

H.R. 4759
THE U.S.-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION ACT
SECTION-BY-SECTION SUMMARY
PREPARED BY THE COMMITTEE ON WAYS AND MEANS

Sections 1-3: Short title, purposes and definitions

TITLE I: APPROVAL AND GENERAL PROVISIONS

Section 101: Approval and Entry into Force

Section 101 states that Congress approves the Agreement and the Statement of Administrative Action and provides that the Agreement enters into force when the President determines that Australia is in compliance and has exchanged notes, on or after January 1, 2005.

Section 102: Relationship of the Agreement to U.S. and State Law

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

Section 103: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

Section 103(a) provides that after the date of enactment, the President may proclaim actions and issue regulations as necessary to ensure that any provision of this Act that takes effect on the date that the Agreement is entered into force is appropriately implemented, but not before the date the Agreement enters into force.

Section 103(b) establishes that regulations necessary or appropriate to carrying out the actions proposed in the Statement of Administrative Action shall, to the maximum extent feasible, be issued within one year of entry into force or the effective date of the provision.

Section 104: Consultation and Layover for Proclaimed Actions

Section 104 provides that if the President implements proclamation authority subject to consultation and layover, the President may proclaim action only after he has: obtained advice from the International Trade Commission and the appropriate private sector advisory committees; submitted a report to the Ways & Means and Finance Committees concerning the reasons for the action; and consulted with the Committees. The action takes effect after 60 days have elapsed.

Section 105: Administration of Dispute Settlement Proceedings

Section 105 authorizes the President to establish an office within the Commerce Department responsible for providing administrative assistance to any panels that may be

established under the Agreement and authorizes appropriations for the office and for payment of the U.S. share of expenses.

Section 106: Effective Dates; Effect of Termination

The effective date of this Act is date the Agreement enters into force with respect to the United States except sections 1-3 and Title I take effect upon the date of enactment. The provisions of the Act terminate on the date on which the Agreement terminates.

TITLE II: CUSTOMS PROVISIONS

Section 201: Tariff Modifications

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

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

Section 201(c) allows the President, for any goods for which the base rate is a specific or compound rate of duty, to substitute for the base rate an ad valorem rate to carry out the tariff modifications in subsections (a) and (b).

Section 202: Additional Duties on Certain Agricultural Goods

Section 202 of the bill implements the agricultural safeguard provisions of article 3.4 and Annex 3-A of the Agreement. Article 3.4 permits the United States to impose an agricultural safeguard measure, in the form of additional duties, on imports from Australia of an agricultural good listed in the U.S. schedule to Annex 3-A of the Agreement. The bill provides for three different types of agricultural safeguards. The first applies to certain horticulture goods specified in Annex 3-A of the Agreement. The second applies to certain beef goods imported into the United States above specified quantities during the period from January 1, 2013 through December 31, 2022. The third applies to the same categories of beef goods imported into the United States above specified quantities and the monthly average index price in the United States falls below the specified “trigger” price beginning January 1, 2023.

No additional duty may be applied under section 202 if, at the time of entry, the good is subject to import relief under subtitle A of title III of this bill (the general safeguard) or chapter 1 of title II of the Trade Act of 1974 (“section 201” relief). The assessment of an additional duty under either the horticulture safeguard or the quantity-based beef safeguard shall cease to apply to a good on the date on which duty-free treatment must be provided to that good. There is no termination date for the price-based beef safeguard. The sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the U.S. schedule may not exceed the lesser of the existing normal trade relation (NTR)/most favored nation (MFN) rate or the

NTR/MFN rate imposed when the Agreement entered into force.

Sections 202(c)(4) and (d)(5) provide that the United States Trade Representative may waive the application of the quantity-based beef safeguard and the price-based beef safeguard if he determines that extraordinary market conditions demonstrate that a waiver would be in the U.S. national interest, after notice and consultation with the Ways & Means and Finance Committees and the appropriate private sector advisory committees.

Section 203: Rules of Origin

Section 203 codifies the rules of origin set out in chapter 5 of the Agreement. Under the general rules, there are four basic ways for a good of Australia to qualify as an “originating good” and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is “wholly obtained or produced entirely in the territory of Australia, the United States, or both”; (2) those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 4-A or Annex 5-A of the Agreement; (3) it is produced entirely in the territory of Australia, the United States, or both exclusively from originating materials; or (4) it otherwise qualifies as an originating good under chapter 4 or chapter 5 of the Agreement.

Under the rules in chapter 5.1 and Annex 4-A of the Agreement, an apparel product must generally meet a tariff shift rule that implicitly imposes a “yarn forward” requirement. Thus, to qualify as an originating good imported into the United States from Australia, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Australia from yarn, or fabric made from yarn, that originates in Australia or the United States, or both.

The remainder of section 203 of the implementing bill sets forth more detailed rules for determining whether a good meets the Agreement’s requirements under the second method of qualifying as an originating good. These provisions include rules pertaining to *de minimis* quantities of non-originating materials that do not undergo a tariff transformation, transformation by regional content, and the alternative methods for calculating regional value content. Other provisions in section 203 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials.

Section 204: Customs User Fees

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

Section 205: Disclosure of Incorrect Information

Section 205, which implements article 5.13(4) of the Agreement, prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to correct the error and pays any duty owing. Importers have at least a 12-month grace period after submitting an invalid claim in which to correct it.

Section 206: Enforcement Relating to Trade in Textile and Apparel Goods

Section 206 implements the verification provisions of the Agreement at article 4.3 and authorizes the President to take appropriate action while the verification is being conducted. Such appropriate action includes suspending preferential tariff treatment to the textile or apparel good for which a claim of origin has been made or, in a case where the request for verification was based on a reasonable suspicion of unlawful activity related to such goods, for textile or apparel goods exported or produced by the person subject to a verification. If the Secretary determines that the information obtained from verification is insufficient to make a determination, the President may take appropriate action described in section 206(d), including publishing the name and address of the person subject to the verification and denial of preferential treatment and denial of entry to certain textile and apparel goods produced or exported by the person subject to the verification.

Section 207: Regulations

Section 207 provides that the Secretary of the Treasury shall issue regulations to carry out provisions of this bill related to rules of origin and Customs user fees.

TITLE III: RELIEF FROM IMPORTS

Subtitle A: Relief from Imports Benefiting from the Agreement (Sections 311-316)

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

Section 311(c) defines “substantial cause” and applies factors in making determinations in the same manner as section 201 of the Trade Act of 1974.

Section 311(d) exempts from investigation under this section Australian articles for which import relief has been provided under this safeguard since the Agreement entered into force.

Under sections 312(b) and (c), if the ITC makes an affirmative determination, it must find

and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(a), the President may provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c) sets forth the nature of the relief that the President may provide as: a suspension of further reductions for the article; or an increase to a level that does not exceed the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the Agreement entered into force. Section 313(c)(1)(C) specifies that if a duty is applied on a seasonal basis, then the NTR/MFN rate corresponds to the immediately preceding season. Section 313(c)(2) states that if the President provides relief for greater than one year, it must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not exceed two years. If the President determines that import relief continues to be necessary and there is evidence that the industry is making positive adjustment to import competition, then he may extend the relief, but the aggregate period of relief, including extensions, may not exceed four years.

Section 314 provides that no relief may be provided under this subtitle after ten years from the date the Agreement enters into force, unless the tariff elimination for the article under the Agreement is greater than ten years, in which case relief may not be provided for that article after the period for tariff elimination for that article ends.

Section 315 authorizes the President to provide compensation to Australia consistent with article 9.4 of the Agreement.

Section 316 provides for the treatment of confidential business information.

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

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

Section 321(b) allows an interested party to allege critical circumstances (such that delay

in the provision of relief would cause damage that would be difficult to repair) and request that relief be provided on a provisional basis.

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

Section 322(b) identifies the relief that the President may provide, which is the lesser of the existing NTR/ MFN rate or the NTR/MFN rate imposed when the Agreement entered into force. Section 322(c) provides that when an allegation of critical circumstances is made, the President shall make a determination whether there is clear evidence that critical circumstances exist. If the determination is affirmative, he may provide provisional relief for up to 200 days.

Section 323 of the bill provides that the period of relief shall be no longer than two years (including any provisional relief). The President may extend the relief, but the aggregate period of relief, including extensions, may not exceed four years.

Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard, or the article is subject to import relief under subtitle A of title III of this bill or under chapter 1 of title II of the Trade Act of 1974.

Under section 325, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect but for the safeguard action.

Section 326 states that the authority to provide safeguard relief under this subtitle expires ten years after the date on which duties on the article are eliminated pursuant to the Agreement. Section 327 of the Act gives authority to the President to provide compensation to Australia if he orders relief. Section 328 provides for the treatment of business confidential information.

Subtitle C: Cases Under Title II of the Trade Act of 1974 (Section 331)

If, in any investigation initiated under title II of the Trade Act of 1974 ("section 201" action), the ITC makes an affirmative determination, the ITC shall also find and report to the President whether imports of the article from Australia are a substantial cause of serious injury or threat thereof. In determining relief to be taken under section 201, the President shall determine whether imports from Australia are a substantial cause of the serious injury or threat thereof found by the Commission and, if such determination is negative, may exclude from such actions products from Australia.

TITLE IV: PROCUREMENT

Section 401 implements chapter 15 of the Agreement and amends the definition of “eligible product” in section 308 of the Trade Agreements Act of 1979. As amended, section 308(4)(A) will provide that, for a party to a free trade agreement that entered into force for the United States after December 31, 2003 and prior to January 2, 2005, an “eligible product” means “a product or service of that country or instrumentality which is covered under the free trade 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 Agreement Act will allow procurement of products and services of Australia and other Parties to FTAs that entered into force during the specified time period.