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108TH CONGRESS
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H. R. 2738

[Report No. 108–224, Parts I and II]

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

JULY 21, 2003

Reported from the Committee on Ways and Means

JULY 21, 2003

Referral to the Committee on the Judiciary extended for a period ending not later than July 22, 2003

JULY 22, 2003

Reported from the Committee on the Judiciary; 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-Chile 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-Chile Free Trade Agreement Implementa-
 6 tion Act”.

7 (b) **TABLE OF CONTENTS.**—

- 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. Consultation and layover provisions for, and effective date of, pro-
claimed actions.
- Sec. 104. Implementing actions in anticipation of entry into force and initial
regulations.
- Sec. 105. Administration of dispute settlement proceedings.
- Sec. 106. Arbitration of claims.
- Sec. 107. Effective dates; effect of termination.

TITLE II—CUSTOMS PROVISIONS

- Sec. 201. Tariff modifications.
- Sec. 202. Rules of origin.
- Sec. 203. Drawback.
- Sec. 204. Customs user fees.
- Sec. 205. Disclosure of incorrect information; denial of preferential tariff treat-
ment; false certificates of origin.
- Sec. 206. Reliquidation of entries.
- Sec. 207. Recordkeeping requirements.
- Sec. 208. Enforcement of textile and apparel rules of origin.
- Sec. 209. Conforming amendments.
- Sec. 210. 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.

TITLE IV—TEMPORARY ENTRY OF BUSINESS PERSONS

Sec. 401. Nonimmigrant traders and investors.

Sec. 402. Nonimmigrant professionals; labor attestation.

Sec. 403. Labor disputes.

Sec. 404. Conforming amendments.

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 the Re-
5 public of Chile entered into under the authority of
6 section 2103(b) of the Bipartisan Trade Promotion
7 Authority Act of 2002;

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

11 (3) to establish free trade between the two na-
12 tions through the reduction and elimination of bar-
13 riers to trade in goods and services and to invest-
14 ment; and

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

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) AGREEMENT.—The term “Agreement”
4 means the United States-Chile Free Trade Agree-
5 ment approved by the Congress under section
6 101(a)(1).

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

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

14 **TITLE I—APPROVAL OF, AND**
15 **GENERAL PROVISIONS RE-**
16 **LATING TO, THE AGREEMENT**

17 **SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE**
18 **AGREEMENT.**

19 (a) APPROVAL OF AGREEMENT AND STATEMENT OF
20 ADMINISTRATIVE ACTION.—Pursuant to section 2105 of
21 the Bipartisan Trade Promotion Authority Act of 2002
22 (19 U.S.C. 3805) and section 151 of the Trade Act of
23 1974 (19 U.S.C. 2191), the Congress approves—

24 (1) the United States-Chile Free Trade Agree-
25 ment entered into on June 6, 2003, with the Gov-

1 ernment of Chile and submitted to the Congress on
2 July 15, 2003; and

3 (2) the statement of administrative action pro-
4 posed to implement the Agreement that was sub-
5 mitted to the Congress on July 15, 2003.

6 (b) **CONDITIONS FOR ENTRY INTO FORCE OF THE**
7 **AGREEMENT.**—At such time as the President determines
8 that Chile has taken measures necessary to bring it into
9 compliance with the provisions of the Agreement that take
10 effect on the date on which the Agreement enters into
11 force, the President is authorized to exchange notes with
12 the Government of Chile providing for the entry into force,
13 on or after January 1, 2004, of the Agreement for the
14 United States.

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

17 (a) **RELATIONSHIP TO UNITED STATES LAW.**—

18 (1) **UNITED STATES LAW TO PREVAIL IN CON-**
19 **FLICT.**—No provision of the Agreement, nor the ap-
20 plication of any such provision to any person or cir-
21 cumstance, which is inconsistent with any law of the
22 United States shall have effect.

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

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

3 (B) to limit any authority conferred under
4 any law of the United States,
5 unless specifically provided for in this Act.

6 (b) RELATIONSHIP OF AGREEMENT TO STATE
7 LAW.—

8 (1) LEGAL CHALLENGE.—No State law, or the
9 application thereof, may be declared invalid as to
10 any person or circumstance on the ground that the
11 provision or application is inconsistent with the
12 Agreement, except in an action brought by the
13 United States for the purpose of declaring such law
14 or application invalid.

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

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

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

21 (c) EFFECT OF AGREEMENT WITH RESPECT TO PRI-
22 VATE REMEDIES.—No person other than the United
23 States—

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

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

10 **SEC. 103. CONSULTATION AND LAYOVER PROVISIONS FOR,**
11 **AND EFFECTIVE DATE OF, PROCLAIMED AC-**
12 **TIONS.**

13 (a) CONSULTATION AND LAYOVER REQUIRE-
14 MENTS.—If a provision of this Act provides that the imple-
15 mentation of an action by the President by proclamation
16 is subject to the consultation and layover requirements of
17 this section, such action may be proclaimed only if—

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

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

23 (B) the United States International Trade
24 Commission;

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

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

7 (B) the advice obtained under paragraph
8 (1);

9 (3) a period of 60 calendar days, beginning on
10 the first day on which the requirements set forth in
11 paragraphs (1) and (2) have been met has expired;
12 and

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

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

22 **SEC. 104. IMPLEMENTING ACTIONS IN ANTICIPATION OF**
23 **ENTRY INTO FORCE AND INITIAL REGULA-**
24 **TIONS.**

25 (a) **IMPLEMENTING ACTIONS.**—

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

3 (A) the President may proclaim such ac-
4 tions, and

5 (B) other appropriate officers of the
6 United States Government may issue such reg-
7 ulations,

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

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

21 (b) INITIAL REGULATIONS.—Initial regulations nec-
22 essary or appropriate to carry out the actions required by
23 or authorized under this Act or proposed in the statement
24 of administrative action referred to in section 101(a)(2)
25 to implement the Agreement shall, to the maximum extent

1 feasible, be issued within 1 year after the date of entry
2 into force of the Agreement. In the case of any imple-
3 menting action that takes effect on a date after the date
4 of entry into force of the Agreement, initial regulations
5 to carry out that action shall, to the maximum extent fea-
6 sible, be issued within 1 year after such effective date.—

7 **SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PRO-**
8 **CEEDINGS.**

9 (a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—

10 The President is authorized to establish or designate with-
11 in the Department of Commerce an office that shall be
12 responsible for providing administrative assistance to pan-
13 els established under chapter 22 of the Agreement. The
14 office may not be considered to be an agency for purposes
15 of section 552 of title 5, United States Code.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated for each fiscal year after
18 fiscal year 2003 to the Department of Commerce such
19 sums as may be necessary for the establishment and oper-
20 ations of the office under subsection (a) and for the pay-
21 ment of the United States share of the expenses of panels
22 established under chapter 22 of the Agreement.

23 **SEC. 106. ARBITRATION OF CLAIMS.**

24 (a) SUBMISSION OF CERTAIN CLAIMS.—The United
25 States is authorized to resolve any claim against the

1 United States covered by article 10.15(1)(a)(i)(C) or
2 10.15(1)(b)(i)(C) of the Agreement, pursuant to the In-
3 vestor-State Dispute Settlement procedures set forth in
4 section B of chapter 10 of the Agreement.

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

10 **SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.**

11 (a) EFFECTIVE DATES.—Except as provided in sub-
12 section (b), the provisions of this Act and the amendments
13 made by this Act take effect on the date the Agreement
14 enters into force.

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

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

21 **TITLE II—CUSTOMS PROVISIONS**

22 **SEC. 201. TARIFF MODIFICATIONS.**

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

1 (1) PROCLAMATION AUTHORITY.—The Presi-
2 dent may proclaim—

3 (A) such modifications or continuation of
4 any duty,

5 (B) such continuation of duty-free or ex-
6 cise treatment, or

7 (C) such additional duties,

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

12 (2) EFFECT ON CHILEAN GSP STATUS.—Not-
13 withstanding section 502(a)(1) of the Trade Act of
14 1974 (19 U.S.C. 2462(a)(1)), the President shall
15 terminate the designation of Chile as a beneficiary
16 developing country for purposes of title V of the
17 Trade Act of 1974 on the date of entry into force
18 of the Agreement.

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

22 (1) such modifications or continuation of any
23 duty,

24 (2) such modifications as the United States
25 may agree to with Chile regarding the staging of any

1 duty treatment set forth in Annex 3.3 of the Agree-
2 ment,

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

5 (4) such additional duties,

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

10 (c) ADDITIONAL TARIFFS ON AGRICULTURAL SAFE-
11 GUARD GOODS.—

12 (1) IN GENERAL.—In addition to any duty pro-
13 claimed under subsection (a) or (b), and subject to
14 paragraphs (3) through (5), the Secretary of the
15 Treasury shall assess a duty, in the amount pre-
16 scribed under paragraph (2), on an agricultural safe-
17 guard good if the Secretary of the Treasury deter-
18 mines that the unit import price of the good when
19 it enters the United States, determined on an
20 F.O.B. basis, is less than the trigger price indicated
21 for that good in Annex 3.18 of the Agreement or
22 any amendment thereto.

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

1 (A) If the difference between the unit im-
2 port price and the trigger price is less than, or
3 equal to, 10 percent of the trigger price, no ad-
4 ditional duty shall be imposed.

5 (B) If the difference between the unit im-
6 port price and the trigger price is greater than
7 10 percent, but less than or equal to 40 per-
8 cent, of the trigger price, the additional duty
9 shall be equal to 30 percent of the difference
10 between the preferential tariff rate and the col-
11 umn 1 general rate of duty imposed under the
12 HTS on like articles at the time the additional
13 duty is imposed.

14 (C) If the difference between the unit im-
15 port price and the trigger price is greater than
16 40 percent, but less than or equal to 60 per-
17 cent, of the trigger price, the additional duty
18 shall be equal to 50 percent of the difference
19 between the preferential tariff rate and the col-
20 umn 1 general rate of duty imposed under the
21 HTS on like articles at the time the additional
22 duty is imposed.

23 (D) If the difference between the unit im-
24 port price and the trigger price is greater than
25 60 percent, but less than or equal to 75 per-

1 cent, of the trigger price, the additional duty
2 shall be equal to 70 percent of the difference
3 between the preferential tariff rate and the col-
4 umn 1 general rate of duty imposed under the
5 HTS on like articles at the time the additional
6 duty is imposed.

7 (E) If the difference between the unit im-
8 port price and the trigger price is greater than
9 75 percent of the trigger price, the additional
10 duty shall be equal to 100 percent of the dif-
11 ference between the preferential tariff rate and
12 the column 1 general rate of duty imposed
13 under the HTS on like articles at the time the
14 additional duty is imposed.

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

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

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

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

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

7 (6) NOTICE.—Not later than 60 days after the
8 Secretary of the Treasury first assesses additional
9 duties on an agricultural safeguard good under this
10 subsection, the Secretary shall notify the Govern-
11 ment of Chile in writing of such action and shall
12 provide to the Government of Chile data supporting
13 the assessment of additional duties.

14 (7) MODIFICATION OF TRIGGER PRICES.—Not
15 later than 60 calendar days before agreeing with the
16 Government of Chile pursuant to article 3.18(2)(b)
17 of the Agreement on a modification to a trigger
18 price for a good listed in Annex 3.18 of the Agree-
19 ment, the President shall notify the Committees on
20 Ways and Means and Agriculture of the House of
21 Representatives and the Committees on Finance and
22 Agriculture of the Senate of the proposed modifica-
23 tion and the reasons therefor.

24 (8) DEFINITIONS.—In this subsection:

1 (A) AGRICULTURAL SAFEGUARD GOOD.—

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

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

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

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

13 (B) F.O.B.—The term “F.O.B.” means
14 free on board, regardless of the mode of trans-
15 portation, at the point of direct shipment by the
16 seller to the buyer.

17 (C) UNIT IMPORT PRICE.—The term “unit
18 import price” means the price expressed in dol-
19 lars per kilogram.

20 (d) CONVERSION TO AD VALOREM RATES.—For pur-
21 poses of subsections (a) and (b), with respect to any good
22 for which the base rate in the Schedule of the United
23 States to Annex 3.3 of the Agreement is a specific or com-
24 pound rate of duty, the President may substitute for the

1 base rate an ad valorem rate that the President deter-
2 mines to be equivalent to the base rate.

3 **SEC. 202. RULES OF ORIGIN.**

4 (a) ORIGINATING GOODS.—

5 (1) IN GENERAL.—For purposes of this Act
6 and for purposes of implementing the tariff treat-
7 ment provided for under the Agreement, except as
8 otherwise provided in this section, a good is an origi-
9 nating good if—

10 (A) the good is wholly obtained or pro-
11 duced entirely in the territory of Chile, the
12 United States, or both;

13 (B) the good—

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

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

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

1 (ii) satisfies all other applicable re-
2 quirements of this section; or

3 (C) the good is produced entirely in the
4 territory of Chile, the United States, or both,
5 exclusively from materials described in subpara-
6 graph (A) or (B).

7 (2) SIMPLE COMBINATION OR MERE DILU-
8 TION.—A good shall not be considered to be an origi-
9 nating good and a material shall not be considered
10 to be an originating material by virtue of having un-
11 dergone—

12 (A) simple combining or packaging oper-
13 ations; or

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

17 (b) DE MINIMIS AMOUNTS OF NONORIGINATING MA-
18 TERIALS.—

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

23 (A) the value of all nonoriginating mate-
24 rials that are used in the production of the good
25 and do not undergo the applicable change in

1 tariff classification does not exceed 10 percent
2 of the adjusted value of the good;

3 (B) the value of such nonoriginating mate-
4 rials is included in the value of nonoriginating
5 materials for any applicable regional value-con-
6 tent requirement; and

7 (C) the good meets all other applicable re-
8 quirements of this section.

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

11 (A) A nonoriginating material provided for
12 in chapter 4 of the HTS, or a nonoriginating
13 dairy preparation containing over 10 percent by
14 weight of milk solids provided for in subheading
15 1901.90 or 2106.90 of the HTS, that is used
16 in the production of a good provided for in
17 chapter 4 of the HTS.

18 (B) A nonoriginating material provided for
19 in chapter 4 of the HTS, or nonoriginating
20 dairy preparations containing over 10 percent
21 by weight of milk solids provided for in sub-
22 heading 1901.90 of the HTS, that are used in
23 the production of the following goods:

24 (i) Infant preparations containing
25 over 10 percent in weight of milk solids

1 provided for in subheading 1901.10 of the
2 HTS.

3 (ii) Mixes and doughs, containing over
4 25 percent by weight of butterfat, not put
5 up for retail sale, provided for in sub-
6 heading 1901.20 of the HTS.

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

11 (iv) Goods provided for in heading
12 2105 of the HTS.

13 (v) Beverages containing milk pro-
14 vided for in subheading 2202.90 of the
15 HTS.

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

19 (C) A nonoriginating material provided for
20 in heading 0805 of the HTS, or any of sub-
21 headings 2009.11.00 through 2009.39 of the
22 HTS, that is used in the production of a good
23 provided for in any of subheadings 2009.11.00
24 through 2009.39 of the HTS, or in fruit or veg-
25 etable juice of any single fruit or vegetable, for-

1 tified with minerals or vitamins, concentrated
2 or unconcentrated, provided for in subheading
3 2106.90 or 2202.90 of the HTS.

4 (D) A nonoriginating material provided for
5 in chapter 15 of the HTS that is used in the
6 production of a good provided for in any of
7 headings 1501.00.00 through 1508, 1512,
8 1514, and 1515 of the HTS.

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

13 (F) A nonoriginating material provided for
14 in chapter 17 of the HTS or in heading
15 1805.00.00 of the HTS that is used in the pro-
16 duction of a good provided for in subheading
17 1806.10 of the HTS.

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

23 (H) A nonoriginating material used in the
24 production of a good provided for in any of
25 chapters 1 through 21 of the HTS, unless the

1 nonoriginating material is provided for in a dif-
2 ferent subheading than the good for which ori-
3 gin is being determined under this section.

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

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), a good provided for in any
8 of chapters 50 through 63 of the HTS that is
9 not an originating good because certain fibers
10 or yarns used in the production of the compo-
11 nent of the good that determines the tariff clas-
12 sification of the good do not undergo an appli-
13 cable change in tariff classification set out in
14 Annex 4.1 of the Agreement, shall be consid-
15 ered to be an originating good if the total
16 weight of all such fibers or yarns in that com-
17 ponent is not more than 7 percent of the total
18 weight of that component.

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

1 (c) ACCUMULATION.—

2 (1) ORIGINATING GOODS INCORPORATED IN
3 GOODS OF OTHER COUNTRY.—Originating goods or
4 materials of Chile or the United States that are in-
5 corporated into a good in the territory of the other
6 country shall be considered to originate in the terri-
7 tory of the other country.

8 (2) MULTIPLE PROCEDURES.—A good that is
9 produced in the territory of Chile, the United States,
10 or both, by 1 or more producers, is an originating
11 good if the good satisfies the requirements of sub-
12 section (a) and all other applicable requirements of
13 this section.

14 (d) REGIONAL VALUE-CONTENT.—

15 (1) IN GENERAL.—For purposes of subsection
16 (a)(2), the regional value-content of a good referred
17 to in Annex 4.1 of the Agreement shall be cal-
18 culated, at the choice of the person claiming pref-
19 erential tariff treatment for the good, on the basis
20 of the build-down method described in paragraph (2)
21 or the build-up method described in paragraph (3),
22 unless otherwise provided in Annex 4.1 of the Agree-
23 ment.

24 (2) BUILD-DOWN METHOD.—

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

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

4 (B) DEFINITIONS.—For purposes of sub-
 5 paragraph (A):

6 (i) The term “RVC” means the re-
 7 gional value-content, expressed as a per-
 8 centage.

9 (ii) The term “AV” means the ad-
 10 justed value.

11 (iii) The term “VNM” means the
 12 value of nonoriginating materials used by
 13 the producer in the production of the good.

14 (3) BUILD-UP METHOD.—

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

$$\text{RVC} = \frac{\text{VOM}}{\Delta V} \times 100$$

18 (B) DEFINITIONS.—For purposes of sub-
 19 paragraph (A):

20 (i) The term “RVC” means the re-
 21 gional value-content, expressed as a per-
 22 centage.

1 (ii) The term “AV” means the ad-
2 justed value.

3 (iii) The term “VOM” means the
4 value of originating materials used by the
5 producer in the production of the good.

6 (e) VALUE OF MATERIALS.—

7 (1) IN GENERAL.—For purposes of calculating
8 the regional value-content of a good under sub-
9 section (d), and for purposes of applying the de
10 minimis rules under subsection (b), 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 with respect to that
15 importation;

16 (B) in the case of a material acquired in
17 the territory in which the good is produced, ex-
18 cept for a material to which subparagraph (C)
19 applies, the producer’s price actually paid or
20 payable for the material;

21 (C) in the case of a material provided to
22 the producer without charge, or at a price re-
23 flecting a discount or similar reduction, the sum
24 of—

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

4 (ii) an amount for profit; or

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

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

10 (ii) an amount for profit.

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

13 (A) ORIGINATING MATERIALS.—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 to the location of
21 the producer.

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

1 waived, refunded, refundable, or otherwise
2 recoverable, including credit against duty
3 or tax paid or payable.

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

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

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

17 (ii) Duties, taxes, and customs broker-
18 age fees on the material paid in the terri-
19 tory of Chile, the United States, or both,
20 other than duties and taxes that are
21 waived, refunded, refundable, or otherwise
22 recoverable, including credit against duty
23 or tax paid or payable.

24 (iii) The cost of waste and spoilage re-
25 sulting from the use of the material in the

1 production of the good, less the value of
2 renewable scrap or byproducts.

3 (iv) The cost of originating materials
4 used in the production of the nonorigi-
5 nating material in the territory of Chile or
6 the United States.

7 (f) ACCESSORIES, SPARE PARTS, OR TOOLS.—Acces-
8 sories, spare parts, or tools delivered with a good that
9 form part of the good's standard accessories, spare parts,
10 or tools shall be regarded as a material used in the produc-
11 tion of the good, if—

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

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

17 (g) FUNGIBLE GOODS AND MATERIALS.—

18 (1) IN GENERAL.—

19 (A) CLAIM FOR PREFERENTIAL TREAT-
20 MENT.—A person claiming preferential tariff
21 treatment for a good may claim that a fungible
22 good or material is originating either based on
23 the physical segregation of each fungible good
24 or material or by using an inventory manage-
25 ment method.

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 Chile 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 particular fungible goods or
18 materials shall continue to use that method for those
19 goods or materials throughout the fiscal year of that
20 person.

21 (h) 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 nonoriginating materials used in the production of the

1 good undergo the applicable change in tariff classification
2 set out in Annex 4.1 of the Agreement, and, if the good
3 is subject to a regional value-content requirement, the
4 value of such packaging materials and containers shall be
5 taken into account as originating or nonoriginating mate-
6 rials, as the case may be, in calculating the regional value-
7 content of the good.

8 (i) 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 the good undergo an applicable change
13 in tariff classification set out in Annex 4.1 of the
14 Agreement; and

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

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

20 (k) TRANSIT AND TRANSSHIPMENT.—A good that
21 has undergone production necessary to qualify as an origi-
22 nating good under subsection (a) shall not be considered
23 to be an originating good if, subsequent to that produc-
24 tion, the good undergoes further production or any other
25 operation outside the territory of Chile or the United

1 States, other than unloading, reloading, or any other proc-
2 ess necessary to preserve the good in good condition or
3 to transport the good to the territory of Chile or the
4 United States.

5 (l) TEXTILE AND APPAREL GOODS CLASSIFIABLE AS
6 GOODS PUT UP IN SETS.—Notwithstanding the rules set
7 forth in Annex 4.1 of the Agreement, textile and apparel
8 goods classifiable as goods put up in sets for retail sale
9 as provided for in General Rule of Interpretation 3 of the
10 Harmonized System shall not be considered to be origi-
11 nating goods unless each of the goods in the set is an origi-
12 nating good or the total value of the nonoriginating goods
13 in the set does not exceed 10 percent of the value of the
14 set determined for purposes of assessing customs duties.

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

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

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

24 (n) DEFINITIONS.—In this section:

1 (1) ADJUSTED VALUE.—The term “adjusted
2 value” means the value determined in accordance
3 with articles 1 through 8, article 15, and the cor-
4 responding interpretive notes of the Agreement on
5 Implementation of Article VII of the General Agree-
6 ment on Tariffs and Trade 1994 referred to in sec-
7 tion 101(d)(8) of the Uruguay Round Agreements
8 Act, except that such value may be adjusted to ex-
9 clude any costs, charges, or expenses incurred for
10 transportation, insurance, and related services inci-
11 dent to the international shipment of the merchan-
12 dise from the country of exportation to the place of
13 importation.

14 (2) FUNGIBLE GOODS OR FUNGIBLE MATE-
15 RIALS.—The terms “fungible goods” and “fungible
16 materials” mean goods or materials, as the case may
17 be, that are interchangeable for commercial purposes
18 and the properties of which are essentially identical.

19 (3) GENERALLY ACCEPTED ACCOUNTING PRIN-
20 CIPLES.—The term “generally accepted accounting
21 principles” means the principles, rules, and proce-
22 dures, including both broad and specific guidelines,
23 that define the accounting practices accepted in the
24 territory of Chile or the United States, as the case
25 may be.

1 (4) GOODS WHOLLY OBTAINED OR PRODUCED
2 ENTIRELY IN THE TERRITORY OF CHILE, THE
3 UNITED STATES, OR BOTH.—The term “goods whol-
4 ly obtained or produced entirely in the territory of
5 Chile, the United States, or both” means—

6 (A) mineral goods extracted in the terri-
7 tory of Chile, the United States, or both;

8 (B) vegetable goods, as such goods are de-
9 fined in the Harmonized System, harvested in
10 the territory of Chile, the United States, or
11 both;

12 (C) live animals born and raised in the ter-
13 ritory of Chile, the United States, or both;

14 (D) goods obtained from hunting, trap-
15 ping, or fishing in the territory of Chile, the
16 United States, or both;

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

21 (F) goods produced on board factory ships
22 from the goods referred to in subparagraph
23 (E), if such factory ships are registered or re-
24 corded with Chile or the United States and fly
25 the flag of that country;

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

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

11 (I) waste and scrap derived from—

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

14 (ii) used goods collected in the terri-
15 tory of Chile, the United States, or both,
16 if such goods are fit only for the recovery
17 of raw materials;

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

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

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

1 (ii) from the derivatives of goods re-
2 ferred to in clause (i),
3 at any stage of production.

4 (5) HARMONIZED SYSTEM.—The term “Har-
5 monized System” means the Harmonized Com-
6 modity Description and Coding System.

7 (6) INDIRECT MATERIAL.—The term “indirect
8 material” means a good used in the production, test-
9 ing, or inspection of a good but not physically incor-
10 porated into the good, or a good used in the mainte-
11 nance of buildings or the operation of equipment as-
12 sociated with the production of a good, including—

13 (A) fuel and energy;

14 (B) tools, dies, and molds;

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

17 (D) lubricants, greases, compounding ma-
18 terials, and other materials used in production
19 or used to operate equipment or buildings;

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

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

24 (G) catalysts and solvents; and

1 (H) any other goods that are not incor-
2 porated into the good but the use of which in
3 the production of the good can reasonably be
4 demonstrated to be a part of that production.

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

8 (8) MATERIAL THAT IS SELF-PRODUCED.—The
9 term “material that is self-produced” means a mate-
10 rial that is an originating good produced by a pro-
11 ducer of a good and used in the production of that
12 good.

13 (9) NONORIGINATING GOOD OR NONORIGI-
14 NATING MATERIAL.—The terms “nonoriginating
15 good” and “nonoriginating material” mean a good
16 or material, as the case may be, that does not qual-
17 ify as an originating good under this section.

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

24 (11) PREFERENTIAL TARIFF TREATMENT.—
25 The term “preferential tariff treatment” means the

1 customs duty rate that is applicable to an origi-
2 nating good pursuant to chapter 3 of the Agree-
3 ment.

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

7 (13) PRODUCTION.—The term “production”
8 means growing, mining, harvesting, fishing, raising,
9 trapping, hunting, manufacturing, processing, as-
10 sembling, or disassembling a good.

11 (14) RECOVERED GOODS.—

12 (A) IN GENERAL.—The term “recovered
13 goods” means materials in the form of indi-
14 vidual parts that are the result of—

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

17 (ii) the cleaning, inspecting, testing,
18 or other processing of those parts as nec-
19 essary for improvement to sound working
20 condition by one or more of the processes
21 described in subparagraph (B), in order
22 for such parts to be assembled with other
23 parts, including other parts that have un-
24 dergone the processes described in this

1 paragraph, in the production of a remanu-
2 factured good.

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

7 (15) REMANUFACTURED GOOD.—The term “re-
8 manufactured good” means an industrial good as-
9 sembled in the territory of Chile or the United
10 States, that is listed in Annex 4.18 of the Agree-
11 ment, and—

12 (A) is entirely or partially comprised of re-
13 covered goods;

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

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

19 (o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

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

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

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

4 (2) MODIFICATIONS.—

5 (A) IN GENERAL.—Subject to the consulta-
6 tion and layover provisions of section 103(a),
7 the President may proclaim modifications to the
8 provisions proclaimed under the authority of
9 paragraph (1)(A), other than provisions of
10 chapters 50 through 63 of the HTS, as in-
11 cluded in Annex 4.1 of the Agreement.

12 (B) ADDITIONAL PROCLAMATIONS.—Not-
13 withstanding subparagraph (A), and subject to
14 the consultation and layover provisions of sec-
15 tion 103(a), the President may proclaim—

16 (i) modifications to the provisions pro-
17 claimed under the authority of paragraph
18 (1)(A) that are necessary to implement an
19 agreement with Chile pursuant to article
20 3.20(5) of the Agreement; and

21 (ii) before the 1st anniversary of the
22 date of the enactment of this Act, modi-
23 fications to correct any typographical, cler-
24 ical, or other nonsubstantive technical
25 error regarding the provisions of chapters

1 50 through 63 of the HTS, as included in
2 Annex 4.1 of the Agreement.

3 **SEC. 203. DRAWBACK.**

4 (a) DEFINITION OF A GOOD SUBJECT TO CHILE FTA
5 DRAWBACK.—For purposes of this Act and the amend-
6 ments made by subsection (b), the term “good subject to
7 Chile FTA drawback” means any imported good other
8 than the following:

9 (1) A good entered under bond for transpor-
10 tation and exportation to Chile.

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

13 (B) For purposes of subparagraph (A)—

14 (i) processes such as testing, cleaning, re-
15 packing, inspecting, sorting, or marking a good,
16 or preserving it in its same condition, shall not
17 be considered to change the condition of the
18 good; and

19 (ii) if a good described in subparagraph
20 (A) is commingled with fungible goods and ex-
21 ported in the same condition, the origin of the
22 good for the purposes of subsection (j)(1) of
23 section 313 of the Tariff Act of 1930 (19
24 U.S.C. 1313(j)(1)) may be determined on the

1 basis of the inventory methods provided for in
2 the regulations implementing this title.

3 (3) A good—

4 (A) that is—

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

7 (ii) used as a material in the produc-
8 tion of another good that is deemed to be
9 exported to Chile; or

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

14 (B) that is delivered—

15 (i) to a duty-free shop;

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

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

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

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

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

3 (5) A good that qualifies under the rules of ori-
4 gin set out in section 202 that is—

5 (A) exported to Chile;

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

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

12 (b) CONSEQUENTIAL AMENDMENTS.—

13 (1) BONDED MANUFACTURING WAREHOUSES.—

14 Section 311 of the Tariff Act of 1930 (19 U.S.C.
15 1311) is amended by adding at the end the following
16 new paragraph:

17 “No article manufactured in a bonded warehouse
18 from materials that are goods subject to Chile FTA draw-
19 back, as defined in section 203(a) of the United States-
20 Chile Free Trade Agreement Implementation Act, may be
21 withdrawn from warehouse for exportation to Chile with-
22 out assessment of a duty on the materials in their condi-
23 tion and quantity, and at their weight, at the time of im-
24 portation into the United States. The duty shall be paid

1 before the 61st day after the date of exportation, except
2 that the duty may be waived or reduced by—

3 “(1) 100 percent during the 8-year period be-
4 ginning on January 1, 2004;

5 “(2) 75 percent during the 1-year period begin-
6 ning on January 1, 2012;

7 “(3) 50 percent during the 1-year period begin-
8 ning on January 1, 2013; and

9 “(4) 25 percent during the 1-year period begin-
10 ning on January 1, 2014.”.

11 (2) BONDED SMELTING AND REFINING WARE-
12 HOUSES.—Section 312 of the Tariff Act of 1930 (19
13 U.S.C. 1312) is amended—

14 (A) in paragraph (1) of subsection (b), by
15 striking “except that” and all that follows
16 through subparagraph (B) and inserting the
17 following: “except that—

18 “(A) in the case of a withdrawal for expor-
19 tation of such a product to a NAFTA country,
20 as defined in section 2(4) of the North Amer-
21 ican Free Trade Agreement Implementation
22 Act, if any of the imported metal-bearing mate-
23 rials are goods subject to NAFTA drawback, as
24 defined in section 203(a) of that Act, the duties
25 on the materials shall be paid, and the charges

1 against the bond canceled, before the 61st day
2 after the date of exportation; but upon the pres-
3 entation, before such 61st day, of satisfactory
4 evidence of the amount of any customs duties
5 paid to the NAFTA country on the product, the
6 duties on the materials may be waived or re-
7 duced (subject to section 508(b)(2)(B)) in an
8 amount that does not exceed the lesser of—

9 “(i) the total amount of customs du-
10 ties owed on the materials on importation
11 into the United States, or

12 “(ii) the total amount of customs du-
13 ties paid to the NAFTA country on the
14 product, and

15 “(B) in the case of a withdrawal for expor-
16 tation of such a product to Chile, if any of the
17 imported metal-bearing materials are goods
18 subject to Chile FTA drawback, as defined in
19 section 203(a) of the United States-Chile Free
20 Trade Agreement Implementation Act, the du-
21 ties on the materials shall be paid, and the
22 charges against the bond canceled, before the
23 61st day after the date of exportation, except
24 that the duties may be waived or reduced by—

1 “(i) 100 percent during the 8-year pe-
2 riod beginning on January 1, 2004,

3 “(ii) 75 percent during the 1-year pe-
4 riod beginning on January 1, 2012,

5 “(iii) 50 percent during the 1-year pe-
6 riod beginning on January 1, 2013, and

7 “(iv) 25 percent during the 1-year pe-
8 riod beginning on January 1, 2014, or”;

9 (B) in paragraph (4) of subsection (b), by
10 striking “except that” and all that follows
11 through subparagraph (B) and inserting the
12 following: “except that—

13 “(A) in the case of a withdrawal for expor-
14 tation of such a product to a NAFTA country,
15 as defined in section 2(4) of the North Amer-
16 ican Free Trade Agreement Implementation
17 Act, if any of the imported metal-bearing mate-
18 rials are goods subject to NAFTA drawback, as
19 defined in section 203(a) of that Act, the duties
20 on the materials shall be paid, and the charges
21 against the bond canceled, before the 61st day
22 after the date of exportation; but upon the pres-
23 entation, before such 61st day, of satisfactory
24 evidence of the amount of any customs duties
25 paid to the NAFTA country on the product, the

1 duties on the materials may be waived or re-
2 duced (subject to section 508(b)(2)(B)) in an
3 amount that does not exceed the lesser of—

4 “(i) the total amount of customs du-
5 ties owed on the materials on importation
6 into the United States, or

7 “(ii) the total amount of customs du-
8 ties paid to the NAFTA country on the
9 product, and

10 “(B) in the case of a withdrawal for expor-
11 tation of such a product to Chile, if any of the
12 imported metal-bearing materials are goods
13 subject to Chile FTA drawback, as defined in
14 section 203(a) of the United States-Chile Free
15 Trade Agreement Implementation Act, the du-
16 ties on the materials shall be paid, and the
17 charges against the bond canceled, before the
18 61st day after the date of exportation, except
19 that the duties may be waived or reduced by—

20 “(i) 100 percent during the 8-year pe-
21 riod beginning on January 1, 2004,

22 “(ii) 75 percent during the 1-year pe-
23 riod beginning on January 1, 2012,

24 “(iii) 50 percent during the 1-year pe-
25 riod beginning on January 1, 2013, and

1 “(iv) 25 percent during the 1-year pe-
2 riod beginning on January 1, 2014, or”;
3 and

4 (C) in subsection (d), in the matter pre-
5 ceding paragraph (1), by striking “except that”
6 and all that follows through the end of para-
7 graph (2) and inserting the following: “except
8 that—

9 “(1) in the case of a withdrawal for exportation
10 to a NAFTA country, as defined in section 2(4) of
11 the North American Free Trade Agreement Imple-
12 mentation Act, if any of the imported metal-bearing
13 materials are goods subject to NAFTA drawback, as
14 defined in section 203(a) of that Act, charges
15 against the bond shall be paid before the 61st day
16 after the date of exportation; but upon the presen-
17 tation, before such 61st day, of satisfactory evidence
18 of the amount of any customs duties paid to the
19 NAFTA country on the product, the bond shall be
20 credited (subject to section 508(b)(2)(B)) in an
21 amount not to exceed the lesser of—

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

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

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

12 “(A) 100 percent of the total amount of
13 customs duties paid or owed on the materials
14 on importation into the United States during
15 the 8-year period beginning on January 1,
16 2004,

17 “(B) 75 percent of the total amount of
18 customs duties paid or owed on the materials
19 on importation into the United States during
20 the 1-year period beginning on January 1,
21 2012,

22 “(C) 50 percent of the total amount of
23 customs duties paid or owed on the materials
24 on importation into the United States during

1 the 1-year period beginning on January 1,
2 2013, and

3 “(D) 25 percent of the total amount of
4 customs duties paid or owed on the materials
5 on importation into the United States during
6 the 1-year period beginning on January 1,
7 2014.”.

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

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

11 (i) by striking “(4)” and inserting
12 “(4)(A)”; and

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

15 “(B) Beginning on January 1, 2015, the expor-
16 tation to Chile of merchandise that is fungible with
17 and substituted for imported merchandise, other
18 than merchandise described in paragraphs (1)
19 through (5) of section 203(a) of the United States-
20 Chile Free Trade Agreement Implementation Act,
21 shall not constitute an exportation for purposes of
22 paragraph (2). The preceding sentence shall not be
23 construed to permit the substitution of unused draw-
24 back under paragraph (2) of this subsection with re-
25 spect to merchandise described in paragraph (2) of

1 section 203(a) of the United States-Chile Free
2 Trade Agreement Implementation Act.”;

3 (B) in subsection (n)—

4 (i) by striking “(n)” and inserting the
5 following:

6 “(n) REFUNDS, WAIVERS, OR REDUCTIONS UNDER
7 CERTAIN FREE TRADE AGREEMENTS.—”;

8 (ii) in paragraph (1)—

9 (I) by striking “; and” at the end
10 of subparagraph (B);

11 (II) by striking the period at the
12 end of subparagraph (C) and insert-
13 ing “; and”; and

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

16 “(D) the term ‘good subject to Chile FTA
17 drawback’ has the meaning given that term in sec-
18 tion 203(a) of the United States-Chile Free Trade
19 Agreement Implementation Act.”; and

20 (iii) by adding the following new para-
21 graph at the end:

22 “(4)(A) For purposes of subsections (a), (b), (f), (h),
23 (j)(2), (p), and (q), if an article that is exported to Chile
24 is a good subject to Chile FTA drawback, no customs du-

1 ties on the good may be refunded, waived, or reduced, ex-
2 cept as provided in subparagraph (B).

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

5 “(i) 100 percent during the 8-year period begin-
6 ning on January 1, 2004;

7 “(ii) 75 percent during the 1-year period begin-
8 ning on January 1, 2012;

9 “(iii) 50 percent during the 1-year period begin-
10 ning on January 1, 2013; and

11 “(iv) 25 percent during the 1-year period begin-
12 ning on January 1, 2014.”; and

13 (C) in subsection (o)—

14 (i) by striking “(o)” and inserting the
15 following:

16 “(o) SPECIAL RULES FOR CERTAIN VESSELS AND
17 IMPORTED MATERIALS.—”; and

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

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

21 “(A) a vessel is built for the account and own-
22 ership of a resident of Chile or the Government of
23 Chile, and

24 “(B) imported materials that are used in the
25 construction and equipment of the vessel are goods

1 subject to Chile FTA drawback, as defined in sec-
2 tion 203(a) of the United States-Chile Free Trade
3 Agreement Implementation Act,

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

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

8 “(A) 100 percent during the 8-year period be-
9 ginning on January 1, 2004;

10 “(B) 75 percent during the 1-year period begin-
11 ning on January 1, 2012;

12 “(C) 50 percent during the 1-year period begin-
13 ning on January 1, 2013; and

14 “(D) 25 percent during the 1-year period begin-
15 ning on January 1, 2014.”.

16 (4) MANIPULATION IN WAREHOUSE.—Section
17 562 of the Tariff Act of 1930 (19 U.S.C. 1562) is
18 amended—

19 (A) in paragraph (3), by striking “to a
20 NAFTA country” and inserting “to Chile, to a
21 NAFTA country,”;

22 (B) by striking “; and” at the end of para-
23 graph (4)(B);

24 (C) by striking the period at the end of
25 paragraph (5) and inserting “; and”; and

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

3 “(6)(A) without payment of duties for expor-
4 tation to Chile, if the merchandise is of a kind de-
5 scribed in any of paragraphs (1) through (5) of sec-
6 tion 203(a) of the United States-Chile Free Trade
7 Agreement Implementation Act; and

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

13 “(i) the merchandise may not be with-
14 drawn from warehouse without assessment of a
15 duty on the merchandise in its condition and
16 quantity, and at its weight, at the time of with-
17 drawal from the warehouse with such additions
18 to, or deductions from, the final appraised value
19 as may be necessary by reason of a change in
20 condition, and

21 “(ii) duty shall be paid on the merchandise
22 before the 61st day after the date of expor-
23 tation, except that such duties may be waived
24 or reduced by—

1 “(I) 100 percent during the 8-year pe-
2 riod beginning on January 1, 2004,

3 “(II) 75 percent during the 1-year pe-
4 riod beginning on January 1, 2012,

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

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

9 (5) FOREIGN TRADE ZONES.—Section 3(a) of
10 the Act of June 18, 1934 (commonly known as the
11 “Foreign Trade Zones Act”; 19 U.S.C. 81c(a)) is
12 amended by striking the end period and inserting
13 the following: “: *Provided further*, That no merchan-
14 dise that consists of goods subject to Chile FTA
15 drawback, as defined in section 203(a) of the United
16 States-Chile Free Trade Agreement Implementation
17 Act, that is manufactured or otherwise changed in
18 condition shall be exported to Chile without an as-
19 sessment of a duty on the merchandise in its condi-
20 tion and quantity, and at its weight, at the time of
21 its exportation (or if the privilege in the first proviso
22 to this subsection was requested, an assessment of
23 a duty on the merchandise in its condition and
24 quantity, and at its weight, at the time of its admis-
25 sion into the zone) and the payment of the assessed

1 duty before the 61st day after the date of expor-
2 tation of the article, except that the customs duty
3 may be waived or reduced by (1) 100 percent during
4 the 8-year period beginning on January 1, 2004; (2)
5 75 percent during the 1-year period beginning on
6 January 1, 2012; (3) 50 percent during the 1-year
7 period beginning on January 1, 2013; and (4) 25
8 percent during the 1-year period beginning on Janu-
9 ary 1, 2014.”.

10 (c) INAPPLICABILITY TO COUNTERVAILING AND
11 ANTIDUMPING DUTIES.—Nothing in this section or the
12 amendments made by this section shall be considered to
13 authorize the refund, waiver, or reduction of counter-
14 vailing duties or antidumping duties imposed on an im-
15 ported good.

16 **SEC. 204. CUSTOMS USER FEES.**

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

20 “(12) No fee may be charged under subsection (a)
21 (9) or (10) with respect to goods that qualify as origi-
22 nating goods under section 202 of the United States-Chile
23 Free Trade Agreement Implementation Act. Any service
24 for which an exemption from such fee is provided by rea-

1 son of this paragraph may not be funded with money con-
2 tained in the Customs User Fee Account.”.

3 **SEC. 205. DISCLOSURE OF INCORRECT INFORMATION; DE-**
4 **NIAL OF PREFERENTIAL TARIFF TREAT-**
5 **MENT; FALSE CERTIFICATES OF ORIGIN.**

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

9 (1) in subsection (c)—

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

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

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

1 (2) by adding at the end the following new sub-
2 section:

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

5 “(1) IN GENERAL.—Subject to paragraph (2),
6 it is unlawful for any person to certify falsely, by
7 fraud, gross negligence, or negligence, in a Chile
8 FTA Certificate of Origin (as defined in section
9 508(f)(1)(B) of this Act that a good exported from
10 the United States qualifies as an originating good
11 under the rules of origin set out in section 202 of
12 the United States-Chile Free Trade Agreement Im-
13 plementation Act. The procedures and penalties of
14 this section that apply to a violation of subsection
15 (a) also apply to a violation of this subsection.

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

1 “(3) EXCEPTION.—A person may not be consid-
2 ered to have violated paragraph (1) if—

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

7 “(B) the person immediately and volun-
8 tarily provides written notice of the change in
9 circumstances to all persons to whom the per-
10 son provided the certificate.”.

11 (b) DENIAL OF PREFERENTIAL TARIFF TREAT-
12 MENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C.
13 1514) is amended by adding at the end the following new
14 subsection:

15 “(g) DENIAL OF PREFERENTIAL TARIFF TREAT-
16 MENT UNDER UNITED STATES-CHILE FREE TRADE
17 AGREEMENT.—If the Bureau of Customs and Border Pro-
18 tection or the Bureau of Immigration and Customs En-
19 forcement finds indications of a pattern of conduct by an
20 importer of false or unsupported representations that
21 goods qualify under the rules of origin set out in section
22 202 of the United States-Chile Free Trade Agreement Im-
23 plementation Act, the Bureau of Customs and Border Pro-
24 tection, in accordance with regulations issued by the Sec-
25 retary of the Treasury, may deny preferential tariff treat-

1 ment under the United States-Chile Free Trade Agree-
2 ment to entries of identical goods imported by that person
3 until the person establishes to the satisfaction of the Bu-
4 reau of Customs and Border Protection that representa-
5 tions of that person are in conformity with such section
6 202.”.

7 **SEC. 206. RELIQUIDATION OF ENTRIES.**

8 Subsection (d) of section 520 of the Tariff Act of
9 1930 (19 U.S.C. 1520(d)) is amended—

10 (1) by striking “(d)” and inserting the fol-
11 lowing:

12 “(d) GOODS QUALIFYING UNDER FREE TRADE
13 AGREEMENT RULES OF ORIGIN.—”;

14 (2) in the matter preceding paragraph (1), by
15 inserting “or section 202 of the United States-Chile
16 Free Trade Agreement Implementation Act” after
17 “Act”;

18 (3) in paragraph (1), by striking “those” and
19 inserting “the applicable”; and

20 (4) in paragraph (2), by inserting before the
21 semicolon “, or other certificates of origin, as the
22 case may be”.

23 **SEC. 207. RECORDKEEPING REQUIREMENTS.**

24 Section 508 of the Tariff Act of 1930 (19 U.S.C.
25 1508) is amended—

1 (1) by striking the heading of subsection (b)
2 and inserting the following: “EXPORTATIONS TO
3 NAFTA COUNTRIES.—”; and

4 (2) by adding at the end the following:

5 “(f) CERTIFICATES OF ORIGIN FOR GOODS EX-
6 PORTED UNDER THE UNITED STATES-CHILE FREE
7 TRADE AGREEMENT.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) RECORDS AND SUPPORTING DOCU-
10 MENTS.—The term ‘records and supporting
11 documents’ means, with respect to an exported
12 good under paragraph (2), records and docu-
13 ments related to the origin of the good, includ-
14 ing—

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

17 “(ii) if applicable, the purchase, cost,
18 and value of, and payment for, all mate-
19 rials, including recovered goods, used in
20 the production of the good; and

21 “(iii) if applicable, the production of
22 the good in the form in which it was ex-
23 ported.

24 “(B) CHILE FTA CERTIFICATE OF ORI-
25 GIN.—The term ‘Chile FTA Certificate of Ori-

1 gin’ means the certification, established under
2 article 4.13 of the United States-Chile Free
3 Trade Agreement, that a good qualifies as an
4 originating good under such Agreement.

5 “(2) EXPORTS TO CHILE.—Any person who
6 completes and issues a Chile FTA Certificate of Ori-
7 gin for a good exported from the United States shall
8 make, keep, and, pursuant to rules and regulations
9 promulgated by the Secretary of the Treasury,
10 render for examination and inspection all records
11 and supporting documents related to the origin of
12 the good (including the Certificate or copies thereof).

13 “(3) RETENTION PERIOD.—Records and sup-
14 porting documents shall be kept by the person who
15 issued a Chile FTA Certificate of Origin for at least
16 5 years after the date on which the certificate was
17 issued.

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

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

23 “(2) the general record keeping penalty that ap-
24 plies under the customs laws of the United States.”.

1 **SEC. 208. ENFORCEMENT OF TEXTILE AND APPAREL RULES**
2 **OF ORIGIN.**

3 (a) ACTION DURING VERIFICATION.—If the Sec-
4 retary of the Treasury requests the Government of Chile
5 to conduct a verification pursuant to article 3.21 of the
6 Agreement for purposes of determining that—

7 (1) an exporter or producer in Chile is com-
8 plying with applicable customs laws, regulations, and
9 procedures regarding trade in textile and apparel
10 goods, or

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

13 (A) qualify as originating goods under sec-
14 tion 202 of this Act, or

15 (B) are goods of Chile,
16 are accurate,

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

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

22 (1) suspension of liquidation of entries of textile
23 and apparel goods exported or produced by the per-
24 son that is the subject of the verification, in a case
25 in which the request for verification was based on a

1 reasonable suspicion of unlawful activity related to
2 such goods; and

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

5 (c) ACTION WHEN INFORMATION IS INSUFFI-
6 CIENT.—If the Secretary of the Treasury determines that
7 the information obtained within 12 months after making
8 a request for a verification under subsection (a) is insuffi-
9 cient to make a determination under subsection (a), the
10 President may direct the Secretary to take appropriate ac-
11 tion described in subsection (d) until such time as the Sec-
12 retary receives information sufficient to make a deter-
13 mination under subsection (a) or until such earlier date
14 as the President may direct.

15 (d) APPROPRIATE ACTION DESCRIBED.—Appro-
16 priate action under subsection (c) includes—

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

19 (2) denial of preferential tariff treatment under
20 the Agreement to any textile or apparel goods ex-
21 ported or produced by the person that is the subject
22 of the verification; and

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

1 **SEC. 209. CONFORMING AMENDMENTS.**

2 Section 508(b)(2)(B)(i)(I) of the Tariff Act of 1930
3 (19 U.S.C. 1508(b)(2)(B)(i)(I)) is amended—

4 (1) by striking “the last paragraph of section
5 311” and inserting “the eleventh paragraph of sec-
6 tion 311”; and

7 (2) by striking “the last proviso to section
8 3(a)” and inserting “the proviso preceding the last
9 proviso to section 3(a)”.

10 **SEC. 210. REGULATIONS.**

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

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

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

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

18 **TITLE III—RELIEF FROM**
19 **IMPORTS**

20 **SEC. 301. DEFINITIONS.**

21 In this title:

22 (1) COMMISSION.—The term “Commission”
23 means the United States International Trade Com-
24 mission.

1 (2) CHILEAN ARTICLE.—The term “Chilean ar-
2 ticle” means an article that qualifies as an origi-
3 nating good under section 202(a) of this Act.

4 (3) CHILEAN TEXTILE OR APPAREL ARTICLE.—
5 The term “Chilean textile or apparel article” means
6 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 a Chilean article.

12 **Subtitle A—Relief From Imports**
13 **Benefiting From the Agreement**

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

15 (a) FILING OF PETITION.—A petition requesting ac-
16 tion under this subtitle for the purpose of adjusting to
17 the obligations of the United States under the Agreement
18 may be filed with the Commission by an entity, including
19 a trade association, firm, certified or recognized union, or
20 group of workers, that is representative of an industry.
21 The Commission shall transmit a copy of any petition filed
22 under this subsection to the United States Trade Rep-
23 resentative.

24 (b) INVESTIGATION AND DETERMINATION.—Upon
25 the filing of a petition under subsection (a), the Commis-

1 sion, unless subsection (d) applies, shall promptly initiate
2 an investigation to determine whether, as a result of the
3 reduction or elimination of a duty provided for under the
4 Agreement, a Chilean article is being imported into the
5 United States in such increased quantities, in absolute
6 terms or relative to domestic production, and under such
7 conditions that imports of the Chilean article constitute
8 a substantial cause of serious injury or threat thereof to
9 the domestic industry producing an article that is like, or
10 directly competitive with, the imported article.

11 (c) APPLICABLE PROVISIONS.—The following provi-
12 sions of section 202 of the Trade Act of 1974 (19 U.S.C.
13 2252) apply with respect to any investigation initiated
14 under subsection (b):

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

17 (2) Subsection (c).

18 (3) Subsection (i).

19 (d) ARTICLES EXEMPT FROM INVESTIGATION.—No
20 investigation may be initiated under this section with re-
21 spect to any Chilean article if, after the date that the
22 Agreement enters into force, import relief has been pro-
23 vided with respect to that Chilean article under this sub-
24 title, or if, at the time the petition is filed, the article is

1 subject to import relief under chapter 1 of title II of the
2 Trade Act of 1974.

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

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

8 (b) APPLICABLE PROVISIONS.—For purposes of this
9 subtitle, the provisions of paragraphs (1), (2), and (3) of
10 section 330(d) of the Tariff Act of 1930 (19 U.S.C.
11 1330(d) (1), (2), and (3)) shall be applied with respect
12 to determinations and findings made under this section
13 as if such determinations and findings were made under
14 section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

15 (c) ADDITIONAL FINDING AND RECOMMENDATION IF
16 DETERMINATION AFFIRMATIVE.—If the determination
17 made by the Commission under subsection (a) with respect
18 to imports of an article is affirmative, or if the President
19 may consider a determination of the Commission to be an
20 affirmative determination as provided for under paragraph
21 (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
22 1330(d)), the Commission shall find, and recommend to
23 the President in the report required under subsection (d),
24 the amount of import relief that is necessary to remedy
25 or prevent the injury found by the Commission in the de-

1 termination and to facilitate the efforts of the domestic
2 industry to make a positive adjustment to import competi-
3 tion. The import relief recommended by the Commission
4 under this subsection shall be limited to the relief de-
5 scribed in section 313(c). Only those members of the Com-
6 mission who voted in the affirmative under subsection (a)
7 are eligible to vote on the proposed action to remedy or
8 prevent the injury found by the Commission. Members of
9 the Commission who did not vote in the affirmative may
10 submit, in the report required under subsection (d), sepa-
11 rate views regarding what action, if any, should be taken
12 to remedy or prevent the injury.

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

18 (1) the determination made under subsection
19 (a) and an explanation of the basis for the deter-
20 mination;

21 (2) if the determination under subsection (a) is
22 affirmative, any findings and recommendations for
23 import relief made under subsection (c) and an ex-
24 planation of the basis for each recommendation; and

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

5 (e) PUBLIC NOTICE.—Upon submitting a report to
6 the President under subsection (d), the Commission shall
7 promptly make public such report (with the exception of
8 information which the Commission determines to be con-
9 fidential) and shall cause a summary thereof to be pub-
10 lished in the Federal Register.

11 **SEC. 313. PROVISION OF RELIEF.**

12 (a) IN GENERAL.—Not later than the date that is
13 30 days after the date on which the President receives the
14 report of the Commission in which the Commission's de-
15 termination under section 312(a) is affirmative, or which
16 contains a determination under section 312(a) that the
17 President considers to be affirmative under paragraph (1)
18 of section 330(d) of the Tariff Act of 1930 (19 U.S.C.
19 1330(d)(1), the President, subject to subsection (b), shall
20 provide relief from imports of the article that is the subject
21 of such determination to the extent that the President de-
22 termines necessary to remedy or prevent the injury found
23 by the Commission and to facilitate the efforts of the do-
24 mestic industry to make a positive adjustment to import
25 competition.

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

5 (c) NATURE OF RELIEF.—

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

9 (A) The suspension of any further reduc-
10 tion provided for under Annex 3.3 of the Agree-
11 ment in the duty imposed on such article.

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

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

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

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

1 in article 8.2(2) of the Agreement) of such relief at
2 regular intervals during the period of its application.

3 (d) PERIOD OF RELIEF.—

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

8 (2) EXTENSION.—

9 (A) IN GENERAL.—If the initial period for
10 any import relief provided under this section is
11 less than 3 years, the President, after receiving
12 an affirmative determination from the Commis-
13 sion under subparagraph (B), may extend the
14 effective period of any import relief provided
15 under this section, subject to the limitation
16 under paragraph (1), if the President deter-
17 mines that—

18 (i) the import relief continues to be
19 necessary to remedy or prevent serious in-
20 jury and to facilitate adjustment; 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 filed with the Commission not earlier than the
2 date which is 9 months, and not later than the
3 date which is 6 months, before the date on
4 which any action taken under subsection (a) is
5 to terminate, the Commission shall conduct an
6 investigation 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 (e) RATE AFTER TERMINATION OF IMPORT RE-
4 LIEF.—When import relief under this section is termi-
5 nated with respect to an article—

6 (1) the rate of duty on that article after such
7 termination and on or before December 31 of the
8 year in which such termination occurs shall be the
9 rate that, according to the Schedule of the United
10 States in Annex 3.3 of the Agreement for the staged
11 elimination of the tariff, would have been in effect
12 1 year after the provision of relief under subsection
13 (a); and

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

17 (A) the applicable rate of duty for that ar-
18 ticle set out in the Schedule of the United
19 States in Annex 3.3 of the Agreement; or

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

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

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

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

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

16 **SEC. 315. COMPENSATION AUTHORITY.**

17 For purposes of section 123 of the Trade Act of 1974
18 (19 U.S.C. 2133), any import relief provided by the Presi-
19 dent under section 313 shall be treated as action taken
20 under chapter 1 of title II of such Act.

21 **SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.**

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

24 (1) by striking “and”; and

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

4 **Subtitle B—Textile and Apparel**
5 **Safeguard Measures**

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

7 (a) IN GENERAL.—A request under this subtitle for
8 the purpose of adjusting to the obligations of the United
9 States under the Agreement may be filed with the Presi-
10 dent by an interested party. Upon the filing of a request,
11 the President shall review the request to determine, from
12 information presented in the request, whether to com-
13 mence consideration of the request.

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

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

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

20 (a) IN GENERAL.—The import relief that the Presi-
21 dent is authorized to provide under section 322, including
22 any extensions thereof, may not, in the aggregate, exceed
23 3 years.

24 (b) EXTENSION.—If the initial period for any import
25 relief provided under this section is less than 3 years, the

1 President may extend the effective period of any import
2 relief provided under this section, subject to the limitation
3 set forth in subsection (a), if the President determines
4 that—

5 (1) the import relief continues to be necessary
6 to remedy or prevent serious damage and to facili-
7 tate adjustment; and

8 (2) there is evidence that the industry is mak-
9 ing a positive adjustment to import competition.

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

11 The President may not provide import relief under
12 this subtitle with respect to any article if import relief pre-
13 viously has been provided under this subtitle with respect
14 to that article.

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 duty-free.

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

20 No import relief may be provided under this subtitle
21 with respect to any article after the date that is 8 years
22 after the date on which duties on the article are eliminated
23 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 that Act.

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

7 The President may not release information which the
8 President considers to be confidential business informa-
9 tion unless the party submitting the confidential business
10 information had notice, at the time of submission, that
11 such information would be released by the President, or
12 such party subsequently consents to the release of the in-
13 formation. To the extent business confidential information
14 is provided, a nonconfidential version of the information
15 shall also be provided, in which the business confidential
16 information is summarized or, if necessary, deleted.

17 **TITLE IV—TEMPORARY ENTRY**
18 **OF BUSINESS PERSONS.**

19 **SEC. 401. NONIMMIGRANT TRADERS AND INVESTORS.**

20 Upon a basis of reciprocity secured by the Agree-
21 ment, an alien who is a national of Chile (and any spouse
22 or child (as defined in section 101(b)(1) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1101(b)(1)) of such
24 alien, if accompanying or following to join the alien) may,
25 if otherwise eligible for a visa and if otherwise admissible
26 into the United States under the Immigration and Nation-

1 ality Act (8 U.S.C. 1101 et seq.), be considered to be clas-
2 sifiable as a nonimmigrant under section 101(a)(15)(E)
3 of such Act (8 U.S.C. 1101(a)(15)(E)) if entering solely
4 for a purpose specified in clause (i) or (ii) of such section
5 101(a)(15)(E). For purposes of this section, the term “na-
6 tional” has the meaning given such term in article 14.9
7 of the Agreement.

8 **SEC. 402. NONIMMIGRANT PROFESSIONALS; LABOR ATTES-**
9 **TATIONS.**

10 (a) NONIMMIGRANT PROFESSIONALS.—

11 (1) DEFINITIONS.—Section 101(a)(15)(H)(i)(b)
12 of the Immigration and Nationality Act (8 U.S.C.
13 1101(a)(15)(H)(i)(b)) is amended by striking
14 “212(n)(1), or (c)” and inserting “212(n)(1), or
15 (b1) who is entitled to enter the United States under
16 and in pursuance of the provisions of an agreement
17 listed in section 214(g)(8)(A), who is engaged in a
18 specialty occupation described in section 214(i)(3),
19 and with respect to whom the Secretary of Labor de-
20 termines and certifies to the Secretary of Homeland
21 Security and the Secretary of State that the intend-
22 ing employer has filed with the Secretary of Labor
23 an attestation under section 212(t)(1), or (c)”.

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

4 (A) in subsection (i)—

5 (i) in paragraph (1), by striking “For
6 purposes” and inserting “Except as pro-
7 vided in paragraph (3), for purposes”; and

8 (ii) by adding at the end the fol-
9 lowing:

10 “(3) For purposes of section 101(a)(15)(H)(i)(b1),
11 the term ‘specialty occupation’ means an occupation that
12 requires—

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

15 “(B) attainment of a bachelor’s or higher de-
16 gree in the specific specialty (or its equivalent) as a
17 minimum for entry into the occupation in the United
18 States.”; and

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

21 “(8)(A) The agreement referred to in section
22 101(a)(15)(H)(i)(b1) is the United States-Chile Free
23 Trade Agreement.

24 “(B)(i) The Secretary of Homeland Security shall es-
25 tablish annual numerical limitations on approvals of initial

1 applications by aliens for admission under section
2 101(a)(15)(H)(i)(b1).

3 “(ii) The annual numerical limitations described in
4 clause (i) shall not exceed 1,400 for nationals of Chile for
5 any fiscal year. For purposes of this clause, the term ‘na-
6 tional’ has the meaning given such term in article 14.9
7 of the United States-Chile Free Trade Agreement.

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

11 “(iv) The annual numerical limitation described in
12 paragraph (1)(A) is reduced by the amount of the annual
13 numerical limitations established under clause (i). How-
14 ever, if a numerical limitation established under clause (i)
15 has not been exhausted at the end of a given fiscal year,
16 the Secretary of Homeland Security shall adjust upwards
17 the numerical limitation in paragraph (1)(A) for that fis-
18 cal year by the amount remaining in the numerical limita-
19 tion under clause (i). Visas under section
20 101(a)(15)(H)(i)(b) may be issued pursuant to such ad-
21 justment within the first 45 days of the next fiscal year
22 to aliens who had applied for such visas during the fiscal
23 year for which the adjustment was made.

24 “(C) The period of authorized admission as a non-
25 immigrant under section 101(a)(15)(H)(i)(b1) shall be 1

1 year, and may be extended, but only in 1-year increments.
2 After every second extension, the next following extension
3 shall not be granted unless the Secretary of Labor had
4 determined and certified to the Secretary of Homeland Se-
5 curity and the Secretary of State that the intending em-
6 ployer has filed with the Secretary of Labor an attestation
7 under section 212(t)(1) for the purpose of permitting the
8 nonimmigrant to obtain such extension.

9 “(D) The numerical limitation described in para-
10 graph (1)(A) for a fiscal year shall be reduced by one for
11 each alien granted an extension under subparagraph (C)
12 during such year who has obtained 5 or more consecutive
13 prior extensions.”.

14 (b) LABOR ATTESTATIONS.—Section 212 of the Im-
15 migration and Nationality Act (8 U.S.C. 1182) is amend-
16 ed—

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

20 (2) by adding at the end the following:

21 “(t)(1) No alien may be admitted or provided status
22 as a nonimmigrant under section 101(a)(15)(H)(i)(b1) in
23 an occupational classification unless the employer has filed
24 with the Secretary of Labor an attestation stating the fol-
25 lowing:

1 “(A) The employer—

2 “(i) is offering and will offer during the
3 period of authorized employment to aliens ad-
4 mitted or provided status under section
5 101(a)(15)(H)(i)(b1) wages that are at least—

6 “(I) the actual wage level paid by the
7 employer to all other individuals with simi-
8 lar experience and qualifications for the
9 specific employment in question; or

10 “(II) the prevailing wage level for the
11 occupational classification in the area of
12 employment,

13 whichever is greater, based on the best informa-
14 tion available as of the time of filing the attes-
15 tation; and

16 “(ii) will provide working conditions for
17 such a nonimmigrant that will not adversely af-
18 fect the working conditions of workers similarly
19 employed.

20 “(B) There is not a strike or lockout in the
21 course of a labor dispute in the occupational classi-
22 fication at the place of employment.

23 “(C) The employer, at the time of filing the at-
24 testation—

1 “(i) has provided notice of the filing under
2 this paragraph to the bargaining representative
3 (if any) of the employer’s employees in the oc-
4 cupational classification and area for which
5 aliens are sought; or

6 “(ii) if there is no such bargaining rep-
7 resentative, has provided notice of filing in the
8 occupational classification through such meth-
9 ods as physical posting in conspicuous locations
10 at the place of employment or electronic notifi-
11 cation to employees in the occupational classi-
12 fication for which nonimmigrants under section
13 101(a)(15)(H)(i)(b1) are sought.

14 “(D) A specification of the number of workers
15 sought, the occupational classification in which the
16 workers will be employed, and wage rate and condi-
17 tions under which they will be employed.

18 “(2)(A) The employer shall make available for public
19 examination, within one working day after the date on
20 which an attestation under this subsection is filed, at the
21 employer’s principal place of business or worksite, a copy
22 of each such attestation (and such accompanying docu-
23 ments as are necessary).

24 “(B)(i) The Secretary of Labor shall compile, on a
25 current basis, a list (by employer and by occupational clas-

1 sification) of the attestations filed under this subsection.
2 Such list shall include, with respect to each attestation,
3 the wage rate, number of aliens sought, period of intended
4 employment, and date of need.

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

7 “(C) The Secretary of Labor shall review an attesta-
8 tion filed under this subsection only for completeness and
9 obvious inaccuracies. Unless the Secretary of Labor finds
10 that an attestation is incomplete or obviously inaccurate,
11 the Secretary of Labor shall provide the certification de-
12 scribed in section 101(a)(15)(H)(i)(b1) within 7 days of
13 the date of the filing of the attestation.

14 “(3)(A) The Secretary of Labor shall establish a
15 process for the receipt, investigation, and disposition of
16 complaints respecting the failure of an employer to meet
17 a condition specified in an attestation submitted under
18 this subsection or misrepresentation by the employer of
19 material facts in such an attestation. Complaints may be
20 filed by any aggrieved person or organization (including
21 bargaining representatives). No investigation or hearing
22 shall be conducted on a complaint concerning such a fail-
23 ure or misrepresentation unless the complaint was filed
24 not later than 12 months after the date of the failure or
25 misrepresentation, respectively. The Secretary of Labor

1 shall conduct an investigation under this paragraph if
2 there is reasonable cause to believe that such a failure or
3 misrepresentation has occurred.

4 “(B) Under the process described in subparagraph
5 (A), the Secretary of Labor shall provide, within 30 days
6 after the date a complaint is filed, for a determination as
7 to whether or not a reasonable basis exists to make a find-
8 ing described in subparagraph (C). If the Secretary of
9 Labor determines that such a reasonable basis exists, the
10 Secretary of Labor shall provide for notice of such deter-
11 mination to the interested parties and an opportunity for
12 a hearing on the complaint, in accordance with section 556
13 of title 5, United States Code, within 60 days after the
14 date of the determination. If such a hearing is requested,
15 the Secretary of Labor shall make a finding concerning
16 the matter by not later than 60 days after the date of
17 the hearing. In the case of similar complaints respecting
18 the same applicant, the Secretary of Labor may consoli-
19 date the hearings under this subparagraph on such com-
20 plaints.

21 “(C)(i) If the Secretary of Labor finds, after notice
22 and opportunity for a hearing, a failure to meet a condi-
23 tion of paragraph (1)(B), a substantial failure to meet a
24 condition of paragraph (1)(C) or (1)(D), or a misrepresen-
25 tation of material fact in an attestation—

1 “(I) the Secretary of Labor shall notify the Sec-
2 retary of State and the Secretary of Homeland Secu-
3 rity of such finding and may, in addition, impose
4 such other administrative remedies (including civil
5 monetary penalties in an amount not to exceed
6 \$1,000 per violation) as the Secretary of Labor de-
7 termines to be appropriate; and

8 “(II) the Secretary of State or the Secretary of
9 Homeland Security, as appropriate, shall not ap-
10 prove petitions or applications filed with respect to
11 that employer under section 204, 214(e), or
12 101(a)(15)(H)(i)(b1) during a period of at least 1
13 year for aliens to be employed by the employer.

14 “(ii) If the Secretary of Labor finds, after notice and
15 opportunity for a hearing, a willful failure to meet a condi-
16 tion of paragraph (1), a willful misrepresentation of mate-
17 rial fact in an attestation, or a violation of clause (iv)—

18 “(I) the Secretary of Labor shall notify the Sec-
19 retary of State and the Secretary of Homeland Secu-
20 rity of such finding and may, in addition, impose
21 such other administrative remedies (including civil
22 monetary penalties in an amount not to exceed
23 \$5,000 per violation) as the Secretary of Labor de-
24 termines to be appropriate; and

1 “(II) the Secretary of State or the Secretary of
2 Homeland Security, as appropriate, shall not ap-
3 prove petitions or applications filed with respect to
4 that employer under section 204, 214(e), or
5 101(a)(15)(H)(i)(b1) during a period of at least 2
6 years for aliens to be employed by the employer.

7 “(iii) If the Secretary of Labor finds, after notice and
8 opportunity for a hearing, a willful failure to meet a condi-
9 tion of paragraph (1) or a willful misrepresentation of ma-
10 terial fact in an attestation, in the course of which failure
11 or misrepresentation the employer displaced a United
12 States worker employed by the employer within the period
13 beginning 90 days before and ending 90 days after the
14 date of filing of any visa petition or application supported
15 by the attestation—

16 “(I) the Secretary of Labor shall notify the Sec-
17 retary of State and the Secretary of Homeland Secu-
18 rity of such finding and may, in addition, impose
19 such other administrative remedies (including civil
20 monetary penalties in an amount not to exceed
21 \$35,000 per violation) as the Secretary of Labor de-
22 termines to be appropriate; and

23 “(II) the Secretary of State or the Secretary of
24 Homeland Security, as appropriate, shall not ap-
25 prove petitions or applications filed with respect to

1 that employer under section 204, 214(e), or
2 101(a)(15)(H)(i)(b1) during a period of at least 3
3 years for aliens to be employed by the employer.

4 “(iv) It is a violation of this clause for an employer
5 who has filed an attestation under this subsection to in-
6 timidate, threaten, restrain, coerce, blacklist, discharge, or
7 in any other manner discriminate against an employee
8 (which term, for purposes of this clause, includes a former
9 employee and an applicant for employment) because the
10 employee has disclosed information to the employer, or to
11 any other person, that the employee reasonably believes
12 evidences a violation of this subsection, or any rule or reg-
13 ulation pertaining to this subsection, or because the em-
14 ployee cooperates or seeks to cooperate in an investigation
15 or other proceeding concerning the employer’s compliance
16 with the requirements of this subsection or any rule or
17 regulation pertaining to this subsection.

18 “(v) The Secretary of Labor and the Secretary of
19 Homeland Security shall devise a process under which a
20 nonimmigrant under section 101(a)(15)(H)(i)(b1) who
21 files a complaint regarding a violation of clause (iv) and
22 is otherwise eligible to remain and work in the United
23 States may be allowed to seek other appropriate employ-
24 ment in the United States for a period not to exceed the

1 maximum period of stay authorized for such non-
2 immigrant classification.

3 “(vi)(I) It is a violation of this clause for an employer
4 who has filed an attestation under this subsection to re-
5 quire a nonimmigrant under section 101(a)(15)(H)(i)(b1)
6 to pay a penalty for ceasing employment with the employer
7 prior to a date agreed to by the nonimmigrant and the
8 employer. The Secretary of Labor shall determine whether
9 a required payment is a penalty (and not liquidated dam-
10 ages) pursuant to relevant State law.

11 “(II) If the Secretary of Labor finds, after notice and
12 opportunity for a hearing, that an employer has committed
13 a violation of this clause, the Secretary of Labor may im-
14 pose a civil monetary penalty of \$1,000 for each such vio-
15 lation and issue an administrative order requiring the re-
16 turn to the nonimmigrant of any amount paid in violation
17 of this clause, or, if the nonimmigrant cannot be located,
18 requiring payment of any such amount to the general fund
19 of the Treasury.

20 “(vii)(I) It is a failure to meet a condition of para-
21 graph (1)(A) for an employer who has filed an attestation
22 under this subsection and who places a nonimmigrant
23 under section 101(a)(15)(H)(i)(b1) designated as a full-
24 time employee in the attestation, after the nonimmigrant
25 has entered into employment with the employer, in non-

1 productive status due to a decision by the employer (based
2 on factors such as lack of work), or due to the non-
3 immigrant's lack of a permit or license, to fail to pay the
4 nonimmigrant full-time wages in accordance with para-
5 graph (1)(A) for all such nonproductive time.

6 “(II) It is a failure to meet a condition of paragraph
7 (1)(A) for an employer who has filed an attestation under
8 this subsection and who places a nonimmigrant under sec-
9 tion 101(a)(15)(H)(i)(b1) designated as a part-time em-
10 ployee in the attestation, after the nonimmigrant has en-
11 tered into employment with the employer, in nonproduc-
12 tive status under circumstances described in subclause (I),
13 to fail to pay such a nonimmigrant for such hours as are
14 designated on the attestation consistent with the rate of
15 pay identified on the attestation.

16 “(III) In the case of a nonimmigrant under section
17 101(a)(15)(H)(i)(b1) who has not yet entered into employ-
18 ment with an employer who has had approved an attesta-
19 tion under this subsection with respect to the non-
20 immigrant, the provisions of subclauses (I) and (II) shall
21 apply to the employer beginning 30 days after the date
22 the nonimmigrant first is admitted into the United States,
23 or 60 days after the date the nonimmigrant becomes eligi-
24 ble to work for the employer in the case of a nonimmigrant
25 who is present in the United States on the date of the

1 approval of the attestation filed with the Secretary of
2 Labor.

3 “(IV) This clause does not apply to a failure to pay
4 wages to a nonimmigrant under section
5 101(a)(15)(H)(i)(b1) for nonproductive time due to non-
6 work-related factors, such as the voluntary request of the
7 nonimmigrant for an absence or circumstances rendering
8 the nonimmigrant unable to work.

9 “(V) This clause shall not be construed as prohibiting
10 an employer that is a school or other educational institu-
11 tion from applying to a nonimmigrant under section
12 101(a)(15)(H)(i)(b1) an established salary practice of the
13 employer, under which the employer pays to non-
14 immigrants under section 101(a)(15)(H)(i)(b1) and
15 United States workers in the same occupational classifica-
16 tion an annual salary in disbursements over fewer than
17 12 months, if—

18 “(aa) the nonimmigrant agrees to the com-
19 pressed annual salary payments prior to the com-
20 mencement of the employment; and

21 “(bb) the application of the salary practice to
22 the nonimmigrant does not otherwise cause the non-
23 immigrant to violate any condition of the non-
24 immigrant’s authorization under this Act to remain
25 in the United States.

1 “(VI) This clause shall not be construed as super-
2 seding clause (viii).

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

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

23 “(E) The Secretary of Labor may, on a case-by-case
24 basis, subject an employer to random investigations for
25 a period of up to 5 years, beginning on the date on which

1 the employer is found by the Secretary of Labor to have
2 committed a willful failure to meet a condition of para-
3 graph (1) or to have made a willful misrepresentation of
4 material fact in an attestation. The authority of the Sec-
5 retary of Labor under this subparagraph shall not be con-
6 strued to be subject to, or limited by, the requirements
7 of subparagraph (A).

8 “(F) Nothing in this subsection shall be construed
9 as superseding or preempting any other enforcement-re-
10 lated authority under this Act (such as the authorities
11 under section 274B), or any other Act.

12 “(4) For purposes of this subsection:

13 “(A) The term ‘area of employment’ means the
14 area within normal commuting distance of the work-
15 site or physical location where the work of the non-
16 immigrant under section 101(a)(15)(H)(i)(b1) is or
17 will be performed. If such worksite or location is
18 within a Metropolitan Statistical Area, any place
19 within such area is deemed to be within the area of
20 employment.

21 “(B) In the case of an attestation with respect
22 to one or more nonimmigrants under section
23 101(a)(15)(H)(i)(b1) by an employer, the employer
24 is considered to ‘displace’ a United States worker
25 from a job if the employer lays off the worker from

1 a job that is essentially the equivalent of the job for
2 which the nonimmigrant or nonimmigrants is or are
3 sought. A job shall not be considered to be essen-
4 tially equivalent of another job unless it involves es-
5 sentially the same responsibilities, was held by a
6 United States worker with substantially equivalent
7 qualifications and experience, and is located in the
8 same area of employment as the other job.

9 “(C)(i) The term ‘lays off’, with respect to a
10 worker—

11 “(I) means to cause the worker’s loss of
12 employment, other than through a discharge for
13 inadequate performance, violation of workplace
14 rules, cause, voluntary departure, voluntary re-
15 tirement, or the expiration of a grant or con-
16 tract; but

17 “(II) does not include any situation in
18 which the worker is offered, as an alternative to
19 such loss of employment, a similar employment
20 opportunity with the same employer at equiva-
21 lent or higher compensation and benefits than
22 the position from which the employee was dis-
23 charged, regardless of whether or not the em-
24 ployee accepts the offer.

1 “(ii) Nothing in this subparagraph is intended
2 to limit an employee’s rights under a collective bar-
3 gaining agreement or other employment contract.

4 “(D) The term ‘United States worker’ means
5 an employee who—

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

8 “(ii) is an alien who is lawfully admitted
9 for permanent residence, is admitted as a ref-
10 ugee under section 207 of this title, is granted
11 asylum under section 208, or is an immigrant
12 otherwise authorized, by this Act or by the Sec-
13 retary of Homeland Security, to be employed.”.

14 (c) SPECIAL RULE FOR COMPUTATION OF PRE-
15 VAILING WAGE.—Section 212(p)(1) of the Immigration
16 and Nationality Act (8 U.S.C. 1182(p)(1)) is amended by
17 striking “(n)(1)(A)(i)(II) and (a)(5)(A)” and inserting
18 “(a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)”.

19 (d) FEE.—

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

23 “(11)(A) Subject to subparagraph (B), the Secretary
24 of Homeland Security or the Secretary of State, as appro-

1 puate, shall impose a fee on an employer who has filed
2 an attestation described in section 212(t)—

3 “(i) in order that an alien may be initially
4 granted nonimmigrant status described in section
5 101(a)(15)(H)(i)(b1); or

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

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

15 “(C) Fees collected under this paragraph shall be de-
16 posited in the Treasury in accordance with section
17 286(s).”.

18 (2) USE OF FEE.—Section 286(s)(1) of the Im-
19 migration and Nationality Act (8 U.S.C. 1356(s)(1))
20 is amended by striking “section 214(c)(9).” and in-
21 sserting “paragraphs (9) and (11) of section
22 214(c).”.

23 **SEC. 403. LABOR DISPUTES.**

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

1 (1) by striking “(j)” and inserting “(j)(1)”;

2 (2) by striking “this subsection” each place
3 such term appears and inserting “this paragraph”;
4 and

5 (3) by adding at the end the following:

6 “(2) Notwithstanding any other provision of this Act
7 except section 212(t)(1), and subject to regulations pro-
8 mulgated by the Secretary of Homeland Security, an alien
9 who seeks to enter the United States under and pursuant
10 to the provisions of an agreement listed in subsection
11 (g)(8)(A), and the spouse and children of such an alien
12 if accompanying or following to join the alien, may be de-
13 nied admission as a nonimmigrant under subparagraph
14 (E), (L), or (H)(i)(b1) of section 101(a)(15) if there is
15 in progress a labor dispute in the occupational classifica-
16 tion at the place or intended place of employment, unless
17 such alien establishes, pursuant to regulations promul-
18 gated by the Secretary of Homeland Security after con-
19 sultation with the Secretary of Labor, that the alien’s
20 entry will not affect adversely the settlement of the labor
21 dispute or the employment of any person who is involved
22 in the labor dispute. Notice of a determination under this
23 paragraph shall be given as may be required by such
24 agreement.”.

1 **SEC. 404. CONFORMING AMENDMENTS.**

2 Section 214 of the Immigration and Nationality Act
3 (8 U.S.C. 1184) is amended—

4 (1) in subsection (b), by striking “(other than
5 a nonimmigrant described in subparagraph (H)(i),
6 (L), or (V) of section 101(a)(15))” and inserting
7 “(other than a nonimmigrant described in subpara-
8 graph (L) or (V) of section 101(a)(15), and other
9 than a nonimmigrant described in any provision of
10 section 101(a)(15)(H)(i) except subclause (b1) of
11 such section)”;

12 (2) in subsection (c)(1), by striking “section
13 101(a)(15)(H), (L), (O), or (P)(i)” and inserting
14 “subparagraph (H), (L), (O), or (P)(i) of section
15 101(a)(15) (excluding nonimmigrants under section
16 101(a)(15)(H)(i)(b1))”; and

17 (3) in subsection (h), by striking “(H)(i)” and
18 inserting “(H)(i)(b) or (c)”.

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108TH CONGRESS
1ST SESSION

H. R. 2738

[Report No. 108-224, Parts I and II]

A BILL

To implement the United States-Chile Free Trade
Agreement.

JULY 22, 2003

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