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H. R. 1560

To expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in foreign countries, to provide the President with reciprocal trade authority, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1995

Mr. GEPHARDT (for himself, Mr. BONIOR, Mr. FAZIO of California, Mrs. KENNELLY, Mr. MATSUI, Mr. DINGELL, Mr. LEVIN, Mr. MINETA, Ms. KAPTUR, Mr. HOYER, Mr. MILLER of California, Mrs. COLLINS of Illinois, Mr. CARDIN, Mr. LAFALCE, Mr. BROWN of Ohio, Mr. CLYBURN, Ms. DANNER, Ms. DELAURO, Mr. DEUTSCH, Mr. EVANS, Mr. FILNER, Mr. FRANK of Massachusetts, Mr. FRAZER, Mr. GONZALEZ, Mr. HINCHEY, Mr. JACOBS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KILDEE, Mr. KLINK, Mr. LIPINSKI, Mrs. MEEK of Florida, Mr. NEAL of Massachusetts, Mr. RAHALL, Mr. ROMERO-BARCELÓ, Mr. SANDERS, Mr. STUPAK, Mr. SPRATT, Mr. KLECZKA, and Ms. JACKSON-LEE) 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 expand United States exports of goods and services by requiring the development of objective criteria to achieve market access in foreign countries, to provide the President with reciprocal trade authority, 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 “Open Markets and
5 Fair Trade Act of 1995”.

6 **SEC. 2. REPORTS ON MARKET ACCESS.**

7 (a) ANNUAL REPORTS.—Not later than 90 days after
8 the date of the enactment of this Act, and annually there-
9 after, the Secretary shall submit to the Congress a report
10 with respect to those countries selected by the Secretary
11 in which goods or services produced or originating in the
12 United States, that would otherwise be competitive in
13 those countries, do not have market access. Each report
14 shall contain the following with respect to each such coun-
15 try:

16 (1) ASSESSMENT OF POTENTIAL MARKET AC-
17 CESS.—An assessment of the opportunities that
18 would, but for the lack of market access, be available
19 in the market in that country, for goods and services
20 produced or originating in the United States in
21 those sectors selected by the Secretary. In making
22 such assessment, the Secretary shall consider the
23 competitive position of such goods and services in
24 similarly developed markets in other countries. Such
25 assessment shall specify the time periods within

1 which such market access opportunities should rea-
2 sonably be expected to be obtained.

3 (2) CRITERIA FOR MEASURING MARKET AC-
4 CESS.—Objective criteria for measuring the extent to
5 which those market access opportunities described in
6 paragraph (1) have been obtained. The development
7 of such objective criteria may include the use of in-
8 terim objective criteria to measure results on a peri-
9 odic basis, as appropriate.

10 (3) COMPLIANCE WITH TRADE AGREEMENTS.—
11 An assessment of whether, and to what extent, the
12 country concerned has materially complied with—

13 (A) agreements and understandings
14 reached between the United States and that
15 country pursuant to section 3, and

16 (B) existing trade agreements between the
17 United States and that country.

18 Such assessment shall include specific information
19 on the extent to which United States suppliers have
20 achieved additional access to the market in the coun-
21 try concerned and the extent to which that country
22 has complied with other commitments under such
23 agreements and understandings.

24 (b) SELECTION OF COUNTRIES AND SECTORS.—

1 (1) IN GENERAL.—In selecting countries and
2 sectors that are to be the subject of a report under
3 subsection (a), the Secretary shall give priority to—

4 (A) any country with which the United
5 States has a trade deficit if access to the mar-
6 kets in that country is likely to have significant
7 potential to increase exports of United States
8 goods and services; and

9 (B) any country, and sectors therein, in
10 which access to the markets will result in sig-
11 nificant employment benefits for producers of
12 United States goods and services.

13 The Secretary shall also give priority to sectors
14 which represent critical technologies, including those
15 identified by the National Critical Technologies
16 Panel under section 603 of the National Science and
17 Technology Policy, Organization, and Priorities Act
18 of 1976 (42 U.S.C. 6683).

19 (2) FIRST REPORT.—The first report submitted
20 under subsection (a) shall include those countries
21 with which the United States has a substantial por-
22 tion of its trade deficit.

23 (3) TRADE SURPLUS COUNTRIES.—The Sec-
24 retary may include in reports after the first report
25 such countries as the Secretary considers appro-

1 appropriate with which the United States has a trade sur-
2 plus but which are otherwise described in subsection
3 (a) and paragraph (1) of this subsection.

4 (c) OTHER SECTORS.—The Secretary shall include
5 an assessment under subsection (a) of any country or sec-
6 tor for which the Trade Representative requests such as-
7 sessment be made. In preparing any such request, the
8 Trade Representative shall give priority to those barriers
9 identified in the reports required by section 181(b) of the
10 Trade Act of 1974 (19 U.S.C. 2241(b)).

11 (d) INFORMATION ON ACCESS BY FOREIGN SUPPLI-
12 ERS.—The Secretary shall consult with the governments
13 of foreign countries concerning access to the markets of
14 any other country of goods and services produced or origi-
15 nating in those countries. At the request of the govern-
16 ment of any such country so consulted, the Secretary may
17 include in the reports required by subsection (a) informa-
18 tion, with respect to that country, on such access.

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

20 (a) NEGOTIATING AUTHORITY.—The President is au-
21 thorized to enter into agreements or other understandings
22 with the government of any country for the purpose of
23 obtaining the market access opportunities described in the
24 reports of the Secretary under section 2.

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

5 (1) for which countries and sectors identified in
6 the report the Trade Representative will pursue ne-
7 gotiations, during the 6-month period following sub-
8 mission of the report, for the purpose of concluding
9 agreements or other understandings described in
10 subsection (a), and the timeframe for pursuing nego-
11 tiations on any other country or sector identified in
12 the report; and

13 (2) for which countries and sectors identified in
14 any previous report of the Secretary under section 2
15 the Trade Representative will pursue negotiations,
16 during the 6-month period described in paragraph
17 (1), in cases in which—

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

20 (B) negotiations that were pursued by the
21 Trade Representative did not result in the con-
22 clusion of an agreement or understanding de-
23 scribed in subsection (a) during the preceding
24 6-month period, but are expected to result in

1 such an agreement or understanding during the
2 6-month period described in paragraph (1).

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

6 (c) SEMIANNUAL REPORTS.—At the end of the 6-
7 month period beginning on the date on which the Sec-
8 retary's first report is submitted under section 2(a), and
9 every 6 months thereafter, the Trade Representative shall
10 submit to the Congress a report containing the following:

11 (1) REPORT WHERE NEGOTIATIONS PURSUED
12 IN PREVIOUS 6-MONTH PERIOD.—With respect to
13 each country and sector on which negotiations de-
14 scribed in subsection (b) were pursued during that
15 6-month period—

16 (A) a determination of whether such nego-
17 tiations have resulted in the conclusion of an
18 agreement or understanding intended to obtain
19 the market access opportunities described in the
20 most recent applicable report of the Secretary,
21 and if not—

22 (i) whether such negotiations are con-
23 tinuing because they are expected to result
24 in such an agreement or understanding
25 during the succeeding 6-month period; or

1 (ii) whether such negotiations have
2 terminated;

3 (B) in the case of a positive determination
4 made under subparagraph (A)(i) in the preced-
5 ing report submitted under this subsection, a
6 determination of whether the continuing nego-
7 tiations have resulted in the conclusion of an
8 agreement or understanding described in sub-
9 paragraph (A) during that 6-month period.

10 (2) REPORT WHERE NEGOTIATIONS NOT PUR-
11 SUED.—With respect to each country and sector on
12 which negotiations described in subsection (b) were
13 not pursued during that 6-month period, a deter-
14 mination of when such negotiations will be pursued.

15 **SEC. 4. MONITORING OF AGREEMENTS AND UNDERSTAND-**
16 **INGS.**

17 (a) IN GENERAL.—For the purpose of making the
18 assessments required by section 2(a)(3), the Secretary
19 shall monitor the compliance with each agreement or un-
20 derstanding reached between the United States and any
21 country pursuant to section 3, and with each existing
22 trade agreement between the United States and any coun-
23 try that is the subject of a report under section 2(a). In
24 making each such assessment, the Secretary shall de-
25 scribe—

1 (1) the extent to which market access for the
2 country and sectors covered by the agreement or un-
3 derstanding has been achieved; and

4 (2) the bilateral trade relationship with that
5 country in that sector.

6 In the case of agreements or understandings reached pur-
7 suant to section 3, the description under paragraph (1)
8 shall be done on the basis of the objective criteria set forth
9 in the applicable report under section 2(a)(2).

10 (b) TREATMENT OF AGREEMENTS AND UNDER-
11 STANDINGS.—Any agreement or understanding reached
12 pursuant to negotiations conducted under this Act, and
13 each existing trade agreement between the United States
14 and a country that is the subject of a report under section
15 2(a), shall be considered to be a trade agreement for pur-
16 poses of section 301 of the Trade Act of 1974.

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

18 (a) FAILURE TO CONCLUDE AGREEMENTS.—In any
19 case in which the Trade Representative determines under
20 section 3(c)(1) (A)(ii) or (B) that negotiations have not
21 resulted in the conclusion of an agreement or understand-
22 ing described in section 3(a), each restriction on, or bar-
23 rier or impediment to, access to the markets of the country
24 concerned that was the subject of such negotiations shall,
25 for purposes of title III of the Trade Act of 1974, be con-

1 sidered to be an act, policy, or practice determined under
2 section 304 of that Act to be an act, policy, or practice
3 that is unreasonable and discriminatory and burdens or
4 restricts United States commerce. The Trade Representa-
5 tive shall determine what action to take under section
6 301(b) of that Act in response to such act, policy, or prac-
7 tice.

8 (b) NONCOMPLIANCE WITH AGREEMENTS OR UN-
9 DERSTANDINGS.—In any case in which the Secretary de-
10 termines, in a report submitted under section 2(a), that
11 a foreign country is not in material compliance with—

12 (1) any agreement or understanding concluded
13 pursuant to negotiations conducted under section 3,
14 or

15 (2) any existing trade agreement between the
16 United States and that country,

17 the Trade Representative shall determine what action to
18 take under section 301(a) of the Trade Act of 1974. For
19 purposes of section 301 of that Act, a determination of
20 noncompliance described in the preceding sentence shall
21 be treated as a determination made under section 304 of
22 that Act.

1 **SEC. 6. EXPEDITED PROCEDURES FOR CERTAIN PRESI-**
2 **DENTIAL ACTIONS.**

3 (a) **AUTHORITY FOR RECIPROCAL ACTIONS.**—In any
4 case in which—

5 (1) section 5 applies,

6 (2) the President determines that reciprocal ac-
7 tion should be taken by the United States in re-
8 sponse to—

9 (A) a restriction, barrier, or impediment
10 referred to in section 5(a) with respect to access
11 to the market of a country, or

12 (B) noncompliance with an agreement, un-
13 derstanding, or trade agreement referred to in
14 section 5(b),

15 as the case may be,

16 (3) changes in existing law or new statutory au-
17 thority is necessary for such reciprocal action to be
18 taken, and

19 (4) the President, within 30 days (excluding
20 any day described in section 154(b) of the Trade Act
21 of 1974) after—

22 (A) the determination of the Trade Rep-
23 resentative under section 3(c)(1)(A)(ii) or (B),
24 or

25 (B) the determination of the Secretary in
26 the applicable report under section 2(a),

1 as the case may be, submits to the Congress a draft
2 of implementing legislation with respect to the
3 changes or authority described in paragraph (3),
4 then subsection (c) applies.

5 (b) DEFINITIONS.—For purposes of this section—

6 (1) the term “reciprocal action” means action
7 that is taken in direct response to a restriction on,
8 or barrier or impediment to, access to the market in
9 another country and is comparable or of equivalent
10 effect to such restriction, barrier, or impediment;
11 and

12 (2) the term “implementing legislation” means
13 a bill of either House of Congress which is intro-
14 duced as provided in subsection (c) and which con-
15 tains provisions necessary to make the changes or
16 provide the authority described in subsection (a)(3).

17 (c) PROCEDURES FOR IMPLEMENTING LEGISLA-
18 TION.—On the day on which implementing legislation is
19 submitted to the House of Representatives and the Senate
20 under subsection (a), the implementing legislation shall be
21 introduced and referred as provided in section 151(c)(1)
22 of the Trade Act of 1974 for implementing bills under
23 such section. The provisions of subsections (d), (e), (f),
24 and (g) of section 151 of such Act shall apply to imple-

1 menting legislation to the same extent as such subsections
2 apply to implementing bills.

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

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

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

16 **SEC. 7. URUGUAY ROUND AGREEMENTS NOT AFFECTED.**

17 Nothing in this Act shall be construed to violate any
18 provision of the agreements approved by the Congress in
19 section 101(a)(1) of the Uruguay Round Agreements Act
20 (19 U.S.C. 3511(a)(1)).

21 **SEC. 8. DEFINITIONS.**

22 As used in this Act:

23 (1) EXISTING TRADE AGREEMENT BETWEEN
24 THE UNITED STATES AND A COUNTRY.—An “exist-
25 ing trade agreement” between the United States and

1 another country means any trade agreement or un-
2 derstanding that was entered into between the Unit-
3 ed States and that country before the date of the en-
4 actment of this Act and is in effect on such date.
5 Such term includes, but is not limited to—

6 (A) with respect to Japan—

7 (i) the Arrangement Between the Gov-
8 ernment of Japan and the Government of
9 the United States of America Concerning
10 Trade in Semiconductor Products, signed
11 in 1986;

12 (ii) the Arrangement Between the
13 Government of Japan and the Government
14 of the United States of America Concern-
15 ing Trade in Semiconductor Products,
16 signed in 1991;

17 (iii) the United States-Japan Wood
18 Products Agreement, signed on June 5,
19 1990;

20 (iv) Measures Related to Japanese
21 Public Sector Procurements of Computer
22 Products and Services, signed on January
23 10, 1992;

1 (v) the Tokyo Declaration on the
2 U.S.-Japan Global Partnership, signed on
3 January 9, 1992; and

4 (vi) the Cellular Telephone and Third-
5 Party Radio Agreement, signed in 1989;

6 (B) with respect to the European Union—

7 (i) the Agreement Concerning the Ap-
8 plication of the GATT Agreement on
9 Trade in Civil Aircraft Between the Euro-
10 pean Economic Community and the Gov-
11 ernment of the United States of America
12 on trade in large civil aircraft, with an-
13 nexes, entered into force on July 17, 1992;

14 (ii) the Agreement Concerning Pro-
15 curement Between the United States and
16 the European Union, signed April 15,
17 1994; and

18 (iii) the Memorandum of Understand-
19 ing (MOU) on Procurement Between the
20 United States and the European Union,
21 signed May 25, 1993; and

22 (C) with respect to the People's Republic
23 of China—

24 (i) the Memorandum of Understand-
25 ing (MOU) on the Protection of Intellec-

1 tual Property Rights Between the United
2 States and the People’s Republic of China,
3 signed January 17, 1992;

4 (ii) the Memorandum of Understand-
5 ing (MOU) on Market Access Between the
6 United States and the People’s Republic of
7 China, signed October 10, 1992;

8 (iii) the Bilateral Textile Agreement
9 Between the United States and the Peo-
10 ple’s Republic of China, signed January
11 17, 1994; and

12 (iv) an exchange of letters with an at-
13 tached action plan between the United
14 States and the People’s Republic of China,
15 signed February 26, 1995, relating to in-
16 tellectual property rights.

17 (2) SECRETARY.—The term “Secretary” means
18 the Secretary of Commerce.

19 (3) TRADE REPRESENTATIVE.—The term
20 “Trade Representative” means the United States
21 Trade Representative.

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