

104TH CONGRESS
1ST SESSION

H. R. 1434

To establish a commission to review the dispute settlement reports of the World Trade Organization, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 1995

Mr. HOUGHTON (for himself and Mr. LEVIN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a commission to review the dispute settlement reports of the World Trade Organization, 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 “WTO Dispute Settle-
5 ment Review Commission Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds the following:

1 (1) The United States joined the World Trade
2 Organization as a founding member with the goal of
3 creating an improved global trading system.

4 (2) The American people must receive assur-
5 ances that United States sovereignty will be pro-
6 tected, and United States interests will be advanced,
7 within the global trading system which the WTO will
8 oversee.

9 (3) The survival of the new WTO requires the
10 continuation of both trade liberalization and the
11 ability to respond effectively to unfair or otherwise
12 harmful trade practices.

13 (4) United States support for the WTO de-
14 pends upon obtaining mutual trade benefits through
15 the openness of foreign markets and the mainte-
16 nance of effective United States and WTO remedies
17 against unfair or otherwise harmful trade practices.

18 (5) Congress passed the Uruguay Round Agree-
19 ments Act based upon its understanding that effec-
20 tive trade remedies would not be eroded. These rem-
21 edies are essential to continue the process of opening
22 foreign markets to imports of goods and services and
23 to prevent harm to American industry and agri-
24 culture, particularly through foreign dumping and
25 subsidization.

1 (6) The continued support of the Congress for
2 the WTO is dependent upon a WTO dispute settle-
3 ment system that—

4 (A) operates in a fair and impartial man-
5 ner;

6 (B) does not add to the obligations of or
7 diminish the rights of the United States under
8 the Uruguay Round Agreements; and

9 (C) does not exceed its authority, scope, or
10 established standard of review.

11 (b) PURPOSE.—It is the purpose of this Act to pro-
12 vide for the establishment of the WTO Dispute Settlement
13 Review Commission to achieve the goals described in sub-
14 section (a)(6).

15 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

16 (a) ESTABLISHMENT.—There is established a com-
17 mission to be known as the WTO Dispute Settlement Re-
18 view Commission (hereafter in this Act referred to as the
19 “Commission”).

20 (b) MEMBERSHIP.—

21 (1) COMPOSITION.—The Commission shall be
22 composed of 5 members all of whom shall be judges
23 of the Federal judicial circuits and shall be ap-
24 pointed by the President, after consultation with the
25 Majority Leader and Minority Leader of the House

1 of Representatives, the Majority Leader and Minor-
2 ity Leader of the Senate, the chairman and ranking
3 member of the Committee on Ways and Means of
4 the House of Representatives, and the chairman and
5 ranking member of the Committee on Finance of the
6 Senate.

7 (2) DATE.—The appointments of the members
8 of the Commission shall be made no later than 60
9 days after the date of the enactment of this Act.

10 (c) PERIOD OF APPOINTMENT; VACANCIES.—

11 (1) IN GENERAL.—Members of the Commission
12 first appointed shall each be appointed for a term of
13 5 years. After the initial 5-year term, 3 members of
14 the Commission shall be appointed for terms of 3
15 years and the remaining 2 members shall be ap-
16 pointed for terms of 2 years.

17 (2) VACANCIES.—

18 (A) IN GENERAL.—Any vacancy on the
19 Commission shall not affect its powers, but
20 shall be filled in the same manner as the origi-
21 nal appointment and shall be subject to the
22 same conditions as the original appointment.

23 (B) UNEXPIRED TERM.—An individual
24 chosen to fill a vacancy shall be appointed for
25 the unexpired term of the member replaced.

1 (d) INITIAL MEETING.—No later than 30 days after
2 the date on which all members of the Commission have
3 been appointed, the Commission shall hold its first meet-
4 ing.

5 (e) MEETINGS.—The Commission shall meet at the
6 call of the Chairman.

7 (f) QUORUM.—A majority of the members of the
8 Commission shall constitute a quorum, but a lesser num-
9 ber of members may hold hearings.

10 (g) CHAIRMAN AND VICE CHAIRMAN.—The Commis-
11 sion shall select a Chairman and Vice Chairman from
12 among its members.

13 **SEC. 4. DUTIES OF THE COMMISSION.**

14 (a) REVIEW OF WTO DISPUTE SETTLEMENT RE-
15 PORTS.—

16 (1) IN GENERAL.—The Commission shall re-
17 view—

18 (A) all reports of dispute settlement panels
19 or the Appellate Body of the World Trade Or-
20 ganization in proceedings initiated by other par-
21 ties to the WTO which are adverse to the
22 United States and which are adopted by the
23 Dispute Settlement Body, and

24 (B) upon request of the United States
25 Trade Representative, any other report of a dis-

1 pute settlement panel or the Appellate Body
2 which is adopted by the Dispute Settlement
3 Body.

4 (2) SCOPE OF REVIEW.—In the case of any re-
5 port described in paragraph (1), the Commission
6 shall review the report and determine whether—

7 (A) the panel or the Appellate Body, as the
8 case may be, exceeded its authority or its terms
9 of reference;

10 (B) the panel or the Appellate Body, as
11 the case may be, added to the obligations of or
12 diminished the rights of the United States
13 under the Uruguay Round Agreement which is
14 the subject of the report;

15 (C) the panel or the Appellate Body, as the
16 case may be, acted arbitrarily or capriciously,
17 engaged in misconduct, or demonstrably de-
18 parted from the procedures specified for panels
19 and the Appellate Body in the applicable Uru-
20 guay Round Agreement; and

21 (D) the report of the panel or the Appel-
22 late Body, as the case may be, deviated from
23 the applicable standard of review, including in
24 antidumping, countervailing duty, and other un-
25 fair trade remedy cases, including the standard

1 of review set forth in Article 17.6 of the Agree-
2 ment on Implementation of Article VI of the
3 General Agreement on Tariffs and Trade 1994.

4 (3) AFFIRMATIVE DETERMINATION.—If the
5 Commission makes an affirmative determination
6 with respect to the action of a panel or the Appellate
7 Body under subparagraph (A), (B), (C), or (D) of
8 paragraph (2), the Commission shall determine
9 whether the action of the panel or Appellate Body
10 materially affected the outcome of the report of the
11 panel or Appellate Body.

12 (b) DETERMINATION; REPORT.—

13 (1) DETERMINATION.—No later than 120 days
14 after the date on which a report of a panel or the
15 Appellate Body described in subsection (a)(1) is
16 adopted by the Dispute Settlement Body, the Com-
17 mission shall make a written determination with re-
18 spect to matters described in subsections (a)(2) and
19 (a)(3).

20 (2) REPORTS.—The Commission shall report
21 the determinations described in paragraph (1) to the
22 Committee on Ways and Means of the House of
23 Representatives and the Committee on Finance of
24 the Senate.

1 **SEC. 5. POWERS OF THE COMMISSION.**

2 (a) HEARINGS.—The Commission may hold such
3 hearings, sit and act at such times and places, take such
4 testimony, and receive such evidence as the Commission
5 considers advisable to carry out the purposes of this Act.

6 (b) INFORMATION FROM INTERESTED PARTIES AND
7 FEDERAL AGENCIES.—

8 (1) NOTICE OF PANEL OR APPELLATE BODY
9 REPORT.—The United States Trade Representative
10 shall advise the Commission no later than 5 days
11 after the date the Dispute Settlement Body adopts
12 the report of a panel or the Appellate Body that is
13 adverse to the United States and shall immediately
14 publish notice of such advice in the Federal Reg-
15 ister, along with notice of an opportunity for inter-
16 ested parties to submit comments to the Commis-
17 sion.

18 (2) SUBMISSIONS AND REQUESTS FOR INFOR-
19 MATION.—Any interested party may submit com-
20 ments to the Commission regarding the panel or Ap-
21 pellate Body report. The Commission may also se-
22 cure directly from any Federal department or agency
23 such information as the Commission considers nec-
24 essary to carry out the provisions of this Act. Upon
25 request of the Chairman of the Commission, the

1 head of such department or agency shall furnish
2 such information to the Commission.

3 (3) ACCESS TO PANEL AND APPELLATE BODY
4 DOCUMENTS.—The United States Trade Representa-
5 tive shall make available to the Commission all sub-
6 missions and relevant documents relating to the
7 panel or Appellate Body report, including any infor-
8 mation contained in such submissions identified by
9 the provider of the information as proprietary infor-
10 mation or information treated as confidential by a
11 foreign government.

12 **SEC. 6. REVIEW OF DISPUTE SETTLEMENT PROCEDURES**
13 **AND PARTICIPATION IN THE WTO.**

14 (a) AFFIRMATIVE REPORT BY COMMISSION.—

15 (1) IN GENERAL.—If a joint resolution de-
16 scribed in subsection (b)(1) is enacted into law pur-
17 suant to the provisions of subsection (c), the United
18 States Trade Representative shall undertake nego-
19 tiations to amend or modify the rules and proce-
20 dures of the Dispute Settlement Understanding to
21 which such joint resolution relates.

22 (2) 3 AFFIRMATIVE REPORTS BY COMMIS-
23 SION.—If a joint resolution described in subsection
24 (b)(2) is enacted into law pursuant to the provisions
25 of subsection (c), the approval of the Congress, pro-

1 vided under section 101(a) of the Uruguay Round
2 Agreements Act, of the WTO Agreement shall cease
3 to be effective in accordance with the provisions of
4 the joint resolution and the United States shall
5 cease to be a member of the WTO.

6 (b) JOINT RESOLUTIONS DESCRIBED.—

7 (1) IN GENERAL.—For purposes of subsection
8 (a)(1), a joint resolution is described in this para-
9 graph if it is a joint resolution of the 2 Houses of
10 Congress and the matter after the resolving clause
11 of such joint resolution is as follows: “That the Con-
12 gress authorizes and directs the United States Trade
13 Representative to undertake negotiations to amend
14 or modify the rules and procedures of the Under-
15 standing on Rules and Procedures Governing the
16 Settlement of Disputes relating to ____ with respect
17 to the affirmative determination submitted to the
18 Congress by the WTO Dispute Settlement Review
19 Commission on _____”, the first blank space being
20 filled with the specific rules and procedures with re-
21 spect to which the Trade Representative is to under-
22 take negotiations and the second blank space being
23 filled with the date of the affirmative determination
24 submitted to the Congress by the Commission pursu-

1 ant to section 4(b) which has given rise to the joint
2 resolution.

3 (2) WITHDRAWAL RESOLUTION.—For purposes
4 of subsection (a)(2), a joint resolution is described
5 in this paragraph if it is a joint resolution of the 2
6 Houses of Congress and the matter after the resolv-
7 ing clause of such joint resolution is as follows:
8 “That the Congress authorizes and directs the Unit-
9 ed States Trade Representative to undertake nego-
10 tiations to amend or modify the rules and proce-
11 dures of the Understanding on Rules and Proce-
12 dures Governing the Settlement of Disputes relating
13 to ____ with respect to the affirmative report sub-
14 mitted to the Congress by the WTO Dispute Settle-
15 ment Review Commission on ____ and if such nego-
16 tiations do not result in a solution that the Trade
17 Representative, by ____, certifies to the Congress is
18 satisfactory, the Congress withdraws its approval,
19 provided under section 101(a) of the Uruguay
20 Round Agreements Act, of the WTO Agreement as
21 defined in section 2(9) of that Act”, the first blank
22 space being filled with the specific rules and proce-
23 dures with respect to which the Trade Representa-
24 tive is to undertake negotiations, the second blank
25 space being filled with the date of the affirmative de-

1 termination submitted to the Congress by the Com-
2 mission pursuant to section 4(b) which has given
3 rise to the joint resolution, and the third blank space
4 being filled with the date the Congress withdraws its
5 approval of the WTO Agreement.

6 (c) PROCEDURAL PROVISIONS.—

7 (1) IN GENERAL.—The requirements of this
8 subsection are met if the joint resolution is enacted
9 in accordance with this subsection, and—

10 (A) in the case of a joint resolution de-
11 scribed in subsection (b)(1), the Congress
12 adopts and transmits the joint resolution to the
13 President before the end of the 90-day period
14 (excluding any day described in section 154(b)
15 of the Trade Act of 1974) beginning on the
16 date on which the Congress receives an affirma-
17 tive determination from the Commission de-
18 scribed in section 4(b), or

19 (B) in the case of a joint resolution de-
20 scribed in subsection (b)(2), the Commission
21 has made 3 affirmative determinations de-
22 scribed in section 4(b) during a 5-year period,
23 and the Congress adopts and transmits the
24 joint resolution to the President before the end
25 of the 90-day period (excluding any day de-

1 scribed in section 154(b) of the Trade Act of
2 1974) beginning on the date on which the Con-
3 gress receives the third such affirmative deter-
4 mination.

5 (2) PRESIDENTIAL VETO.—In any case in
6 which the President vetoes the joint resolution, the
7 requirements of this subsection are met if each
8 House of Congress votes to override that veto on or
9 before the later of the last day of the 90-day period
10 referred to in subparagraph (A) or (B) of paragraph
11 (1), whichever is applicable, or the last day of the
12 15-day period (excluding any day described in sec-
13 tion 154(b) of the Trade Act of 1974) beginning on
14 the date on which the Congress receives the veto
15 message from the President.

16 (3) INTRODUCTION.—

17 (A) TIME.—A joint resolution to which
18 this section applies may be introduced at any
19 time on or after the date on which the Commis-
20 sion transmits to the Congress an affirmative
21 determination described in section 4(b), and be-
22 fore the end of the 90-day period referred to in
23 subparagraph (A) or (B) of paragraph (1), as
24 the case may be.

1 (B) ANY MEMBER MAY INTRODUCE.—A
2 joint resolution described in subsection (b) may
3 be introduced in either House of the Congress
4 by any Member of such House.

5 (4) EXPEDITED PROCEDURES.—

6 (A) GENERAL RULE.—Subject to the pro-
7 visions of this subsection, the provisions of sub-
8 sections (b), (d), (e), and (f) of section 152 of
9 the Trade Act of 1974 (19 U.S.C. 2192(b), (d),
10 (e), and (f)) apply to joint resolutions described
11 in subsection (b) to the same extent as such
12 provisions apply to resolutions under such sec-
13 tion.

14 (B) REPORT OR DISCHARGE OF COMMIT-
15 TEE.—If the committee of either House to
16 which a joint resolution has been referred has
17 not reported it by the close of the 45th day
18 after its introduction (excluding any day de-
19 scribed in section 154(b) of the Trade Act of
20 1974), such committee shall be automatically
21 discharged from further consideration of the
22 joint resolution and it shall be placed on the ap-
23 propriate calendar.

24 (C) FINANCE AND WAYS AND MEANS COM-
25 MITTEES.—It is not in order for—

1 (i) the Senate to consider any joint
2 resolution unless it has been reported by
3 the Committee on Finance or the commit-
4 tee has been discharged under subpara-
5 graph (B); or

6 (ii) the House of Representatives to
7 consider any joint resolution unless it has
8 been reported by the Committee on Ways
9 and Means or the committee has been dis-
10 charged under subparagraph (B).

11 (D) SPECIAL RULE FOR HOUSE.—A mo-
12 tion in the House of Representatives to proceed
13 to the consideration of a joint resolution may
14 only be made on the second legislative day after
15 the calendar day on which the Member making
16 the motion announces to the House his or her
17 intention to do so.

18 (5) CONSIDERATION OF SECOND RESOLUTION
19 NOT IN ORDER.—It shall not be in order in either
20 the House of Representatives or the Senate to con-
21 sider a joint resolution (other than a joint resolution
22 received from the other House), if that House has
23 previously adopted a joint resolution under this sec-
24 tion relating to the same matter.

1 (d) RULES OF HOUSE OF REPRESENTATIVES AND
2 SENATE.—This section is enacted by the Congress—

3 (1) as an exercise of the rulemaking power of
4 the House of Representatives and the Senate, re-
5 spectively, and as such is deemed a part of the rules
6 of each House, respectively, and such procedures su-
7 persede other rules only to the extent that they are
8 inconsistent with such other rules; and

9 (2) with the full recognition of the constitu-
10 tional right of either House to change the rules (so
11 far as relating to the procedures of that House) at
12 any time, in the same manner, and to the same ex-
13 tent as any other rule of that House.

14 **SEC. 7. PARTICIPATION IN WTO PANEL PROCEEDINGS.**

15 (a) IN GENERAL.—If the United States Trade Rep-
16 resentative, in proceedings before a dispute settlement
17 panel or the Appellate Body of the WTO, seeks—

18 (1) to enforce United States rights under a
19 multilateral trade agreement, or

20 (2) to defend a challenged action or determina-
21 tion of the United States Government,

22 a private United States person that is supportive of the
23 United States Government's position before the panel or
24 Appellate Body and that has a direct economic interest
25 in the panel's or Appellate Body's resolution of the mat-

1 ters in dispute shall be permitted to participate in con-
2 sultations and panel proceedings. The Trade Representa-
3 tive shall issue regulations, consistent with subsections (b)
4 and (c), ensuring full and effective participation by any
5 such private person.

6 (b) ACCESS TO INFORMATION.—The United States
7 Trade Representative shall make available to persons de-
8 scribed in subsection (a) all information presented to or
9 otherwise obtained by the Trade Representative in connec-
10 tion with a WTO dispute settlement proceeding. The
11 United States Trade Representative shall promulgate reg-
12 ulations implementing a protective order system to protect
13 information designated by the submitting member as con-
14 fidential.

15 (c) PARTICIPATION IN PANEL PROCESS.—Upon re-
16 quest from a person described in subsection (a), the
17 United States Trade Representative shall—

18 (1) consult in advance with such person regard-
19 ing the content of written submissions from the
20 United States to the WTO panel concerned or to the
21 other member countries involved;

22 (2) include, where appropriate, such person or
23 its appropriate representative as an advisory mem-
24 ber of the delegation in sessions of the dispute set-
25 tlement panel;

1 (3) allow such special delegation member, where
2 such member would bring special knowledge to the
3 proceeding, to appear before the panel, directly or
4 through counsel, under the supervision of responsible
5 United States Government officials; and

6 (4) in proceedings involving confidential infor-
7 mation, allow appearance of such person only
8 through counsel as a member of the special delega-
9 tion.

10 **SEC. 8. DEFINITIONS.**

11 For purposes of this Act:

12 (1) APPELLATE BODY.—The term “Appellate
13 Body” means the Appellate Body established under
14 Article 17.1 of the Dispute Settlement Understand-
15 ing.

16 (2) ADVERSE TO THE UNITED STATES.—The
17 term “adverse to the United States” includes any re-
18 port which holds any law, regulation, or application
19 thereof by a government agency to be inconsistent
20 with international obligations under a Uruguay
21 Round Agreement (or a nullification or impairment
22 thereof), whether or not there are other elements of
23 the decision which favor arguments made by the
24 United States.

1 (3) DISPUTE SETTLEMENT PANEL; PANEL.—
2 The terms “dispute settlement panel” and “panel”
3 mean a panel established pursuant to Article 6 of
4 the Dispute Settlement Understanding.

5 (4) DISPUTE SETTLEMENT BODY.—The term
6 “Dispute Settlement Body” means the Dispute Set-
7 tlement Body administering the rules and proce-
8 dures set forth in the Dispute Settlement Under-
9 standing.

10 (5) DISPUTE SETTLEMENT UNDERSTANDING.—
11 The term “Dispute Settlement Understanding”
12 means the Understanding on Rules and Procedures
13 Governing the Settlement of Disputes referred to in
14 section 101(d)(16) of the Uruguay Round Agree-
15 ments Act.

16 (6) URUGUAY ROUND AGREEMENT.—The term
17 “Uruguay Round Agreement” means any of the
18 agreements described in section 101(d) of the Uru-
19 guay Round Agreements Act.

20 (7) WORLD TRADE ORGANIZATION; WTO.—The
21 terms “World Trade Organization” and “WTO”
22 mean the organization established pursuant to the
23 WTO Agreement.

24 (8) WTO AGREEMENT.—The term “WTO
25 Agreement” means the Agreement Establishing the

1 World Trade Organization entered into on April 15,
2 1994.

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