II) If the Secretary of Labor finds, after notice and opportunity for a hearing, that an employer has committed a violation of this clause, the Secretary of Labor may impose a civil monetary penalty of $1,000 for each such violation and issue an administrative order requiring the return to the nonimmigrant of any amount paid in violation of this clause, or, if the nonimmigrant cannot be located, requiring payment of any such amount to the general fund of the Treasury.

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

(II) It is a failure to meet a condition of paragraph (1)(A) for an employer who has filed an attestation under this subsection and who places a nonimmigrant under section 101(a)(15)(H)(i)(b1) des-

ignated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

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

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

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

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

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

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

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

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

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

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

(4) For purposes of this subsection:

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

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

(C)(i) The term "lays off", with respect to a worker—

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

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

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

(D) The term "United States worker" means an employee who—

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

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

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

(b) Every alien [(other than a nonimmigrant described in subparagraph (H)(i), (L), or (V) of section 101(a)(15))] *(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)* shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15). An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b).

(c)(1) The question of importing any alien as a nonimmigrant under [section 101(a)(15)(H), (L), (O), or (P)(i)] *subparagraph (H), (L), (O), or (P)(i) of section 101(a)(15) (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1))* in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).

* * * * * * *

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

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

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

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

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

* * * * * * *

(g)(1) * * *

* * * * * * *

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

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

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

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

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

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

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

(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph **[**(H)(i)**]** *(H)(i)(b) or (c)*, (L), or (V) of section 101(a)(15) or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 248 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

(i)(1) [For purposes] *Except as provided in paragraph (3), for purposes* of section 101(a)(15)(H)(i)(b) and paragraph (2), the term "specialty occupation" means an occupation that requires—

(A) * * *

* * * * * * *

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

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

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

(j)*(1)* Notwithstanding any other provision of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien's entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this [subsection] *paragraph* shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this [subsection] *paragraph*, the term "citizen of Mexico" means "citizen" as defined in Annex 1608 of such Agreement.

(2) Notwithstanding any other provision of this Act except section 212(t)(1), and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A), and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 101(a)(15) if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien's entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

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CHAPTER 9—MISCELLANEOUS

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DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. (a) * * *

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(s) H–1B NONIMMIGRANT PETITIONER ACCOUNT.—

(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the "H–1B Nonimmigrant Petitioner Account". Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under [section 214(c)(9).] *paragraphs (9) and (11) of section 214(c).*

* * * * * * *

VII. EXECUTIVE CORRESPONDENCE

EXECUTIVE OFFICE OF THE PRESIDENT,
THE UNITED STATES TRADE REPRESENTATIVE,
Washington, DC, July 18, 2003.

Hon. WILLIAM M. THOMAS,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: I appreciate your leadership in moving through the Ways and Means Committee legislation to implement the United States-Singapore and United States-Chile free trade agreements.

Because we have received inquiries about how the tariff suspension provisions of the agreements would operate, I thought it would be useful to provide the relevant text for the enforcement of dispute settlement panel reports. The following provisions are set out in articles 20.5–7 of the U.S.-Singapore Free Trade Agreement (FTA) and articles 22.14–16 of the U.S.-Chile FTA.

Commercial disputes

If, in its final report, the panel determines that a Party has not conformed with its obligation under this Agreement or that a Party's measure is causing nullification or impairment * * *, the resolution, whenever possible, shall be eliminate the non-conformity or the nullification or impairment * * * If * * * the Parties are unable to reach agreement on a resolution, * * * the Party complained against shall enter into negotiations with the other Party with a view to developing mutually acceptable compensation.

If the Parties * * * are unable to agree on compensation within 30 days after the period for developing such compensation has begun; or * * * have agreed on compensation or on a resolution * * * and the complaining Party consider that the other Party has failed to observe the terms of such agreement, the complaining Party may at any time thereafter provide written notice * * * that it intends to suspend the application to the other Party of benefits of equivalent effect * * *.

If the Party complained against considers that * * * the level of benefits [that the other Party has] proposed to be suspended is manifestly excessive; or * * * [that the defending party] has eliminated the non-conformity or the nullification or impairment that the panel has found, it may * * * request that the panel be reconvened to consider the matter * * * If the panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits is considers to be of equivalent effect.

The complaining Party may suspend benefits up to the level the panel has determined of, if the panel has not determined the level, the level the Party has proposed to suspend * * * unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

The complaining Party may not suspend benefits if, within 30 days after is provides written notice of intent to suspend benefits or * * * the Party complained against provides written notice * * * that it pay an annual monetary assessment. The Parties shall consult * * * with a view to reaching agreement on the amount of the assessment. If the Parties are unable to reach an agreement within 30 days after consultations begin, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 percent of the level of the benefits the panel has determined * * * to be of equivalent effect of, if the panel has not determined the level, 50 percent of the level of that the complaining Party has proposed to suspend * * *.

If the Party complained against fails to pay a monetary assessment, the complaining Party may suspend the application to the Party complained against of benefits [under the Agreement].

Labor and environment disputes

If, in its final report, a panel determines that a party has not conformed with its [labor or environment] obligations * * * and the Parties * * * are unable to reach agreement on a resolution * * *; or have agreed on a resolution * * * and the complaining Party considers that the other Party has failed to observe the terms of the agreement, the complaining Party may at any time thereafter request that the panel be reconvened to impose an annual monetary assessment on the other Party * * *.

The panel shall determine the amount of the monetary assessment in U.S. dollars * * * In determining the amount of the assessment, the panel shall take into account [various factors set forth in the agreement.]

The amount of the assessment shall not exceed 15 million U.S. dollars annually * * *. Assessments shall be * * * expended * * * for appropriate labor or environmental initiatives, including efforts to improve or enhance labor or environmental law enforcement, as the case may be, in the territory of the Party complained against, consistent with its law.

If the Party complained against fails to pay a monetary assessment, [or, under the U.S.-Singapore FTA, does not make funds available through an escrow account] the complaining Party may take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Against, thank your for your efforts to securing passage of this important legislation.

Sincerely,

ROBERT B. ZOELLICK.

VIII. VIEWS

DISSENTING VIEWS

If these two trade agreements were truly going to benefit U.S. workers, as the Administration claims, then we would have no reservations and would gladly support both agreements today. However, the lack of strong labor enforcement language, the addition of a new permanent work visa program, and the use of these agreements as a template for future trade agreements is sufficient reason to oppose both agreements and the implementing legislation.

Our nation's unemployment rate reached 6.4 percent in June—the highest rate in more than nine years, causing a loss of more than one million jobs in the last three months alone. The Bush Administration's solution is to pursue trade agreements that depart from the standard set by the U.S.-Jordan Free Trade Agreement and return to the failed North American Free Trade Agreement (NAFTA) model. As of September 2000, the U.S. lost over half a million jobs due to NAFTA. Over three-quarters of the jobs lost due to NAFTA have been in the manufacturing sector. These are good paying U.S. jobs that have been shipped overseas. But rather than take the successes of the U.S.-Jordan FTA which was heralded by the Clinton Administration, labor and environment organizations, as the new model for trade agreements, the Bush Administration is taking us down the path of further job losses.

Neither trade agreement includes the International Labour Organization's (ILO) five core labor standards. While both countries claim to uphold the ILO's core labor standards, there is nothing in the agreements that require either country to do so. If these countries are truly committed to the five core labor standards then there is no reason to exclude binding agreement language that would have committed these countries to adhering to them. It is time to make labor standards as serious an issue in trade agreements as the commercial provisions—especially when the involved parties claim to uphold ILO's policies anyway.

Furthermore, these agreements fail to provide the same enforcement mechanisms for labor and environmental violations as the agreements provide for commercial violations. Once again, the Administration chooses to relegate labor and environment to a substandard class. Under the Chile and Singapore agreements, once a determination that a labor violation has been made the first course of action is a fine, which is capped at $15 million annually. This is a mere slap on the wrist for a country that could be found in serious violation of the labor provisions. The negotiated course of enforcement pales in comparison to the sanctions that are available for commercial violations.

In addition to the failures of the labor provisions in both trade agreements, both agreements set up a new immigration visa pro-

gram. This sets a dangerous precedent by including U.S. immigration law in trade agreements. Nor was this provision authorized in the Fast Tract negotiating language that narrowly passed the House of Representatives. House Judiciary members of both the majority and minority have expressed serious reservations about including U.S. immigration law in trade agreements, and usurping Congress's constitutional authority. The current H1–B visa program is a 3-year temporary work visa, which may be renewed one time. The new visa program negotiated in these trade agreements will allow an indefinite renewal of 5,800 nationals from Singapore and Chile. This means that we are earmarking ten percent of the current H1–B visa program to nationals from these small countries in these small agreements.

Another serious concern we have is the fact that the implementing language contradicts the trade agreement language with respect to the new visa program. It is doublespeak. The implementing language attempts to address the concern of allowing new immigrant workers only upon certifying that U.S. workers won't be displaced; the negotiated trade agreements prohibit such certification as a condition of entry. As the U.S. experienced with NAFTA, it is the trade agreement, and not the domestic statute that takes precedent under global trade rules.

Finally, these two agreements should not be used as a model for future trade agreements. A vote in support of the agreements signals to the Administration that the model used for Chile and Singapore is acceptable, when it is far from acceptable. We oppose both agreements, the implementing legislation and urge the Administration to avoid using the flawed Chile and Singapore model for future trade agreements.

PETE STARK.
STEPHANIE TUBBS JONES.
JERRY KLECZKA.
MICHAEL R. MCNULTY.
JOHN LEWIS.

ADDITIONAL VIEWS

The U.S.-Chile Free Trade Agreement

The U.S.-Chile Free Trade Agreement (FTA) includes strong and comprehensive commitments by Chile to open its goods, agricultural and services markets to U.S. producers. The agreement includes commitments that will increase regulatory transparency and act to the benefit of U.S. workers, investors, intellectual property holders, businesses and consumers.

At the same time, the economic impact of the Chile agreement is likely to be minuscule. The U.S. International Trade Commission estimates that the Chile FTA will account for just five one hundredths of one percent of U.S. gross domestic product (GDP).

While some of the provisions in the FTA could serve as a model for other agreements, a number of provisions clearly cannot. In some instances, this is because the provision, while workable in the Chile context, is not appropriate for FTAs with other countries, where very different circumstances prevail. In other cases, it is because the policy being pursued by the Administration is just plain wrong.

In fact, one of the concerns raised in the consideration of both the Chile and Singapore FTAs has been that the Administration is beginning to use some of their provisions as models for other FTAs, for example the Central America Free Trade Agreement (CAFTA), where the conditions make it inappropriate to do so.

We cannot change in the implementing bill major provisions in the basic agreements specifically negotiated between the parties. Unfortunately, the provisions relating to core labor and environmental standards and investment issues, raise serious concerns. For example, there are separate dispute settlement rules that place arbitrary caps on the enforceability of those provisions. This is a mistaken approach, the difficulties of which would only be magnified if used as a precedent for future FTAs involving very different circumstances.

That is doubly true of any attempt to use as a model for other FTAs the "enforce your own law" standard used in Chile and Singapore. The laws of Chile and Singapore essentially reflect core internationally recognized labor rights and these countries' have a history of enforcing their laws. How they are applied does vary in the two countries, reflecting the different characteristics of the two nations. At the same time, there is little practical concern that these countries will backtrack.

Chile is very different from many other FTA negotiating partners, including most Central American countries and many others that would be a part of an FTAA. Use of the "enforce your own law" standard is invalid as a precedent—indeed it contradicts the purpose of promoting enforceable core labor standards—when a country's laws clearly do not reflect international standards and

when there is a history, not only of non-enforcement, but of a hostile environment towards the rights of workers to organize and bargain collectively. Using this standard in different circumstances will lead to totally different results.

The Office of the U.S. Trade Representative (USTR) has undertaken this misapplication of the "enforce your own law" standard by using it in the core labor proposal tabled in CAFTA and Free Trade Area of the Americas (FTAA). USTR justifies this action by arguing that the Trade Act of 2002 does not allow it to go further. That interpretation is erroneous. Under Trade Promotion Authority, USTR can negotiate a provision to adopt and enforce the five core International Labor Organization (ILO) labor standards (bans on child labor, forced labor, discrimination, and the rights to associate and bargain collectively).

Expanded trade is important to this country and the world. Benefits will accrue to a broad range of persons in our nation and other nations if trade agreements include enforceable commitments on basic labor standards. With such a provision, workers in developing countries, including Central America, have the opportunity to become real partners in economic progress and help develop the expanded middle class so vital to those nations, and to the United States.

With regard to other provisions that the Administration has stated it intends to use as a model, we are seriously concerned about any such use and we will be watching carefully their implementation. These provisions include: (1) certain intellectual property provisions that lock in the current state of U.S. law, thereby making it much more difficult for Congress to change those rules in the future; (2) the investor-state provisions and the issue of whether the USTR has adequately ensured that foreign investors will not have greater rights than provided under U.S. law; and (3) the provisions on capital controls and the question of whether USTR's and Treasury's effort to eliminate a country's flexibility to impose on an emergency basis temporary capital controls is sound policy and should be pursued in future FTAs. At a recent hearing, USTR Zoellick made comments that indicated that the USTR had changed its position on this issue.

Finally, one area where we would like to see improvements in future FTAs is in the rules or origin. The Committee report states that the Agreement contains "strong, simple, and transparent rules of origin." The rules of origin used for the Agreement are different than those for the NAFTA and for other previous FTAs. It is extremely difficult for Congress to gauge whether the rules of origin strike the correct balance between the dual goals of preventing transshipment/ensuring economic activity in the FTA partners and ease of compliance and administration. While we trust that the USTR negotiators are seeking the correct balance, the Committee should request the ITC to conduct a study into the operation of various type of rules of origin and their impact on trade.

The U.S.-Chile implementing legislation

The Committee Democrats pressed for the Committee to hold the July 10, 2003, traditional "mock" mark-up. The information legislative drafting process ensures active congressional involvement in

shaping the legislation necessary to implement changes to U.S. law that are required by trade agreements. This process was used in the case of implementing legislation for the North American Free Trade Agreement (NAFTA), the Uruguay round agreements, and prior trade agreements dating back more than 20 years.

The mock markup reflects a broadly agree-upon and well-established practice. Further, is enables the Members of the Committee and the public to understand more fully and clearly the content of the legislation, raise questions about it, and offer "mock amendments" when necessary. Ensuring that the legislative process for the implementing legislation is as open as possible in consistent with the great importance the United States has attached to improving the transparency of international trade agreements and foreign government laws and regulatory practices.

The implementing legislation only addresses those portions of the FTA where implementation requires changes to U.S. law. With respect to these provisions, it is important to note the improvements that we have been successful in making to several controversial areas.

One set of troublesome issues in both the U.S.-Chile and U.S.-Singapore FTAs related to H1–B immigration visas. Although non under the jurisdiction of this Committee, we worked actively with our colleagues in both parties on the Judiciary Committee to make meaningful changes to these provisions. The most significant changes include: (1) inclusion of the Singapore and Chile visas within the overall H–1B cap; (2) a requirement that employers pay the H1–B fee (currently $1000) for the initial visa, and for every third renewal of the visa (these fees are used to fund training programs for workers in the United States); (3) a requirement that employers submit labor attestations not only for the initial visa, but also for every third renewal; (4) a clarification in the Statement of Administrative Action that visas issued under the Chile and Singapore programs are temporary, and that laws governing temporary visas, including requirements that the visa holder show that the stay is temporary, continue to apply; and (5) a clarification in the Statement of Administrative Action on the scope of occupations covered.

Finally, as first drafted, the bills did not require the Administration to consult with trade advisory committee, ITC, or Congress when exercising discretionary authority granted by the legislation. the bill has amended to require consultation with each of these entities, helping to provide a greater role for Congress and a more balanced and well-founded trade policy.

This process has worked for improving the problematic provisions in the implementing legislation.

Additionally, we are concerned that the legislative implementation of the rules of origin may create unnecessary confusion. The rules of origin in the Chile and Singapore FTAs differ in a number of ways, some substantive, but most non-substantive. In a number of instances, the implementing legislation mirrored the language in the agreements, despite the fact that there were no substantive differences intended. We are concerned that the differences in legislative language between two contemporaneously considered bills could create confusion for Customs and traders. Generally, Con-

gress does not use different language when it means the same thing. Accordingly, we encourage Customs to issue harmonized implementing regulations for the Singapore and Chile FTAs to the maximum extent possible.

U.S. trade policy for economic growth and jobs

Even as we support these agreements, it is vital that American trade policy restore a focus on opening markets that achieve the largest gains for Americans. In particular, numerous barriers to exports of American goods and services and other unfair trade practices have been allowed to stand for too long. These barriers include international piracy of the American copyrights and other intellectual property, discrimination by China against key American high-tech exports, and Japan's discrimination against myriad of manufactured and agricultural goods. A more concerted effort needs to be undertaken to reduce these barriers that cost American jobs and exports.

Additionallly, there is a great deal at stake in negotiations currently ongoing under the auspices of the World Trade Organization—the so-called Doha round. These negotiations should be concluded carefully to achieve potential significant benefits to both the United States as well as other developed countries, and developing countries. Ways and Means Democrats are monitoring these negotiations carefully and urge a greater focus by the Administration ensuring real and meaningful process at the upcoming Ministerial meeting in September in Mexico.

CHARLES B. RANGEL.
JIM MCDERMOTT.
MAX SANDLIN.
ROBERT T. MATSUI.
EARL POMEROY.
RICHARD E. NEAL.
BEN CARDIN.
SANDER LEVIN.
XAVIER BECERRA.