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UNITED STATES-CHILE FREE TRADE AGREEMENT IMPLEMENTATION ACT

JULY 22, 2003.—Ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2738]

[Including cost estimate of the Congressional Budget Office]

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

CONTENTS

PURPOSE AND SUMMARY

On June 6, 2003, the United States and Chile entered into a Free Trade Agreement ("FTA") after several rounds of negotiation that commenced in December of 2000. H.R. 2738 approves the U.S.-Chile FTA submitted to Congress on July 15, 2003 and makes changes to United States law necessary to ensure compliance with the agreement. The legislation contains four titles: Title I, "Approval of, and General Provisions Relating to the Agreement;" Title II, "Customs Provisions;" Title III, "Relief from Imports;" and Title IV, "Temporary Entry of Business Persons." The Committee's consideration of H.R. 2738 was limited to title IV of the legislation. Title IV establishes 1,400 annual professional worker visas for Chilean citizens to enter the United States on a temporary basis.

H.R. 2738 was considered pursuant to the Bipartisan Trade Promotion Authority Act of 2002 [1] and the Trade Act of 1974.[2] As a result, the legislation was considered on an expedited basis which did not permit committees of jurisdiction to amend the legislation after its formal introduction. However, the Committee made several changes to draft implementing legislation transmitted to the Committee for a pre-introduction "mock markup" on July 10, 2003. These changes were substantially reflected in H.R. 2738.

BACKGROUND AND NEED FOR THE LEGISLATION

U.S.-CHILE FREE TRADE AGREEMENT

Background

On June 6, 2003, the United States and Chile entered into a bilateral FTA, concluding a 14-round negotiation process that began in December of 2000.[3] Chile is recognized as one of the most open, reformed, and developed economies in Latin America. The Bush Administration has asserted that a U.S.-Chile FTA would expand U.S. exports, provide a basis for broader hemispheric trade liberalization, enhance regional economic and political cooperation, and support economic and trade reform in Latin America. Chile has pursued trade liberalization agreements with a number of its trading partners, including Bolivia, Mexico, Venezuela, Colombia, Ecuador, Peru, and Argentina. In addition, Chile has signed FTAs with Canada and Mexico. In April and October 2002, Chile completed negotiations for an FTA with the European Union and South Korea, and is negotiating FTAs with Japan, New Zealand, and Singapore. Proponents of the U.S.-Chile FTA have argued that Chile's current trade agreements with U.S. economic competitors place U.S. exporters at a commercial disadvantage and that eliminating these tariffs would enhance U.S. commercial interests. In 2001, Chile's per capita income level was second only to Argentina's in Latin America and will likely be first once data reflect Argentina's current financial crisis.[4]

The United States is Chile's largest trading partner, accounting for 20 percent of Chilean exports and 15 percent of imports in

[1] 19 U.S.C. § 3805 *et. seq.* (2002).
[2] 19 U.S.C. § 2191 *et. seq.* (2002).
[3] The full text of the U.S.-Chile FTA is available at: <http://www.ustr.gov/new/fta/chile. htm>.
[4] *See generally,* J.F. Hornbeck, CRS Report for Congress, *The U.S.-Chile Free Trade Agreement: Economic and Trade Policy Issues*, June 26, 2003.

2002. By contrast, Chile is the United States' 34th largest export destination and 36th largest import contributor, accounting for 0.3 percent of U.S. trade.[5] U.S. products exported to Chile are mostly capital goods. These include: machinery (31 percent), particularly computers, office machinery, and industrial equipment such as gas turbines and bulldozers; electrical machinery (16 percent) including television and radio transmission apparatus, telephone equipment, spare parts, integrated circuits, sound recording equipment and media; vehicles (8 percent) mostly trucks and passenger cars; aircraft and parts (5 percent) and optical/medical instruments (5 percent).[6] The top five U.S. imports from Chile are natural resource based goods that reflect some refining of the basic resource, but little value-added manufacturing activity. They account for nearly 70 percent of total imports from Chile and include: copper articles (19 percent), mostly refined alloys; edible fruits and nuts (18 percent), most of which are grapes; fish (15 percent), mostly salmon; wood (13 percent), various types of lumber; and beverages (4 percent), virtually all wine.[7]

Last month, the United States International Trade Commission (ITC) released a comprehensive study assessing the likely impact of the U.S.-Chile FTA on the U.S. economy, providing both quantitative and qualitative estimates of the FTA's possible effects. The overall estimate of the ITC study was that by 2016, when the full effect of tariff eliminations would be felt, U.S. exports to Chile would increase in a range between 18 percent and 52 percent and U.S. imports would rise between 6 percent and 14 percent. The study notes that this flow of goods would be very small relative to total U.S. trade and that the economy-wide effects on trade, production, and overall economic welfare would be small to negligible (in a range of negative 0.001 percent to a positive 0.003 percent of GDP).[8]

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

Although the Committee's formal legislative consideration of H.R. 2738 was limited to title IV of the legislation, which implemented changes to United States immigration law, the U.S.-Chile FTA also contained intellectual property and competition chapters that fall within the jurisdiction of the Committee.

Intellectual Property Rights (IPR)

Chile is a signatory to the Trade Related Intellectual Property Rights (TRIPS), but has not yet ratified its implementing provisions. In addition, Chile has signed two World Intellectual Property Organization (WIPO) treaties, but has also not fully complied with these obligations. The U.S.-Chile FTA reaffirms obligations under TRIPS and adds another layer of protection which would potentially increase revenues to a number of industries including: motion

[5] *See U.S. Trade Balance With Chile,* U.S. Census Bureau, Foreign Trade Division, U.S. DEPT. OF COMMERCE, <http://landview.census.gov/foreign-trade/balance/c3370.html>.

[6] *See Id.*

[7] Inter-American Development Bank (IDB), *Integration and Trade in the Americas: Periodic Note*, December 2000, <http://www.iadb.org/int/itd/english/periodic notes/May02/intro.pdf>.

[8] *U.S.-Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects,* U.S. INTL. TRADE COMM., Publication 3605, (June 2003), <ftp://ftp.usitc.gov/pub/reports/studies/pub3605.PDF>.

picture, sound recording, business software, book publishing, pharmaceuticals, and agricultural chemicals.[9]

Chapter 17 of the Agreement requires Chile to ratify or accede to several international IPR agreements, including the International Convention for the Protection of New Varieties of Plants (UPOV 1991), the Trademark Law Treaty, the Brussels Convention relating to the Distribution of Program-Carrying Satellite Signals, and the Patent Cooperation Treaty. The FTA also enhances enforcement of intellectual property rights. Non-discrimination obligations apply to all types of intellectual property. The FTA ensures government involvement in resolving disputes between trademarks and Internet domain names (important to prevent "cyber-squatting" of trademarked domain names). It also applies the principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names) applied to products.

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

Under the FTA, protection for encrypted program-carrying satellite signals extends to the signals themselves as well as the programming. This is designed to prevent piracy of satellite television programming. Both sides agreed to criminalize unauthorized reception and redistribution of satellite signals. The Agreement also contains limited liability for Internet Service Providers (ISPs)—reflecting the balance struck in the U.S. Digital Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights. In essence, both sides are to provide immunity to Internet service providers for complying with notification and take-down procedures when material suspected to be infringing on copyright is hosted on their servers. The FTA provides for a patent term to be extended to compensate for up-front administrative or regulatory delays in granting the original patent, consistent with U.S. practice. The grounds for revoking a patent are limited to the same grounds required to originally refuse a patent. This is to protect against arbitrary revocation.

The Agreement provides further protections for patents covering biotech plants and animals. Chile is to accede to the International Convention for the Protection of New Varieties of Plants. It also provides for protection against imports of pharmaceutical products without a patent-holder's consent by allowing lawsuits when con-

[9] *Supra,* note 5, at 109 and 118.

tracts are breached. Under the FTA, test data and trade secrets submitted to a government for the purpose of product approval are to be protected against disclosure for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. The FTA also closes potential loopholes to these provisions and is designed to ensure that government marketing-approval agencies will not grant approval to patent-violating products.

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

Competition Policy/Antitrust

H.R. 2738 contains no changes to United States antitrust law. However, a summary of provisions related to competition/antitrust contained in the U.S.-Chile FTA is set forth below.

Chapter 16 of the Agreement helps ensure that the opportunities created by trade liberalization are supported by healthy competitive domestic markets, allowing the firms of each country to compete unhampered by anticompetitive business conduct in either country's territory. Firms that are subject to antitrust enforcement action will be guaranteed some basic procedural safeguards. Since these protections already exist in the United States, no changes to United States law are necessary. While state monopolies and state enterprises do not account for a significant portion of either country's economy, the provisions governing these entities will help eliminate the potential for either party to favor domestic firms in the sale or purchase of goods and services.

Specifically, chapter 16 ensures that both countries:

- Enforce domestic antitrust law that prohibits anticompetitive business conduct;
- Cooperate in the enforcement of antitrust law;
- Ensure that any private or public monopolies designated by either country, and any state enterprises, be subject to disciplinary action for abusing their status or otherwise discriminating in a manner that harms the interests of the other country.
- Explicitly recognize that anticompetitive conduct threatens the free flow of bilateral trade and investment, and seek to secure the benefits of the FTA by prohibiting such conduct, encouraging economically sound competition policies, and furthering transparency and cooperation;

- Expand NAFTA's competition provisions by affirming that antitrust laws be enforced in a neutral manner that does not discriminate on the basis of nationality;
- Ensure basic procedural rights for firms that are subject to antitrust enforcement actions: each country will provide a right to be heard and to present evidence before imposing a sanction or remedy;
- Provide for consultations and further transparency by allowing either country to request from the other specific public information regarding antitrust enforcement activity, official monopolies and state enterprises, and any exemptions from their antitrust laws.

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

Temporary Entry

Title IV of the pre-introduction draft implementing legislation for the U.S.-Chile FTA that the Administration forwarded to the Committee for its "mock markup" on July 10, 2003, effectuated U.S. commitments under chapter 14 of the U.S.-Chile FTA pertaining to the temporary entry of business persons. However, this draft legislation was considerably amended during the Committee's "mock markup" on July 10, 2003. These Committee recommendations were then incorporated into the introduced version of H.R. 2738. These changes are highlighted in the "Pre-Introduction 'Mock Markup' of U.S.-Chile FTA Implementing Legislation and Committee Amendments Incorporated Into H.R. 2738" section of this report.

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

In order to provide for the admission of business visitors and intra-company transferees, no changes in U.S. statutes are required. Limited technical changes are needed to provide for the admission of traders and investors and professionals. Legislation is also required to implement article 14.3(2) of the Agreement regarding labor disputes.

Traders and Investors

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

Section 101(a)(15)(E) of the INA currently conditions admission into the United States upon authorization pursuant to a treaty of commerce and navigation. Since the Agreement is not a treaty of commerce and navigation, and no such treaty exists between the United States and Chile, legislation is necessary to accord treaty

trader and investor status to Chilean citizens qualifying for entry under Section B.

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

Professionals

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

New INA § 101(a)(15)(W) also provided for the entry of spouses and children accompanying or following to join business persons entering under this category. The purpose of this provision was to grant express authorization for current Immigration and Naturalization Service practice, which is to admit such persons, but not allow them to be employed in the United States unless they independently met all applicable INA requirements.

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

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

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

in the United States in which the professional will be self-employed.

Numerical Limitations

Paragraph six of Section D of Annex 14.3 of the Agreement permits the United States to establish an annual numerical limit on temporary entries under the Agreement of Chilean professionals. Under the proposed paragraph (8) of INA § 214(g) that would have been added by § 402(a) of the draft bill, the Secretary of Homeland Security would have issued regulations establishing an annual limit of up to 1,400 new temporary entry applications from Chilean professionals, as provided in Appendix 14.3(D)(6) of the Agreement.

Labor Attestations

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

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

- It would pay the employee the higher of: (a) the actual wage paid to all other individuals with similar experience and qualifications for the specific employment in question, or (b) the prevailing wage level for the occupational classification in the area of employment.
- It will provide working conditions for the employee that will not adversely affect the working conditions of workers similarly employed.
- There is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.
- The employer has provided notice of its attestation to its employees' bargaining representative in the occupational classification in the area for which the employee is sought or, absent such a representative, has otherwise notified its employees.

The remainder of new INA § 212(s) contains provisions for enforcing the labor attestation requirement. Like the contents of the attestation itself, the enforcement requirements are based on requirements under the "H-1B" visa program. INA § 212(s)(2)(A) requires an employer to make copies of labor attestations (and such accompanying documents as are necessary) available for public examination at the employer's principal place of business or worksite. INA

§ 212(s)(2)(B) requires the Secretary of Labor to compile a list of all labor attestations filed including, with respect to each attestation, the wage rate, number of alien professionals sought for employment, period of intended employment, and date of need. INA § 212(s)(2)(C) provides that the Secretary of Labor shall accept a labor attestation within 7 days of filing and issue the certification necessary for an alien to enter the United States as a nonimmigrant under INA § 101(a)(15)(W), unless the attestation is incomplete or obviously inaccurate.

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

Labor Disputes

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

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

New paragraph (2) also requires the provision of notice to the affected Chilean business persons and to Chile of a determination to deny nonimmigrant classification, as required under article 14.3(3) of the Agreement. INA § 214(j)(2) as inserted by the bill applies only to requests for temporary entry by traders and investors, intra-company transferees, and professionals—*i.e.,* the categories of nonimmigrants that require employment authorization under U.S.

law (corresponding to Sections B, C, and D of Annex 14.3 of the Agreement). Employment in the U.S. labor market is not permitted for business visitors, as defined in INA § 101(a)(15)(B) (8 U.S.C. 1101(a)(15)(B)) (corresponding to Section A of Annex 14.3 of the Agreement); violations of status under that provision that involve labor disputes are fully redressable under existing law.

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

Administrative Action

Chile will be added to the list of countries, maintained by the Department of State, whose citizens are eligible for treaty trader and treaty investor status under INA § 101(a)(15)(E). With respect to professionals provided for under Section D of Annex 14.3 of the Agreement, in all cases where a state license is required to engage in a particular activity in the United States, such professionals will be required to obtain the appropriate state license. Pursuant to INA § 101(a)(15)(W) as added by section 402(a) of the bill, the Secretary of Homeland Security will issue regulations implementing the numerical limits set forth in Appendix 14.3(D)(6) of the Agreement. The Secretary of Labor would have issued regulations implementing the labor attestation provisions in new subsection (s) of INA § 212. The administrative agencies responsible for administering the other amendments to the INA described above will promulgate regulations to implement those amendments.

Pre-Introduction "Mock Markup" of U.S.-Chile FTA Implementing Legislation and Committee Amendments Incorporated Into H.R. 2738

On July 10, 2003, the Committee held a pre-introduction "mock markup" of draft implementing legislation submitted by the Administration to the Committee. The Committee's consideration of this draft legislation was limited to title IV of the draft implementing legislation. During this meeting, Chairman Sensenbrenner, Ranking Member Conyers, and several Members of the Committee made it clear that they opposed the inclusion of immigration provisions in H.R. 2738 and that they would not support any future FTA that included substantive changes to United States immigration law.

Judiciary Committee Amendments to Draft Implementing Legislation

The Committee reported several amendments to the immigration provisions by voice vote. The amendments were reflected in H.R. 2738.

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

The Committee also reported an amendment offered by Representatives Berman and Conyers requiring that an application for every second extension for an H-1B1 visa be accompanied by a new employer attestation. This will have the effect of requiring the employer to update the prevailing wage determination at such time. The amendment also requires that an employer pay a fee when H-1B1 status is initially granted and after every second extension of that status. The fee shall be the same as the fee an employer must pay when petitioning for an H-1B visa. However, if no fee is being assessed under the H-1B program, no fee shall be imposed under the H-1B1 program.

Finally, the implementing legislation now clarifies that an employer generally cannot sponsor an alien for an E, L, or H-1B1 visa it there is any labor dispute occurring in the occupational classification at the place of employment, regardless of whether the labor dispute is classified as a strike or lockout. In this regard, worker protections in H.R. 2738 are broader than those contained in the H-1B visa category.

HEARINGS

No hearings were held on H.R. 2738 before the Committee on the Judiciary.

COMMITTEE CONSIDERATION

On July 16, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 2738 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 2738.

COMMITTEE OVERSIGHT FINDINGS

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

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2738, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

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

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 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, who can be reached at 226–2680.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

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

SUMMARY

H.R. 2738 would approve the free trade 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 for tariff reductions and other changes in law related to implementation of the agreement, such as provisions dealing with dispute settlement, rules of origin, and safeguard measures for textile and ap-

parel 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 [a]					
Reductions in Tariff Rates	-5	-7	-8	-9	-10
Civil Penalties for Attestation Violations	*	*	*	*	*
Total	-5	-7	-8	-9	-10

a. 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 net impact on BCIS spending would not be significant.

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

Spending Subject to Appropriation

Title I of H.R. 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 $200,000 per investigation. Based on this information, CBO estimates the bill would have no significant effect on spending subject to appropriation.

SUMMARY OF EFFECT ON REVENUES AND DIRECT SPENDING

The overall effects of H.R. 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:

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ESTIMATE APPROVED BY:

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PERFORMANCE GOALS AND OBJECTIVES

H.R. 2738 does not authorize funding. Therefore, clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

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

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following section-by-section analysis describes the sections of H.R. 2738 within the rule X jurisdiction of the Committee on the Judiciary.

TITLE IV. TEMPORARY ENTRY FOR BUSINESS PERSONS

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

Sec. 401. Nonimmigrant Traders and Investors.

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

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

INA section 101(a)(15)(E).

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

Sec. 402. Nonimmigrant Professionals; Labor Attestations.

Section 402 of the bill creates a new nonimmigrant classification—"H1B1"—at section 101(a)(15)(H)(i)(b1) of the INA. This classification, for nationals of Chile (and Singapore, as provided for in H.R. 2739), is generally derived from the "H1B" program, found at section 101(a)(15)(H)(i)(b). Already existing and future Executive Office for Immigration Review (Immigration Judges and the Board of Immigration Appeals) and Federal court precedent regarding the H-1B program shall be applicable to identical provisions of the H-1B1 program, and shall be applicable to similar provisions where appropriate. In deciding whether to grant visas for aliens under the H-1B1 visas, State Department consular officers and supervising officers of the Department of Homeland Security shall be familiar with, and adhere to, this precedent.

There are four principal differences between the H-1B program and the new H-1B1 program. First, the H-1B1 category has its own yearly numerical quota—1,400 for Chileans (and 5,400 for Singaporeans, as contained in H.R. 2739). Second, under the H-1B1 program, there is no petition requirement. After the Department of Labor approves an employer's attestation, a State Department consular officer overseas will decide whether to grant visas to alien applicants, dependent in part on whether the prospective job meets the standards of a qualifying occupation and whether the alien meets the educational standards of a qualifying employee. Third, while an alien can be granted H-1B status for a maximum of 6 years which generally cannot be further extended, an alien will receive H-1B1 status for a 1-year period, which may be extended in 1 year increments. Fourth, aliens seeking H-1B status do not have to prove, as most prospective nonimmigrants do, that they do not have an intent to become immigrants (see INA section 214(b)). Aliens seeking H-1B1 status will have to prove that they have no intent to become immigrants, as befits the purely temporary nature of visa provisions created as part of free trade agreements.

H-1B1 visas are available for workers coming temporarily to the United States to perform services in a specialty occupation. Such an occupation is one 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 speciality (or its equivalent) as a minimum for entry into the occupation in the United States." This requirement is to be interpreted identically to the requirement to qualify as a professional under the H-1B category (except as regarding four professions listed in appendix 14.3(D)(2) of the U.S.-Chile Free Trade Agreement). Thus, to qualify as a professional for purposes of section 402, a person must be engaged in a specialty occupation requiring a theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in the specific specialty (or the equivalent of such a degree).

H-1B1 visas shall authorize admission for 1 year. Such admission may be extended at the sole discretion of the Department of Homeland Security, but only in 1 year increments, and only if the alien is found to be in compliance with INA section 214(b). After every second extension of H-1B1 status, an application for a further extension must be accompanied by a new employer attestation. This will have the effect of requiring the employer to update the prevailing wage determination at such time.

The total number of initial applications for admission under the H-1B1 program for Chilean nationals during any fiscal year is 1,400 (plus accompanying or following to join spouses and children). This will have the effect of reducing the H-1B visa quota in two ways. First, the number of aliens who may be issued visas or otherwise provided nonimmigrant status in a fiscal year under the H-1B program will be reduced by the maximum number of approvals of initial applications for admission permitted under the H-1B1 program in that fiscal year. However, if at the end of a fiscal year, the 1,400 approvals for nationals of Chile (or the 5,400 for nationals of Singapore under H.R. 2739) have not been exhausted, the number of H-1B visas available for that fiscal year will be adjusted upwards by the number of unused Chile/Singapore visas. These newly available H-1B visas may be issued within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made. Second, the number of aliens who may be issued visas or otherwise provided nonimmigrant status in a fiscal year under the H-1B program will be reduced by the number of extensions of H-1B1 status approved in that fiscal year to aliens who have previously been granted five or more consecutive prior extensions.

As under the H-1B program, the H-1B1 program's mechanism for protecting American workers is not a lengthy pre-arrival review of the availability of suitable American workers (such as the labor certification process necessary to obtain most employer-sponsored immigrant visas). Instead, an employer files a "labor condition attestation" with the Department of Labor (identical to the labor condition application under the H-1B program) making certain basic attestations (promises) and the Department of Labor then investigates complaints alleging noncompliance.

The H-1B1 program contains the four basic attestations of the H-1B1 program (found at INA sections 212(n)(1) for the H-1B program and at INA sections 212(t)(1) for the H-1B1 program):

- The employer will pay H-1B1 aliens wages that are the higher of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of employment, and the employer will provide working conditions for H-1B1 aliens that will not adversely affect those of workers similarly employed.
- There is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment.
- At the time of the filing of the application, the employer has provided notice of the filing to the bargaining representative of the employer's employees in the occupational classification and area for which the H-1B1 aliens are sought, or if there is no such bargaining representative, the employer has posted notice through such methods as physical posting in conspicuous locations at the place of employment or electronic notification to employees in the relevant occupation classification.
- The attestation will contain a specification of the number of aliens sought, the occupational classification in which the aliens will be employed, and the wage rate and conditions under which they will be employed.

There are two other attestations in the H-1B program that expire at the end of fiscal year 2003 that apply to specific employers, generally H-1B dependent employers. Should Congress decide to reauthorize these additional H-1B attestations and their enforcement mechanisms, or expand their scope, such as by requiring all employers to meet their terms, Congress can also make these changes applicable to the H-1B1 program. This is provided for specifically in annex 14.3(D)(5) of the U.S.-Chile Free Trade Agreement ("[A] party may require a business person seeking temporary entry [as a professional] to comply with procedures applicable to temporary entry of professionals, such as an attestation of compliance with the Party's labor and immigration laws.") and similarly in the U.S.-Singapore Free Trade Agreement. More generally, should Congress extend or modify any provisions of the H-1B program, it may make corresponding modifications to the amendments to the INA made by this bill (and H.R. 2739), to the extent consistent with the obligations of the United States under the Agreement, as spelled out in side letters sent to the Chilean (and Singaporean) governments by Ambassador Zoellick. Thus, even though this implementing legislation does not include all requirements currently present in the H-1B visa program, Congress is not precluded from amending the INA to add additional requirements to the H1B1 program consistent with the H-1B program, such as the attestations for H-1B dependent employers (as mentioned, and found at INA section 212(n)(1)(E)–(G)) or the self initiated investigations of employer compliance (found at INA section 212(n)(2)(G)).

The enforcement scheme for the H-1B1 program is generally the same as that of the H-1B program (found at INA section 212(n)(2)

for the H-1B program and at INA section 212(t)(3) for the H-1B1 program). Department of Labor investigations as to whether an employer has failed to fulfill its promises or has misrepresented material facts in its attestation are triggered by complaints filed by aggrieved persons or organizations (including bargaining representatives). Investigations are to be conducted where there is reasonable cause to believe that a violation has occurred.

An employer is subject to penalties for failing to fulfill the attestations—for willfully failing to pay the required wage, for there being a strike or lockout, for substantially failing to provide notice or provide all required information in an application, and for making a misrepresentation of material fact in an attestation. Penalties include administrative remedies (including civil monetary penalties of up to $35,000 per violation) that the Department of Labor determines to be appropriate and a bar for at least 1 year on the Department of State or the Department of Homeland Security's ability to approve petitions or applications filed by the employer for alien workers (both immigrant and nonimmigrant) (found at INA section 212(n)(2)(C) for the H-1B program and 212(t)(3)(C) for the H-1B1 program). In addition, the Department of Labor must order an employer to provide H-1B1 nonimmigrants with back pay where wages were not paid at the required level, regardless of whether other penalties are imposed (found at INA section 212(n)(2)(D) for the H-1B program and INA section 212(t)(3)(D) for the H-1B program).

Also included in the H-1B1 enforcement scheme is 1) the bar on retaliation (found at INA sections 212(n)(2)(C)(iv)-(v) for the H-1B program and at INA sections 212(t)(3)(C)(iv)-(v) for the H-1B1 program), 2) the ability of the Department of Labor to engage in random investigations in certain circumstances (found at INA section 212(n)(2)(D) for the H-1B program and at INA section 212(t)(3)(D) for the H-1B1 program), and 3) the preservation of any other enforcement authority under the INA (found at INA section 212(n)(2)(F) for the H-1B program and at INA section 212(t)(3)(F) for the H-1B1 program).

Also included in the H-1B1 program are 1) the prohibition of an employer from seeking a penalty against an alien for ceasing employment (found at INA section 212(n)(2)(C)(vi) for the H-1B program and INA section 212(t)(3)(C)(vi) for the H-1B1 program), 2) the prohibition of an employer from "benching" an alien (found at INA section 212(n)(2)(C)(vii) for the H-1B program and INA section 212(t)(3)(C)(vii) for the H-1B1 program), 3) the requirement that an employer offer to an alien benefits and the eligibility for benefits on the same basis and criteria as the employer offers U.S. workers (found at INA section 212(n)(2)(C)(viii) for the H-1B program and INA section 212(t)(3)(C)(viii) for the H-1B1 program), and 4) the special rule for computation of the prevailing wage for educational and research institutions (found at INA section 212(p)).

Under the H-1B1 program, an employer will have to pay a fee in order for an alien to be initially granted H-1B1 status and after every second extension of that status. The fee shall be the same as the fee an employer must pay when petitioning for an H-1B visa (currently $1,000 per alien). However, if no fee is being assessed under the H-1B program (the current fee expires at the end of the fiscal year), no fee shall be imposed under the H-1B1 program.

Sec. 403 Labor Disputes

Section 403 of the bill provides that, except when superseded by the enhanced labor protections of the H-1B1 program found at found at INA section 212(t)(1), an alien who seeks to enter the U.S. under and pursuant to the U.S.-Chile Free Trade Agreement (and the U.S-Singapore Free Trade Agreement as under H.R. 2739), and the spouse and children accompanying and following to join, may be denied admission as an "E", "L" or "H1B1" nonimmigrant if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless the alien establishes 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.

Section 404. Conforming Amendments

Section 404 of the bill makes conforming amendments.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

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 offi-

cer 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 Implementa-

tion 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 para-

graphs (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) * * *

* * * * * * *

(c) MAXIMUM PENALTIES.—

(1) * * *

* * * * * * *

(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 merchandise 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 manipu-

lation 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 Amer-

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

* * * * * * *

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.

* * * * * * *

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 chil-

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

(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

* * * * * * *

DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. (a) * * *

* * * * * * *

(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).*

* * * * * * *

AGENCY CORRESPONDENCE

July 10, 2003

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

Dear Ambassador Zoellick:

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

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

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

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

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

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

Sincerely,

F. JAMES SENSENBRENNER, JR.
Chairman

JOHN CONYERS, JR.
Ranking Member

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

July 18, 2003

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

Dear Ambassador Zoellick:

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

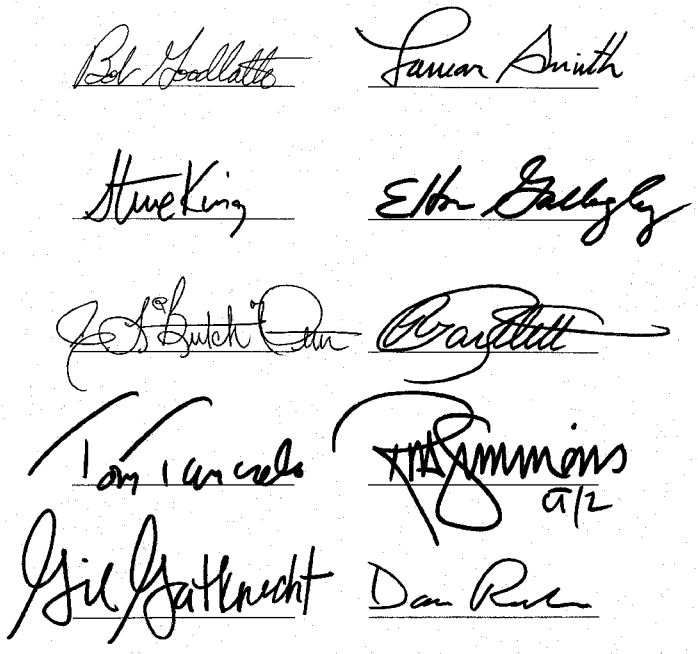
It would be unfair and inaccurate to allege that this practice began with your tenure. The most grievous indignities to Article I, section 8, clause 4 of the Constitution took place during the negotiations over the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade in Services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

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

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

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

Sincerely,



W. Todd Akin

Nathan Deal

Joe Wilson

Julia Brown

Ed Royce

Rick Allen

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 16, 2003

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

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

Chairman SENSENBRENNER. The Committee will come to order. A working quorum is present.

Pursuant to notice, I now call up H.R. 2738, the implementing legislation for the U.S.-Chile Free Trade Agreement, and move its favorable recommendation to the House. This legislation was introduced by the majority leader, by request of the Administration, as provided by the Trade Promotion Authority law. It makes necessary changes in U.S. law to ensure compliance with the U.S.-Chile Free Trade Agreement.

Last week, the Committee considered draft implementing legislation for this agreement and recommended changes to provisions within this Committee's jurisdiction. The underlying agreement contains several provisions within the jurisdiction of this Committee. However, only those pertaining to the immigration law require accompanying implementing legislation.

Thus, our consideration of the draft implementing legislation last week was confined to those provisions. The changes we recommended to those provisions have now been incorporated in the introduced legislation that is before us today, and they have greatly improved the product. Under the Trade Promotion Authority law, no amendments to this introduced legislation are in order.

In addition, Members should keep in mind that the legislation has been referred to us only for consideration of those provisions that fall under our jurisdiction.

Without objection the bill will be considered as read.

[The bill, H.R. 2738, follows:]

I

108TH CONGRESS
1ST SESSION

H. R. 2738

To implement the United States-Chile Free Trade Agreement.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2003

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

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A BILL

To implement the United States-Chile Free Trade Agreement.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—

SEC. 2. PURPOSES.

The purposes of this Act are—

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

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

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

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

SEC. 3. DEFINITIONS.

In this Act:

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

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

(3) TEXTILE OR APPAREL GOOD.—The term ''textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)).

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

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

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

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

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

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that Chile has taken measures necessary to bring it into

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

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

(a) RELATIONSHIP TO UNITED STATES LAW.—

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

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

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

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

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to

any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

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

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

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

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

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

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

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

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

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

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

(B) the United States International Trade Commission;

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

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

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

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in

paragraphs (1) and (2) have been met has expired; and

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

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

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

(a) IMPLEMENTING ACTIONS.—

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

(A) the President may proclaim such actions, and

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

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force

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

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

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

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate with-

in the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 22 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

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

SEC. 106. ARBITRATION OF CLAIMS.

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

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

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

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

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

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

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

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

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

(A) such modifications or continuation of any duty,

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

(C) such additional duties,

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

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

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

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with Chile regarding the staging of any duty treatment set forth in Annex 3.3 of the Agreement,

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

(4) such additional duties,

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

(c) ADDITIONAL TARIFFS ON AGRICULTURAL SAFEGUARD GOODS.—

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

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

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

(B) If the difference between the unit import price and the trigger price is greater than 10 percent, but less than or equal to 40 percent, of the trigger price, the additional duty shall be equal to 30 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the

HTS on like articles at the time the additional duty is imposed.

(C) If the difference between the unit import price and the trigger price is greater than 40 percent, but less than or equal to 60 percent, of the trigger price, the additional duty shall be equal to 50 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

(D) If the difference between the unit import price and the trigger price is greater than 60 percent, but less than or equal to 75 percent, of the trigger price, the additional duty shall be equal to 70 percent of the difference between the preferential tariff rate and the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

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

the column 1 general rate of duty imposed under the HTS on like articles at the time the additional duty is imposed.

(3) EXCEPTIONS.—No additional duty under this subsection shall be assessed on an agricultural safeguard good if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(4) TERMINATION.—This subsection shall cease to apply on the date that is 12 years after the date on which the Agreement enters into force.

(5) TARIFF-RATE QUOTAS.—If an agricultural safeguard good is subject to a tariff-rate quota, and the in-quota duty rate for the good proclaimed pursuant to subsection (a) or (b) is zero, any additional duty assessed under this subsection shall be applied only to over-quota imports of the good.

(6) NOTICE.—Not later than 60 days after the Secretary of the Treasury first assesses additional duties on an agricultural safeguard good under this subsection, the Secretary shall notify the Government of Chile in writing of such action and shall

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

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

(8) DEFINITIONS.—In this subsection:

(A) AGRICULTURAL SAFEGUARD GOOD.—The term ''agricultural safeguard good'' means a good—

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

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

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

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

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

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

SEC. 202. RULES OF ORIGIN.

(a) ORIGINATING GOODS.—

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

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

(B) the good—

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

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

(II) the good otherwise satisfies any applicable regional value-content or other requirements specified in Annex 4.1 of the Agreement; and

(ii) satisfies all other applicable requirements of this section; or

(C) the good is produced entirely in the territory of Chile, the United States, or both, exclusively from materials described in subparagraph (A) or (B).

(2) SIMPLE COMBINATION OR MERE DILUTION.—A good shall not be considered to be an originating good and a material shall not be considered to be an originating material by virtue of having undergone—

(A) simple combining or packaging operations; or

(B) mere dilution with water or another substance that does not materially alter the characteristics of the good or material.

(b) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 4.1 of the Agreement is an originating good if—

(A) the value of all nonoriginating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(B) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement; and

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

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

(A) A nonoriginating material provided for in chapter 4 of the HTS, or a nonoriginating dairy preparation containing over 10 percent by

weight of milk solids provided for in subheading 1901.90 or 2106.90 of the HTS, that is used in the production of a good provided for in chapter 4 of the HTS.

(B) A nonoriginating material provided for in chapter 4 of the HTS, or nonoriginating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the HTS, that are used in the production of the following goods:

(i) Infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the HTS.

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the HTS.

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90 of the HTS.

(iv) Goods provided for in heading 2105 of the HTS.

(v) Beverages containing milk provided for in subheading 2202.90 of the HTS.

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

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

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

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

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

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

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

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

(A) IN GENERAL.—Except as provided in subparagraph (B), a good provided for in any of chapters 50 through 63 of the HTS that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an appli-

cable change in tariff classification set out in Annex 4.1 of the Agreement, shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

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

(c) ACCUMULATION.—

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

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of Chile, the United States, or both, by 1 or more producers, is an originating good if the good satisfies the requirements of sub-

section (a) and all other applicable requirements of this section.

(d) REGIONAL VALUE-CONTENT.—

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

(2) BUILD-DOWN METHOD.—

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

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

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

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

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

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

(3) BUILD-UP METHOD.—

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

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

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

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

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

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

(e) VALUE OF MATERIALS.—

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

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

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

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

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

(ii) an amount for profit; or

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

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

(ii) an amount for profit.

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

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

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

(i) averaging;

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

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

(iv) any other method—

(I) recognized in the generally accepted accounting principles of the country in which the production is

performed (whether Chile or the United States); or

(II) otherwise accepted by that country.

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

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

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

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

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

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

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

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

nating goods unless each of the goods in the set is an originating good or the total value of the nonoriginating goods in the set does not exceed 10 percent of the value of the set determined for purposes of assessing customs duties.

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

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

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

(n) DEFINITIONS.—In this section:

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

dise from the country of exportation to the place of importation.

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

(3) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term ''generally accepted accounting principles'' means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of Chile or the United States, as the case may be.

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

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

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

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

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

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

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

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

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

(I) waste and scrap derived from—

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

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

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

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

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

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

at any stage of production.

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

(6) INDIRECT MATERIAL.—The term ''indirect material'' means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the mainte-

nance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

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

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

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

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

(G) catalysts and solvents; and

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

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

(8) MATERIAL THAT IS SELF-PRODUCED.—The term ''material that is self-produced'' means a material that is an originating good produced by a pro-

ducer of a good and used in the production of that good.

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

(10) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—The term ''packing materials and containers for shipment'' means the goods used to protect a good during its transportation, and does not include the packaging materials and containers in which a good is packaged for retail sale.

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

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

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

(14) RECOVERED GOODS.—

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

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

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

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

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

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

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

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

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

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

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

(2) MODIFICATIONS.—

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

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to

the consultation and layover provisions of section 103(a), the President may proclaim—

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

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

SEC. 203. DRAWBACK.

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

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

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

(B) For purposes of subparagraph (A)—

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

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

(3) A good—

(A) that is—

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

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

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

(B) that is delivered—

(i) to a duty-free shop;

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

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

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

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

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

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

(A) exported to Chile;

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

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

(b) CONSEQUENTIAL AMENDMENTS.—

(1) BONDED MANUFACTURING WAREHOUSES.—Section 311 of the Tariff Act of 1930 (19 U.S.C.

1311) is amended by adding at the end the following new paragraph:

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

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

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

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

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

(2) BONDED SMELTING AND REFINING WAREHOUSES.—Section 312 of the Tariff Act of 1930 (19 U.S.C. 1312) is amended—

(A) in paragraph (1) of subsection (b), by striking ''except that'' and all that follows

through subparagraph (B) and inserting the following: ''except that—

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

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

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

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

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

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

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

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

(B) in paragraph (4) of subsection (b), by striking ''except that'' and all that follows through subparagraph (B) and inserting the following: ''except that—

''(A) in the case of a withdrawal for exportation of such a product to a NAFTA country, as defined in section 2(4) of the North Amer-

ican 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 du-

ties on the materials shall be paid, and the charges against the bond canceled, before the 61st day after the date of exportation, except that the duties may be waived or reduced by—

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

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

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

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

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

''(1) in the case of a withdrawal for exportation to a NAFTA country, as defined in section 2(4) of the North American Free Trade Agreement Implementation Act, if any of the imported metal-bearing materials are goods subject to NAFTA drawback, as defined in section 203(a) of that Act, charges against the bond shall be paid before the 61st day

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

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

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

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

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

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

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

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

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

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

(i) by striking "(4)" and inserting "(4)(A)"; and

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

"(B) Beginning on January 1, 2015, the exportation to Chile of merchandise that is fungible with and substituted for imported merchandise, other

than merchandise described in paragraphs (1) through (5) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act, shall not constitute an exportation for purposes of paragraph (2). The preceding sentence shall not be construed to permit the substitution of unused drawback under paragraph (2) of this subsection with respect to merchandise described in paragraph (2) of section 203(a) of the United States-Chile Free Trade Agreement Implementation Act.'';

(B) in subsection (n)—

(i) by striking ''(n)'' and inserting the following:

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

(ii) in paragraph (1)—

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

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

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

''(D) the term 'good subject to Chile FTA drawback' has the meaning given that term in sec-

tion 203(a) of the United States-Chile Free Trade Agreement Implementation Act.''; and

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

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

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

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

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

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

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

(C) in subsection (o)—

(i) by striking ''(o)'' and inserting the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(i) the merchandise may not be withdrawn from warehouse without assessment of a duty on the merchandise in its condition and

quantity, and at its weight, at the time of withdrawal from the warehouse with such additions to, or deductions from, the final appraised value as may be necessary by reason of a change in condition, and

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

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

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

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

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

(5) FOREIGN TRADE ZONES.—Section 3(a) of the Act of June 18, 1934 (commonly known as the ''Foreign Trade Zones Act''; 19 U.S.C. 81c(a)) is amended by striking the end period and inserting the following: '': *Provided further,* That no merchandise that consists of goods subject to Chile FTA drawback, as defined in section 203(a) of the United States-Chile Free Trade Agreement Implementation

Act, that is manufactured or otherwise changed in condition shall be exported to Chile without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation (or if the privilege in the first proviso to this subsection was requested, an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its admission into the zone) and the payment of the assessed duty before the 61st day after the date of exportation of the article, except that the customs duty may be waived or reduced by (1) 100 percent during the 8-year period beginning on January 1, 2004; (2) 75 percent during the 1-year period beginning on January 1, 2012; (3) 50 percent during the 1-year period beginning on January 1, 2013; and (4) 25 percent during the 1-year period beginning on January 1, 2014.''.

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

SEC. 204. CUSTOMS USER FEES.

Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is amended by inserting after paragraph (11) the following:

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

SEC. 205. DISCLOSURE OF INCORRECT INFORMATION; DENIAL OF PREFERENTIAL TARIFF TREATMENT; FALSE CERTIFICATES OF ORIGIN.

(a) DISCLOSURE OF INCORRECT INFORMATION.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended—

(1) in subsection (c)—

(A) by redesignating paragraph (6) as paragraph (7); and

(B) by inserting after paragraph (5) the following new paragraph:

''(6) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE UNITED STATES-CHILE FREE TRADE AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incor-

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

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

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

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

''(2) IMMEDIATE AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, immediately after

an exporter or producer that issued a Chile FTA Certificate of Origin has reason to believe that such certificate contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certificate was issued.

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

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

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

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

''(g) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER UNITED STATES-CHILE FREE TRADE AGREEMENT.—If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an

importer of false or unsupported representations that goods qualify under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in accordance with regulations issued by the Secretary of the Treasury, may deny preferential tariff treatment under the United States-Chile Free Trade Agreement to entries of identical goods imported by that person until the person establishes to the satisfaction of the Bureau of Customs and Border Protection that representations of that person are in conformity with such section 202.''.

SEC. 206. RELIQUIDATION OF ENTRIES.

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

(1) by striking ''(d)'' and inserting the following:

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

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

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

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

SEC. 207. RECORDKEEPING REQUIREMENTS.

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

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

(2) by adding at the end the following:

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

‘‘(1) DEFINITIONS.—In this subsection:

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

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

‘‘(ii) if applicable, the purchase, cost, and value of, and payment for, all mate-

rials, 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. 208. ENFORCEMENT OF TEXTILE AND APPAREL RULES OF ORIGIN.

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

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

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

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

(B) are goods of Chile,

are accurate,

the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a) includes—

(1) suspension of liquidation of entries of textile and apparel goods exported or produced by the person that is the subject of the verification, in a case in which the request for verification was based on a reasonable suspicion of unlawful activity related to such goods; and

(2) publication of the name of the person that is the subject of the verification.

(c) ACTION WHEN INFORMATION IS INSUFFICIENT.—If the Secretary of the Treasury determines that the information obtained within 12 months after making a request for a verification under subsection (a) is insufficient to make a determination under subsection (a), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make a determination under subsection (a) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (c) includes—

(1) publication of the identity of the person that is the subject of the verification;

(2) denial of preferential tariff treatment under the Agreement to any textile or apparel goods exported or produced by the person that is the subject of the verification; and

(3) denial of entry into the United States of any textile or apparel goods exported or produced by the person that is the subject of the verification.

SEC. 209. CONFORMING AMENDMENTS.

Section 508(b)(2)(B)(i)(I) of the Tariff Act of 1930 (19 U.S.C. 1508(b)(2)(B)(i)(I)) is amended—

(1) by striking ''the last paragraph of section 311'' and inserting ''the eleventh paragraph of section 311''; and

(2) by striking ''the last proviso to section 3(a)'' and inserting ''the proviso preceding the last proviso to section 3(a)''.

SEC. 210. REGULATIONS.

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

(1) subsections (a) through (n) of section 202, and sections 203 and 204;

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

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

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

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

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

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

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

(B) that is a Chilean article.

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement

may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

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

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

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

(2) Subsection (c).

(3) Subsection (i).

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

SEC. 312. COMMISSION ACTION ON PETITION.

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

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

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President

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

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

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

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

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

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

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.

1330(d)(1), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

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

(c) NATURE OF RELIEF.—

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

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

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

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

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

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described in article 8.2(2) of the Agreement) of such relief at regular intervals during the period of its application.

(d) PERIOD OF RELIEF.—

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

(2) EXTENSION.—

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

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

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

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

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

and to respond to the presentations of other parties and consumers, and otherwise to be heard.

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

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

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

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

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

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

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

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

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

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

SEC. 315. COMPENSATION AUTHORITY.

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

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

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

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

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

Subtitle B—Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

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

(b) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered, the President shall cause to be published in the Federal

Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

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

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

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as output, productivity, utilization of capacity, inventories, market share, exports, wages, em-

ployment, domestic prices, profits, and investment, none of which is necessarily decisive; and

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

(b) PROVISION OF RELIEF.—

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

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

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

(B) the column 1 general rate of duty imposed under the HTS on like articles on the

day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

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

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

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

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

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

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

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

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

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

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

SEC. 327. COMPENSATION AUTHORITY.

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

SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.

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

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS.

SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

Upon a basis of reciprocity secured by the Agreement, an alien who is a national of Chile (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) of such alien, if accompanying or following to join the alien) may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in clause (i) or (ii) of such section 101(a)(15)(E). For purposes of this section, the term ''national'' has the meaning given such term in article 14.9 of the Agreement.

SEC. 402. NONIMMIGRANT PROFESSIONALS; LABOR ATTESTATIONS.

(a) NONIMMIGRANT PROFESSIONALS.—

(1) DEFINITIONS.—Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by striking ''212(n)(1), or (c)'' and inserting ''212(n)(1), or (b1) who is entitled to enter the United States under

and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A), who is engaged in a specialty occupation described in section 214(i)(3), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1), or (c)''.

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

(A) in subsection (i)—

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

(ii) by adding at the end the following:

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

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

''(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a

minimum for entry into the occupation in the United States.''; and

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

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

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

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

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

''(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards

the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under section 101(a)(15)(H)(i)(b) may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

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

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

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

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

(2) by adding at the end the following:

''(t)(1) No alien may be admitted or provided status as a 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 condi-

tion 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 non-productive status due to a decision by the employer (based on factors such as lack of work), or due to the non-immigrant'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) designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated on the attestation consistent with the rate of pay identified on the attestation.

''(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 classifica-

tion 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 work-

site 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 re-

tirement, or the expiration of a grant or contract; but

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

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

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

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

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

(c) SPECIAL RULE FOR COMPUTATION OF PREVAILING WAGE.—Section 212(p)(1) of the Immigration

and Nationality Act (8 U.S.C. 1182(p)(1)) is amended by striking ''(n)(1)(A)(i)(II) and (a)(5)(A)'' and inserting ''(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)''.

(d) FEE.—

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

''(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).''.

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

SEC. 403. LABOR DISPUTES.

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

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

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

(3) by adding at the end the following:

''(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.''.

SEC. 404. CONFORMING AMENDMENTS.

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

(1) in subsection (b), by striking ''(other than a nonimmigrant described in subparagraph (H)(i), (L), or (V) of section 101(a)(15))'' and inserting ''(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)'';

(2) in subsection (c)(1), by striking ''section 101(a)(15)(H), (L), (O), or (P)(i)'' and inserting ''subparagraph (H), (L), (O), or (P)(i) of section

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

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

○

Chairman SENSENBRENNER. And without objection, the transcript of the mock markup that was held on this legislation last week will be included in the record following opening statements by myself and whoever the Democratic designated hitter is.

I think that we thoroughly explained all of this last week, and I am just going to ask unanimous consent that my opening statement be placed in the record at this point.

[The prepared statement of Mr. Sensenbrenner follows:]

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

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

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

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

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

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

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

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

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

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

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

The legislation we consider today is a considerable improvement over the draft implementing legislation we considered last week. The Committee's bipartisan commitment to ensuring that our recommendations were incorporated into these bills reaffirms the constitutional prerogative of Congress and this Committee's commitment to ensuring that future free trade agreements are not used to substantively alter United States immigration law. It is my hope and expectation that our actions over the last week will not go unnoticed by this and future Administrations.

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

I now recognize the Ranking Member for his remarks.

Chairman SENSENBRENNER. Without objection, all opening statements will be placed in the record at this point.

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

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

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

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

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

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

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

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

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

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

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

Chairman SENSENBRENNER. Without objection, the previous question is ordered, since a reporting quorum is not present.

[Intervening business.]

Chairman SENSENBRENNER. Because a reporting quorum is present, the unfinished business is the motion to report favorably the bill H.R. 2738, the implementing legislation for the U.S.-Chile Free Trade Agreement on which the previous question has been ordered.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The previous question has been ordered. No debate is in order.

Those in favor will say aye.

Opposed, no.

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

MOCK MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, JULY 10, 2003

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

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

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

The next item on the agenda for consideration is the draft implementing legislation for the U.S.-Chile Free Trade Agreement, which was signed by the President on June 6, 2003. This draft legislation was provided to the Committee by the U.S. Trade Representative and makes changes to U.S. law to ensure compliance with the agreement.

Under the Trade Promotion Authority law, Congress cannot amend either trade agreements or implementing legislation after their formal introduction. The U.S.-Chile legislation will be introduced next week, and today's markup will be to recommend changes to provisions in a draft bill that are within the jurisdiction of the Committee.

While the underlying agreement contains several provisions within the jurisdiction of this Committee, only those pertaining to immigration law require accompanying implementing legislation. Thus, our markup today will be confined to these provisions.

At the conclusion of today's session, these recommendations will be forwarded to the Administration. While the Administration will weigh recommendations made by the Committee, it is not required to accept them. And with that in mind, I now move that the Com-

mittee approve the U.S.-Chile draft implementing legislation and forward it to the United States Trade Representative.

Without objection, the draft implementing legislation will be considered as read and opening for amendment at any time.

[The legislation follows:]

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

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS.

SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.

Upon a basis of reciprocity secured by the Agreement, an alien who is a national of Chile (and any spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) of such alien, if accompanying or following to join the alien) may, if otherwise eligible for a visa and if otherwise admissible into the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), be considered to be classifiable as a nonimmigrant under section 101(a)(15)(E) of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely for a purpose specified in clause (i) or (ii) of such section 101(a)(15)(E). For purposes of this section, the term ''national'' has the meaning given such term in article 14.9 of the Agreement.

SEC. 402. NONIMMIGRANT PROFESSIONALS; LABOR ATTESTATIONS.

(a) NONIMMIGRANT PROFESSIONALS.—

(1) DEFINITIONS.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(A) by striking ''or'' at the end of subparagraph (U);

(B) by striking the period at the end of subparagraph (V) and inserting ''; or''; and

(C) by adding at the end the following:

''(W)(i) subject to section 212(t), an alien—

''(I) 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);

''(II) who is engaged in a specialty occupation requiring—

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

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

''(III) 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); and

''(ii) the alien spouse and children (as defined in subsection (b)(1)) of an alien described in clause (i), if accompanying or following to join such alien.''.

(2) ADMISSION OF NONIMMIGRANTS.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

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

''(B) The Secretary of Homeland Security shall establish annual numerical limits on approvals of initial applications by aliens for admission under section 101(a)(15)(W)(i), which shall not exceed 1,400 for nationals of Chile. For purposes of this subparagraph, the term 'national' has the meaning given such term in article 14.9 of the United States-Chile Free Trade Agreement.

''(C) The period of authorized admission as a nonimmigrant under section 101(a)(15)(W) shall be 1 year, and may be extended, but only in 1-year increments.''.

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

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

(2) by adding at the end the following:

''(t)(1) No alien may be admitted or provided status as a nonimmigrant under section 101(a)(15)(W) 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)(W) 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)(W) 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)(W)(i)(III) 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)(W) 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 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)(W) 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 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)(W) 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 em-

ployee 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)(W) 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)(W) 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 vio-

lation 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)(W) 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)(W) designated as a part-time employee in the attestation, after the nonimmigrant has entered into employment with the employer, in nonproductive status under circumstances described in subclause (I), to fail to pay such a nonimmigrant for such hours as are designated

on the attestation consistent with the rate of pay identified on the attestation.

''(III) In the case of a nonimmigrant under section 101(a)(15)(W) 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)(W) 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)(W) an established salary practice of the employer, under which the employer pays to nonimmigrants under section 101(a)(15)(W) 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)(W), 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 work-

site or physical location where the work of the nonimmigrant under section 101(a)(15)(W) 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)(W) 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 re-

tirement, or the expiration of a grant or contract; but

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

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

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

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

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

(c) SPECIAL RULE FOR COMPUTATION OF PREVAILING WAGE.—Section 212(p)(1) of the Immigration

and Nationality Act (8 U.S.C. 1182(p)(1)) is amended by striking ''(n)(1)(A)(i)(II) and (a)(5)(A)'' and inserting ''(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)''.

SEC. 403. LABOR DISPUTES.

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

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

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

(3) by adding at the end the following:

''(2) Notwithstanding any other provision of this Act except section 212(t)(1)(B), 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, shall not be classified as a nonimmigrant under subparagraph (E), (L), or (W) of section 101(a)(15) 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 Secretary of Homeland Security after consultation with the Secretary

of Labor, 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 paragraph shall be given as may be required by such agreement.''.

Chairman SENSENBRENNER. And the Chair recognizes himself to strike the last word.

The entire issue of trade agreements has been a matter of great controversy in the Congress, and the Trade Promotion Authority or fast-track legislation passed the House by one vote last year, and the conference report was adopted by three votes last year. And basically what it does is make non-amendable trade agreements that have been negotiated and signed by the President and thus subject to an up-or-down vote by the Congress.

What the TPA law did do, however, is to require extensive consultation by the U.S. Trade Representative to Congress and congressional Committees relative to issues within each of the congressional Committee's jurisdiction. The Ranking Member Mr. Conyers and I, immediately following the enactment of the trade promotion authority, sent a letter to Ambassador Zoellick, the U.S. Trade Representative, asking for that consultation.

At the time TPA was enacted into law, a lot of the negotiations in both of these trade agreements had been well underway and tentative agreements had been reached between the United States, on the one hand, and either Chile or Singapore, on the other hand, including agreements pertaining to increased immigration quotas and various types of immigration visas.

I expressed both in writing and verbally my concerns to Mr. Zoellick on these areas as well as my hope that trade agreements would not derogate U.S. antitrust law or U.S. intellectual property protection law. And I can say that in these latter two areas, the trade agreement reflects the concerns that I have expressed to Mr. Zoellick, and they also do not require any implementing legislation. So both the IP protection issues as well as the antitrust and competition issues are not before the Committee, and the agreement does not derogate our national law in either of these respects.

However, with respect to the immigration provision, the draft implementing legislation creates a new W non-immigrant professional worker visa category for nationals of Chile and Singapore. And what this does is that it increases the total number of aliens who would be admitted into the United States by 5,400 in the case of Singapore and 1,400 in the case of Chile.

It is my concern that immigration policy really does not belong in any trade promotion authority bill or any free trade agreement. And as a result, there will be an amendment that will be offered shortly that will basically not authorize the new W non-immigrant professional worker visa category that is contained in the draft implementing legislation and require that the number of people who are eligible for these visas be deducted from the national H-1B visa cap. Thus, the amendment will create a new category of H-1B visas to effect the temporary entry provisions in the free trade agreements without increasing the total number of temporary entries that are allowed into the United States.

I would also point out that the H-1B visa category requires certain labor certifications as well as a $1,000 fee. So there will be no distinction between how applicants from Singapore and Chile will be treated versus applicants for this type of visa category from other countries.

I think that this is a good amendment, but I am also concerned that there not be future changes in the basic immigration law con-

tained in future trade agreements. Article I, section 8 of the Constitution makes immigration and naturalization law an exclusive enumerated power of the Congress, and we intend to follow the Constitution and not to delegate this authority to the executive branch of Government.

I intend to send a letter to Ambassador Zoellick, which I will invite Mr. Conyers to co-sign with me, stating our strong opposition to any type of changes in the immigration law in any future free trade agreements that will be put in the Committee report when we formally mark up the introduced legislation next week, as well as any response that Ambassador Zoellick cares to give to us. There will also be some rather strong report language that says that changes in immigration law are off the table as far as this Committee is concerned in future free trade agreements.

With that, I will be happy to yield to the gentleman from Michigan, Mr. Conyers, for whatever remarks he chooses to make.

Mr. CONYERS. Thank you, Chairman Sensenbrenner.

I come to the markup this morning in extreme agreement with you, as contrasted with 24 hours ago, for example. So here we meet in amity and peace and accord. And so I have nothing to add except the comment that the Judiciary portion is to me very well crafted. The bigger problem is with trade agreements in general. I am part of that group that they just go through by one or two or three votes. I was one of those that was trying to let it not get through.

The problem, the bigger problem is that with these trade agreements increasingly—and this was true in the previous Administration, maybe not to the same extent it looks like it's going to develop now. But we are opening the gates to workers coming in to whom the standard of living that we enjoy is so different from theirs that it increases our unemployment. The other problem is that we have companies taking jobs and industry out at the same time—all of this under the rubric of free trade. Isn't globalization wonderful. Well. And the only—the small thing I would like to do with the immigration portion that is before the Committee today is that we have a little amendment on line 23 at page 3 that says you can't stay forever in this country once you come in without the numbers being counted against the cap of the country from which the immigrant comes. Not unreasonable. I mean, otherwise, we're driving a huge hole into the whole concept of immigration because here you just come in and that's it, you stay. Frequently you become a citizen or you become lost in the 275 million others.

And so I'm happy to join with our Chairman and all of us in today's markup.

Chairman SENSENBRENNER. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, thank you.

I do want to point out that in both of these two trade agreements there are some good provisions, particularly those that have strong intellectual property protections, and we ought not overlook the fact that this is good for American industry, good for American high-tech companies to have these strong intellectual property protections in these two trade agreements. And in regard to those in-

tellectual property protections, I think they do set a good precedent that we hope to establish in future trade agreements as well.

Mr. Chairman, like you, I share your concerns about the immigration provisions in both these trade agreements, and I think that you have done as much as humanly possible to try to correct the problems with the immigration provisions. We are no longer going to have an indefinite category of a new visa. That is being corrected by the amendment. Hopefully in the future we will be able to send a message to the trade reps that we do not want a trade negotiator or the Administration establishing immigration policy, which is clearly the prerogative of the U.S. Congress. And I am glad that we have bipartisan agreement on that.

Also, Mr. Chairman, I just want to point out that I'm not aware of any trade agreement in the last 12 years or so that has had these type of immigration provisions in it. So I'm glad that we can get back in the future to having trade agreements without immigration provisions and leaving those determinations, again, to be made by Congress.

Mr. Chairman, I just want to say I appreciate very much all that you've done to negotiate with the—with Ambassador Zoellick and others to try to work out, as I say, the best compromise that I think is possible and that will establish a good precedent in the future for not having others determine what the immigration policy of the United States is.

I will yield back.

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman.

Mr. BERMAN. Well, thank you, Mr. Chairman.

First, I want to echo the comments of our Ranking Member and Mr. Smith in praising you for, I think, standing up both for the jurisdiction of the Committee and for the powers of Congress in this context. I agree very much with—every once in a while, for reasons I'm never quite sure of, I find myself agreeing with Mr. Smith, the former Chairman of the Immigration Subcommittee, on these issues. And this is one of those times.

The fact is, although in all fairness we can't blame the Trade Representative this time for initiating something new, because I believe NAFTA and some of our other earlier agreements also had some immigration provisions in them which were not separately enacted by Congress but just stuck into the implementing legislation. But, Mr. Chairman, I was wondering if it would be possible, since this is a mockup and not a markup, and since what we do here are simply in the form of recommendations to the Trade Representative for the legislation that they will be presenting next week, which will come up at an up-or-down vote, to ask a representative of that office just to clarify a few of the questions that have gone on in the discussions so that there's no doubt that when they prepare this legislation, we are all—we have a shared understanding of what that implementing legislation will look like before it's too late and it can no longer be amended.

So could I—only because this is not a regular——

Chairman SENSENBRENNER. Can we find out for the record if a USTR representative would like—since this is a mock markup—ordinarily we do not allow witnesses at a markup. But would a rep-

resentative of the USTR mind answering questions of Members of the Committee?

Mr. BERMAN. In the spirit of the compromise which you have been——

Mr. CONYERS. A few friendly questions.

[Pause.]

Mr. BERMAN. I don't know if "mind" should be the standard.

Mr. Chairman, in the meantime, while they are making up their mind——

Chairman SENSENBRENNER. I see them nodding yes.

Mr. BERMAN. Oh, okay.

Chairman SENSENBRENNER. Could whomever wants to answer the questions sit at the witness table? Please identify yourselves for the record and I'll swear you in.

Mr. SHIGETOMI. Mr. Chairman, my name is Kent Shigetomi——

Chairman SENSENBRENNER. Could you press the mike button, please.

Mr. SHIGETOMI. Mr. Chairman, my name is Kent Shigetomi. I'm from the Office of the U.S. Trade Representative.

Chairman SENSENBRENNER. Is there anybody else with the USTR that will be testifying?

Mr. POSNER. Mr. Chairman, my name is Ted Posner. I'm with the Office of General Counsel at the Office of the U.S. Trade Representative.

Chairman SENSENBRENNER. Would both of you please stand and raise your right hands?

[Witnesses sworn.]

Chairman SENSENBRENNER. Let the record indicate that both witnesses answered in the affirmative. Mr. Berman, you have some questions.

Mr. BERMAN. Yes, Mr. Chairman. As I understand it, Mr. King will be—I don't know if it's a manager's amendment or it's an amendment by Mr. King, but there will be an amendment, a mock amendment to this mocked-up bill being offered later. And my questions pertain to some of the fundamental issues that that amendment, I understand, will be trying to deal with.

As I understand it, the W visas that were proposed in the proposed legislation will now become part of the H-1B—they'll be H-1B visas. Am I—is that correct?

Mr. POSNER. Congressman, I should preface my response by saying I have not seen the text, but in concept, my understanding is that is what is intended.

Mr. BERMAN. And does that mean that the fees that now apply to the H-1B program will apply to each of these individual visas as well?

Mr. POSNER. That is my understanding.

Mr. BERMAN. Okay. And that the fees collected, those fees will be allocated the way the H-1B visa's fees are now allocated?

Mr. POSNER. That is also my understanding.

Mr. BERMAN. Okay. Secondly, the H-1B program has provisions with respect to replacing workers in a time of strike or lockout. And the H-1B law requires petitioning employers to attest that there is not a strike or lockout in the occupational classification that the visa holder will fill. Will that language now apply to these visas as well?

Mr. POSNER. My understanding is that the employer, the intended employer, will make an attestation including elements substantively identical, including the item you just described, the no strike or lockout attestation.

Mr. BERMAN. Say that one more time.

Mr. POSNER. My understanding is that the substantive elements of the attestation that the employer will make will be the same as the H-1B attestation items, including the no strike or lockout attestation.

Mr. BERMAN. Okay. Then on the issue of the renewals and the—in effect, these visas—let's just—it's 5,000 for Singapore?

Mr. SHIGETOMI. Five thousand four hundred for Singapore, 1,400 for Chile.

Mr. BERMAN. Five thousand one hundred——

Mr. SHIGETOMI. Five thousand four hundred——

Mr. BERMAN. Five thousand four hundred for Singapore, 5,100——

Mr. SHIGETOMI. One thousand four hundred for Chile.

Mr. BERMAN. And to the extent those visas are allotted in any given year, they will come off the H-1B overall cap for that year? They will come out of that cap?

Mr. POSNER. That's my understanding.

Mr. BERMAN. Okay. And then the issue of the renewals, those visas as to Singapore and Chile, unlike the H-1B visas, as I understand the negotiated agreement, they are permitted an infinite number of annual visa renewals. Is that—not infinite. As long as the person and the—is it the employer who keeps petitioning for the annual renewal, or is it the visa holder who petitions for the renewal?

Mr. SHIGETOMI. Congressman, I should preface my remarks by saying I haven't seen the actual text of the amendment.

Mr. BERMAN. Conceptually. We're talking——

Mr. SHIGETOMI. One difference I would point out is that under the implementation of the entry for Singaporeans and Chileans, there would be no petition. In fact, petitions are not permitted under the terms of the—of both free trade agreements.

Mr. BERMAN. There would be an attestation, but not a petition.

Mr. SHIGETOMI. That's correct.

Mr. BERMAN. All right. But the granting of the visa would come out of the H-1B cap?

Mr. SHIGETOMI. That's correct.

Mr. BERMAN. All right. Now the question of the renewal of the visa. Somebody has to initiate that renewal. Who is it, the employer or the employee?

Mr. SHIGETOMI. Well, there are certain elements that fall to the responsibility of the alien and certain that fall to the responsibility of the employer. Only the employer can make the attestation, and it's my understanding that the attestation would be—a new attestation would be required after 3 years.

Mr. BERMAN. That's under H-1B?

Mr. SHIGETOMI. And under the operation of this proposed program.

Mr. BERMAN. But I understand that the agreement that was negotiated allows an annual renewal——

Mr. SHIGETOMI. Oh, I'm sorry, sir. That was for the attestation of compliance with U.S. labor laws.

Mr. BERMAN. I am not——

Mr. SHIGETOMI. For the period that the alien is in the United States, there is nothing in the text of the agreement that mandates a specific time. It was our understanding that the program would operate in a manner similar to the NAFTA TN professional system under which an alien is permitted an initial stay of 1 year and then an extension granted in 1-year increments thereafter.

Mr. BERMAN. I think the thing the Committee should be aware of is that under the H-1B program you're entitled to 3 years——

Mr. SHIGETOMI. For an initial stay.

Mr. BERMAN. For an initial stay, and one renewal, for a maximum of 6 years under the H-1B status. Here, you—the plan is to have annual renewals with no limit for this non-immigrant temporary visa program. It could be—it could be perpetual. Is that right?

Mr. SHIGETOMI. Again, I should preface my remarks by saying I haven't seen the text of the amendment, but any alien who seeks entry under this category would still be required to comply or meet—overcome the presumptions of an immigrant intent that are established in another section of the Immigration and Nationality Act. So all of the exclusions, the rights, or privileges that apply to non-immigrants would also apply to aliens.

Mr. BERMAN. My only point is, were this Committee to adopt an amendment that said—it gets complicated. The way it works under the H-1B program is you have an annual cap of a hundred—what is it now?—190——

Mr. SHIGETOMI. Five thousand.

Mr. BERMAN. A hundred ninety-five thousand. The renewals don't count against the cap. If there were a provision that said renewals after 6 years for these sub-quotas inside the cap for Singapore and Chile, if the renewals were to count against the H-1B cap after 6 years, would that in any way violate the provisions of this agreement? It would not?

Mr. SHIGETOMI. Congressman, that would create a problem.

Mr. BERMAN. Why?

Mr. SHIGETOMI. Under both agreements there is language—I'll just read it to you. This is from the Singaporean text under Appendix 11A.3: "Beginning on the date of entry into force of this agreement, the United States shall annually approve as many as 5,400 initial applications of businesspersons." And then in paragraph 2, subparagraph (a), "The United States shall not take into account: (a), the renewal of a period of temporary entry."

Mr. BERMAN. I'm aware of that. But if the amendment were simply to say that after 6 years the renewal of a period of temporary entry would count—would count—6 consecutive years, would count against the H-1B cap, that is not a prevention of renewals. It doesn't violate the agreement. It simply says in the seventh year it——

Mr. SHIGETOMI. It would count against——

Mr. BERMAN. It would count against the overall H-1B cap. It wouldn't in any way violate the agreement. It would simply limit the other visas that could be granted under H-1B.

Mr. SHIGETOMI. I think I understand your point now. So you're saying that in the—after the 6-year period, in the seventh year that extension would count against the H-1B cap and not against the separate cap established.

Mr. BERMAN. That's right.

Mr. SHIGETOMI. I'm not an attorney, sir, but that would not seem to be in conflict with the terms of the free trade agreement.

Mr. BERMAN. All right. Then are we——

Chairman SENSENBRENNER. The gentleman from Iowa would like to offer an amendment now. Do you have an amendment at the desk?

Ms. JACKSON LEE. Excuse me. Are we allowed to have opening remarks or what?

Chairman SENSENBRENNER. Wait a minute.

Mr. KING. Mr. Chairman, I have an amendment, an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the draft implementing legislation for the United States-Chile Free Trade Agreement, offered by Mr. King. Page 2——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

Amendment to draft implementing legislation for the United States-Singapore Free Trade Agreement

Offered by Mr. [redacted] King

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

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

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

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

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

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

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

Chairman SENSENBRENNER. The gentleman from Iowa will be recognized for 5 minutes to explain his amendment.

Mr. KING. Thank you, Mr. Chairman, and ladies and gentlemen of the Committee, much of this amendment has been discussed. I'd like to preface my remarks on the amendment with a philosophy on immigration, which is I believe the United States of America needs to continue to develop an immigration policy that's designed to enhance the economic, the social, and the cultural well-being of the United States of America. That should be our endeavor here in this Committee and in this Congress, and, in fact, we have a constitutional authority and a constitutional obligation to provide that policy to the Administration rather than have the Administration provide the policy to Congress for our ratification. And I am a strong supporter of free trade and a strong supporter of trade promotion authority, although I do not believe that it was the intent of Congress to consider trade and immigration as part of those negotiations, and that's the effort here in this Committee, is to help the Administration have some guidance on limitation of what you might be negotiating with free trade.

This amendment then before us today takes the new W category for immigration that's been negotiated, particularly this first amendment with the Chile agreement, and rolls that new category of the W into a new subcategory under H-1B called H-1B2. And it just simply limits the number under the cap, the existing cap of 195,000 that's there for H-1B, and it will statutorily roll back to 65,000 sometime later this fall.

So it is exactly as described by the Committee and announced by the Chairman, and I'd point out also that the H-1B program is one of the best programs that we have with—immigration program because it is designed to go out and identify highly skilled, highly talented people who can come into this economy and make a positive contribution right away. I believe it has some flaws in it that at some point we will need to address in another bill on another issue down the road a few months. But what's in front of us today is this amendment that simply rolls the W category underneath the H-1B, sets up a new subcategory of H-1B2, and that I think is the intent of this Committee, and I'm asking——

Mr. NADLER. Would the gentleman yield for a question?

Mr. KING.—for your support on this amendment. I will yield.

Mr. NADLER. I really don't understand what you're trying to do. How does that differ from what the Chairman outlined in the Chairman's amendment?

Mr. KING. I'm not aware there was a Chairman's amendment before us, but it's consistent——

Mr. NADLER. Never mind. Thank you.

Mr. KING. You're welcome.

That would conclude my remarks, and I'd yield back.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. I am going to recognize myself for 5 minutes at this point.

I support the King amendment, and I think the important thing to note in the King amendment is that the new visas that have been negotiated as a part of both the Singapore and the Chile Free Trade Agreement will not result in an increase in the total number of visas that will be allowed on a worldwide basis, meaning that

the 5,400 for Singapore and the 1,400 for Chile will come under the existing H-1B cap, be subject to the same fee, which is $1,000 for applications, and will also be subject to the labor attestation provisions and the anti-strike and lockout provisions that are contained in H-1B.

So what this amendment does is decouple immigration policy from free trade policy. I don't think it ever should have been merged. It was merged in the past. I think that we're decoupling this in the future. And I intend to support this amendment.

I also intend to support an amendment that will shortly be offered by Mr. Conyers to make sure that renewals go against the worldwide cap on H-1B visa, and according to the testimony of the USTR representative, the Conyers amendment will not conflict with either the Chile or the Singapore Free Trade Agreement.

With that, I yield back the balance of my time, and for what purpose does the gentleman from Michigan seek recognition?

Mr. CONYERS. Mr. Chairman, I have that amendment.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. CONYERS. It's the Conyers-Berman amendment now.

Mr. GOODLATTE. Point of order, Mr. Chairman. Is that an amendment to this amendment?

Chairman SENSENBRENNER. Yes, it is.

The CLERK. Mr. Chairman, I don't have a copy.

Chairman SENSENBRENNER. Would the——

The CLERK. Amendment to the draft implementing legislation for the United States-Chile——

Mr. CONYERS. No, that's not the right one.

The CLERK. Amendment to draft implementing legislation for the United States-Chile Free Trade Agreement, offered by Mr. Conyers. Page 3, line 23, strike the quotation——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

H.L.C.

AMENDMENT TO DRAFT IMPLEMENTING

LEGISLATION

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

AGREEMENT

OFFERED BY MR. Conyers

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

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

Page 3, after line 23, insert the following:

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

Chairman SENSENBRENNER. And the gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Thank you. Mr. Chairman and Members of the Committee, after talking this over with the Chairman, Howard Berman, and Perry Applebaum, what are we trying to do with the amendment to the amendment, the King amendment, which I support? Well, it's because we've supported in the past H-1B extensions and renewals, but we always know at the end of the day that the stay of the aliens would be temporary and would be subject to a cap. That protection is not contained in the bill as it's currently written, and so all we do is make that important. And all of you who are concerned about the labor, domestic labor aspects, this would be very important.

It's a kind of a loophole in the bill that we're correcting because, as currently written, individuals could come into and remain indefinitely and not count against any subsequent overall annual cap once they're given entry. So we fixed the problem by providing that any extensions beyond 6 years count against the H-1B cap in that year. And we think that's very fair, and I would yield to the gentleman from California.

Mr. BERMAN. I thank the gentleman for yielding, and I think he just expressed it exactly the way it is. This is consistent with the whole premise of the H-1B program, which is to have an annual

cap that allows people to stay here for 6 years, and by this amendment it will be consistent with it and won't violate the underlying agreement reached between the two countries, or the three countries in this case. I support it.

Mr. WATT. Mr. Chairman, might I make a parliamentary inquiry?

Chairman SENSENBRENNER. State your inquiry.

Mr. WATT. I'm a little confused about what it is we're marking up. Are we marking up the King amendment as the underlying bill, the thing that was given out yesterday? Is Mr. Conyers' an amendment to King's?

Chairman SENSENBRENNER. Okay. The answer to the gentleman's parliamentary inquiry is the base bill is the draft implementing legislation, which was given to the Members yesterday. That.

Mr. WATT. All right.

Chairman SENSENBRENNER. Mr. King has an amendment to the draft implementing legislation. Mr. Conyers' amendment is an amendment to the King amendment.

Mr. WATT. All right. May I make a further—I think I understand substantively what we're doing. I just——

Chairman SENSENBRENNER. The questions will be put as follows: the adoption of the Conyers amendment to the King amendment, the adoption of the King amendment, presumably as amended, then the draft implementing legislation. The immigration provisions of it are open to further amendment, and then we would make a recommendation to the USTR to make these changes in his draft implementing legislation. And then we will be back here next week to deal with the actual formal markup.

Mr. WATT. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Okay. The question——

Mr. GOODLATTE. Mr. Chairman?

Chairman SENSENBRENNER. For what—the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GOODLATTE. Thank you, Mr. Chairman.

I first want to comment you for making the best of a very difficult situation, and I want to thank the them from Michigan, the gentleman from Iowa, and others who've worked in a bipartisan way to try to resolve this problem.

The real problem here is not what I consider to be bad immigration policy. It is bad immigration policy. The real problem here is—as the gentleman from California has noted, this is a mock markup, and what we're trying to do is to avoid making a mockery of the jurisdiction of the United States Congress that we've inherited.

And I also want to make it very clear to our friends from the U.S. Trade Representative's office that I know that this is something that's been going on for a long time, and I don't hold them, those here today, personally accountable for this. But I hope they can see from what we've been put through in the last few days and the Chairman's been put through for the last few months that this is a major, major insult to the United States Congress. That is exactly what we're confronting here. This has no business being in

trade agreements of the past, certainly not in this one, and quite frankly, all we're able to do today is try to patch together a bad situation and then send it down to the Trade Representative, hope that's the understanding that he reached with the Chairman, and that it'll come back in that form when we get it back from the USTR next week.

So we'll have to see what we get from them and reserve judgment on that before we make any final decision on how to proceed. And all of that's a shame because these are good free trade agreements. As the gentleman from Texas noted, there are good provisions in here promoting trade in a whole host of areas between countries in which we have a great deal of interest in increasing exports and allowing our American consumers to have choice of new goods from these countries.

But to add this to the process is very, very problematic, and I——

Mr. BERMAN. Would the gentleman yield?

Mr. GOODLATTE. I will yield in just a minute. I would hope that the Chairman's assurance that his discussions with the U.S. Trade Representative will lead to this not occurring again in the future, will be very strongly and carefully heeded. And I would like to ask the USTR representatives what their understanding is of future trade negotiations that the USTR may be presently involved in or intending to be involved in in the future with regard to changing U.S. immigration policy.

Mr. SHIGETOMI. Congressman Goodlatte, my experiences here for the last 2 days have made it perfectly clear what the views of this Committee are in this particular aspect of trade negotiation.

Mr. GOODLATTE. You don't need to tell me what the views of the Committee are. I want to know what the views of the U.S. Trade Representative are on this issue.

Mr. SHIGETOMI. Congressman, I am not in a position to address the views of my agency with regard to the other trade negotiations that we're undertaking.

Mr. GOODLATTE. Well, I would hope that you would convey to the Representative that before I cast my vote on these agreements, which I've already stated have much merit—as the Chairman of the Agriculture Committee, I've looked at the provisions related to agricultural trade, and while there is not unanimity of support for them, there's a great deal of comfort in the United States on these being well negotiated in that regard. But prior to that, I hope to receive that assurance from the U.S. Trade Representative that we're not going to see this in future trade agreements.

Mr. NADLER. Would the gentleman yield?

Mr. GOODLATTE. I would be happy to yield to the gentleman from New York.

Mr. NADLER. Thank you. I just wanted to say that I would hope the U.S. Trade Representative would take from this little colloquy the fact that if there are such provisions in this trade agreement when it finally comes down to us or in future trade agreements, you run a real risk of not having the trade agreement agreed to because an immigration provision is a real—and after this Committee has made its opinion clear, a studied and deliberate insult to the Congress, which many people who might support those trade agreements on the merits would not stand for.

I'll yield back.

Mr. BERMAN. Would the gentleman yield?

Mr. GOODLATTE. The gentleman from California——

Mr. BERMAN. I ask unanimous consent for the gentleman to have one additional minute.

Chairman SENSENBRENNER. Without objection.

Mr. BERMAN. Thank you. I thank the gentleman for yielding. Let's just clarify one point. First, just as a preface, it is not this Trade Representative who started the insults.

Mr. GOODLATTE. I—reclaiming my time, I fully agree with that and thought I had indicated that.

Mr. BERMAN. Oh, okay. But what I would—to look at this as half-full rather than half-empty, this is the first time this Committee has pushed back. And as I understand it—and let's just clarify that. As to these two agreements, my understanding is that it is subject to technical corrections and those kinds of things that frequently come up after an amendment's adopted. It is my understanding that it is the intention of the Trade Representative in proposing the implementing legislation which we will be seeing next year to reflect the—next week, I mean, the agreements that you have already discussed and that are reflected in the King amendment, now amended, soon to be hopefully amended by the Conyers amendment.

Mr. CONYERS. Mr. Chairman, could the gentleman from Virginia get 30 seconds additional?

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. I'd like to scare these two guys a little bit more during that time. [Laughter.]

Mr. CONYERS. They're such fine fellows. Obviously some of these questions may be slightly below their pay grade. But here's the problem, men, is that these are relatively small trade agreements, Chile and so forth. But we know that around the corner entire continents may be involved in massive situations like the one before us. And this would have incredible implications in terms of our immigration law, and that's the point.

So, so nice of you being here.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California wants a direct answer to the question that he asked, which we'll put on the record.

Mr. POSNER. Right. Thank you, Mr. Chairman. With respect to recommendations by the Committee that the USTR can agree to, there are certain provisions, including the provisions of the King amendment, that were discussed among staff of the Committee and staff of USTR, which it is my understanding we are prepared to agree to. The provisions of the Conyers amendment to the King amendment is not one that we have discussed, and so I'm not prepared at this time to say one way or the other whether the agency would be prepared to accept it.

Mr. CONYERS. Bring out the leg irons, then. That's it. [Laughter.]

Mr. GOODLATTE. Would the gentleman yield?

Mr. BERMAN. Well, it's your time, but I'd just like—but as—I'd just like the record to show that as to the—what we have described as the Conyers amendment—you'll be able to analyze it—I think we've had a statement from the office, from your office, that that

does not violate the underlying agreements, that its impact is on the overall H-1B quota, cap in the seventh year.

Mr. POSNER. If I could just make one point of clarification on that. It is correct to the extent that it doesn't draw down the agreement-specific cap, it is not a violation of the agreement. If you had a particular factual situation in a given year where you were not able to renew a Singaporean or a Chilean citizen's stay under this W category because the H-1B cap had already been exhausted, in that particular—in that particular factual scenario, I can't say definitively that we would not in that case be violating the agreement.

What I'm saying—what we intended to say previously is that nothing about the amendment appears to us per se to violate provision of the agreement to the extent that you're not drawing down the 5,400 or 1,400 cap. So if I could just have that clarification on the record.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. I believe the time of the gentleman from Virginia has expired.

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

First, I would like unanimous consent to make a part of the record several letters that were exchanged between Congressman Boucher and myself and the USTR relative to the IT provisions. It's not before us today, but I'd just like to make that——

Chairman SENSENBRENNER. If the gentlewoman from California would yield, this is a mock markup.

Ms. LOFGREN. I understand.

Chairman SENSENBRENNER. We will not be filing a Committee report following this markup. This is kind of advice to the USTR on what to put in the bill that we'll be marking up next week.

Ms. LOFGREN. So I'll save these for next week.

Chairman SENSENBRENNER. And I think the proper time—you know, if you want this to be preserved and read forever and ever——

Ms. LOFGREN. That's my goal.

Chairman SENSENBRENNER.—is to ask UC next week, and I have no objection to doing that.

Ms. LOFGREN. I will do that, then.

On the issue before us——

Mr. BERMAN. Would the gentlelady just yield on this first point first?

Ms. LOFGREN. Yes.

Mr. BERMAN. Would it then be appropriate to say that we want to—some of us on the Committee want to congratulate the Representative for the intellectual property provisions? Is this the appropriate time?

Ms. LOFGREN. No. That will be next week.

Mr. BERMAN. Next week I will——

Ms. LOFGREN. Reclaiming my time, I want to talk about—I voted against the fast-track bill last year because I was afraid that this would happen, and I was right. You know, the Ways and Means Committee doesn't know anything about matters within our juris-

diction. And I was focusing on antitrust, but the—I'll just say that the drafting of these immigration provisions is defective in my judgment. They're poorly drafted. They're not well thought out. And because the numbers are small, it's not going to prevent us from passing these agreements. But if this a template for the future, you're not going to have any trade agreements, because we know that there are many—there are many in the labor community who oppose these free trade agreements. There are many people who are very concerned about immigration. You're not going to have any free trade agreements if you don't stop doing this. And I think it's important that you understand that.

What I object—and I've spent a lot of time on immigration. I used to teach immigration law. I've been on the Immigration Subcommittee for many years. What we're going to end up doing is skewing a program that is supposed to bring the brightest people in the world to the United States to help our country. And what we've said is now, you know, 10,000 of those people must come from two little countries. Well, maybe we don't have Ph.D.s in astrophysics from Chile and Singapore. So you're really messing up a program that should charge the economy.

If we do this down the road with whole continents, you're going to seriously disrupt the technology economy of the United States, and I think that's a big problem.

So I would just hope that we—out of this public session we can have a sit-down with people who work on this stuff with the USTR and make sure that you don't continue to cause problems for our country by faulty and defective drafting of these agreements.

I understand that we will have a proposal—it's an up-and-down vote on the trade agreement, but I think you're in very—you may lose this even with these amendments that are being proposed. And I think, you know, this isn't the first time. When I went to do some reforms on the H-1B program, I found out—I mean, I was stunned—that the WTO got there first and that we were constrained on what we could do in reforming the H-1B program. There are still some things that I think we need to do on the H-1B program that I wanted to do when we last touched the agreement in terms of protections for employees and the like.

I think that the—what you've done on this agreement, I'm sure with the best intentions in the world, has even caused problems in that arena.

So I would just like to counsel the USTR, number one, not to be negotiating matters that are really within the purview of this Committee, and certainly not to do so without a full communication, not just with the Chairman and Ranking Member, but with the Members of the Committee who in many cases have spent several decades working on these issues and actually know quite a bit about—I don't want to just say myself, but Mr. Berman and Ms. Jackson Lee and others on the other side of the aisle who actually know something about this more than you do, because you've made a mess of this, I must say.

And I yield back my time.

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. Mr. Chairman, I ask to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HOSTETTLER. Mr. Chairman, I want to commend Mr. Conyers and Mr. King for their amendments, and I support them. And I want to also commend the representatives here today from the U.S. Trade Representative and your willingness to help us in this process. It's very encouraging that—you did not have to testify. You did not have to answer our questions on the record. But you chose to, and that's very helpful and we want to thank you for that.

Mr. Chairman, I want to commend you and the gentleman from Virginia and the gentleman from Texas as well as the gentleman from Iowa and the gentleman from Michigan for jealously guarding the prerogatives not only of this Committee but of this Congress in our constitutional obligations. You are in a sense, this Committee is in a sense today attempting to put the genie back in the bottle, because, as has been pointed out several times today, this U.S. Trade Representative was simply working from a template of previously agreed-to agreements, not only between the United States and other countries but of this United States Congress. And so I don't hold these folks at any fault because they did it before, we did it before—I guess I should say that Congress did it before, and so they were simply working on that assumption that it would be okay to continue this.

But just as this Committee is jealously guarding our constitutional prerogatives with regard to article I, section 8, when it says, "Congress shall have power to establish a uniform rule of naturalization," I would hope that at some time in the future that the entire Congress would once again re-establish our primacy when it comes to trade agreements in general, because in the same Constitution, in the same section of that Constitution, article I, section 8, it says that "Congress shall have power to regulate commerce with foreign nations."

We are delegating that power to the executive branch with every single trade agreement that we do. Every time we pass what has previously been referred to as fast-track, now as trade promotion authority, we are essentially ceding them the legislative authority to fashion law for this country, and then they are granting us the law that we pass—I should say trade promotion authority grants us essentially a veto authority, turning the constitutional prerogatives and obligations on their head. They fashioned the law. They fashioned the policy. And all we get to do, because, as we said earlier, this is a mockup and not a markup, we basically get an up-or-down vote in the House of Representatives. So we can either veto the bill or we can—we can essentially put the bill into law, even though the President has to sign our piece of legislation afterwards.

And so I would hope that in our discussion today that we go from this point and as a Committee we maybe make the case to the rest of the Congress that we are trying to do our part with regard to immigration law, antitrust law, intellectual property law, and that maybe the rest of the Congress should do our job into making the case that maybe Congress is capable of regulating commerce with foreign nations since the Framers of the Congress—Framers of the Constitution gave us that obligation over 200 years ago.

And I yield back the balance of my time.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, thank you very much. I want to add my appreciation to the Chairman and the Ranking Member for demanding jurisdiction on this question or oversight over this trade deal that has become a legislative initiative. And I'd like to emphasize that the agreements that we are looking at are simply that. They are deals. And when you're in negotiations, two nations are dealing—dealing on matters of who can benefit the most or, as they say, it's a lot of horse trading. And I think it's very difficult to horse trade on a very technical area of the law and area of responsibility of the Congress such as immigration.

And I want to cite to you gentlemen—and I assume that there is a record—that one of the difficulties we have or that I have with this process and with the fact that immigration policies are included in a trade deal is that we have throngs of individuals who are in line to access legalization, who are proceeding through a process to achieve legal status and permanent status. These are temporary statuses. And they're waiting years and years because of backlog to be able to enter into this country or to be able to achieve either legal permanent resident status or citizenship.

And then we have an additional burden that I believe this Committee and this Congress has abdicated its responsibility, and that is, of course, to deal with the throngs of others who are in this country that may have entered illegally, but many of us know are working, paying taxes, and we should develop policies to allow them to earn access to legalization. That is certainly an issue beyond the jurisdiction—not the jurisdiction but the discussion today.

But I raise it only because I'm concerned about this temporary status that goes on and on and on, and as I recall—and I'd appreciate it if the witnesses could listen while I'm speaking. I listened to the inquiry being made by Congressman Berman, and I'm not clear on the answer. It goes to the amendment that is before us, and that is the temporary annual renewal of the visas that would be allowed. I think you said 5,000 from Singapore and 1,400 from Chile. And my question is: Are we still at that point where they are annually renewed, even with this amendment? I didn't understand. This means that these are 1-year visas, if I understand them, and they're temporary, but they are renewed every year and there's no—there's no ending time. Is that correct?

Mr. SHIGETOMI. Congresswoman, my understanding is that each extension would be granted in 1-year increments.

Ms. JACKSON LEE. Right.

Mr. SHIGETOMI. By virtue of its inclusion as a—by virtue of its classification as a non-immigrant, these aliens would be subject to the same grounds of exclusions, rights, responsibilities, and privileges as all other classes of non-immigrants. As a result, they are held to the same standard as any other non-immigrant.

Ms. JACKSON LEE. And I appreciate that you are not well versed in immigration law, and I appreciate your attempting to answer the question. What I am suggesting is, are you—I understand criteria and standards, but am I to understand that the provision suggests that you can renew and renew and renew and renew, as long

as you meet the standards, but it could be 12 years and you could still be here on that visa? Is that my understanding?

Mr. SHIGETOMI. That's theoretically possible, yes.

Ms. JACKSON LEE. Then what I would say to my colleagues, I find that totally unacceptable. And because I juxtapose it against our responsibilities with respect to immigration policies, immigration—or applicants for immigration status, and also the H-1Bs, as I understand the present structure, is you have a 3-year and then you have a renewal. And as my colleague said from California, those were based upon a certain expertise that you brought.

I am making no speculation of the expertise in Chile or Singapore. I am sure there are an enormous number of individuals who qualify for H-1B, but they're not coming in under H-1B.

So I would simply say that I have a—I take great umbrage with the process. I, too, celebrate my vote in opposition to the free trade act, the speed trade act, because I believe it's very important that these issues not be unaddressed.

I would also ask you to take back a message that they have made a large mistake in adding this to the trade legislation.

I'd ask for an additional 1 minute.

Chairman SENSENBRENNER. Without objection.

Ms. JACKSON LEE. And I believe that we can move further, if you will, with the understanding that there is great difficulty in this process. When we hear—when Members hear that you have a perpetual 1-year renewal, regardless of whether or not they meet criteria, it certainly begs the question of the difficulties we have. I'll do that in just a second.

I would like to also suggest to my colleagues that I will have an amendment that I hope to gain support, even though one suggests that it might be in, and that is the distribution of the user fees. I think it'll be very helpful to give instruction on the user fees that may be offered in terms of the immigration process. I hope to offer it in a moment. I'd be happy to yield to the distinguished gentlelady.

Ms. LOFGREN. If I—and I thank the gentlelady for yielding. I just think it's a huge mistake to have a temporary visa that theoretically could go on for 25 years. I mean—or 50 years. You know, we have a temporary visa program. It serves a purpose. But it's limited. And if somebody's going to come here and live for 20 years, they should meet the labor certification standard, they should apply just like any other immigrant. This is a huge problem. It's fraught with abuse. The potential for abuse of individuals is huge. And I just think it's a huge mistake. And if you bring this to the floor without changing that, I mean, I think you risk having this thing come down.

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Mr. COBLE. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Mr. Chairman, move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. COBLE. Mr. Chairman, I realize that the King and the Conyers amendment are before us, but you've been very generous procedurally. I'd like to make a general comment or two.

First of all, I want to associate with the remarks made by Mr. Berman and Mr. Smith regarding the intellectual property feature. I'm pleased that that received a good amount of attention in this bill.

When the appropriate time comes, Mr. Chairman, to send this bill to the floor, I will vote to send it to the floor because I think it deserves full floor attention.

I am concerned, however, that most of these—well, strike that. Many of these—some of these trade amendments initiated by Democrat administrations as well as Republican administrations strongly emphasize free trade, but fair trade oftentimes is conspicuously missing. And I hope that's not the case with this bill. I'll dig into that more in more detail. But when fairness is omitted in the scenario, it oftentimes works to the detriment of U.S. manufacturers. I'm talking textiles, furniture, et cetera.

But I repeat, Mr. Chairman, when the appropriate day comes to send it to the floor, I will vote to send it to the floor. I don't know how I'll do at that point, but it's good to have you all——

Ms. JACKSON LEE. Would the gentleman yield?

Mr. COBLE. I will yield.

Ms. JACKSON LEE. I thank the gentleman very much. You were mentioning intellectual property, but I wanted to finish on a point that somewhat ties to the comment of intellectual property, just to explain why I have such difficulty in this perpetual visa, Mr. Coble, is that we're having difficulty in even getting research scientists for some of our institutions of higher learning and research institutions to be able to get visas to come into the country post-9/11.

We're also having difficulty, coming from Texas—and I know others who have medical centers such as the Texas Medical Center—where patients who are attempting to come in for unique and particular services at our medical facilities, who typically have been able, or previously to 9/11 been able to achieve visas are not able to get them, some to the extent where we're hearing indications that patients have died waiting for a visa to come into this country for legitimate medical treatment.

Mr. COBLE. Ms. Jackson Lee, if you would suspend, I need to make another point.

Ms. JACKSON LEE. I'd be happy to suspend.

Mr. COBLE. If you want to wrap up quickly.

Ms. JACKSON LEE. All right. I would beg you to take this message back that what you do when you put a perpetual visa alongside of individuals who have decided needs and then Americans who have decided needs for them to be here, it makes it a very difficult mountain to climb. And I think these provisions should not be in there, and I think there should be some modification.

I yield back to the gentleman.

Mr. COBLE. Let me reclaim my time. I just want to reiterate what's already been suggested from both sides of the aisle. This is a bad precedent to lump—and I'm not blaming you gentlemen—to lump immigration matters into a trade bill. And I hope that can be avoided subsequently.

And I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The question—or the gentleman from California has a modification he wishes to propose to the Conyers amendment.

Mr. BERMAN. Thank you, Mr. Chairman. I guess I'd ask unanimous consent that the—that on line 4 of the Conyers amendment, the number 6 be replaced by the following: 5 or more.

Chairman SENSENBRENNER. Without objection, the modification is agreed to. The question is——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I will try not to take the 5 minutes because it's quite obvious the Chairman doesn't want to hear me since he passed on me several times trying to get recognition. But I wanted to make a couple of comments.

Number one, to seize the historic opportunity to be on the same side of an issue with Mr. Hostettler, which doesn't happen very often.

Number two, to say that I generally agree with most of the comments that have been made about the substance of what's being done here.

But, number three, to—and I'm the last person that ought to be trying to defend the U.S. Trade Representative's office—to make it clear that this is a logical result when you support fast-track legislation.

I mean, I—you know, it's like these people have done something outrageous. This is like what you get when you pass a law and you leave the details to be written by the regulators. This is what you get when you pass fast-track, and then they take the authority that they've been given under fast-track and come back to you, and then you say, well, I'm praising you for what I agree with, which is the intellectual property part of it, because I consider that trade, yet I'm absolutely condemning you for the other parts of it that I don't agree with.

There is no way you're going to be able to get off of that slippery slope. And so the problem from my opinion all along with Democratic administrations and Republican administrations is that this is our authority as a Congress. And we shouldn't be delegating it under fast-track to the Administration. And if we do delegate it, then I think you're going to get exactly the same result in the future that you got this time. I mean, this is just—these people are just doing the job you told them to do. They're going and negotiating an agreement, and I'm even surprised that we're back here a week early to even get consultation on it as opposed to being here next week with the agreement already done and saying either vote it up or down, which has been historically the precedent that's been followed.

So this righteous indignation that we're expressing up here is a little misplaced, in my opinion. Although I agree with the content of the righteous indignation, I just take issue with our right to be righteously indignant in this circumstance.

Mr. BERMAN. Would the gentleman yield?

Mr. WATT. I'd be happy to yield.

Mr. BERMAN. One could be righteously indignant about delegating our jurisdiction and not care too much about delegating the Ways and Means jurisdiction.

Mr. WATT. Yes, and that's exactly what I'm saying, is once you get—there's somewhere along the spectrum, and you are on a very slippery slope, and I don't think you can say to the Trade Representative, okay, you've got to do only what's in the—because, I mean, we don't even know what's in that Committee's jurisdiction over—versus our Committee's jurisdiction versus Commerce Committee's jurisdiction. We've been arguing about that for years and years and can't even resolve it among ourselves. How are we going to expect the Administration to resolve it?

Ms. LOFGREN. Would the gentleman yield?

Mr. WATT. And I'm not—I mean, this is not about the substance of this conversation. It's about me watching this on television, which the Chairman wants me to do rather than participate in it, and just giving you my observations as a casual observed.

I'll yield to the gentlelady.

Ms. LOFGREN. Thank you, and——

Chairman SENSENBRENNER. Without objection, the gentleman from North Carolina will be given 5 additional minutes.

Mr. WATT. I don't care for 5 additional minutes.

Ms. LOFGREN. I do.

Mr. WATT. I'll take 1 additional minute, and I'll yield it to Ms. Lofgren.

Ms. LOFGREN. I would just like to say, you know, the idea of fast-track is not antithetical to me. I mean, I do understand that the Trade Representative needs to be able to make a deal and that you can't then come to Congress and have 435 people micromanage every line.

I mean, the problem I have with what's happened here is that the Ways and Means Committee was supposed to be consulted. I don't know if they were. I presume and hope that they were under the fast-track. But there was no consultation with me about the issues under the jurisdiction of this Committee. And I don't know what communication occurred with the senior Members of the Committee, but I will say the result is inept. And it reflects the fact that there was no consultation with people who knew something about this, and that's the problem.

And I think if we move forward with these deals, you guys better deal with the people who are in charge of these substantive law areas, or you're not going to have any deals.

Mr. WATT. Reclaiming my time long enough to say that I definitely agree with the gentlelady from California that this is inept. But I've also agreed that most of the other parts of the agreements that you've come back with in the other Committees' jurisdiction have been inept, too.

So we can't do this on the basis of what we consider inept. We gave these people this authority, and they've taken it, and now I'm——

Ms. JACKSON LEE. Would the gentleman yield?

Mr. WATT. I don't want any more time because I don't want to offend the Chairman. I'm going to yield back.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina never offends the Chairman.

Let me say that we've got this one to do, which is the Chile one. We've also got the Singapore one to do. And I would encourage the Members to be succinct in their comments on this and not repetitious.

The gentleman from Ohio.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be very brief and won't take up the 5 minutes. But there's been a—I think this has been a beneficial and instructive and helpful discussion here this morning. There have been a number of shots taken at fast-track or trade promotion authority or whatever one wants to call it, and I think it's important to again at least point out that the reason that I think the majority—it was only by one—in the Congress voted for this legislation is because many of us believe that it's—these agreements will be mutually beneficial to both the United States and some other country or group of countries that will ultimately create more jobs in this country, will improve the standard of living in this country, will enable the American public to buy more affordable products, that other countries' standard of living will increase as well as they're able to have jobs and those folks then will buy products from our country, and that creates jobs here.

And so I think the Congress was appropriate—or taking appropriate action in passing that, but I think this has been a very good discussion this morning. I thank the gentlemen here for their candor, and I yield back the balance of my time.

Ms. JACKSON LEE. Mr. Chabot, would you yield for a moment?

Mr. CHABOT. I'm going to yield back my time because the Chairman wants to get this——

Chairman SENSENBRENNER. The question is on agreeing to the Conyers-Berman amendment as modified to the King amendment. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the Conyers-Berman amendment is modified as agreed to.

The question now is on the King amendment as amended by the Conyers-Berman amendment. Those in favor say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the amendment as amended is agreed to.

Are there further amendments to the draft implementing legislation?

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas.

Ms. JACKSON LEE. Thank you. I have an amendment that I would like to pursue with the Trade Representative this coming week as we move toward the formal markup. I will not—I'd like to bring it up at this point to describe it, Mr. Chairman. I'm going to ask to withdraw it if you can——

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. GOODLATTE. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. A point of order is reserved. The clerk will report the amendment.

The CLERK. Amendment to draft implementing legislation, offered by Ms. Jackson Lee of Texas. Add at the end the following——

Ms. JACKSON LEE. I ask that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered.

[The amendment follows:]

AMENDMENT TO H.R.

OFFERED BY MS. JACKSON-LEE OF TEXAS

(Amendment to Draft Implementing Legislation for the United States-Chile Free Trade Agreement)

Add at the end the following new section:

SEC. ___. USE OF NEW FEES.

Any new fees generated by virtue of the enactment of this title shall be placed into a fund that shall be used as follows:

(1) 4 percent shall be used for the processing of visas for nonimmigrant status under section 101(a)(15)(W) of the Immigration and Nationality Act.

(2) The remainder shall be used as additional resources for accelerating the processing by consular officers of other nonimmigrant visa applications.

Chairman SENSENBRENNER. And the gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Since I do not understand fully the King amendment, I am going to at this time withdraw this amendment so that I can understand the revenue stream that the King amendment and the Conyers amendment have actually now produced.

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. JACKSON LEE. I'd be happy to yield.

Chairman SENSENBRENNER. The issue of what happens to the fees that are generated for H-1B applications is not a part of the free trade agreement, and I assume that the gentleman from Virginia will insist on his point of order and that the Chair will say that he's prepared to sustain——

Ms. JACKSON LEE. I have already indicated—if I could reclaim my time——

Chairman SENSENBRENNER. However—however, the Chair is intending to deal with the entire issue of the H-1B visa cap and the H-1B visa law after we return from the August recess, and the proper time to deal with the allocation of fees would be at that time.

Ms. JACKSON LEE. Excuse me. Let me just say, Mr. Chairman, that I would be happy to work with this Committee on that issue, and I hope that any review of the H-1B fees because of all of our interest will be an inclusive process. But I still desire—as I said, I was going to withdraw this amendment because I wanted to make the point that I do think it is important to utilize some of the resources to help in the backlog as this is indicated for some of the consular offices, and then also to help with the processing of these particularly expansive visas.

But I hope that we can have an opportunity to discuss this, and I hope that this coming week I'd like to discuss it with you as—I'm talking about the gentlemen here, your office or representative thereof, so I can understand the implications of the King and Conyers amendment as to whether or not they impact that.

I'd be happy to yield to the gentlelady from California.

Ms. LOFGREN. I realize we're speaking on the point of order. The fees do expire this fall, and I am just hopeful that as we move forward—I was—that the Chairman will consider—many of us have discussing the GAO report that basically describes the training programs in less than glorious terms, and that we might pursue the math and scholarship program that was discussed in 1998 that would actually yield a greater level of Ph.D. among Americans. And I——

Chairman SENSENBRENNER. If the gentlewoman——

Ms. JACKSON LEE. Reclaiming my time——

Chairman SENSENBRENNER.—from Texas would yield again, that's, you know, one of the things that we have to do when we deal with the H-1B visa program. I certainly think that the fees have not been spent in as proper a manner as they could be. I certainly would not want to take money away from training American students to do these high-tech jobs in order to hire more consular officials overseas. I think that we would like to get Americans to take these jobs rather than issue more H-1B visas for aliens to take these jobs.

But certainly the allocation of the funds needs to be better monitored and fine-tuned, and we will have an opportunity to do that in September.

Ms. JACKSON LEE. Well, reclaiming my time, I'm not ruling out any use of the H-1B fees that would enhance the opportunities for training Americans. If the Chairman will recollect, Mr. Smith and myself, in fact, drafted legislation that was rejected by this Committee that had to do with enhancing training in H-1B for Americans. So I'm not someone who has not done that.

I hope this process will be inclusive, that all of us will have input. I still think it's important to provide resources that are needed for processing visa applications, and we can look at other alternatives. But I at this time offer to withdraw the amendment, and if I could inquire of Mister—I'm sorry. Please forgive me.

Mr. SHIGETOMI. Shigetomi.

Ms. JACKSON LEE. Atomi, is that correct?

Mr. SHIGETOMI. Shigetomi.

Ms. JACKSON LEE. Shigetomi. Thank you very much, sir. The opportunity to meet with some representative this week in my office on this issue.

Chairman SENSENBRENNER. The amendment is withdrawn.

Ms. JACKSON LEE. I'm sorry. I didn't get his—is that—can we——

Mr. SHIGETOMI. That's fine, yes.

Ms. JACKSON LEE. Thank you very much.

Thank you, Mr. Chairman. I ask unanimous consent to withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments? If there are no further amendments, the question is on agreeing to the draft legislation that has been put before. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the draft legislation as amended is sent back to the USTR for a redo job.

Without objection, this staff is directed to make technical and conforming changes.

MINORITY VIEWS

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

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

Having stated that, we do appreciate the efforts of the Majority to work with us in improving the implementing language with regard to immigration as best we could, given the unfortunate constraints of the underlying agreement. For example, the initial draft of the legislation we received contained several major loopholes and flaws. It would have created 1,400 new visas for persons to come into this country from Chile. There was no requirement that employers pay any fees when such temporary workers were brought in. There was no requirement that employers certify that they were unable to find American workers before they hired these foreign workers. And there was no real limitation on the ability of these individuals to stay in this country indefinitely.

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

We would note that we have a significant remaining concern that the Administration was unwilling to include in the text of the implementing legislation. First and foremost, the Chile implementing bill provides no overall limitation on how many times professional visas can be renewed. While the implementing language included the Conyers/Berman language insuring that renewals beyond 6

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

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

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

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

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

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

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