

Union Calendar No. 357

108TH CONGRESS
2^D SESSION

H. R. 4759

[Report No. 108-597]

To implement the United States-Australia Free Trade Agreement.

IN THE HOUSE OF REPRESENTATIVES

JULY 6, 2004

Mr. DELAY (for himself and Mr. RANGEL) (both by request): introduced the following bill; which was referred to the Committee on Ways and Means

JULY 12, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To implement the United States-Australia Free Trade Agreement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “United States-Australia Free Trade Agreement Imple-
6 mentation Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

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

- Sec. 101. Approval and entry into force of the Agreement.
- Sec. 102. Relationship of the Agreement to United States and State law.
- Sec. 103. Implementing actions in anticipation of entry into force and initial regulations.
- Sec. 104. Consultation and layover provisions for, and effective date of, proclaimed actions.
- Sec. 105. Administration of dispute settlement proceedings.
- Sec. 106. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.
- Sec. 202. Additional duties on certain agricultural goods.
- Sec. 203. Rules of origin.
- Sec. 204. Customs user fees.
- Sec. 205. Disclosure of incorrect information.
- Sec. 206. Enforcement relating to trade in textile and apparel goods.
- Sec. 207. Regulations.

TITLE III—RELIEF FROM IMPORTS

- Sec. 301. Definitions.

Subtitle A—Relief From Imports Benefiting From the Agreement

- Sec. 311. Commencing of action for relief.
- Sec. 312. Commission action on petition.
- Sec. 313. Provision of relief.
- Sec. 314. Termination of relief authority.
- Sec. 315. Compensation authority.
- Sec. 316. Confidential business information.

Subtitle B—Textile and Apparel Safeguard Measures

- Sec. 321. Commencement of action for relief.
- Sec. 322. Determination and provision of relief.
- Sec. 323. Period of relief.
- Sec. 324. Articles exempt from relief.
- Sec. 325. Rate after termination of import relief.
- Sec. 326. Termination of relief authority.
- Sec. 327. Compensation authority.
- Sec. 328. Business confidential information.

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

- Sec. 331. Findings and action on goods from Australia.

TITLE IV—PROCUREMENT

Sec. 401. Eligible products.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to approve and implement the Free Trade
4 Agreement between the United States and Australia,
5 entered into under the authority of section 2103(b)
6 of the Bipartisan Trade Promotion Authority Act of
7 2002 (19 U.S.C. 3803(b));

8 (2) to strengthen and develop economic rela-
9 tions between the United States and Australia for
10 their mutual benefit;

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

14 (4) to lay the foundation for further coopera-
15 tion to expand and enhance the benefits of such
16 Agreement.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) AGREEMENT.—The term “Agreement”
20 means the United States-Australia Free Trade
21 Agreement approved by Congress under section
22 101(a)(1).

23 (2) HTS.—The term “HTS” means the Har-
24 monized Tariff Schedule of the United States.

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

6 **TITLE I—APPROVAL OF, AND**
7 **GENERAL PROVISIONS RE-**
8 **LATING TO, THE AGREEMENT**

9 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**
10 **AGREEMENT.**

11 (a) APPROVAL OF AGREEMENT AND STATEMENT OF
12 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of
13 the Bipartisan Trade Promotion Authority Act of 2002
14 (19 U.S.C. 3805) and section 151 of the Trade Act of
15 1974 (19 U.S.C. 2191), Congress approves—

16 (1) the United States-Australia Free Trade
17 Agreement entered into on May 18, 2004, with the
18 Government of Australia and submitted to Congress
19 on July 6, 2004; and

20 (2) the statement of administrative action pro-
21 posed to implement the Agreement that was sub-
22 mitted to Congress on July 6, 2004.

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

1 into compliance with those provisions of the Agreement
2 that are to take effect on the date on which the Agreement
3 enters into force, the President is authorized to exchange
4 notes with the Government of Australia providing for the
5 entry into force, on or after January 1, 2005, of the
6 Agreement with respect to the United States.

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

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

11 (1) UNITED STATES LAW TO PREVAIL IN CON-
12 FFLICT.—No provision of the Agreement, nor the ap-
13 plication of any such provision to any person or cir-
14 cumstance, which is inconsistent with any law of the
15 United States shall have effect.

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

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

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

22 unless specifically provided for in this Act.

23 (b) RELATIONSHIP OF AGREEMENT TO STATE
24 LAW.—

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

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

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

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

14 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-
15 VATE REMEDIES.—No person other than the United
16 States—

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

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

1 **SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF**
2 **ENTRY INTO FORCE AND INITIAL REGULA-**
3 **TIONS.**

4 (a) IMPLEMENTING ACTIONS.—

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

7 (A) the President may proclaim such ac-
8 tions, and

9 (B) other appropriate officers of the
10 United States Government may issue such reg-
11 ulations,

12 as may be necessary to ensure that any provision of
13 this Act, or amendment made by this Act, that takes
14 effect on the date the Agreement enters into force
15 is appropriately implemented on such date, but no
16 such proclamation or regulation may have an effec-
17 tive date earlier than the date on which the Agree-
18 ment enters into force.

19 (2) EFFECTIVE DATE OF CERTAIN PROCLAIMED
20 ACTIONS.—Any action proclaimed by the President
21 under the authority of this Act that is not subject
22 to the consultation and layover provisions under sec-
23 tion 104, may not take effect before the 15th day
24 after the date on which the text of the proclamation
25 is published in the Federal Register.

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

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

6 (B) the United States International Trade
7 Commission;

8 (2) the President has submitted a report to the
9 Committee on Finance of the Senate and the Com-
10 mittee on Ways and Means of the House of Rep-
11 resentatives that sets forth—

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

14 (B) the advice obtained under paragraph
15 (1);

16 (3) a period of 60 calendar days, beginning on
17 the first day on which the requirements set forth in
18 paragraphs (1) and (2) have been met has expired;
19 and

20 (4) the President has consulted with such Com-
21 mittees regarding the proposed action during the pe-
22 riod referred to in paragraph (3).

1 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**
2 **CEEDINGS.**

3 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—
4 The President is authorized to establish or designate with-
5 in the Department of Commerce an office that shall be
6 responsible for providing administrative assistance to pan-
7 els established under chapter 21 of the Agreement. The
8 office may not be considered to be an agency for purposes
9 of section 552 of title 5, United States Code.

10 (b) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated for each fiscal year after
12 fiscal year 2004 to the Department of Commerce such
13 sums as may be necessary for the establishment and oper-
14 ations of the office under subsection (a) and for the pay-
15 ment of the United States share of the expenses of panels
16 established under chapter 21 of the Agreement.

17 **SEC. 106. EFFECTIVE DATES; EFFECT OF TERMINATION.**

18 (a) EFFECTIVE DATES.—Except as provided in sub-
19 section (b), the provisions of this Act and the amendments
20 made by this Act take effect on the date on which the
21 Agreement enters into force.

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

24 (c) TERMINATION OF THE AGREEMENT.—On the
25 date on which the Agreement terminates, the provisions

1 of this Act (other than this subsection) and the amend-
2 ments made by this Act shall cease to be effective.

3 **TITLE II—CUSTOMS PROVISIONS**

4 **SEC. 201. TARIFF MODIFICATIONS.**

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

7 (1) such modifications or continuation of any
8 duty,

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

11 (3) such additional duties,

12 as the President determines to be necessary or appropriate
13 to carry out or apply articles 2.3, 2.5, and 2.6, and Annex
14 2–B of the Agreement.

15 (b) OTHER TARIFF MODIFICATIONS.—Subject to the
16 consultation and layover provisions of section 104, the
17 President may proclaim—

18 (1) such modifications or continuation of any
19 duty,

20 (2) such modifications as the United States
21 may agree to with Australia regarding the staging of
22 any duty treatment set forth in Annex 2–B of the
23 Agreement,

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

1 (4) such additional duties,
2 as the President determines to be necessary or appropriate
3 to maintain the general level of reciprocal and mutually
4 advantageous concessions with respect to Australia pro-
5 vided for by the Agreement.

6 (c) **CONVERSION TO AD VALOREM RATES.**—For pur-
7 poses of subsections (a) and (b), with respect to any good
8 for which the base rate in the Schedule of the United
9 States to Annex 2–B of the Agreement is a specific or
10 compound rate of duty, the President may substitute for
11 the base rate an ad valorem rate that the President deter-
12 mines to be equivalent to the base rate.

13 **SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICUL-**
14 **TURAL GOODS.**

15 (a) **GENERAL PROVISIONS.**—

16 (1) **APPLICABILITY OF SUBSECTION.**—This sub-
17 section applies to additional duties assessed under
18 subsections (b), (c), and (d).

19 (2) **APPLICABLE NTR (MFN) RATE OF DUTY.**—
20 For purposes of subsections (b), (c), and (d), the
21 term “applicable NTR (MFN) rate of duty” means,
22 with respect to a safeguard good, a rate of duty that
23 is the lesser of—

24 (A) the column 1 general rate of duty that
25 would have been imposed under the HTS on the

1 same safeguard good entered, without a claim
2 for preferential treatment, at the time the addi-
3 tional duty is imposed under subsection (b), (c),
4 or (d), as the case may be; or

5 (B) the column 1 general rate of duty that
6 would have been imposed under the HTS on the
7 same safeguard good entered, without a claim
8 for preferential treatment, on December 31,
9 2004.

10 (3) SCHEDULE RATE OF DUTY.—For purposes
11 of subsections (b) and (c), the term “schedule rate
12 of duty” means, with respect to a safeguard good,
13 the rate of duty for that good set out in the Sched-
14 ule of the United States to Annex 2–B of the Agree-
15 ment.

16 (4) SAFEGUARD GOOD.—In this subsection, the
17 term “safeguard good” means—

18 (A) a horticulture safeguard good de-
19 scribed subsection (b)(1)(B); or

20 (B) a beef safeguard good described in
21 subsection (c)(1) or subsection (d)(1)(A).

22 (5) EXCEPTIONS.—No additional duty shall be
23 assessed on a good under subsection (b), (c), or (d)
24 if, at the time of entry, the good is subject to import
25 relief under—

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

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

4 (6) TERMINATION.—The assessment of an ad-
5 ditional duty on a good under subsection (b) or (c),
6 whichever is applicable, shall cease to apply to that
7 good on the date on which duty-free treatment must
8 be provided to that good under the Schedule of the
9 United States to Annex 2–B of the Agreement.

10 (7) NOTICE.—Not later than 60 days after the
11 date on which the Secretary of the Treasury assesses
12 an additional duty on a good under subsection (b),
13 (c), or (d), the Secretary shall notify the Govern-
14 ment of Australia in writing of such action and shall
15 provide to that Government data supporting the as-
16 sessment of the additional duty.

17 (b) ADDITIONAL DUTIES ON HORTICULTURE SAFE-
18 GUARD GOODS.—

19 (1) DEFINITIONS.—In this subsection:

20 (A) F.O.B.—The term “F.O.B.” means
21 free on board, regardless of the mode of trans-
22 portation, at the point of direct shipment by the
23 seller to the buyer.

1 (B) HORTICULTURE SAFEGUARD GOOD.—

2 The term “horticulture safeguard good” means
3 a good—

4 (i) that qualifies as an originating
5 good under section 203;

6 (ii) that is included in the United
7 States Horticulture Safeguard List set
8 forth in Annex 3–A of the Agreement; and

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

12 (C) UNIT IMPORT PRICE.—The “unit im-
13 port price” of a good means the price of the
14 good determined on the basis of the F.O.B. im-
15 port price of the good, expressed in either dol-
16 lars per kilogram or dollars per liter, whichever
17 unit of measure is indicated for the good in the
18 United States Horticulture Safeguard List set
19 forth in Annex 3–A of the Agreement.

20 (D) TRIGGER PRICE.—The “trigger price”
21 for a good is the trigger price indicated for that
22 good in the United States Horticulture Safe-
23 guard List set forth in Annex 3–A of the
24 Agreement or any amendment thereto.

1 (2) ADDITIONAL DUTIES.—In addition to any
 2 duty proclaimed under subsection (a) or (b) of sec-
 3 tion 201, and subject to subsection (a) of this sec-
 4 tion, the Secretary of the Treasury shall assess a
 5 duty on a horticulture safeguard good, in the
 6 amount determined under paragraph (3), if the Sec-
 7 retary determines that the unit import price of the
 8 good when it enters the United States is less than
 9 the trigger price for that good.

10 (3) CALCULATION OF ADDITIONAL DUTY.—The
 11 additional duty assessed under this subsection on a
 12 horticulture safeguard good shall be an amount de-
 13 termined in accordance with the following table:

If the excess of the trigger price over the unit import price is:	The additional duty is an amount equal to:
Not more than 10 percent of the trigger price	0.
More than 10 percent but not more than 40 percent of the trigger price	30 percent of the excess of the appli- cable NTR (MFN) rate of duty over the schedule rate of duty.
More than 40 percent but not more than 60 percent of the trigger price	50 percent of such excess.
More than 60 percent but not more than 75 percent of the trigger price	70 percent of such excess.
More than 75 percent of the trigger price	100 percent of such excess.

14 (c) ADDITIONAL DUTIES ON BEEF SAFEGUARD
 15 GOODS BASED ON QUANTITY OF IMPORTS.—

16 (1) DEFINITION.—In this subsection, the term
 17 “beef safeguard good” means a good—

18 (A) that qualifies as an originating good
 19 under section 203;

1 (B) that is listed in paragraph 3 of Annex
2 I of the General Notes to the Schedule of the
3 United States to Annex 2–B of the Agreement;
4 and

5 (C) for which a claim for preferential
6 treatment under the Agreement has been made.

7 (2) ADDITIONAL DUTIES.—In addition to any
8 duty proclaimed under subsection (a) or (b) of sec-
9 tion 201, and subject to subsection (a) of this sec-
10 tion and paragraphs (4) and (5) of this subsection,
11 the Secretary of the Treasury shall assess a duty, in
12 the amount determined under paragraph (3), on a
13 beef safeguard good imported into the United States
14 in a calendar year if the Secretary determines that,
15 prior to such importation, the total volume of beef
16 safeguard goods imported into the United States in
17 that calendar year is equal to or greater than 110
18 percent of the volume set out for beef safeguard
19 goods in the corresponding year in the table con-
20 tained in paragraph 3(a) of Annex I of the General
21 Notes to the Schedule of the United States to Annex
22 2–B of the Agreement. For purposes of this sub-
23 section, the years 1 through 19 set out in the table
24 contained in paragraph 3(a) of such Annex I cor-
25 respond to the calendar years 2005 through 2023.

1 (3) CALCULATION OF ADDITIONAL DUTY.—The
2 additional duty on a beef safeguard good under this
3 subsection shall be an amount equal to 75 percent
4 of the excess of the applicable NTR (MFN) rate of
5 duty over the schedule rate of duty.

6 (4) WAIVER.—

7 (A) IN GENERAL.—The United States
8 Trade Representative is authorized to waive the
9 application of this subsection, if the Trade Rep-
10 resentative determines that extraordinary mar-
11 ket conditions demonstrate that the waiver
12 would be in the national interest of the United
13 States, after the requirements of subparagraph
14 (B) are met.

15 (B) NOTICE AND CONSULTATIONS.—
16 Promptly after receiving a request for a waiver
17 of this subsection, the Trade Representative
18 shall notify the Committee on Ways and Means
19 of the House of Representatives and the Com-
20 mittee on Finance of the Senate, and may make
21 the determination provided for in subparagraph
22 (A) only after consulting with—

23 (i) appropriate private sector advisory
24 committees established under section 135

1 of the Trade Act of 1974 (19 U.S.C.
2 2155); and

3 (ii) the Committee on Ways and
4 Means of the House of Representatives
5 and the Committee on Finance of the Sen-
6 ate regarding—

7 (I) the reasons supporting the
8 determination to grant the waiver;
9 and

10 (II) the proposed scope and dura-
11 tion of the waiver.

12 (C) NOTIFICATION OF THE SEC-
13 RETARY OF THE TREASURY AND PUBLICA-
14 TION.—Upon granting a waiver under this
15 paragraph, the Trade Representative shall
16 promptly notify the Secretary of the Treas-
17 ury of the period in which the waiver will
18 be in effect, and shall publish notice of the
19 waiver in the Federal Register.

20 (5) EFFECTIVE DATES.—This subsection takes
21 effect on January 1, 2013, and shall not be effective
22 after December 31, 2022.

23 (d) ADDITIONAL DUTIES ON BEEF SAFEGUARD
24 GOODS BASED ON PRICE.—

25 (1) DEFINITIONS.—In this subsection:

1 (A) BEEF SAFEGUARD GOOD.—The term
2 “beef safeguard good” means a good—

3 (i) that qualifies as an originating
4 good under section 203;

5 (ii) that is classified under subheading
6 0201.10.50, 0201.20.80, 0201.30.80,
7 0202.10.50, 0202.20.80, or 0202.30.80 of
8 the HTS; and

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

12 (B) CALENDAR QUARTER.—

13 (i) IN GENERAL.—The term “calendar
14 quarter” means any 3-month period begin-
15 ning on January 1, April 1, July 1, or Oc-
16 tober 1 of a calendar year.

17 (ii) FIRST CALENDAR QUARTER.—The
18 term “first calendar quarter” means the
19 calendar quarter beginning on January 1.

20 (iii) SECOND CALENDAR QUARTER.—
21 The term “second calendar quarter”
22 means the calendar quarter beginning on
23 April 1.

1 (iv) THIRD CALENDAR QUARTER.—

2 The term “third calendar quarter” means
3 the calendar quarter beginning on July 1.

4 (v) FOURTH CALENDAR QUARTER.—

5 The term “fourth calendar quarter” means
6 the calendar quarter beginning on October
7 1.

8 (C) MONTHLY AVERAGE INDEX PRICE.—

9 The term “monthly average index price” means
10 the simple average, as determined by the Sec-
11 retary of Agriculture, for a calendar month of
12 the daily average index prices for Wholesale
13 Boxed Beef Cut-Out Value Select 1–3 Central
14 U.S. 600–750 lbs., or its equivalent, as such
15 simple average is reported by the Agricultural
16 Marketing Service of the Department of Agri-
17 culture in Report LM–XB459 or any equivalent
18 report.

19 (D) 24-MONTH TRIGGER PRICE.—The term
20 “24-month trigger price” means, with respect
21 to any calendar month, the average of the
22 monthly average index prices for the 24 pre-
23 ceding calendar months, multiplied by 0.935.

24 (2) ADDITIONAL DUTIES.—In addition to any
25 duty proclaimed under subsection (a) or (b) of sec-

1 tion 201, and subject to subsection (a) of this sec-
2 tion and paragraphs (4) through (6) of this sub-
3 section, the Secretary of the Treasury shall assess a
4 duty, in the amount determined under paragraph
5 (3), on a beef safeguard good imported into the
6 United States if—

7 (A)(i) the good is imported in the first cal-
8 endar quarter, second calendar quarter, or third
9 calendar quarter of a calendar year; and

10 (ii) the monthly average index price, in any
11 2 calendar months of the preceding calendar
12 quarter, is less than the 24-month trigger price;
13 or

14 (B)(i) the good is imported in the fourth
15 calendar quarter of a calendar year; and

16 (ii)(I) the monthly average index price, in
17 any 2 calendar months of the preceding cal-
18 endar quarter, is less than the 24-month trigger
19 price; or

20 (II) the monthly average index price, in
21 any of the 4 calendar months preceding Janu-
22 ary 1 of the succeeding calendar year, is less
23 than the 24-month trigger price.

24 (3) CALCULATION OF ADDITIONAL DUTY.—The
25 additional duty on a beef safeguard good under this

1 subsection shall be an amount equal to 65 percent
2 of the applicable NTR (MFN) rate of duty for that
3 good.

4 (4) LIMITATION.—An additional duty shall be
5 assessed under this subsection on a beef safeguard
6 good imported into the United States in a calendar
7 year only if, prior to the importation of that good,
8 the total quantity of beef safeguard goods imported
9 into the United States in that calendar year is equal
10 to or greater than the sum of—

11 (A) the quantity of goods of Australia eli-
12 gible to enter the United States in that year
13 specified in Additional United States Note 3 to
14 Chapter 2 of the HTS; and

15 (B)(i) in 2023, 70,420 metric tons; or

16 (ii) in 2024, and in each year thereafter,
17 a quantity that is 0.6 percent greater than the
18 quantity provided for in the preceding year
19 under this subparagraph.

20 (5) WAIVER.—

21 (A) IN GENERAL.—The United States
22 Trade Representative is authorized to waive the
23 application of this subsection, if the Trade Rep-
24 resentative determines that extraordinary mar-
25 ket conditions demonstrate that the waiver

1 would be in the national interest of the United
2 States, after the requirements of subparagraph
3 (B) are met.

4 (B) NOTICE AND CONSULTATIONS.—
5 Promptly after receiving a request for a waiver
6 of this subsection, the Trade Representative
7 shall notify the Committee on Ways and Means
8 of the House of Representatives and the Com-
9 mittee on Finance of the Senate, and may make
10 the determination provided for in subparagraph
11 (A) only after consulting with—

12 (i) appropriate private sector advisory
13 committees established under section 135
14 of the Trade Act of 1974 (19 U.S.C.
15 2155); and

16 (ii) the Committee on Ways and
17 Means of the House of Representatives
18 and the Committee on Finance of the Sen-
19 ate regarding—

20 (I) the reasons supporting the
21 determination to grant the waiver;
22 and

23 (II) the proposed scope and dura-
24 tion of the waiver.

1 (C) NOTIFICATION OF THE SEC-
2 RETARY OF THE TREASURY AND PUBLICA-
3 TION.—Upon granting a waiver under this
4 paragraph, the Trade Representative shall
5 promptly notify the Secretary of the Treas-
6 ury of the period in which the waiver will
7 be in effect, and shall publish notice of the
8 waiver in the Federal Register.

9 (6) EFFECTIVE DATE.—This subsection takes
10 effect on January 1, 2023.

11 **SEC. 203. RULES OF ORIGIN.**

12 (a) APPLICATION AND INTERPRETATION.—In this
13 section:

14 (1) TARIFF CLASSIFICATION.—The basis for
15 any tariff classification is the HTS.

16 (2) REFERENCE TO HTS.—Whenever in this
17 section there is a reference to a heading or sub-
18 heading, such reference shall be a reference to a
19 heading or subheading of the HTS.

20 (3) COST OR VALUE.—Any cost or value re-
21 ferred to in this section shall be recorded and main-
22 tained in accordance with the generally accepted ac-
23 counting principles applicable in the territory of the
24 country in which the good is produced (whether Aus-
25 tralia or the United States).

1 (b) ORIGINATING GOODS.—For purposes of this Act
2 and for purposes of implementing the preferential treat-
3 ment provided for under the Agreement, a good is an orig-
4 inating good if—

5 (1) the good is a good wholly obtained or pro-
6 duced entirely in the territory of Australia, the
7 United States, or both;

8 (2) the good—

9 (A) is produced entirely in the territory of
10 Australia, the United States, or both, and—

11 (i) each of the nonoriginating mate-
12 rials used in the production of the good
13 undergoes an applicable change in tariff
14 classification specified in Annex 4–A or
15 Annex 5–A of the Agreement;

16 (ii) the good otherwise satisfies any
17 applicable regional value-content require-
18 ment referred to in Annex 5–A of the
19 Agreement; or

20 (iii) the good meets any other require-
21 ments specified in Annex 4–A or Annex 5–
22 A of the Agreement; and

23 (B) the good satisfies all other applicable
24 requirements of this section;

1 (3) the good is produced entirely in the terri-
2 tory of Australia, the United States, or both, exclu-
3 sively from materials described in paragraph (1) or
4 (2); or

5 (4) the good otherwise qualifies as an origi-
6 nating good under this section.

7 (c) DE MINIMIS AMOUNTS OF NONORIGINATING MA-
8 TERIALS.—

9 (1) IN GENERAL.—Except as provided in para-
10 graphs (2) and (3), a good that does not undergo a
11 change in tariff classification pursuant to Annex 5-
12 A of the Agreement is an originating good if—

13 (A) the value of all nonoriginating mate-
14 rials that—

15 (i) are used in the production of the
16 good, and

17 (ii) do not undergo the required
18 change in tariff classification,

19 does not exceed 10 percent of the adjusted
20 value of the good;

21 (B) the good meets all other applicable re-
22 quirements of this section; and

23 (C) the value of such nonoriginating mate-
24 rials is included in the value of nonoriginating

1 materials for any applicable regional value-con-
2 tent requirement for the good.

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

5 (A) A nonoriginating material provided for
6 in chapter 4 of the HTS or in subheading
7 1901.90 that is used in the production of a
8 good provided for in chapter 4 of the HTS.

9 (B) A nonoriginating material provided for
10 in chapter 4 of the HTS or in subheading
11 1901.90 that is used in the production of a
12 good provided for in subheading 1901.10,
13 1901.20, or 1901.90, heading 2105, or sub-
14 heading 2106.90, 2202.90, or 2309.90.

15 (C) A nonoriginating material provided for
16 in heading 0805 or any of subheadings 2009.11
17 through 2009.39 that is used in the production
18 of a good provided for in any of subheadings
19 2009.11 through 2009.39, or in subheading
20 2106.90 or 2202.90.

21 (D) A nonoriginating material provided for
22 in chapter 15 of the HTS that is used in the
23 production of a good provided for in any of
24 headings 1501.00.00 through 1508, or in head-
25 ing 1512, 1514, or 1515.

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

5 (F) A nonoriginating material provided for
6 in chapter 17 of the HTS or heading
7 1805.00.00 that is used in the production of a
8 good provided for in subheading 1806.10.

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

13 (H) A nonoriginating material used in the
14 production of a good provided for in any of
15 chapters 1 through 21 of the HTS unless the
16 nonoriginating material is provided for in a dif-
17 ferent subheading than the good for which ori-
18 gin is being determined under this section.

19 (3) TEXTILE AND APPAREL GOODS.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), a textile or apparel good
22 that is not an originating good because certain
23 fibers or yarns used in the production of the
24 component of the good that determines the tar-
25 iff classification of the good do not undergo an

1 applicable change in tariff classification set out
2 in Annex 4–A of the Agreement shall be consid-
3 ered to be an originating good if the total
4 weight of all such fibers or yarns in that com-
5 ponent is not more than 7 percent of the total
6 weight of that component.

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

14 (C) YARN, FABRIC, OR FIBER.—For pur-
15 poses of this paragraph, in the case of a textile
16 or apparel good that is a yarn, fabric, or group
17 of fibers, the term “component of the good that
18 determines the tariff classification of the good”
19 means all of the fibers in the yarn, fabric, or
20 group of fibers.

21 (d) ACCUMULATION.—

22 (1) ORIGINATING MATERIALS USED IN PRODUC-
23 TION OF GOODS OF OTHER COUNTRY.—Originating
24 materials from the territory of Australia or the
25 United States that are used in the production of a

1 good in the territory of the other country shall be
 2 considered to originate in the territory of the other
 3 country.

4 (2) MULTIPLE PROCEDURES.—A good that is
 5 produced in the territory of Australia, the United
 6 States, or both, by 1 or more producers, is an origi-
 7 nating good if the good satisfies the requirements of
 8 subsection (b) and all other applicable requirements
 9 of this section.

10 (e) REGIONAL VALUE-CONTENT.—

11 (1) IN GENERAL.—For purposes of subsection
 12 (b)(2), the regional value-content of a good referred
 13 to in Annex 5–A of the Agreement, except for goods
 14 to which paragraph (4) applies, shall be calculated
 15 by the importer, exporter, or producer of the good,
 16 on the basis of the build-down method described in
 17 paragraph (2) or the build-up method described in
 18 paragraph (3).

19 (2) BUILD-DOWN METHOD.—

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

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

23 (B) DEFINITIONS.—In subparagraph (A):

1 (i) RVC.—The term “RVC” means
 2 the regional value-content of the good, ex-
 3 pressed as a percentage.

4 (ii) AV.—The term “AV” means the
 5 adjusted value of the good.

6 (iii) VNM.—The term “VNM” means
 7 the value of nonoriginating materials that
 8 are acquired and used by the producer in
 9 the production of the good, but does not
 10 include the value of a material that is self-
 11 produced.

12 (3) BUILD-UP METHOD.—

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

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

16 (B) DEFINITIONS.—In subparagraph (A):

17 (i) RVC.—The term “RVC” means
 18 the regional value-content of the good, ex-
 19 pressed as a percentage.

20 (ii) AV.—The term “AV” means the
 21 adjusted value of the good.

22 (iii) VOM.—The term “VOM” means
 23 the value of originating materials that are

1 acquired or self-produced, and used by the
2 producer in the production of the good.

3 (4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE
4 GOODS.—

5 (A) IN GENERAL.—For purposes of sub-
6 section (b)(2), the regional value-content of an
7 automotive good referred to in Annex 5–A of
8 the Agreement shall be calculated by the im-
9 porter, exporter, or producer of the good, on the
10 basis of the following net cost method:

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

11 (B) DEFINITIONS.—In subparagraph (A):

12 (i) AUTOMOTIVE GOOD.—The term
13 “automotive good” means a good provided
14 for in any of subheadings 8407.31 through
15 8407.34, subheading 8408.20, heading
16 8409, or in any of headings 8701 through
17 8708.

18 (ii) RVC.—The term “RVC” means
19 the regional value-content of the auto-
20 motive good, expressed as a percentage.

21 (iii) NC.—The term “NC” means the
22 net cost of the automotive good.

23 (iv) VNM.—The term “VNM” means
24 the value of nonoriginating materials that

1 are acquired and used by the producer in
2 the production of the automotive good, but
3 does not include the value of a material
4 that is self-produced.

5 (C) MOTOR VEHICLES.—

6 (i) BASIS OF CALCULATION.—For
7 purposes of determining the regional value-
8 content under subparagraph (A) for an
9 automotive good that is a motor vehicle
10 provided for in any of headings 8701
11 through 8705, an importer, exporter, or
12 producer may average the amounts cal-
13 culated under the formula contained in
14 subparagraph (A), over the producer’s fis-
15 cal year—

16 (I) with respect to all motor vehi-
17 cles in any one of the categories de-
18 scribed in clause (ii); or

19 (II) with respect to all motor ve-
20 hicles in any such category that are
21 exported to the territory of the United
22 States or Australia.

23 (ii) CATEGORIES.—A category is de-
24 scribed in this clause if it—

1 (I) is the same model line of
2 motor vehicles, is in the same class of
3 vehicles, and is produced in the same
4 plant in the territory of Australia or
5 the United States, as the good de-
6 scribed in clause (i) for which regional
7 value-content is being calculated;

8 (II) is the same class of motor
9 vehicles, and is produced in the same
10 plant in the territory of Australia or
11 the United States, as the good de-
12 scribed in clause (i) for which regional
13 value-content is being calculated; or

14 (III) is the same model line of
15 motor vehicles produced in either the
16 territory of Australia or the United
17 States, as the good described in clause
18 (i) for which regional value-content is
19 being calculated.

20 (D) OTHER AUTOMOTIVE GOODS.—For
21 purposes of determining the regional value-con-
22 tent under subparagraph (A) for automotive
23 goods provided for in any of subheadings
24 8407.31 through 8407.34, in subheading
25 8408.20, or in heading 8409, 8706, 8707, or

1 8708, that are produced in the same plant, an
2 importer, exporter, or producer may—

3 (i) average the amounts calculated
4 under the formula contained in subpara-
5 graph (A) over—

6 (I) the fiscal year of the motor
7 vehicle producer to whom the auto-
8 motive goods are sold,

9 (II) any quarter or month, or

10 (III) its own fiscal year,

11 if the goods were produced during the fis-
12 cal year, quarter, or month that is the
13 basis for the calculation;

14 (ii) determine the average referred to
15 in clause (i) separately for such goods sold
16 to one or more motor vehicle producers; or

17 (iii) make a separate determination
18 under clause (i) or (ii) for automotive
19 goods that are exported to the territory of
20 the United States or Australia.

21 (E) CALCULATING NET COST.—Consistent
22 with the provisions regarding allocation of costs
23 set out in generally accepted accounting prin-
24 ciples, the net cost of the automotive good

1 under subparagraph (B) shall be calculated
2 by—

3 (i) calculating the total cost incurred
4 with respect to all goods produced by the
5 producer of the automotive good, sub-
6 tracting any sales promotion, marketing
7 and after-sales service costs, royalties,
8 shipping and packing costs, and nonallow-
9 able interest costs that are included in the
10 total cost of all such goods, and then rea-
11 sonably allocating the resulting net cost of
12 those goods to the automotive good;

13 (ii) calculating the total cost incurred
14 with respect to all goods produced by that
15 producer, reasonably allocating the total
16 cost to the automotive good, and then sub-
17 tracting any sales promotion, marketing
18 and after-sales service costs, royalties,
19 shipping and packing costs, and nonallow-
20 able interest costs that are included in the
21 portion of the total cost allocated to the
22 automotive good; or

23 (iii) reasonably allocating each cost
24 that forms part of the total cost incurred
25 with respect to the automotive good so that

1 the aggregate of these costs does not in-
2 clude any sales promotion, marketing and
3 after-sales service costs, royalties, shipping
4 and packing costs, or nonallowable interest
5 costs.

6 (f) VALUE OF MATERIALS.—

7 (1) IN GENERAL.—For the purpose of calcu-
8 lating the regional value-content of a good under
9 subsection (e), and for purposes of applying the de-
10 minimis rules under subsection (c), the value of a
11 material is—

12 (A) in the case of a material that is im-
13 ported by the producer of the good, the ad-
14 justed value of the material;

15 (B) in the case of a material acquired in
16 the territory in which the good is produced, the
17 value, determined in accordance with Articles 1
18 through 8, article 15, and the corresponding in-
19 terpretive notes of the Agreement on Implemen-
20 tation of Article VII of the General Agreement
21 on Tariffs and Trade 1994 referred to in sec-
22 tion 101(d)(8) of the Uruguay Round Agree-
23 ments Act, as set forth in regulations promul-
24 gated by the Secretary of the Treasury pro-

1 viding for the application of such Articles in the
2 absence of an importation; or

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

5 (i) all expenses incurred in the pro-
6 duction of the material, including general
7 expenses; and

8 (ii) an amount for profit equivalent to
9 the profit added in the normal course of
10 trade.

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

13 (A) ORIGINATING MATERIAL.—The fol-
14 lowing expenses, if not included in the value of
15 an originating material calculated under para-
16 graph (1), may be added to the value of the
17 originating material:

18 (i) The costs of freight, insurance,
19 packing, and all other costs incurred in
20 transporting the material within or be-
21 tween the territory of Australia, the United
22 States, or both, to the location of the pro-
23 ducer.

24 (ii) Duties, taxes, and customs broker-
25 age fees on the material paid in the terri-

1 tory of Australia, the United States, or
2 both, other than duties or taxes that are
3 waived, refunded, refundable, or otherwise
4 recoverable, including credit against duty or
5 tax paid or payable.

6 (iii) The cost of waste and spoilage re-
7 sulting from the use of the material in the
8 production of the good, less the value of
9 renewable scrap or byproducts.

10 (B) NONORIGINATING MATERIAL.—The
11 following expenses, if included in the value of a
12 nonoriginating material calculated under para-
13 graph (1), may be deducted from the value of
14 the nonoriginating material:

15 (i) The costs of freight, insurance,
16 packing, and all other costs incurred in
17 transporting the material within or be-
18 tween the territory of Australia, the United
19 States, or both, to the location of the pro-
20 ducer.

21 (ii) Duties, taxes, and customs broker-
22 age fees on the material paid in the terri-
23 tory of Australia, the United States, or
24 both, other than duties or taxes that are
25 waived, refunded, refundable, or otherwise

1 recoverable, including credit against duty
2 or tax paid or payable.

3 (iii) The cost of waste and spoilage re-
4 sulting from the use of the material in the
5 production of the good, less the value of
6 renewable scrap or byproducts.

7 (iv) The cost of processing incurred in
8 the territory of Australia, the United
9 States, or both, in the production of the
10 nonoriginating material.

11 (v) The cost of originating materials
12 used in the production of the nonorigi-
13 nating material in the territory of Aus-
14 tralia, the United States, or both.

15 (g) ACCESSORIES, SPARE PARTS, OR TOOLS.—

16 (1) IN GENERAL.—Subject to paragraph (2),
17 accessories, spare parts, or tools delivered with a
18 good that form part of the good's standard acces-
19 sories, spare parts, or tools shall—

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

22 (B) be disregarded in determining whether
23 all the nonoriginating materials used in the pro-
24 duction of the good undergo the applicable

1 change in tariff classification set out in Annex
2 5–A of the Agreement.

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

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

7 (B) the quantities and value of the acces-
8 sories, spare parts, or tools are customary for
9 the good; and

10 (C) if the good is subject to a regional
11 value-content requirement, the value of the ac-
12 cessories, spare parts, or tools is taken into ac-
13 count as originating or nonoriginating mate-
14 rials, as the case may be, in calculating the re-
15 gional value-content of the good.

16 (h) FUNGIBLE GOODS AND MATERIALS.—

17 (1) IN GENERAL.—

18 (A) CLAIM FOR PREFERENTIAL TREAT-
19 MENT.—A person claiming that a fungible good
20 or fungible material is an originating good may
21 base the claim either on the physical segrega-
22 tion of the fungible good or fungible material or
23 by using an inventory management method with
24 respect to the fungible good or fungible mate-
25 rial.

1 (B) INVENTORY MANAGEMENT METHOD.—

2 In this subsection, the term “inventory manage-
3 ment method” means—

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

8 (I) recognized in the generally
9 accepted accounting principles of the
10 country in which the production is
11 performed (whether Australia or the
12 United States); or

13 (II) otherwise accepted by that
14 country.

15 (2) ELECTION OF INVENTORY METHOD.—A
16 person selecting an inventory management method
17 under paragraph (1) for a particular fungible good
18 or fungible material shall continue to use that meth-
19 od for that fungible good or fungible material
20 throughout the fiscal year of that person.

21 (i) PACKAGING MATERIALS AND CONTAINERS FOR
22 RETAIL SALE.—Packaging materials and containers in
23 which a good is packaged for retail sale, if classified with
24 the good, shall be disregarded in determining whether all
25 the nonoriginating materials used in the production of the

1 good undergo the applicable change in tariff classification
2 set out in Annex 4–A or Annex 5–A of the Agreement,
3 and, if the good is subject to a regional value-content re-
4 quirement, the value of such packaging materials and con-
5 tainers shall be taken into account as originating or non-
6 originating materials, as the case may be, in calculating
7 the regional value-content of the good.

8 (j) PACKING MATERIALS AND CONTAINERS FOR
9 SHIPMENT.—Packing materials and containers for ship-
10 ment shall be disregarded in determining whether—

11 (1) the nonoriginating materials used in the
12 production of a good undergo the applicable change
13 in tariff classification set out in Annex 4–A or
14 Annex 5–A of the Agreement; and

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

17 (k) INDIRECT MATERIALS.—An indirect material
18 shall be treated as an originating material without regard
19 to where it is produced, and its value shall be the cost
20 registered in the accounting records of the producer of the
21 good.

22 (l) THIRD COUNTRY OPERATIONS.—A good that has
23 undergone production necessary to qualify as an origi-
24 nating good under subsection (b) shall not be considered
25 to be an originating good if, subsequent to that produc-

1 tion, the good undergoes further production or any other
2 operation outside the territory of Australia or the United
3 States, other than unloading, reloading, or any other oper-
4 ation necessary to preserve the good in good condition or
5 to transport the good to the territory of Australia or the
6 United States.

7 (m) TEXTILE AND APPAREL GOODS CLASSIFIABLE
8 AS GOODS PUT UP IN SETS.—Notwithstanding the rules
9 set forth in Annex 4–A of the Agreement, textile or ap-
10 parel goods classifiable as goods put up in sets for retail
11 sale as provided for in General Rule of Interpretation 3
12 of the HTS shall not be considered to be originating goods
13 unless each of the goods in the set is an originating good
14 or the total value of the nonoriginating goods in the set
15 does not exceed 10 percent of the value of the set deter-
16 mined for purposes of assessing customs duties.

17 (n) DEFINITIONS.—In this section:

18 (1) ADJUSTED VALUE.—The term “adjusted
19 value” means the value determined under Articles 1
20 through 8, Article 15, and the corresponding inter-
21 pretive notes of the Agreement on Implementation of
22 Article VII of the General Agreement on Tariffs and
23 Trade 1994 referred to in section 101(d)(8) of the
24 Uruguay Round Agreements Act, adjusted to ex-
25 clude any costs, charges, or expenses incurred for

1 transportation, insurance, and related services inci-
2 dent to the international shipment of the good from
3 the country of exportation to the place of importation.

4 (2) CLASS OF MOTOR VEHICLES.—The term
5 “class of motor vehicles” means any one of the fol-
6 lowing categories of motor vehicles:

7 (A) Motor vehicles provided for in sub-
8 heading 8701.20, 8704.10, 8704.22, 8704.23,
9 8704.32, or 8704.90, or heading 8705 or 8706,
10 or motor vehicles for the transport of 16 or
11 more persons provided for in subheading
12 8702.10 or 8702.90.

13 (B) Motor vehicles provided for in sub-
14 heading 8701.10 or any of subheadings
15 8701.30 through 8701.90.

16 (C) Motor vehicles for the transport of 15
17 or fewer persons provided for in subheading
18 8702.10 or 8702.90, or motor vehicles provided
19 for in subheading 8704.21 or 8704.31.

20 (D) Motor vehicles provided for in any of
21 subheadings 8703.21 through 8703.90.

22 (3) FUNGIBLE GOOD OR FUNGIBLE MATE-
23 RIAL.—The term “fungible good” or “fungible mate-
24 rial” means a good or material, as the case may be,
25 that is interchangeable with another good or mate-

1 rial for commercial purposes and the properties of
2 which are essentially identical to such other good or
3 material.

4 (4) GENERALLY ACCEPTED ACCOUNTING PRIN-
5 CIPLES.—The term “generally accepted accounting
6 principles” means the recognized consensus or sub-
7 stantial authoritative support in the territory of Aus-
8 tralia or the United States, as the case may be, with
9 respect to the recording of revenues, expenses, costs,
10 assets, and liabilities, the disclosure of information,
11 and the preparation of financial statements. These
12 standards may encompass broad guidelines of gen-
13 eral application as well as detailed standards, prac-
14 tices, and procedures.

15 (5) GOOD WHOLLY OBTAINED OR PRODUCED
16 ENTIRELY IN THE TERRITORY OF AUSTRALIA, THE
17 UNITED STATES, OR BOTH.—The term “good wholly
18 obtained or produced entirely in the territory of Aus-
19 tralia, the United States, or both” means—

20 (A) a mineral good extracted in the terri-
21 tory of Australia, the United States, or both;

22 (B) a vegetable good, as such goods are
23 provided for in the HTS, harvested in the terri-
24 tory of Australia, the United States, or both;

1 (C) a live animal born and raised in the
2 territory of Australia, the United States, or
3 both;

4 (D) a good obtained from hunting, trap-
5 ping, fishing, or aquaculture conducted in the
6 territory of Australia, the United States, or
7 both;

8 (E) a good (fish, shellfish, and other ma-
9 rine life) taken from the sea by vessels reg-
10 istered or recorded with Australia or the United
11 States and flying the flag of that country;

12 (F) a good produced exclusively from prod-
13 ucts referred to in subparagraph (E) on board
14 factory ships registered or recorded with Aus-
15 tralia or the United States and flying the flag
16 of that country;

17 (G) a good taken by Australia or the
18 United States or a person of Australia or the
19 United States from the seabed or beneath the
20 seabed outside territorial waters, if Australia or
21 the United States has rights to exploit such
22 seabed;

23 (H) a good taken from outer space, if such
24 good is obtained by Australia or the United
25 States or a person of Australia or the United

1 States and not processed in the territory of a
2 country other than Australia or the United
3 States;

4 (I) waste and scrap derived from—

5 (i) production in the territory of Aus-
6 tralia, the United States, or both; or

7 (ii) used goods collected in the terri-
8 tory of Australia, the United States, or
9 both, if such goods are fit only for the re-
10 covery of raw materials;

11 (J) a recovered good derived in the terri-
12 tory of Australia or the United States from
13 goods that have passed their life expectancy, or
14 are no longer usable due to defects, and utilized
15 in the territory of that country in the produc-
16 tion of remanufactured goods; or

17 (K) a good produced in the territory of
18 Australia, the United States, or both, exclu-
19 sively—

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

22 (ii) from the derivatives of goods re-
23 ferred to in clause (i),

24 at any stage of production.

1 (6) INDIRECT MATERIAL.—The term “indirect
2 material” means a good used in the production, test-
3 ing, or inspection of a good but not physically incor-
4 porated into the good, or a good used in the mainte-
5 nance of buildings or the operation of equipment as-
6 sociated with the production of a good, including—

7 (A) fuel and energy;

8 (B) tools, dies, and molds;

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

11 (D) lubricants, greases, compounding ma-
12 terials, and other materials used in production
13 or used to operate equipment or buildings;

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

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

18 (G) catalysts and solvents; and

19 (H) any other goods that are not incor-
20 porated into the good but the use of which in
21 the production of the good can reasonably be
22 demonstrated to be a part of that production.

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

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

5 (9) MODEL LINE.—The term “model line”
6 means a group of motor vehicles having the same
7 platform or model name.

8 (10) NONALLOWABLE INTEREST COSTS.—The
9 term “nonallowable interest costs” means interest
10 costs incurred by a producer that exceed 700 basis
11 points above the applicable official interest rate for
12 comparable maturities of the country (whether Aus-
13 tralia or the United States).

14 (11) NONORIGINATING MATERIAL.—The term
15 “nonoriginating material” means a material that
16 does not qualify as originating under this section.

17 (12) PREFERENTIAL TREATMENT.—The term
18 “preferential treatment” means the customs duty
19 rate, and the treatment under article 2.12 of the
20 Agreement, that are applicable to an originating
21 good pursuant to the Agreement.

22 (13) PRODUCER.—The term “producer” means
23 a person who engages in the production of a good
24 in the territory of Australia or the United States.

1 (14) PRODUCTION.—The term “production”
2 means growing, raising, mining, harvesting, fishing,
3 trapping, hunting, manufacturing, processing, as-
4 sembling, or disassembling a good.

5 (15) REASONABLY ALLOCATE.—The term “rea-
6 sonably allocate” means to apportion in a manner
7 that would be appropriate under generally accepted
8 accounting principles.

9 (16) RECOVERED GOODS.—The term “recov-
10 ered goods” means materials in the form of indi-
11 vidual parts that result from—

12 (A) the complete disassembly of goods
13 which have passed their life expectancy, or are
14 no longer usable due to defects, into individual
15 parts; and

16 (B) the cleaning, inspecting, or testing, or
17 other processing that is necessary for improve-
18 ment to sound working condition of such indi-
19 vidual parts.

20 (17) REMANUFACTURED GOOD.—The term “re-
21 manufactured good” means an industrial good that
22 is assembled in the territory of Australia or the
23 United States, that is classified under chapter 84,
24 85, or 87 of the HTS or heading 9026, 9031, or
25 9032, other than a good classified under heading

1 8418 or 8516 or any of headings 8701 through
2 8706, and that—

3 (A) is entirely or partially comprised of re-
4 covered goods;

5 (B) has a similar life expectancy to, and
6 meets the same performance standards as, a
7 like good that is new; and

8 (C) enjoys a factory warranty similar to a
9 like good that is new.

10 (18) TOTAL COST.—The term “total cost”
11 means all product costs, period costs, and other
12 costs for a good incurred in the territory of Aus-
13 tralia, the United States, or both.

14 (19) USED.—The term “used” means used or
15 consumed in the production of goods.

16 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

19 (A) the provisions set out in Annex 4–A
20 and Annex 5–A of the Agreement; and

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

24 (2) MODIFICATIONS.—

1 (A) IN GENERAL.—Subject to the consulta-
2 tion and layover provisions of section 104, the
3 President may proclaim modifications to the
4 provisions proclaimed under the authority of
5 paragraph (1)(A), other than provisions of
6 chapters 50 through 63 of the HTS, as in-
7 cluded in Annex 4–A of the Agreement.

8 (B) ADDITIONAL PROCLAMATIONS.—Not-
9 withstanding subparagraph (A), and subject to
10 the consultation and layover provisions of sec-
11 tion 104, the President may proclaim—

12 (i) modifications to the provisions pro-
13 claimed under the authority of paragraph
14 (1)(A) as are necessary to implement an
15 agreement with Australia pursuant to arti-
16 cle 4.2.5 of the Agreement; and

17 (ii) before the end of the 1-year period
18 beginning on the date of the enactment of
19 this Act, modifications to correct any typo-
20 graphical, clerical, or other nonsubstantive
21 technical error regarding the provisions of
22 chapters 50 through 63 of the HTS, as in-
23 cluded in Annex 4–A of the Agreement.

1 **SEC. 204. CUSTOMS USER FEES.**

2 Section 13031(b) of the Consolidated Omnibus Budg-
3 et Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is
4 amended by adding after paragraph (13) the following:

5 “(14) No fee may be charged under subsection (a)
6 (9) or (10) with respect to goods that qualify as origi-
7 nating goods under section 203 of the United States-Aus-
8 tralia Free Trade Agreement Implementation Act. Any
9 service for which an exemption from such fee is provided
10 by reason of this paragraph may not be funded with
11 money contained in the Customs User Fee Account.”.

12 **SEC. 205. DISCLOSURE OF INCORRECT INFORMATION.**

13 Section 592(c) of the Tariff Act of 1930 (19 U.S.C.
14 1592(c)) is amended—

15 (1) by redesignating paragraph (8) as para-
16 graph (9); and

17 (2) by inserting after paragraph (7) the fol-
18 lowing new paragraph:

19 “(8) PRIOR DISCLOSURE REGARDING CLAIMS
20 UNDER THE UNITED STATES-AUSTRALIA FREE
21 TRADE AGREEMENT.—

22 “(A) IN GENERAL.—An importer shall not
23 be subject to penalties under subsection (a) for
24 making an incorrect claim that a good qualifies
25 as an originating good under section 203 of the
26 United States-Australia Free Trade Agreement

1 Implementation Act if the importer, in accord-
2 ance with regulations issued by the Secretary of
3 the Treasury, voluntarily and promptly makes a
4 corrected declaration and pays any duties
5 owing.

6 “(B) TIME PERIODS FOR MAKING CORREC-
7 TIONS.—In the regulations referred to in sub-
8 paragraph (A), the Secretary of the Treasury is
9 authorized to prescribe time periods for making
10 a corrected declaration and paying duties owing
11 under subparagraph (A), if such periods are not
12 shorter than 1 year following the date on which
13 the importer makes the incorrect claim.”.

14 **SEC. 206. ENFORCEMENT RELATING TO TRADE IN TEXTILE**
15 **AND APPAREL GOODS.**

16 (a) ACTION DURING VERIFICATION.—

17 (1) IN GENERAL.—If the Secretary of the
18 Treasury requests the Government of Australia to
19 conduct a verification pursuant to article 4.3 of the
20 Agreement for purposes of making a determination
21 under paragraph (2), the President may direct the
22 Secretary to take appropriate action described in
23 subsection (b) while the verification is being con-
24 ducted.

1 (2) DETERMINATION.—A determination under this
2 paragraph is a determination—

3 (A) that an exporter or producer in Aus-
4 tralia is complying with applicable customs
5 laws, regulations, procedures, requirements, or
6 practices affecting trade in textile or apparel
7 goods; or

8 (B) that a claim that a textile or apparel
9 good exported or produced by such exporter or
10 producer—

11 (i) qualifies as an originating good
12 under section 203 of this Act; or

13 (ii) is a good of Australia,
14 is accurate.

15 (b) APPROPRIATE ACTION DESCRIBED.—Appropriate
16 action under subsection (a)(1) includes—

17 (1) suspension of liquidation of the entry of any
18 textile or apparel good exported or produced by the
19 person that is the subject of a verification under
20 subsection (a)(1) regarding compliance described in
21 subsection (a)(2)(A), in a case in which the request
22 for verification was based on a reasonable suspicion
23 of unlawful activity related to such goods; and

24 (2) suspension of liquidation of the entry of a
25 textile or apparel good for which a claim has been

1 made that is the subject of a verification under sub-
2 section (a)(1) regarding a claim described in sub-
3 section (a)(2)(B).

4 (c) ACTION WHEN INFORMATION IS INSUFFI-
5 CIENT.—If the Secretary of the Treasury determines that
6 the information obtained within 12 months after making
7 a request for a verification under subsection (a)(1) is in-
8 sufficient to make a determination under subsection
9 (a)(2), the President may direct the Secretary to take ap-
10 propriate action described in subsection (d) until such
11 time as the Secretary receives information sufficient to
12 make a determination under subsection (a)(2) or until
13 such earlier date as the President may direct.

14 (d) APPROPRIATE ACTION DESCRIBED.—Appro-
15 priate action referred to in subsection (c) includes—

16 (1) publication of the name and address of the
17 person that is the subject of the verification;

18 (2) denial of preferential tariff treatment under
19 the Agreement to—

20 (A) any textile or apparel good exported or
21 produced by the person that is the subject of a
22 verification under subsection (a)(1) regarding
23 compliance described in subsection (a)(2)(A); or

24 (B) a textile or apparel good for which a
25 claim has been made that is the subject of a

1 verification under subsection (a)(1) regarding a
2 claim described in subsection (a)(2)(B); and
3 (3) denial of entry into the United States of—
4 (A) any textile or apparel good exported or
5 produced by the person that is the subject of a
6 verification under subsection (a)(1) regarding
7 compliance described in subsection (a)(2)(A); or
8 (B) a textile or apparel good for which a
9 claim has been made that is the subject of a
10 verification under subsection (a)(1) regarding a
11 claim described in subsection (a)(2)(B).

12 **SEC. 207. REGULATIONS.**

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

15 (1) subsections (a) through (n) of section 203
16 and section 204;

17 (2) amendments to existing law made by the
18 sections referred to in paragraph (1); and

19 (3) proclamations issued under section 203(o).

20 **TITLE III—RELIEF FROM**
21 **IMPORTS**

22 **SEC. 301. DEFINITIONS.**

23 As used in this title:

1 (1) AUSTRALIAN ARTICLE.—The term “Aus-
2 tralian article” means an article that qualifies as an
3 originating good under section 203(b) of this Act.

4 (2) AUSTRALIAN TEXTILE OR APPAREL ARTI-
5 CLE.—The term “Australian textile or apparel arti-
6 cle” means an article—

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

11 (B) that is an Australian article.

12 (3) COMMISSION.—The term “Commission”
13 means the United States International Trade Com-
14 mission.

15 **Subtitle A—Relief From Imports**
16 **Benefiting From the Agreement**

17 **SEC. 311. COMMENCING OF ACTION FOR RELIEF.**

18 (a) FILING OF PETITION.—

19 (1) IN GENERAL.—A petition requesting action
20 under this subtitle for the purpose of adjusting to
21 the obligations of the United States under the
22 Agreement may be filed with the Commission by an
23 entity, including a trade association, firm, certified
24 or recognized union, or group of workers, that is
25 representative of an industry. The Commission shall

1 transmit a copy of any petition filed under this sub-
2 section to the United States Trade Representative.

3 (2) PROVISIONAL RELIEF.—An entity filing a
4 petition under this subsection may request that pro-
5 visional relief be provided as if the petition had been
6 filed under section 202(a) of the Trade Act of 1974
7 (19 U.S.C. 2252(a)).

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

11 (b) INVESTIGATION AND DETERMINATION.—Upon
12 the filing of a petition under subsection (a), the Commis-
13 sion, unless subsection (d) applies, shall promptly initiate
14 an investigation to determine whether, as a result of the
15 reduction or elimination of a duty provided for under the
16 Agreement, an Australian article is being imported into
17 the United States in such increased quantities, in absolute
18 terms or relative to domestic production, and under such
19 conditions that imports of the Australian article constitute
20 a substantial cause of serious injury or threat thereof to
21 the domestic industry producing an article that is like, or
22 directly competitive with, the imported article.

23 (c) APPLICABLE PROVISIONS.—The following provi-
24 sions of section 202 of the Trade Act of 1974 (19 U.S.C.

1 2252) apply with respect to any investigation initiated
2 under subsection (b):

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

5 (2) Subsection (c).

6 (3) Subsection (d).

7 (4) Subsection (i).

8 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No
9 investigation may be initiated under this section with re-
10 spect to any Australian article if, after the date on which
11 the Agreement enters into force, import relief has been
12 provided with respect to that Australian article under this
13 subtitle.

14 **SEC. 312. COMMISSION ACTION ON PETITION.**

15 (a) DETERMINATION.—Not later than 120 days (180
16 days if critical circumstances have been alleged) after the
17 date on which an investigation is initiated under section
18 311(b) with respect to a petition, the Commission shall
19 make the determination required under that section.

20 (b) APPLICABLE PROVISIONS.—For purposes of this
21 subtitle, the provisions of paragraphs (1), (2), and (3) of
22 section 330(d) of the Tariff Act of 1930 (19 U.S.C.
23 1330(d) (1), (2), and (3)) shall be applied with respect
24 to determinations and findings made under this section

1 as if such determinations and findings were made under
2 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

3 (c) ADDITIONAL FINDING AND RECOMMENDATION IF
4 DETERMINATION AFFIRMATIVE.—If the determination
5 made by the Commission under subsection (a) with respect
6 to imports of an article is affirmative, or if the President
7 may consider a determination of the Commission to be an
8 affirmative determination as provided for under paragraph
9 (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
10 1330(d)), the Commission shall find, and recommend to
11 the President in the report required under subsection (d),
12 the amount of import relief that is necessary to remedy
13 or prevent the injury found by the Commission in the de-
14 termination and to facilitate the efforts of the domestic
15 industry to make a positive adjustment to import competi-
16 tion. The import relief recommended by the Commission
17 under this subsection shall be limited to that described in
18 section 313(c). Only those members of the Commission
19 who voted in the affirmative under subsection (a) are eligi-
20 ble to vote on the proposed action to remedy or prevent
21 the injury found by the Commission. Members of the Com-
22 mission who did not vote in the affirmative may submit,
23 in the report required under subsection (d), separate views
24 regarding what action, if any, should be taken to remedy
25 or prevent the injury.

1 (d) REPORT TO PRESIDENT.—Not later than the
2 date that is 30 days after the date on which a determina-
3 tion is made under subsection (a) with respect to an inves-
4 tigation, the Commission shall submit to the President a
5 report that includes—

6 (1) the determination made under subsection
7 (a) and an explanation of the basis for the deter-
8 mination;

9 (2) if the determination under subsection (a) is
10 affirmative, any findings and recommendations for
11 import relief made under subsection (c) and an ex-
12 planation of the basis for each recommendation; and

13 (3) any dissenting or separate views by mem-
14 bers of the Commission regarding the determination
15 and recommendation referred to in paragraphs (1)
16 and (2).

17 (e) PUBLIC NOTICE.—Upon submitting a report to
18 the President under subsection (d), the Commission shall
19 promptly make public such report (with the exception of
20 information which the Commission determines to be con-
21 fidential) and shall cause a summary thereof to be pub-
22 lished in the Federal Register.

23 **SEC. 313. PROVISION OF RELIEF.**

24 (a) IN GENERAL.—Not later than the date that is
25 30 days after the date on which the President receives the

1 report of the Commission in which the Commission's de-
2 termination under section 312(a) is affirmative, or which
3 contains a determination under section 312(a) that the
4 President considers to be affirmative under paragraph (1)
5 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
6 1330(d)(1)), the President, subject to subsection (b), shall
7 provide relief from imports of the article that is the subject
8 of such determination to the extent that the President de-
9 termines necessary to remedy or prevent the injury found
10 by the Commission and to facilitate the efforts of the do-
11 mestic industry to make a positive adjustment to import
12 competition.

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

17 (c) NATURE OF RELIEF.—

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

22 (A) The suspension of any further reduc-
23 tion provided for under Annex 2–B of the
24 Agreement in the duty imposed on such article.

1 (B) An increase in the rate of duty im-
2 posed on such article to a level that does not
3 exceed the lesser of—

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

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

11 (C) In the case of a duty applied on a sea-
12 sonal basis to such article, an increase in the
13 rate of duty imposed on the article to a level
14 that does not exceed the lesser of—

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

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

23 (2) PROGRESSIVE LIBERALIZATION.—If the pe-
24 riod for which import relief is provided under this
25 section is greater than 1 year, the President shall

1 provide for the progressive liberalization (described
2 in article 9.2.7 of the Agreement) of such relief at
3 regular intervals during the period in which the re-
4 lief is in effect.

5 (d) PERIOD OF RELIEF.—

6 (1) IN GENERAL.—Subject to paragraph (2),
7 any import relief that the President provides under
8 this section may not be in effect for more than 2
9 years.

10 (2) EXTENSION.—

11 (A) IN GENERAL.—Subject to subpara-
12 graph (C), the President, after receiving an af-
13 firmative determination from the Commission
14 under subparagraph (B), may extend the effec-
15 tive period of any import relief provided under
16 this section if the President determines that—

17 (i) the import relief continues to be
18 necessary to remedy or prevent serious in-
19 jury and to facilitate adjustment by the do-
20 mestic industry to import competition; and

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

24 (B) ACTION BY COMMISSION.—(i) Upon a
25 petition on behalf of the industry concerned

1 that is filed with the Commission not earlier
2 than the date which is 9 months, and not later
3 than the date which is 6 months, before the
4 date any action taken under subsection (a) is to
5 terminate, the Commission shall conduct an in-
6 vestigation to determine whether action under
7 this section continues to be necessary to remedy
8 or prevent serious injury and whether there is
9 evidence that the industry is making a positive
10 adjustment to import competition.

11 (ii) The Commission shall publish notice of
12 the commencement of any proceeding under
13 this subparagraph in the Federal Register and
14 shall, within a reasonable time thereafter, hold
15 a public hearing at which the Commission shall
16 afford interested parties and consumers an op-
17 portunity to be present, to present evidence,
18 and to respond to the presentations of other
19 parties and consumers, and otherwise to be
20 heard.

21 (iii) The Commission shall transmit to the
22 President a report on its investigation and de-
23 termination under this subparagraph not later
24 than 60 days before the action under subsection

1 (a) is to terminate, unless the President speci-
2 fies a different date.

3 (C) PERIOD OF IMPORT RELIEF.—Any im-
4 port relief provided under this section, including
5 any extensions thereof, may not, in the aggre-
6 gate, be in effect for more than 4 years.

7 (e) RATE AFTER TERMINATION OF IMPORT RE-
8 LIEF.—When import relief under this section is termi-
9 nated with respect to an article—

10 (1) the rate of duty on that article after such
11 termination and on or before December 31 of the
12 year in which such termination occurs shall be the
13 rate that, according to the Schedule of the United
14 States to Annex 2–B of the Agreement for the
15 staged elimination of the tariff, would have been in
16 effect 1 year after the provision of relief under sub-
17 section (a); and

18 (2) the rate of duty for that article after De-
19 cember 31 of the year in which termination occurs
20 shall be, at the discretion of the President, either—

21 (A) the applicable NTR (MFN) rate of
22 duty for that article set out in the Schedule of
23 the United States to Annex 2–B of the Agree-
24 ment; or

1 (B) the rate of duty resulting from the
2 elimination of the tariff in equal annual stages
3 ending on the date set out in the Schedule of
4 the United States to Annex 2–B of the Agree-
5 ment for the elimination of the tariff.

6 (f) ARTICLES EXEMPT FROM RELIEF.—No import
7 relief may be provided under this section on any article
8 that—

9 (1) is subject to—

10 (A) import relief under subtitle B; or

11 (B) an assessment of additional duty
12 under subsection (b), (c), or (d) of section 202;
13 or

14 (2) has been subject to import relief under this
15 subtitle after the date on which the Agreement en-
16 ters into force.

17 **SEC. 314. TERMINATION OF RELIEF AUTHORITY.**

18 (a) GENERAL RULE.—Subject to subsection (b), no
19 import relief may be provided under this subtitle after the
20 date that is 10 years after the date on which the Agree-
21 ment enters into force.

22 (b) EXCEPTION.—If an article for which relief is pro-
23 vided under this subtitle is an article for which the period
24 for tariff elimination, set out in the Schedule of the United
25 States to Annex 2–B of the Agreement, is greater than

1 10 years, no relief under this subtitle may be provided for
2 that article after the date on which such period ends.

3 (c) **PRESIDENTIAL DETERMINATION.**—Import relief
4 may be provided under this subtitle in the case of an Aus-
5 tralian article after the date on which such relief would,
6 but for this subsection, terminate under subsection (a) or
7 (b), if the President determines that Australia has con-
8 sented to such relief.

9 **SEC. 315. COMPENSATION AUTHORITY.**

10 For purposes of section 123 of the Trade Act of 1974
11 (19 U.S.C. 2133), any import relief provided by the Presi-
12 dent under section 313 shall be treated as action taken
13 under chapter 1 of title II of such Act.

14 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

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

17 (1) by striking “and”; and

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

21 **Subtitle B—Textile and Apparel**
22 **Safeguard Measures**

23 **SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.**

24 (a) **IN GENERAL.**—A request under this subtitle for
25 the purpose of adjusting to the obligations of the United

1 States under the Agreement may be filed with the Presi-
2 dent by an interested party. Upon the filing of a request,
3 the President shall review the request to determine, from
4 information presented in the request, whether to com-
5 mence consideration of the request.

6 (b) ALLEGATION OF CRITICAL CIRCUMSTANCES.—An
7 interested party filing a request under this section may—

8 (1) allege that critical circumstances exist such
9 that delay in the provision of relief would cause
10 damage that would be difficult to repair; and

11 (2) based on such allegation, request that relief
12 be provided on a provisional basis.

13 (c) PUBLICATION OF REQUEST.—If the President de-
14 termines that the request under subsection (a) provides
15 the information necessary for the request to be considered,
16 the President shall cause to be published in the Federal
17 Register a notice of commencement of consideration of the
18 request, and notice seeking public comments regarding the
19 request. The notice shall include a summary of the request
20 and the dates by which comments and rebuttals must be
21 received.

22 **SEC. 322. DETERMINATION AND PROVISION OF RELIEF.**

23 (a) DETERMINATION.—

24 (1) IN GENERAL.—If a positive determination is
25 made under section 321(c), the President shall de-

1 termine whether, as a result of the reduction or
2 elimination of a duty under the Agreement, an Aus-
3 tralian textile or apparel article is being imported
4 into the United States in such increased quantities,
5 in absolute terms or relative to the domestic market
6 for that article, and under such conditions as to
7 cause serious damage, or actual threat thereof, to a
8 domestic industry producing an article that is like,
9 or directly competitive with, the imported article.

10 (2) SERIOUS DAMAGE.—In making a deter-
11 mination under paragraph (1), the President—

12 (A) shall examine the effect of increased
13 imports on the domestic industry, as reflected
14 in changes in such relevant economic factors as
15 output, productivity, utilization of capacity, in-
16 ventories, market share, exports, wages, em-
17 ployment, domestic prices, profits, and invest-
18 ment, none of which is necessarily decisive; and

19 (B) shall not consider changes in tech-
20 nology or consumer preference as factors sup-
21 porting a determination of serious damage or
22 actual threat thereof.

23 (b) PROVISION OF RELIEF.—

24 (1) IN GENERAL.—If a determination under
25 subsection (a) is affirmative, the President may pro-

1 vide relief from imports of the article that is the
2 subject of such determination, as described in para-
3 graph (2), to the extent that the President deter-
4 mines necessary to remedy or prevent the serious
5 damage and to facilitate adjustment by the domestic
6 industry to import competition.

7 (2) NATURE OF RELIEF.—The relief that the
8 President is authorized to provide under this sub-
9 section with respect to imports of an article is an in-
10 crease in the rate of duty imposed on the article to
11 a level that does not exceed the lesser of—

12 (A) the column 1 general rate of duty im-
13 posed under the HTS on like articles at the
14 time the import relief is provided; or

15 (B) the column 1 general rate of duty im-
16 posed under the HTS on like articles on the
17 day before the date on which the Agreement en-
18 ters into force.

19 (c) CRITICAL CIRCUMSTANCES.—

20 (1) PRESIDENTIAL DETERMINATION.—When a
21 request filed under section 321(a) contains an alle-
22 gation of critical circumstances and a request for
23 provisional relief under section 321(b), the President
24 shall, not later than 60 days after the request is

1 filed, determine, on the basis of available informa-
2 tion, whether—

3 (A) there is clear evidence that—

4 (i) imports from Australia have in-
5 creased as the result of the reduction or
6 elimination of a customs duty under the
7 Agreement; and

8 (ii) such imports are causing serious
9 damage, or actual threat thereof, to the
10 domestic industry producing an article like
11 or directly competitive with the imported
12 article; and

13 (B) delay in taking action under this sub-
14 title would cause damage to that industry that
15 would be difficult to repair.

16 (2) EXTENT OF PROVISIONAL RELIEF.—If the
17 determinations under subparagraphs (A) and (B) of
18 paragraph (1) are affirmative, the President shall
19 determine the extent of provisional relief that is nec-
20 essary to remedy or prevent the serious damage. The
21 nature of the provisional relief available shall be the
22 relief described in subsection (b)(2). Within 30 days
23 after making affirmative determinations under sub-
24 paragraphs (A) and (B) of paragraph (1), the Presi-
25 dent, if the President considers provisional relief to

1 be warranted, shall provide, for a period not to exceed
2 200 days, such provisional relief that the President
3 considers necessary to remedy or prevent the serious
4 damage.

5 (3) SUSPENSION OF LIQUIDATION.—If provi-
6 sional relief is provided under paragraph (2), the
7 President shall order the suspension of liquidation of
8 all imported articles subject to the affirmative deter-
9 minations under subparagraphs (A) and (B) of para-
10 graph (1) that are entered, or withdrawn from ware-
11 house for consumption, on or after the date of the
12 determinations.

13 (4) TERMINATION OF PROVISIONAL RELIEF.—

14 (A) IN GENERAL.—Any provisional relief
15 implemented under this subsection with respect
16 to an imported article shall terminate on the
17 day on which—

18 (i) the President makes a negative de-
19 termination under subsection (a) regarding
20 serious damage or actual threat thereof by
21 imports of such article;

22 (ii) action described in subsection (b)
23 takes effect with respect to such article;

1 (iii) a decision by the President not to
2 take any action under subsection (b) with
3 respect to such article becomes final; or

4 (iv) the President determines that, be-
5 cause of changed circumstances, such relief
6 is no longer warranted.

7 (B) SUSPENSION OF LIQUIDATION.—Any
8 suspension of liquidation ordered under para-
9 graph (3) with respect to an imported article
10 shall terminate on the day on which provisional
11 relief is terminated under subparagraph (A)
12 with respect to the article.

13 (C) RATES OF DUTY.—If an increase in, or
14 the imposition of, a duty that is provided under
15 subsection (b) on an imported article is dif-
16 ferent from a duty increase or imposition that
17 was provided for such an article under this sub-
18 section, then the entry of any such article for
19 which liquidation was suspended under para-
20 graph (3) shall be liquidated at whichever of
21 such rates of duty is lower.

22 (D) RATE OF DUTY IF PROVISIONAL RE-
23 LIEF.—If provisional relief is provided under
24 this subsection with respect to an imported arti-
25 cle and neither a duty increase nor a duty im-

1 position is provided under subsection (b) for
2 such article, the entry of any such article for
3 which liquidation was suspended under para-
4 graph (3) shall be liquidated at the rate of duty
5 that applied before the provisional relief was
6 provided.

7 **SEC. 323. PERIOD OF RELIEF.**

8 (a) **IN GENERAL.**—Subject to subsection (b), the im-
9 port relief that the President provides under subsections
10 (b) and (c) of section 322 may not, in the aggregate, be
11 in effect for more than 2 years.

12 (b) **EXTENSION.**—

13 (1) **IN GENERAL.**—Subject to paragraph (2),
14 the President may extend the effective period of any
15 import relief provided under this subtitle for a pe-
16 riod of not more than 2 years, if the President de-
17 termines that—

18 (A) the import relief continues to be nec-
19 essary to remedy or prevent serious damage
20 and to facilitate adjustment by the domestic in-
21 dustry to import competition; and

22 (B) there is evidence that the industry is
23 making a positive adjustment to import com-
24 petition.

1 (2) LIMITATION.—Any relief provided under
2 this subtitle, including any extensions thereof, may
3 not, in the aggregate, be in effect for more than 4
4 years.

5 **SEC. 324. ARTICLES EXEMPT FROM RELIEF.**

6 The President may not provide import relief under
7 this subtitle with respect to any article if—

8 (1) import relief previously has been provided
9 under this subtitle with respect to that article; or

10 (2) the article is subject to import relief
11 under—

12 (A) subtitle A; or

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

15 **SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.**

16 When import relief under this subtitle is terminated
17 with respect to an article, the rate of duty on that article
18 shall be the rate that would have been in effect, but for
19 the provision of such relief, on the date the relief termi-
20 nates.

21 **SEC. 326. TERMINATION OF RELIEF AUTHORITY.**

22 No import relief may be provided under this subtitle
23 with respect to any article after the date that is 10 years
24 after the date on which duties on the article are eliminated
25 pursuant to the Agreement.

1 **SEC. 327. COMPENSATION AUTHORITY.**

2 For purposes of section 123 of the Trade Act of 1974
3 (19 U.S.C. 2133), any import relief provided by the Presi-
4 dent under this subtitle shall be treated as action taken
5 under chapter 1 of title II of such Act.

6 **SEC. 328. BUSINESS CONFIDENTIAL INFORMATION.**

7 The President may not release information which is
8 submitted in a proceeding under this subtitle and which
9 the President considers to be confidential business infor-
10 mation unless the party submitting the confidential busi-
11 ness information had notice, at the time of submission,
12 that such information would be released, or such party
13 subsequently consents to the release of the information.
14 To the extent a party submits confidential business infor-
15 mation to the President in a proceeding under this sub-
16 title, the party also shall submit a nonconfidential version
17 of the information, in which the confidential business in-
18 formation is summarized or, if necessary, deleted.

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

21 **SEC. 331. FINDINGS AND ACTION ON GOODS FROM AUS-**
22 **TRALIA.**

23 (a) EFFECT OF IMPORTS.—If, in any investigation
24 initiated under chapter 1 of title II of the Trade Act of
25 1974 (19 U.S.C. 2251 et seq.), the Commission makes an
26 affirmative determination (or a determination which the

1 President may treat as an affirmative determination under
2 such chapter by reason of section 330(d) of the Tariff Act
3 of 1930), the Commission shall also find (and report to
4 the President at the time such injury determination is sub-
5 mitted to the President) whether imports of the article
6 from Australia are a substantial cause of serious injury
7 or threat thereof.

8 (b) PRESIDENTIAL DETERMINATION REGARDING
9 AUSTRALIAN IMPORTS.—In determining the nature and
10 extent of action to be taken under chapter 1 of title II
11 of the Trade Act of 1974, the President shall determine
12 whether imports from Australia are a substantial cause
13 of the serious injury or threat thereof found by the Com-
14 mission and, if such determination is in the negative, may
15 exclude from such action imports from Australia.

16 **TITLE IV—PROCUREMENT**

17 **SEC. 401. ELIGIBLE PRODUCTS.**

18 Section 308(4)(A) of the Trade Agreements Act of
19 1979 (19 U.S.C. 2518(4)(A)) is amended—

20 (1) by striking “or” at the end of clause (i);

21 (2) by striking the period at the end of clause
22 (ii) and inserting “; or”; and

23 (3) by adding at the end the following new
24 clause:

1 “(iii) a party to a free trade agree-
2 ment that entered into force with respect
3 to the United States after December 31,
4 2003, and before January 2, 2005, a prod-
5 uct or service of that country or instru-
6 mentality which is covered under the free
7 trade agreement for procurement by the
8 United States.”.

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108TH CONGRESS
2^D SESSION

H. R. 4759

[Report No. 108-597]

A BILL

To implement the United States-Australia Free
Trade Agreement.

JULY 12, 2004

Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed