

**DRAFT BILL TO IMPLEMENT THE U.S.-SINGAPORE FREE TRADE AGREEMENT
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 Singapore is in compliance and has exchanged notes, on or after January 1, 2004.

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: Consultation and Layover for Proclaimed Actions

Section 103 provides that if the President is given 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 Committee concerning the reasons for the action; and consulted with the Committees. The action takes effect after 60 days have elapsed.

Section 104: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

Section 104(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 effective date.

Section 104(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 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: Arbitration of Claims

Section 106 authorizes the United States to resolve certain claims covered by the Investor-State Dispute Settlement Procedures set forth in the Agreements and specifies that all U.S. government contracts are to contain a choice of law provision for resolving any breach of contract claim.

Section 107: Effective Dates; Effect of Termination

The effective date of this Act is date of entry into force except sections 1-3 and Title I take effect upon enactment and section 205 takes effect on the date in which the textile and apparel provisions of the Agreement take effect. The Act shall cease to be effective on the date on which the Agreement ceases to be in effect.

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

Section 202: Rules of Origin

Section 202 codifies the rules of origin set out in Chapter 3 of the Agreement. Under the general rules, there are three basic ways for a good of Singapore 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 Singapore, 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 3A of the Agreement; or (3) it is a good listed in Annex 3B of the Agreement and thus considered to be an “originating good” if the good itself, as finished, is imported into the territory of the United States from the territory of Singapore.

Under Annex 3A rules, 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 Singapore, an apparel product must have been cut (or knit

to shape) and sewn or otherwise assembled in Singapore from yarn, or fabric made from yarn, that originates in Singapore or the United States.

The goods listed in Annex 3B (also called Integrated Sourcing Initiative or ISI products) are predominantly information technology goods for which the current United States Normal Trade Relations or Most Favored Nations duty rate is zero. Imports of these goods into the United States would receive duty-free treatment regardless of origin. The bill makes clear that the Annex 3B good “itself, as imported,” is deemed to be an originating good. This means that Annex 3B goods are originating only when transshipped through Singapore, not when the good is incorporated as a component into another product, unless the good is first shipped from the United States to Singapore. Thus, for purposes of determining origin by way of a transformation using the regional value content formula in Section 202(d), an Annex 3B good would not be “originating” for purposes of the regional value content calculation unless it was shipped from the United States to Singapore, where it was then incorporated into the final product.

The remainder of section 202 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 202 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials.

Section 203: Customs User Fees

Section 203 of the bill implements U.S. commitments under Article 2.8 of the Agreement, regarding the exemption from the merchandise processing fee for originating goods. This provision is similar to the one from the implementing legislation for the North American 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 204: Disclosure of Incorrect Information

Section 204 of the bill implements Article 3.14.4(a) of the Agreement. The provision 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. The Secretary of the Treasury may prescribe regulations that allow one year or more as a time period for such voluntary disclosure.

Section 205: Enforcement Relating to Trade in Textile and Apparel Goods

Section 205 of the bill implements the textile and apparel good enforcement against circumvention provisions of the Agreement. In accordance with Articles 5.4.5, 5.5.5, and 5.8.2 of the Agreement, the provision allows the President to exclude from entry textile and apparel goods from any enterprise that does not permit site visits requested by Customs Service officials

or that engages in intentional circumvention. The President may also take further action against circumventing enterprises or related enterprises, such as barring future entries of goods, if consultations with Singapore authorities fail to address problems of circumvention.

Section 206: Regulations

Section 206 of the implementing bill 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, a Singaporean 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(a) permits the award of provisional relief and critical circumstances relief under certain circumstances.

Section 311(c) defines “substantial cause” in the same manner as Section 201 of the Trade Act of 1974.

Section 311(d) exempts from investigation under this section Singaporean articles that have been the basis previously for relief since entry into force under: the bilateral safeguard provision; the textile and apparel safeguard set out in Subtitle B of Title III of this Act; the global safeguard provisions in section 201 of the Trade Act of 1974; article 6 of the WTO Agreement on Textiles and Clothing; or article 5 of the WTO Agreement on Agriculture.

Under section 312(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 must 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 or 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 most favored nation (MFN)/normal trade relation (NTR) rate or the MFN/NTR rate imposed when the Agreement entered into force. The provision further 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) provides that the import relief that the President is authorized to provide may not exceed two years. However, the President may extend the relief under certain circumstances, but the aggregate period of relief, including extensions, may not exceed four years. According to section 313(e), the rate of duty at the end of the relief period is to be the rate that would have been in effect on that date but for such action.

Section 314 provides that no relief may be provided under this subtitle after ten years from the Agreement's entry into force unless Singapore consents.

Section 315 authorizes the President to provide compensation to Singapore consistent with article 7.4 of the Agreement.

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 the request itself.

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 reduction or elimination of a duty provided under the Agreement, a Singaporean 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 that imports of the article constitute a substantial cause of serious damage or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. The section gives guidance to the President in determining "serious damage" and defines "substantial cause."

Section 322(b) identifies the relief that the President may provide as either a suspension of further duty reductions or the normal trade relations/most-favored-nation duty rate for the article at the time relief is granted. Section 323 of the bill provides that the initial period of relief shall be no longer than two years, although an extension is permitted under certain circumstances as long as total relief, including any extension, does 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. Under section 325, the duty rate applicable to the article after the safeguard expires is the rate that would have been in force on that date, but for application of the safeguard.

Section 326 of the bill provides that the authority to provide this safeguard relief expires ten years after the textile and apparel provisions of the Agreement take effect. Section 327 of the

Act gives authority to the President to provide compensation to Singapore 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 Singapore 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 Singapore 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 Singapore.

TITLE IV: TEMPORARY ENTRY OF BUSINESS PERSONS

[These provisions are not within the jurisdiction of the Committee on Ways & Means.]