THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action ("Statement") is submitted to the Congress in compliance with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act") and accompanies the implementing bill for the free trade agreement that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively "Central America" or "Central American countries") and the Dominican Republic ("Agreement" or "CAFTA-DR"). The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on August 5, 2004.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement. The Agreement does not change the provisions of any agreement the United States has previously negotiated with the other parties to the Agreement.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One, Two, and Eighteen through Twenty-Two) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

Chapters:
One (Initial Provisions)
Two (General Definitions)
Eighteen (Transparency)
Nineteen (Administration of the Agreement and Trade Capacity Building)
Twenty (Dispute Settlement)
Twenty-One (Exceptions)
Twenty-Two (Final Provisions)

1. Implementing Bill

a. Congressional Approval

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

b. Entry into Force

Under Article 22.5, the Agreement will enter into force once the United States and at least one other country that has signed the Agreement notify the General Secretariat of the Organization of American States ("OAS"), which serves as the depositary for the Agreement, that they have fulfilled their internal procedures needed to implement the Agreement. Thereafter, the Agreement will enter into force between the United States and any remaining countries 90 days after they provide their notifications to the OAS.

Section 101(b) of the implementing bill provides that when the President determines that other countries that have signed the Agreement have taken measures necessary to comply with those obligations that are to take effect at the time the Agreement enters into force, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.

Certain provisions of the agreement become effective after the Agreement enters into force. For example, certain provisions relating to customs administration become effective with respect to the Central American countries and the Dominican Republic no later than three years after the Agreement enters into force. Certain procedural obligations relating to government procurement become effective with respect to the Central American countries and the Dominican Republic two years after the Agreement enters into force. For Costa Rica, certain commitments on insurance and telecommunications become effective at specified times after the Agreement enters into force. Certain provisions relating to intellectual property rights become effective with respect to the Central American countries and the Dominican Republic following transition periods ranging from six months to four years after the Agreement enters into force. In addition, obligations regarding the ratification of certain international agreements governing intellectual property rights take effect at prescribed times after the Agreement enters into force.

c. Relationship to Federal Law

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

d. Relationship to State Law

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor and environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the Agreement, as they apply to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the Agreement (for example, Chapter Twelve, relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter Twelve exempt existing inconsistent (*i.e.*, "non-conforming") measures.

Given the provision of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Agreement's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

e. Private Lawsuits

Section 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature may interfere with the Administration's conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter Ten (Investment) of the Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

f. Implementing Regulations

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

g. Dispute Settlement

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty of the Agreement. This provision enables the United States to implement its obligations under Article 19.3.1 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements, including the North American Free Trade Agreement ("NAFTA") and free trade agreements with Australia, Chile, and Singapore. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter Twenty are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

h. Effective Dates

Section 107(b) of the bill provides that the first three sections of the bill as well as Title I of the bill go into effect when the bill is enacted into law.

Section 107(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement enters into force. Section 107(c) provides that the provisions of the bill (other than section 107(c) itself) and the amendments to other statutes made by the bill will cease to have effect with respect to a country during any period in which it ceases to be an Agreement country. (Note: for purposes of this statement, the term "Agreement country" refers to a Party to the Agreement other than the United States.) Section 107(d) provides that the provisions of the bill (other than section 107(d) itself) and the amendments to other statutes made by the bill will cease to be effective if the United States withdraws from the Agreement or it terminates.

2. Administrative Action

No administrative changes will be necessary to implement Chapters One, Two, Nineteen, Twenty-One, and Twenty-Two.

Article 18.1.1 of the Agreement requires each government to designate a contact point to facilitate communications regarding the Agreement. The Office of the United States Trade Representative ("USTR") will serve as the U.S. contact point for this purpose.

The Agreement calls for the United States and the other Agreement countries to develop rosters of independent experts willing to serve as panelists to settle disputes between the parties that may arise under the Agreement. One roster will be available for most types of disputes, while specialized rosters will be established to address disputes regarding the Agreement's financial services, labor, and environmental provisions. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate ("Trade Committees") as it develops rosters of panelists.

Chapter Three (National Treatment and Market Access for Goods)

1. Implementing Bill

a. Proclamation Authority

Section 201(a)(1) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Three of the Agreement through the application or elimination of customs duties and tariff-rate quotas ("TRQs"). Section 201(a)(1) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3, 3.27, and 3.28 of the Agreement.

The proclamation authority with respect to Article 3.3 authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States to Annex 3.3 of the Agreement, of customs duties on imports from the other Agreement countries that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 3.5 and 3.6 authorizes the President to provide for the elimination of duties on particular categories of imports from the other Agreement countries. Article 3.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 3.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in another Agreement country; or (ii) sent from another Agreement country for repair or alteration in the United States.

The proclamation authority with respect to Article 3.21 authorizes the President to provide duty-free treatment for textile or apparel articles that the United States and another Agreement country agree are handloomed, handmade, or folklore articles, and are certified as such by that country's competent authority.

The proclamation authority with respect to Article 3.26 of the Agreement authorizes the President to reduce the amount of duty imposed on certain textile or apparel goods that are not "originating goods" for purposes of the Agreement, but that contain U.S.-origin components. The President is authorized to proclaim a duty rate equal to the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty applied to the value of the good minus the value of U.S. components (*e.g.*, fabric). To qualify for this duty treatment the good must be made with U.S. fabric or knit-to-shape components and assembled in an Agreement country with U.S. thread. The U.S. fabric may be cut in one or more Agreement countries.

The proclamation authority with respect to Articles 3.27 and 3.28 and Annexes 3.27 and 3.28 of the Agreement authorizes the President to provide preferential tariff treatment to certain apparel goods of Costa Rica and Nicaragua, respectively, that do not satisfy the Agreement's rules of origin. This treatment is limited to annual quantities specified in the annexes.

Sections 201(a)(2) and (3) of the bill address the status of Agreement countries as designated beneficiary countries under the following U.S. trade preference programs: (i) the Generalized System of Preferences; (ii) the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 *et seq*.) ("CBERA"); and (iii) the United States – Caribbean Basin Trade Partnership Act, Pub. Law 106-200 ("CBTPA"), which amended the CBERA to provide additional tariff preferences to beneficiary countries for certain goods, including certain textile and apparel goods.

Section 201(a)(2) of the bill requires the President to withdraw beneficiary country status under the Generalized System of Preferences from Agreement countries once the Agreement takes effect for them.

Section 201(a)(3) of the bill requires the President to withdraw beneficiary country status under the CBERA from Agreement countries once the Agreement takes effect for them. The requirement to terminate CBERA beneficiary status is subject to three exceptions, however, which are set out in section 201(a)(3)(B).

The first exception implements Article 8.8.1 of the Agreement, which provides that the United States will continue to treat Agreement countries as CBERA beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)). Those provisions preclude the U.S. International Trade Commission ("ITC") from aggregating (or "cumulating") imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether a U.S. industry is materially injured or threatened with material injury by reason of dumped or subsidized imports of a particular product from such beneficiary countries.

The second exception will permit the President to implement the duty free treatment provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement.

The third exception provides that the Agreement countries will continue to be considered CBERA beneficiary countries for purposes of section 274(h)(6)(B) of the Internal Revenue Code (26 U.S.C. 274(h)(6)(B)). Section 274(h) limits taxpayer deductions for expenses incurred in attending conventions, seminars, or similar meetings abroad. The rule does not apply with respect to conventions, seminars, or similar meetings held in CBERA beneficiary countries if the countries meet certain tests. This third exception would maintain the status quo with respect to this tax provision, thereby preserving an existing benefit for the Agreement countries.

Section 213(b)(5)(D) of the CBERA, as amended by the CBTPA, provides that CBTPA benefits terminate with respect to any CBTPA beneficiary country on entry into force of a free trade agreement between that country and the United States. The President's proclamation implementing the Agreement will reflect the termination of CBTPA benefits for Agreement countries.

Section 402 of the bill makes several amendments to the CBERA in light of the fact that the Agreement countries will no longer be beneficiary countries for purposes of the CBERA or the CBTPA once the Agreement takes effect for them. Consistent with the commitment that the United States made during the course of the Agreement negotiations, the purpose of the amendments is to ensure, to the extent possible, that the remaining beneficiary countries under these preference programs are not adversely impacted as a consequence of the removal of the Agreement countries from the CBERA and CBTPA programs. To this end, the amendments generally will ensure that goods produced through a combination of operations in a beneficiary country and an Agreement country that would have qualified for preferential treatment under the CBERA or CBTPA before the Agreement took effect will continue to qualify for this treatment after the Agreement takes effect. The amendments do not provide new benefits for the remaining beneficiary countries or the Agreement countries; rather the amendments preserve benefits the remaining beneficiary countries already have under the CBERA and CBTPA.

CBERA Program: Subsection 402(b) of the bill amends section 212(b) of the CBERA to delete the Agreement countries from the list of countries that the President may designate as beneficiary countries. The amendment takes effect with respect to each country on the date on which the President terminates the country's designation as a beneficiary country pursuant to section 201(a)(3) of the bill. Section 402(a) of the bill amends section 212(a)(1) of the CBERA to define the term "former beneficiary country" to mean a country that ceases to be designated as a beneficiary country because the country has become a party to a free trade agreement with the United States.

Section 213(a)(1) of the CBERA provides that for a good to qualify for duty-free treatment, the sum of the cost or value of materials produced in one or more beneficiary countries and the direct costs of processing operations performed in one or more beneficiary countries must be at least 35 percent of the appraised value of the good at the time of entry into the United States. Puerto Rico and the U.S. Virgin Islands are included within the term "beneficiary country" for purposes of satisfying the 35 percent valued added requirement. Section 402(c) of the bill amends section 213(a)(1) of the CBERA to provide that the term "beneficiary country" also includes "any former beneficiary country" for purposes of determining whether the 35 percent value added test has been satisfied. This amendment will ensure that producers and exporters in the remaining CBERA beneficiary countries will be able to continue to use materials of, or processing performed in, the Agreement countries to satisfy the 35 percent value added test for establishing the eligibility of their goods for duty-free treatment under the CBERA.

CBTPA Program: Section 402(d) of the bill adds subparagraphs (G) and (H) to 213(b)(5) of the CBERA. Subparagraph (G) defines the term "former CBTPA beneficiary country" to mean a country that ceases to be designated as a CBTPA beneficiary country because the country has become a party to a free trade agreement with the United States. Subparagraph (H) provides that any reference to a CBTPA beneficiary country shall be considered to include a former CBTPA beneficiary country for purposes of determining the eligibility of a good for preferential treatment under section 213(b)(2) of the CBERA (for certain textile and apparel articles) and section 213(b)(3) of the CBERA (for certain other goods, including footwear, tuna, petroleum, watches and watch parts, and certain leather goods), provided that the good undergoes some production in one of the remaining beneficiary countries. This amendment ensures that the remaining CBTPA beneficiary countries may continue to obtain preferential treatment for their goods even if the goods contain inputs of an Agreement country or the goods undergo processing in an Agreement country. Subparagraph (H) also provides that a good that meets the requirements of the subparagraph will not be ineligible for preferential treatment under section 213(b)(2) or (3) because the good was imported directly from a former CBTPA beneficiary country. However, in light of the fact that the Agreement countries will no longer be CBTPA beneficiary countries, subparagraph (H) provides that a good that is a good of an Agreement country under U.S. non-preferential rules of origin is not eligible for preferential treatment pursuant to subparagraph (H). (This limitation does not apply to goods of the Dominican Republic that undergo production in Haiti, in order to maintain the status quo with respect to integrated production operations between those two countries.) See 19 U.S.C. 1304; 19 U.S.C. 3592; 19 C.F.R. 102.21; 19 C.F.R. 134.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement under Annex 3.3 with one or more Agreement countries;
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to other Agreement countries provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the ITC on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with the other Agreement countries under Article 4.14 of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

b. Agricultural Safeguard

Section 202 of the bill implements the agricultural safeguard provisions of Article 3.15 and Annex 3.15 of the Agreement. Article 3.15 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports of certain goods of Agreement countries specified in the Schedule of the United States to Annex 3.15 of the Agreement that exceed the volume thresholds set out in that annex.

Section 202(a) of the bill provides the overall contour of the agricultural safeguard rules, including definitions of terms used in the agricultural safeguard provisions. Section 202(a)(2) defines the applicable NTR (MFN) rate of duty for purposes of the agricultural safeguard. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the Schedule of the United States to Annex 3.3 of the Agreement may not exceed the general NTR (MFN) rate of duty.

Section 202(a)(3) of the bill defines the "schedule rate of duty" for purposes of the agricultural safeguard as the rate of duty for a good set out in the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(4) of the bill specifies the products that may be subject to an agricultural safeguard measure. These goods must qualify as originating goods under section 203, except that operations performed in or material obtained from the United States will be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement.

Section 202(a)(5) of the bill implements Article 3.15.4 of the Agreement by establishing that no additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the bill or under the safeguard procedures set out in chapter 1 of Title II of the Trade Act of 1974.

Section 202(a)(6) of the bill provides that the agricultural safeguard provision ceases to apply with respect to a good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(7) of the bill implements Article 3.15.6 of the Agreement by directing the Secretary of the Treasury (the "Secretary") within 60 days of the date on which the Secretary first assesses an agricultural safeguard duty on a good to notify the country whose good is subject to the measure and provide that country with supporting data.

Section 202(b) of the bill provides for the Secretary to impose agricultural safeguard duties and explains how the additional duties are to be calculated. The additional duties are triggered in any year when the volume of imports of the good from an Agreement country exceeds 130 percent of the in-quota quantity allocated to that country for the good in that calendar year in the Schedule of the United States to Annex 3.3 of the Agreement. (The in-quota quantities for goods are set out in the Schedule of the United States to Annex 3.3 of the

Agreement on a calendar-year basis beginning with "year one." Year one refers to the calendar year in which the Agreement enters into force, even with respect to any country that has signed the Agreement that becomes a Party in a subsequent calendar year.) The additional duties remain in effect only until the end of the calendar year in which they are imposed.

c. Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 3.10.4 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Chapter Four of the Agreement. Processing of goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on such non-originating imports will not be used to finance the processing of originating imports.

d. Refund of Duties on Textile or Apparel Goods

Article 3.20.1 of the Agreement establishes rules requiring each government to refund customs duties paid on textile or apparel goods imported prior to the entry into force of the Agreement. Specifically, Article 3.20.1 requires each government to refund customs duties paid on textile or apparel goods of an Agreement country that were imported between January 1, 2004 and the date of entry into force of the Agreement for that country, provided that the goods would have been considered originating goods if the Agreement had been in force when the goods were imported. The refund applies to the extent that the duties paid on the good exceed the applicable duty set out in that country's Schedule to Annex 3.3 of the Agreement. Article 3.20.4 clarifies that the obligation to refund customs duties does not apply with respect to goods that qualify for preferential tariff treatment under Article 3.21, Article 3.27, or Article 3.28 of the Agreement.

Some Agreement countries may not have legal authority to refund duties retroactively. Hence, this obligation does not apply to any Agreement country, or to goods of any Agreement country, that notifies the other governments 90 days before the Agreement enters into force for that country that it will not refund duties under Article 3.20.1. However, Article 3.20.3 establishes an exception if the country agrees to provide benefits to imported textile or apparel goods that the exporting country agrees are equivalent to a refund of excess customs duties.

Section 205 of the bill implements Article 3.20 for the United States. Section 205(a) provides that, notwithstanding section 514 of the Tariff Act of 1930, the Secretary must liquidate or reliquidate entries of textile or apparel goods of an eligible Agreement country made between January 1, 2004, and the date the Agreement enters into force with respect to that country, provided that the goods would have been considered originating goods if the Agreement had been in force at that time. Such liquidations or reliquidations must be at the applicable rate of duty under the Schedule of the United States to Annex 3.3 of the Agreement, and the Secretary will refund any excess customs duties paid on such entries. Section 205(b) provides that the United States Trade Representative will determine, in accordance with Article 3.20, which Agreement countries' goods are eligible for retroactive tariff treatment and will publish a list of such countries in the *Federal Register*. Section 205(c) provides that requests for liquidation or reliquidation under subsection (a) must be filed with the Bureau of Customs and Border Protection ("CBP") and must provide information sufficient for CBP to locate or reconstruct the entry and determine whether the goods in question are eligible for a duty refund.

e. Textile or Apparel Safeguard

Article 3.23 of the Agreement makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods for which duties have been reduced or eliminated under the Agreement. It also sets forth procedures for obtaining such remedies. The Administration does not anticipate that the Agreement will result in injurious increases in textile or apparel imports from the other Agreement countries. Nevertheless, the Agreement's textile or apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, textile or apparel goods of an Agreement country are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 3.23 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. NTR (MFN) duty rate for the good or the U.S. NTR (MFN) duty rate in effect at the time the Agreement entered into force.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile or apparel safeguard.

Section 321(a) establishes that an interested party may file a request for a textile or apparel safeguard measure with the President, who must review the request to determine whether to commence consideration of the request on its merits. Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

Section 322 sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a "CAFTA-DR textile or apparel article" of an Agreement country is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 301(2) of the bill defines "CAFTA-DR textile or apparel article" to mean an article listed in the Annex to the World Trade Organization ("WTO") Agreement on Textiles and Clothing (other than a good listed in Annex 3.29 of the Agreement) that qualifies as an originating good under section 203(b) of the bill. The President's determination corresponds to the determination required under Article 3.23.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.23.2 of the Agreement. Section 322(a)(3) provides that the President must make his determination no later than 30 days after the conclusion of any consultations with the country that may be subject to the measure.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in tariffs to the lesser of: (i) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (ii) the NTR (MFN) duty rate for that article on the day before the Agreement entered into force.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard shall be three years. However, if the initial period of import relief is less than three years, the President may extend the relief (to a maximum of three years) if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Section 324 of the bill provides that relief may not be granted to an article under the textile or apparel safeguard if: (i) relief previously has been granted to that article under the textile or apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Eight of the Agreement (corresponding to Subtitle A of Title III of the bill), or (b) chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile or apparel safeguard will expire five years after the date on which the Agreement enters into force.

Under Article 3.23.6 of the Agreement, if the United States provides relief to a domestic industry under the textile or apparel safeguard, it must provide the country whose good is subject to the measure "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the [safeguard]." If the United States and the pertinent country are unable to agree on trade liberalizing compensation, that country may increase tariffs equivalently on U.S. goods. The obligation to provide compensation (and the right to increase tariffs absent agreement on compensation) terminates when the safeguard relief ends.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement's textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

f. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of origin and to prevent circumvention of laws, regulations, and procedures affecting such trade. Article 3.24 of the Agreement provides for verifications to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods.

Under Articles 3.24.2 and 3.24.3 of the Agreement, at the request of the United States, the government of an Agreement country must conduct a verification. The object of a verification under Article 3.24.2(a)(i) is to determine whether a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.24.2(a)(ii) is to determine whether an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including those implementing international agreements. The United States may assist in the verification or, at the request of the other government, conduct the verification itself. A verification may entail visits by officials of the other government and the United States to the premises of a textile or apparel exporter or producer in that country.

Pursuant to Article 3.24.6 of the Agreement, the United States may take appropriate action during and after a verification, including, depending on the nature of the verification, by suspending or denying preferential tariff treatment for textile or apparel goods exported or produced by the person subject to the verification, detaining the goods, or denying them entry into the United States.

Section 209 of the bill implements Article 3.24 of the Agreement. Under section 209(a), the President may direct the Secretary to take "appropriate action" while a verification that the Secretary has requested is being conducted. Section 209(b) provides that, depending on the nature of the verification, the action may include: (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the

Secretary believes there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary decides that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary considers there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under section 209(c), the President may also direct the Secretary to take "appropriate action" after a verification has been completed. Under section 209(d), depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment under the Agreement to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary considers there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary decides that a person has provided erroneous information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an Agreement country is accurate.

Under section 209(e), the Secretary may publish the name of person that the Secretary has determined: (i) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

g. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

Under the specific rules of origin for textile and apparel goods set out in Annex 4.1 of the Agreement, fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in the United States, Central America, and the Dominican Republic are treated as if they originate in an Agreement country, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Annex 3.25 lists certain fabrics, yarns, and fibers that the CAFTA-DR governments have collectively agreed are unavailable in the region.

In addition, Article 3.25.4 of the Agreement provides that the United States will add fabrics, yarns, or fibers to the list in certain circumstances. First, Article 3.25.4(e) of the Agreement provides that the United States will add any fabrics or yarns that it has determined under its regional trade preference programs prior to the Agreement's entry into force are unavailable in the United States in commercial quantities in a timely manner. These regional trade preference program provisions are set out in: section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), and section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2703(b)(2)(A)(v)(II)).

Second, if the United States determines, at the request of an "interested entity" (a potential or actual purchaser or seller, or another CAFTA-DR government), that a fabric, yarn, or fiber is unavailable in commercial quantities in a timely manner in the CAFTA-DR region (i.e., in the territories of the Parties to the Agreement, collectively), or if it determines that no interested entity objects to the request, the United States will add the material to the list – in a restricted or unrestricted quantity. In addition, within six months of adding a material to the list in Annex 3.25, the United States may remove any restriction it has imposed on the product.

Article 3.25.5 authorizes the United States, in response to a request from an interested entity, either to remove a material from the list or impose a restriction on any material it has added to the list in an unrestricted quantity. The United States may take this action beginning six months after it determines, in response to a request, that the material has become commercially available in the CAFTA-DR region.

Section 203(o)(2) of the bill provides authority for the President to carry out the provision in Article 3.25.4(e) of the Agreement pursuant to which the United States will add materials to the list that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs (the African Growth and Opportunity Act, the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act) before the Agreement enters into force.

Section 203(o)(4) of the bill implements those provisions of Article 3.25 that provide for the United States to modify the list of materials in Annex 3.25 after the Agreement enters into force.

Specifically, subparagraph (C) provides that an interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in the CAFTA-DR region and to proclaim that the material is included in the list in Annex 3.25.

Subparagraph (C)(ii) authorizes the President to determine whether the material is commercially available in a timely manner in the CAFTA-DR region. Subparagraph (C)(iii) provides that if the President determines that the material is not commercially available in a timely manner in the region, or if no interested entity has objected, he may issue a proclamation adding the fabric, yarn, or fiber to the Annex 3.25 list in a restricted or unrestricted quantity. The President normally must issue the proclamation within 30 business days of receiving a request. However, subparagraph (C)(iv) provides that the President may take up to 44 business days if the President decides he lacks sufficient information to make the determination within 30 business days. Subparagraph (C)(v) provides for proclamations to take effect when published in the *Federal Register*.

Subparagraph (C)(vi) provides that within six months after adding a fabric, yarn, or fiber to the list in Annex 3.25 in a restricted quantity, the President may eliminate the restriction if he determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA-DR region.

Subparagraph (D) implements Article 3.25.4(c) of the Agreement. It provides that in the unlikely event that the President takes no action in response to a request to add a material to the list, the material is automatically added in an unrestricted quantity beginning 45 business days after the request was submitted, or 60 days after the request was submitted if the President has determined under subparagraph (C)(iv) that he lacks sufficient information to make the determination within 30 business days.

Under subparagraph (E)(i), an interested entity may request the President to limit the amount of any fabric, yarn, or fiber that the United States has included on the list in Annex 3.25 in an unrestricted quantity, or to remove such a material from the list entirely. Under subparagraph (E)(ii), an interested entity may submit such a request beginning six months after the product was placed on the list in an unrestricted amount. Subparagraph (E)(iii) provides for the President to issue a proclamation carrying out a request if he determines within 30 business days after the request is submitted that the material is available in commercial quantities in a timely manner in the CAFTA-DR region. Subparagraph (E)(iv) provides that this type of proclamation may take effect no earlier than six months after it is published in the *Federal Register*.

Subparagraph (F) calls for the President to establish procedures for interested entities to submit requests for changes in the Annex 3.25 list and to submit comments and supporting evidence before the President determines whether to change the list.

2. Administrative Action

a. Temporary Admission of Goods and Goods Entered After Repair or Alteration

As discussed above, section 201(a)(1) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 3.5 (temporary admission of certain goods) and Article 3.6 (repair or alteration of certain goods) of the Agreement. The Secretary will issue regulations to carry out this portion of the proclamation.

b. Handloomed, Handmade, or Folklore Articles

The President will authorize the Committee for the Implementation of Textile Agreements ("CITA"), to consult with Agreement countries to determine which, if any, textile or apparel goods from Agreement countries will be treated as handloomed, handmade, or folklore articles. CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies, as directed by the President. The President will delegate to CITA his authority under the bill to provide duty-free treatment for these articles.

c. Agricultural Safeguard

The Secretary will issue regulations implementing the agricultural safeguard provisions of section 202. It is the Administration's intent that agricultural safeguard measures will be applied whenever the volume thresholds specified in the Agreement have been met. As discussed below, the Administration expects that in determining the country of origin of goods for purposes of applying agricultural safeguard measures under the bill, CBP will apply the rules of origin that the United States applies in the normal course of trade. (See item 2 of Chapter Four, below.)

d. Textile or Apparel Safeguard

CITA will perform the function of receiving requests for textile or apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a), and providing relief under section 322(b). CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b). CITA will perform these functions pursuant to a delegation of the President's authority under the bill.

e. Enforcement of Textile and Apparel Rules of Origin

Section 209 of the bill provides that the Secretary may request Agreement countries to initiate verifications in order to determine whether claims of origin for textile or apparel goods are accurate or whether exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods. The President will delegate to CITA his authority under the bill to direct appropriate U.S. officials to take an action described in section 209(b) of the bill while such a verification is being conducted. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 209(d) after a verification is completed. If CITA decides that is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to CBP.

Section 209 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 3.24 of the Agreement.

f. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

The President will delegate to CITA his authority under section 203(o)(4) of the bill, which establishes procedures for changing the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in Agreement countries set out in Annex 3.25 of the Agreement.

CITA will publish procedures under which interested entities may request that CITA: (i) add a fabric, yarn, or fiber to the list in Annex 3.25; (ii) eliminate a restriction on a fabric, yarn, or fiber within six months after the item was added to the list in a restricted quantity; (iii) remove a fabric, yarn, or fiber from the list; or (iv) restrict the quantity of a fabric, yarn, or fiber that was added to the list in an unrestricted quantity or with respect to which CITA previously eliminated a restriction. These procedures will set out the information required to be submitted with a request. CITA will publish notice of requests that meet these requirements. CITA will provide an opportunity for interested entities to submit comments and evidence regarding a request, and to rebut evidence that other interested entities have submitted, before CITA makes a determination.

CITA will make determinations under section 203(o)(4) on a case-by-case basis taking into account factors relevant to the request. Such factors ordinarily would include the physical and technical specifications of the fabric, yarn, or fiber that is the subject of the request, as well as evidence demonstrating the extent to which regional manufacturers are able to supply the item in commercial quantities in a timely manner. CITA will provide public notice of its determinations.

Chapter Four (Rules of Origin)

1. Implementing Bill

a. General

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Four of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good for the purposes of this bill would not necessarily be a good of or import from an Agreement country for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of an Agreement country to qualify as an "originating" good, and therefore be eligible for preferential treatment when it is imported into the United States. First, a good is originating if it is "wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries." The term "goods wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries" is defined in section 203(n)(6) of the bill and includes, for example, minerals extracted in one or more of the CAFTA-DR countries, animals born and raised in one or more of the CAFTA-DR countries, and waste and scrap derived from production of goods that takes place in the territory of one or more of the CAFTA-DR countries. For purposes of section 203, the United States is defined (in section 203(n)(2) of the bill) as a "CAFTA-DR country."

The term "goods wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries" includes "recovered goods." These are parts resulting from the disassembly of used goods that are brought into good working condition in order to be combined with other recovered goods and other materials to form a "remanufactured good." The term "remanufactured good" is separately defined in section 203(n)(21) to mean an industrial good assembled in the territory of one or more of the CAFTA-DR countries and falling within Chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032 (with the exception of goods under heading 8418 or 8516) that: (i) is entirely or partially comprised of recovered goods; and (ii) has a similar life expectancy and enjoys a factory warranty similar to such a new good.

Second, the general rules of origin provide that a good is "originating" if the good is produced in one or more of the CAFTA-DR countries, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements, as specified in Annex 4.1 of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in one or more of the CAFTA-DR countries or meeting regional value content requirements, sometimes in conjunction with changes in tariff classification.

Third, the general rules of origin provide that a good is “originating” if the good is produced entirely in the territory of one or more of the CAFTA-DR countries exclusively from materials that themselves qualify as originating goods.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement’s specific requirements to qualify as an originating good. For example, section 203(c) implements provisions in Annex 4.1 of the Agreement that require certain goods to have at least a specified percentage of “regional value content” to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that may be used in the case of certain automotive goods. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Other provisions in section 203 address how materials are to be valued, how to determine whether fungible goods and materials qualify as originating or non-originating, as well as a variety of other matters.

b. Proclamation Authority

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 4.1 of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(3) gives authority to the President to modify certain of the Agreement’s specific origin rules by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a of Chapter Three, above.)

Various provisions of the Agreement expressly contemplate that the CAFTA-DR governments may agree to modify the Agreement’s rules of origin. Article 4.14 calls for the CAFTA-DR governments to consult regularly after the Agreement’s entry into force to discuss proposed modifications to Annex 4.1. Article 19.1.3(b)(ii) of the Agreement authorizes the Free Trade Commission to approve proposed modifications to any of the Agreement’s origin rules. Such modifications are to be implemented in accordance with each country’s applicable legal procedures. In addition, Article 3.25.1 of the Agreement calls for the Parties to consult at the request of any Party to consider whether rules of origin for particular textile or apparel goods should be modified.

Section 203(o)(3) of the bill expressly limits the President’s authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50 through 63 of the HTS and identified in Annex 4.1 of the Agreement). Those rules of origin may be modified by proclamation within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors.

c. Disclosure of Incorrect Information and Denial of Preferential Treatment

Article 4.15.3 of the Agreement provides that a Party may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer did not engage in negligence, gross negligence, or fraud in making the claim and, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duty owing. Article 4.20.5 of the Agreement provides if an importing country determines through verification that an importer, exporter, or producer has provided false or unsupported certifications or other representations that a good qualifies as originating, it may suspend preferential tariff treatment under the Agreement for identical goods covered by any subsequent certifications or other representations that that person may make. The suspension may continue until the importing country determines that the importer, exporter, or producer is in compliance with applicable laws and regulations governing claims for preferential tariff treatment under the Agreement.

Section 206(a) of the bill implements Article 4.15.3 for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)). Section 206(b) of the bill implements Article 4.20.5 for the United States by amending section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

d. Claims for Preferential Tariff Treatment

Article 4.15.5 of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was made at the time of importation. In seeking a refund for excess duties paid, the importer must provide to the customs authorities information substantiating that the good was in fact an originating good at the time of importation.

Section 207 of the bill implements U.S. obligations under Article 4.15.5 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

e. Exporter and Producer Certifications

Article 4.16 of the Agreement provides that an importer may base a claim for preferential tariff treatment on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer’s knowledge that the good is an originating good, including through reasonable reliance on information in the importer’s possession that the good is an originating good. (The Agreement allows certain exceptions, for example, for goods with a customs value less than or equal to $1,500.) If an exporter issues a certification, it must either be based on the person's knowledge that the good is originating or supported by a separate certification issued by the producer.

Article 4.18 of the Agreement sets out rules governing incorrect certifications of origin issued by exporters or producers. Where an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly and voluntarily notify in writing every person to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification. If it does so, no Agreement country may impose a penalty.

Section 206(a) of the bill implements U.S. obligations under Article 4.18 by amending section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). New subsection (h) of section 592, as added by section 206(a), imposes penalties on exporters and producers that issue false CAFTA-DR certifications of origin through fraud, gross negligence, or negligence. These penalties do not apply where an exporter or producer corrects an error in the manner described above.

f. Recordkeeping Requirements

Article 4.19 of the Agreement sets forth record keeping requirements that each government must apply to its importers. U.S. obligations under Article 4.19 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930 (19 U.S.C. 1508).

Article 4.19 also sets forth record keeping requirements that each government must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement. Section 208 of the bill implements Article 4.19 for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

As added by section 208 of the bill, subsection (g) of section 508 of the Tariff Act of 1930 defines the terms "CAFTA-DR certification of origin" and "records and supporting documents." It then provides that a U.S. exporter or producer that issues a CAFTA-DR certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. New subsection (h) of section 508 of the Tariff Act of 1930 sets forth penalties for violations of this record keeping requirement.

2. Administrative Action

The rules of origin in Chapter Four of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in CAFTA-DR countries. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in one or more of the CAFTA-DR countries; or (ii) undergoes substantial processing in one or more of the CAFTA-DR countries.

The Agreement's rules of origin do not establish (or require identification of) the specific country of origin of originating goods or goods that otherwise qualify for preferential treatment. However, various provisions of the Agreement may require U.S. authorities to determine the specific country of origin of such goods. These provisions include, for example, those relating to: (i) the application of TRQs on agricultural goods; (ii) the application of agricultural safeguard measures; (iii) the retroactive refund of customs duties on textile or apparel goods pursuant to Article 3.20 of the Agreement; and (iv) the application of textile or apparel safeguard measures. The Administration intends that, where necessary, U.S. authorities will rely on the rules of origin that the United States applies in the normal course of trade to determine the country of origin identity of originating goods. See 19 U.S.C. 1304; 19 U.S.C. 3592; 19 C.F.R. 102.21; 19 C.F.R. 134.

a. Claims for Preferential Treatment

Section 210 of the bill authorizes the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. Under Article 4.16 of the Agreement, an importer may claim preferential treatment for a good based on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge, including through reasonable reliance on information in the importer's possession, that the good is originating. A certification need not be in a prescribed format, but must include the elements set out in Article 4.16.2 of the Agreement. Under Article 4.15 of the Agreement, an importing Party must grant a claim for preferential tariff treatment unless its customs officials issue a written determination that the claim is invalid as a matter of law or fact.

b. Verification

Under Article 4.20 of the Agreement, customs officials may use a variety of methods to verify claims that goods imported from other Agreement countries satisfy the Agreement's rules of origin. Article 3.24 sets out special procedures for verifying claims that textile or apparel goods imported from Agreement countries meet the Agreement's origin rules. (See item 1.f of Chapter Three, above.) U.S. officials will carry out verifications under Articles 4.20 and 3.24 of the Agreement pursuant to authorities under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

Chapter Five (Customs Administration and Trade Facilitation)

1. Implementing Bill

No statutory changes will be required to implement Chapter Five.

2. Administrative Action

a. Inquiry Point

Article 5.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. CBP will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.1.2, CBP will post information on the Internet at "www.cbp.gov" on how interested persons can make customs-related inquiries.

b. Advance Rulings

Treasury regulations for advance rulings under Article 5.10 of the Agreement (including on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the Agreement will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

Chapter Six (Sanitary and Phytosanitary Measures)

No statutory or administrative changes will be required to implement Chapter Six.

Chapter Seven (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter Seven.

2. Administrative Action

Article 7.8 of the Agreement establishes an inter-governmental Committee on Technical Barriers to Trade ("TBT"). A USTR official responsible for TBT matters or trade relations with the Agreement countries will serve as the U.S. coordinator for the committee.

Chapter Eight (Trade Remedies)

1. Implementing Bill

Subtitle A of Title III of the bill implements in U.S. law the safeguard provisions set out in Chapter Eight of the Agreement. Subtitle C of Title III of the bill implements the global safeguard provisions set out in Chapter Eight of the Agreement. (As discussed under Chapter Three, above, Subtitle B of Title III of the bill implements the textile or apparel safeguard provisions of the Agreement.)

a. Safeguard Measures

Subtitle A of Title III of the bill, Sections 311 through 316, authorizes the President, after an investigation and affirmative determination by the ITC (or a determination that the President may consider to be an affirmative determination), to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a "CAFTA-DR article" when, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. 2251 – 2254).

Section 301(1) defines the term "CAFTA-DR article" to mean a good that qualifies as an originating good under section 203(b) of the bill, and section 301(4) defines the term "relevant CAFTA-DR article" to mean the CAFTA-DR article with respect to which a petition has been filed under section 311(a).

Section 301(3) defines the term "de minimis supplying country" as an Agreement country whose share of imports of a CAFTA-DR article into the United States does not exceed three percent of the aggregate volume of imports of the CAFTA-DR article in the most recent 12-month period for which data are available. However, the definition makes an exception in cases where the aggregate import share of all such Agreement countries exceeds nine percent of U.S. imports of the CAFTA-DR article during the applicable 12-month period. Unlike agricultural and textile or apparel safeguard measures, which will apply on a country-specific basis, general safeguard measures under Chapter Eight of the Agreement will apply with respect to all imports of an originating CAFTA-DR article, other than imports from de minimis supplying countries.

Section 311 of the bill provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is "representative of an industry." As under section 202(a)(1) of the Trade Act of 1974, the term "entity" is defined to include a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of "substantial cause" in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section CAFTA-DR articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation. If the ITC makes an affirmative injury determination it will determine at the same time whether any Agreement country is a de minimis supplying country.

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that the ITC may recommend is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC's report must include: (i) the ITC's determination(s) under section 312(a) and the reasons supporting the determination(s); (ii) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (iii) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to publish its report promptly and to publish a summary of the report in the *Federal Register*.

Section 313(a) of the bill directs the President, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative determination or a determination that the President may consider to be an affirmative determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury the ITC has found and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

- a suspension of further reductions in the rate of duty to be applied to the articles in question; or

- an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force.

Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the period for import relief under a Subtitle A safeguard may not exceed four years. However, if the initial period of import relief is less than four years, the President may extend the period of import relief (to a maximum aggregate period of four years) if the President determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 313(e) specifies the duty rate to be applied to CAFTA-DR articles after termination of a safeguard action. On the termination of relief, the rate of duty for the remainder of the calendar year is to be the rate that was scheduled to have been in effect one year after the initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty:

- at the rate called for under the Schedule of the United States to Annex 3.3 of the Agreement; or

- in a manner that eliminates the duty in equal annual stages ending on the date set out in that Schedule.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (chapter 1 of Title II of the Trade Act of 1974); or (ii) the product of a de minimis supplying country.

Section 314 provides that the President's authority to take action under Subtitle A expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds ten years. In such case, relief may be provided until the expiration of the period for elimination of duties.

Section 315 allows the President to provide trade compensation to Agreement countries, as required under Article 8.5 of the Agreement, when the United States imposes relief through a Subtitle A safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to Subtitle A safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958.

b. Global Safeguard Measures

Section 331 of the bill implements the global safeguard provisions of Article 8.6.2 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of originating articles from the relief when certain conditions are present.

Specifically, section 331(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether imports of the article of each Agreement country considered individually that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof. Under section 331(b), if the ITC makes a negative finding under section 331(a) the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

2. Administrative Action

No administrative changes will be required to implement Chapter Eight.

Chapter Nine (Government Procurement)

1. Implementing Bill

Chapter Nine of the Agreement establishes rules that certain government entities, listed in Annex 9.1.2(b)(i) of the Agreement, must follow in procuring goods and services. The Chapter's rules will apply whenever these entities undertake procurements valued above thresholds specified in Annex 9.1.2(b)(i).

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain federal laws, regulations, procedures and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. By virtue of taking on the procurement-related obligations in Chapter Nine, Agreement countries are eligible to be designated under section 301(b) of the Trade Agreements Act and will be so designated.

The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act for goods and services of countries and instrumentalities that are parties to the WTO Agreement on Government Procurement and countries that are parties to the NAFTA and other recent free trade agreements. Section 401 of the bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for an Agreement country, an "eligible product" means a product or service of that country that is covered under the Agreement for procurement by the United States. This amended definition, coupled with the President's exercise of his authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the Agreement to purchase products and services from other Agreement countries.

2. Administrative Action

As noted above, Annex 9.1.2(b)(i) of the Agreement provides that U.S. government entities subject to Chapter Nine must apply the Chapter's rules to goods and services from other Agreement countries when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council ("FAR Council") of the thresholds that pertain to Agreement countries under the Agreement. The FAR Council will then incorporate those thresholds into the Federal Acquisition Regulation in accordance with applicable procedures under the Office of Federal Procurement Policy Act.

Chapter Ten (Investment)

1. Implementing Bill

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by investors of Agreement countries under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for other claims covered by Article 10.16. Provisions allowing arbitration of contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, and were included in the free trade agreements with Chile, Singapore, and Morocco.

2. Administrative Action

No administrative changes will be required to implement Chapter Ten.

Chapter Eleven (Cross-Border Trade in Services)

No statutory or administrative changes will be required to implement Chapter Eleven.

Chapter Twelve (Financial Services)

No statutory or administrative changes will be required to implement Chapter Twelve.

Chapter Thirteen (Telecommunications)

No statutory or administrative changes will be required to implement Chapter Thirteen.

Chapter Fourteen (Electronic Commerce)

No statutory or administrative changes will be required to implement Chapter Fourteen.

Chapter Fifteen (Intellectual Property Rights)

No statutory or administrative changes will be required to implement Chapter Fifteen.

Chapter Sixteen (Labor)

1. Implementing Bill

Section 403 of the bill establishes periodic reporting and meeting requirements on labor matters.

Section 403(a) provides that not later than two years after the Agreement enters into force, and not later than the end of each two-year period thereafter during the succeeding 14 years, the President shall report to the Congress on the progress made by the Agreement countries in implementing (i) Chapter Sixteen of the Agreement; and (ii) the April 2005 "White Paper" report prepared by the trade and labor Vice Ministers of the Agreement countries on labor matters in Central America and the Dominican Republic. The subsection specifies the contents that each report must include and requires the President to establish a mechanism to solicit public comments relating to the subject matter of the reports.

Section 403(b) provides that the Secretary of Labor should take the necessary steps to meet periodically with the labor ministers of the Agreement countries to discuss (i) the operation of the labor provisions of the Agreement; (ii) progress on commitments the Agreement countries made to implement the White Paper; (iii) the work of the International Labor Organization in the Agreement countries and other cooperative efforts to afford to workers internationally-recognized worker rights; and (iv) any other appropriate matters. Subsection (b)(2) provides that the biennial reports prepared under subsection (a) will, as the President deems appropriate, include summaries of those meetings.

2. Administrative Action

To carry out section 403(b), the Secretary of Labor will take the necessary steps to meet periodically with the labor ministers of the Agreement countries.

Article 16.4.3 of the Agreement calls for each government to designate an office to serve as the contact point for implementing the Agreement's labor provisions. The Department of Labor's Office of Trade Agreement Implementation will serve as the U.S. contact point for this purpose.

Chapter Seventeen (Environment)

1. Implementing Bill

No statutory or administrative changes will be required to implement Chapter Seventeen.

2. **Administrative Action**

Article 17.5.1 of the Agreement establishes an Environmental Affairs Council, comprising cabinet-level officials from each country, and provides that each government will designate a contact point for carrying out the Council's work. USTR's Office of Environment and Natural Resources will serve as the U.S. contact point for this purpose.