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2^D SESSION

S. 1872

To expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in Japan, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, FEBRUARY 22), 1994

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in Japan, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Market Access
5 Act of 1994”.

6 **SEC. 2. REPORTS ON ACCESS TO JAPANESE MARKETS.**

7 (a) INITIAL REPORT.—

8 (1) IN GENERAL.—Not later than 90 days after
9 the date of the enactment of this Act, the Secretary

1 shall submit to the Congress a report assessing the
2 access to the Japanese market of goods and services
3 produced or originating in the United States in each
4 sector specifically identified in the Framework
5 Agreement.

6 (2) CONTENTS OF REPORT.—The Secretary
7 shall include in the report under paragraph (1) the
8 following:

9 (A) An assessment of the market access
10 opportunities that would be available in the
11 Japanese market for goods and services in each
12 sector referred to in paragraph (1) in the ab-
13 sence of barriers to achieving access to such
14 market in both the public and private sectors in
15 Japan. In making such assessment, the Sec-
16 retary shall consider the competitive position of
17 such goods and services in similarly developed
18 markets in other countries. Such assessment
19 shall specify the time periods within which such
20 market access opportunities should reasonably
21 be expected to be obtained.

22 (B) Objective criteria for measuring the
23 extent to which those market access opportuni-
24 ties described in subparagraph (A) have been
25 obtained. The development of such objective cri-

1 teria may include the use of interim objective
2 criteria to measure results on a periodic basis,
3 as appropriate.

4 (b) SUBSEQUENT ANNUAL REPORTS.—

5 (1) IN GENERAL.—Not later than the date
6 which is 1 year after the last day of the 90-day pe-
7 riod referred to in subsection (a)(1), and annually
8 thereafter, the Secretary shall submit to the Con-
9 gress a report containing the following:

10 (A) An assessment of the market access
11 opportunities that would be available in the
12 Japanese market, for goods and services pro-
13 duced or originating in the United States in
14 those sectors selected by the Secretary, in the
15 absence of the barriers to achieving access to
16 such market in both the public and private sec-
17 tors in Japan. In making such assessment, the
18 Secretary shall consider the competitive position
19 of such goods and services in similarly devel-
20 oped markets in other countries. Such assess-
21 ment shall specify the time periods within which
22 such market access opportunities should reason-
23 ably be expected to be obtained.

24 (B) Objective criteria for measuring the
25 extent to which those market access opportuni-

1 ties described in subparagraph (A) have been
2 obtained. The development of such objective cri-
3 teria may include the use of interim criteria de-
4 scribed in subsection (a)(2)(B).

5 (C) An assessment of whether, and to what
6 extent, Japan has materially complied with—

7 (i) agreements and understandings
8 reached between the United States and
9 Japan pursuant to section 3, and

10 (ii) existing trade agreements between
11 the United States and Japan.

12 Such assessment shall include specific informa-
13 tion on the extent to which United States sup-
14 pliers have achieved additional access to the
15 Japanese market and the extent to which
16 Japan has complied with other commitments
17 under such agreements and understandings.

18 (D) An assessment of the effect of the
19 agreements and understandings described in
20 subparagraph (C) on the access to the Japanese
21 markets of goods and services produced or orig-
22 inating in the United States.

23 (2) SELECTION OF SECTORS.—In selecting sec-
24 tors that are to be the subject of a report under

1 paragraph (1), the Secretary shall give priority to
2 those sectors—

3 (A) in which access to the Japanese mar-
4 ket is likely to have significant potential to in-
5 crease exports of United States goods and serv-
6 ices;

7 (B) in which access to the Japanese mar-
8 ket will result in significant employment bene-
9 fits for producers of United States goods and
10 services; or

11 (C) which represent critical technologies,
12 including those identified by the National Criti-
13 cal Technologies Panel under section 603 of the
14 National Science and Technology Policy, Orga-
15 nization, and Priorities Act of 1976 (42 U.S.C.
16 6683).

17 The Secretary shall include an assessment under
18 paragraph (1) of any sector for which the Trade
19 Representative requests such assessment be made.
20 In preparing any such request, the Trade Represent-
21 ative shall give priority to those barriers identified in
22 the reports required by section 181(b) of the Trade
23 Act of 1974.

24 (3) INFORMATION ON ACCESS BY FOREIGN SUP-
25 PLIERS.—The Secretary shall consult with the gov-

1 ernments of foreign countries concerning access to
2 the Japanese market of goods and services produced
3 or originating in those countries. At the request of
4 the government of any such country, the Secretary
5 may include in the reports required by paragraph
6 (1) information, with respect to that country, on
7 such access.

8 **SEC. 3. NEGOTIATIONS TO ACHIEVE MARKET ACCESS.**

9 (a) NEGOTIATING AUTHORITY.—The President is au-
10 thorized to enter into agreements or other understandings
11 with the Government of Japan for the purpose of obtain-
12 ing the market access opportunities described in the re-
13 ports of the Secretary under section 2.

14 (b) DETERMINATION OF PRIORITY OF NEGOTIA-
15 TIONS.—Upon the submission by the Secretary of each re-
16 port under section 2, the Trade Representative shall deter-
17 mine—

18 (1) for which sectors identified in the report the
19 Trade Representative will pursue negotiations, dur-
20 ing the 6-month period following submission of the
21 report, for the purpose of concluding agreements or
22 other understandings described in subsection (a),
23 and the time frame for pursuing negotiations on any
24 other sector identified in the report; and

1 (2) for which sectors identified in any previous
2 report of the Secretary under section 2 the Trade
3 Representative will pursue negotiations, during the
4 6-month period described in paragraph (1), in cases
5 in which—

6 (A) negotiations were not previously pur-
7 sued by the Trade Representative, or

8 (B) negotiations that were pursued by the
9 Trade Representative did not result in the con-
10 clusion of an agreement or understanding de-
11 scribed in subsection (a) during the preceding
12 6-month period, but are expected to result in
13 such an agreement or understanding during the
14 6-month period described in paragraph (1).

15 For purposes of this Act, negotiations by the Trade Rep-
16 resentative with respect to a particular sector shall be for
17 a period of not more than 12 months.

18 (c) SEMIANNUAL REPORTS.—At the end of the 6-
19 month period beginning on the date on which the Sec-
20 retary's first report is submitted under subsection (a)(1),
21 and every 6 months thereafter, the Trade Representative
22 shall submit to the Congress a report containing the fol-
23 lowing:

1 (1) With respect to each sector on which nego-
2 tiations described in subsection (b) were pursued
3 during that 6-month period—

4 (A) a determination of whether such nego-
5 tiations have resulted in the conclusion of an
6 agreement or understanding intended to obtain
7 the market access opportunities described in the
8 most recent applicable report of the Secretary,
9 and if not—

10 (i) whether such negotiations are con-
11 tinuing because they are expected to result
12 in such an agreement or understanding
13 during the succeeding 6-month period; or

14 (ii) whether such negotiations have
15 terminated; and

16 (B) in the case of a positive determination
17 made under subparagraph (A)(i) in the preced-
18 ing report submitted under this subsection, a
19 determination of whether the continuing nego-
20 tiations have resulted in the conclusion of an
21 agreement or understanding described in sub-
22 paragraph (A) during that 6-month period.

23 (2) With respect to each sector on which nego-
24 tiations described in subsection (b) were not pursued

1 during that 6-month period, a determination of when
2 such negotiations will be pursued.

3 **SEC. 4. MONITORING OF AGREEMENTS AND UNDERSTAND-**
4 **INGS.**

5 (a) IN GENERAL.—For the purpose of making the
6 assessments required by section 2(b)(1)(C), the Secretary
7 shall monitor the compliance with each agreement or un-
8 derstanding reached between the United States and Japan
9 pursuant to section 3, and with each existing trade agree-
10 ment between the United States and Japan. In making
11 each such assessment, the Secretary shall describe—

12 (1) the extent to which market access for the
13 sector covered by the agreement or understanding
14 has been achieved; and

15 (2) the bilateral trade relationship with Japan
16 in that sector.

17 In the case of agreements or understandings reached pur-
18 suant to section 3, the description under paragraph (1)
19 shall be done on the basis of the objective criteria set forth
20 in the applicable report under section 2(a)(2)(B) or
21 2(b)(1)(B).

22 (b) TREATMENT OF AGREEMENTS AND UNDER-
23 STANDINGS.—Any agreement or understanding reached
24 pursuant to negotiations conducted under this Act, and
25 each existing trade agreement between the United States

1 and Japan, shall be considered to be a trade agreement
2 for purposes of section 301 of the Trade Act of 1974.

3 **SEC. 5. TRIGGERING OF SECTION 301 ACTIONS.**

4 (a) DETERMINATIONS BY TRADE REPRESENTA-
5 TIVE.—

6 (1) FAILURE TO CONCLUDE AGREEMENTS.—In
7 any case in which the Trade Representative deter-
8 mines under section 3(c)(1)(A)(ii) or (B) that nego-
9 tiations have not resulted in the conclusion of an
10 agreement or understanding described in section
11 3(a), each barrier to access to the Japanese market
12 that was the subject of such negotiations shall, for
13 purposes of title III of the Trade Act of 1974, be
14 considered to be an act, policy, or practice deter-
15 mined under section 304 of that Act to be an act,
16 policy or practice that is unreasonable and discrimi-
17 natory and burdens or restricts United States com-
18 merce. The Trade Representative shall determine
19 what action to take under section 301(b) of that Act
20 in response to such act, policy, or practice.

21 (2) NONCOMPLIANCE WITH AGREEMENTS OR
22 UNDERSTANDINGS.—In any case in which the Sec-
23 retary determines, in a report submitted under sec-
24 tion 2(b)(1), that Japan is not in material compli-
25 ance with—

1 (A) any agreement or understanding con-
2 cluded pursuant to negotiations conducted
3 under section 3, or

4 (B) any existing trade agreement between
5 the United States and Japan,
6 the Trade Representative shall determine what ac-
7 tion to take under section 301(a) of the Trade Act
8 of 1974. For purposes of section 301 of that Act, a
9 determination of noncompliance described in the pre-
10 ceding sentence shall be treated as a determination
11 made under section 304 of that Act.

12 **SEC. 6. DEFINITIONS.**

13 As used in this Act:

14 (1) EXISTING TRADE AGREEMENT BETWEEN
15 THE UNITED STATES AND JAPAN.—The term “exist-
16 ing trade agreement between the United States and
17 Japan” means any trade agreement that was en-
18 tered into between the United States and Japan be-
19 fore the date of the enactment of this Act and is in
20 effect on such date. Such term includes—

21 (A) the Arrangement Between the Govern-
22 ment of Japan and the Government of the
23 United States of America Concerning Trade in
24 Semiconductor Products, signed in 1986;

1 (B) the Arrangement Between the Govern-
2 ment of Japan and the Government of the
3 United States of America Concerning Trade in
4 Semiconductor Products, signed in 1991;

5 (C) the United States-Japan Wood Prod-
6 ucts Agreement, signed on June 5, 1990;

7 (D) Measures Related to Japanese Public
8 Sector Procurements of Computer Products and
9 Services, signed on January 10, 1992;

10 (E) the Tokyo Declaration on the U.S.-
11 Japan Global Partnership, signed on January
12 9, 1992; and

13 (F) the Cellular Telephone and Third-
14 Party Radio Agreement, signed in 1989.

15 (2) FRAMEWORK AGREEMENT.—The term
16 “Framework Agreement” means the Japan-United
17 States Framework for a New Economic Partnership,
18 signed on July 10, 1993.

19 (3) SECRETARY.—The term “Secretary” means
20 the Secretary of Commerce.

21 (4) TRADE REPRESENTATIVE.—The term
22 “Trade Representative” means the United States
23 Trade Representative.

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