

Calendar No. 253

104TH CONGRESS
1ST Session

S. 1438

A BILL

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

DECEMBER 4, 1995

Read the second time and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 30, 1995

Mr. DOLE introduced the following bill; which was read the first time

DECEMBER 4, 1995

Read the second time and placed on the calendar

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 title 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 WTO as an
2 original member with the goal of creating an im-
3 proved global trading system and providing ex-
4 panded economic opportunities for United States
5 firms and workers, while preserving United States
6 sovereignty.

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

12 (3) The WTO's dispute settlement rules are
13 meant to enhance the likelihood that governments
14 will observe their WTO obligations, and thus help
15 ensure that the United States will reap the full bene-
16 fits of its participation in the WTO.

17 (4) United States support for the WTO de-
18 pends on obtaining mutual trade benefits through
19 the openness of foreign markets and the mainte-
20 nance of effective United States and WTO remedies
21 against unfair or otherwise harmful trade practices.

22 (5) Congress passed the Uruguay Round Agree-
23 ments Act based on its understanding that effective
24 trade remedies would not be eroded. These remedies
25 are essential to continue the process of opening for-

1 eign markets to imports of goods and services and
 2 to prevent harm to American industry and agri-
 3 culture.

4 (6) In particular, WTO dispute settlement pan-
 5 els and the Appellate Body should—

6 (A) operate with fairness and in an impar-
 7 tial manner;

8 (B) not add to the obligations, or diminish
 9 the rights, of WTO members under the Uru-
 10 guay Round Agreements; and

11 (C) observe the terms of reference and any
 12 applicable WTO standard of review.

13 (b) PURPOSE.—It is the purpose of this title to pro-
 14 vide for the establishment of the WTO Dispute Settlement
 15 Review Commission to achieve the objectives described in
 16 subsection (a)(6).

17 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

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

22 (b) MEMBERSHIP.—

23 (1) COMPOSITION.—The Commission shall be
 24 composed of 5 members all of whom shall be judges
 25 of the Federal judicial circuits and shall be ap-

1 pointed by the President, after consultation with the
2 Majority Leader and Minority Leader of the House
3 of Representatives, the Majority Leader and Minor-
4 ity Leader of the Senate, the chairman and ranking
5 member of the Committee on Ways and Means of
6 the House of Representatives, and the chairman and
7 ranking member of the Committee on Finance of the
8 Senate.

9 (2) DATE.—The appointments of the initial
10 members of the Commission shall be made no later
11 than 90 days after the date of the enactment of this
12 title.

13 (c) PERIOD OF APPOINTMENT; VACANCIES.—

14 (1) IN GENERAL.—Members of the Commission
15 shall each be appointed for a term of 5 years, except
16 of the members first appointed, 3 members shall be
17 appointed for terms of 3 years and the remaining 2
18 members shall be appointed for terms of 2 years.

19 (2) VACANCIES.—

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

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

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

8 (e) MEETINGS.—The Commission shall meet at the
9 call of the Chairperson.

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

13 (g) AFFIRMATIVE DETERMINATIONS.—An affirma-
14 tive vote by a majority of the members of the Commission
15 shall be required for any affirmative determination by the
16 Commission under section 4.

17 (h) CHAIRPERSON AND VICE CHAIRPERSON.—The
18 Commission shall select a Chairperson and Vice Chair-
19 person from among its members.

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

21 (a) REVIEW OF WTO DISPUTE SETTLEMENT RE-
22 PORTS.—

23 (1) IN GENERAL.—The Commission shall re-
24 view—

1 (A) all adverse reports of dispute settle-
2 ment panels and the Appellate Body which
3 are—

4 (i) adopted by the Dispute Settlement
5 Body, and

6 (ii) the result of a proceeding initiated
7 against the United States by a WTO mem-
8 ber; and

9 (B) upon the request of the Trade Rep-
10 resentative, any adverse report of a dispute set-
11 tlement panel or the Appellate Body—

12 (i) which is adopted by the Dispute
13 Settlement Body, and

14 (ii) in which the United States is a
15 complaining party.

16 (2) SCOPE OF REVIEW.—With respect to any
17 report the Commission reviews under paragraph (1),
18 the Commission shall determine in connection with
19 each adverse finding whether the panel or the Appel-
20 late Body, as the case may be—

21 (A) demonstrably exceeded its authority or
22 its terms of reference;

23 (B) added to the obligations, or diminished
24 the rights, of the United States under the Uru-

1 guay Round Agreement which is the subject of
2 the report;

3 (C) acted arbitrarily or capriciously, en-
4 gaged in misconduct, or demonstrably departed
5 from the procedures specified for panels and
6 the Appellate Body in the applicable Uruguay
7 Round Agreement; and

8 (D) deviated from the applicable standard
9 of review, including in antidumping cases, the
10 standard of review set forth in Article 17.6 of
11 the Agreement on Implementation of Article VI
12 of the General Agreement on Tariffs and Trade
13 1994.

14 (3) AFFIRMATIVE DETERMINATION.—The Com-
15 mission shall make an affirmative determination
16 under this paragraph with respect to the action of
17 a panel or the Appellate Body, if the Commission
18 determines that—

19 (A) any of the matters described in sub-
20 paragraph (A), (B), (C), or (D) of paragraph
21 (2) has occurred; and

22 (B) the action of the panel or the Appel-
23 late Body materially affected the outcome of the
24 report of the panel or Appellate Body.

25 (b) DETERMINATION; REPORT.—

1 (1) DETERMINATION.—No later than 120 days
2 after the date on which a report of a panel or the
3 Appellate Body described in subsection (a)(1) is
4 adopted by the Dispute Settlement Body, the Com-
5 mission shall make a written determination with re-
6 spect to the matters described in paragraphs (2) and
7 (3) of subsection (a).

8 (2) REPORTS.—The Commission shall promptly
9 report the determinations described in paragraph (1)
10 to the Committee on Ways and Means of the House
11 of Representatives, the Committee on Finance of the
12 Senate, and the Trade Representative.

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

14 (a) HEARINGS.—The Commission may hold a public
15 hearing to solicit views concerning a report of a dispute
16 settlement panel or the Appellate Body described in sec-
17 tion 4(a)(1), if the Commission considers such hearing to
18 be necessary to carry out the purpose of this title. The
19 Commission shall provide reasonable notice of a hearing
20 held pursuant to this subsection.

21 (b) INFORMATION FROM INTERESTED PARTIES AND
22 FEDERAL AGENCIES.—

23 (1) NOTICE OF PANEL OR APPELLATE BODY
24 REPORT.—The Trade Representative shall advise the
25 Commission no later than 5 business days after the

1 date the Dispute Settlement Body adopts a report of
2 a panel or the Appellate Body that is to be reviewed
3 by the Commission under section 4(a)(1).

4 (2) SUBMISSIONS AND REQUESTS FOR INFOR-
5 MATION.—

6 (A) IN GENERAL.—The Commission shall
7 promptly publish in the Federal Register notice
8 of the advice received from the Trade Rep-
9 resentative, along with notice of an opportunity
10 for interested parties to submit written com-
11 ments to the Commission. The Commission
12 shall make comments submitted pursuant to the
13 preceding sentence available to the public.

14 (B) INFORMATION FROM FEDERAL AGEN-
15 CIES AND DEPARTMENTS.—The Commission
16 may also secure directly from any Federal de-
17 partment or agency such information as the
18 Commission considers necessary to carry out
19 the provisions of this title. Upon the request of
20 the Chairperson of the Commission, the head of
21 such department or agency shall furnish the in-
22 formation requested to the Commission.

23 (3) ACCESS TO PANEL AND APPELLATE BODY
24 DOCUMENTS.—

1 (A) IN GENERAL.—The Trade Representa-
2 tive shall make available to the Commission all
3 submissions and relevant documents relating to
4 a report of a panel or the Appellate Body de-
5 scribed in section 4(a)(1), including any infor-
6 mation contained in such submissions identified
7 by the provider of the information as propri-
8 etary information or information designated as
9 confidential by a foreign government.

10 (B) PUBLIC ACCESS.—Any document
11 which the Trade Representative submits to the
12 Commission shall be available to the public, ex-
13 cept information which is identified as propri-
14 etary or confidential.

15 (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-
16 FIDENTIALITY.—

17 (1) ADMINISTRATIVE ASSISTANCE.—Any agency
18 or department of the United States that is des-
19 ignated by the President shall provide administrative
20 services, funds, facilities, staff, or other support
21 services to the Commission to assist the Commission
22 with the performance of the Commission's functions.

23 (2) CONFIDENTIALITY.—The Commission shall
24 protect from disclosure any document or information
25 submitted to it by a department or agency of the

1 United States which the agency or department re-
2 quests be kept confidential. The Commission shall
3 not be considered to be an agency for purposes of
4 section 552 of title 5, United States Code.

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

7 (a) AFFIRMATIVE REPORT BY COMMISSION.—

8 (1) IN GENERAL.—If a joint resolution de-
9 scribed in subsection (b)(1) is enacted into law pur-
10 suant to the provisions of subsection (c), the Presi-
11 dent should undertake negotiations to amend or
12 modify the rules and procedures of the Uruguay
13 Round Agreement to which such joint resolution re-
14 lates.

15 (2) 3 AFFIRMATIVE REPORTS BY COMMISS-
16 SION.—If a joint resolution described in subsection
17 (b)(2) is enacted into law pursuant to the provisions
18 of subsection (c), the approval of the Congress, pro-
19 vided for under section 101(a) of the Uruguay
20 Round Agreements Act, of the WTO Agreement
21 shall cease to be effective in accordance with the
22 provisions of the joint resolution.

23 (b) JOINT RESOLUTIONS DESCRIBED.—

24 (1) IN GENERAL.—For purposes of subsection
25 (a)(1), a joint resolution is described in this para-

1 graph if it is a joint resolution of the 2 Houses of
2 Congress and the matter after the resolving clause
3 of such joint resolution is as follows: “That the Con-
4 gress calls upon the President to undertake negotia-
5 tions to amend or modify the matter relating to
6 _____ that is the subject of the affirmative
7 report submitted to the Congress by the WTO Dis-
8 pute Settlement Review Commission on _____”, the
9 first blank space being filled with the specific provi-
10 sions of the Uruguay Round Agreement with respect
11 to which the President is to undertake negotiations
12 and the second blank space being filled with the date
13 that the affirmative report, which was made under
14 section 4(a) and which has given rise to the joint
15 resolution, was submitted to the Congress by the
16 Commission pursuant to section 4(b).

17 (2) WITHDRAWAL RESOLUTION.—For purposes
18 of subsection (a)(2), a joint resolution is described
19 in this paragraph if it is a joint resolution of the 2
20 Houses of Congress and the matter after the resolv-
21 ing clause of such joint resolution is as follows:
22 “That, in light of the 3 affirmative reports submit-
23 ted to the Congress by the WTO Dispute Settlement
24 Review Commission during the preceding 5-year pe-
25 riod, and the failure to remedy the problems identi-

1 fied in the reports through negotiations, it is no
2 longer in the overall national interest of the United
3 States to be a member of the WTO, and accordingly
4 the Congress withdraws its approval, provided under
5 section 101(a) of the Uruguay Round Agreements
6 Act, of the WTO Agreement as defined in section
7 2(9) of that Act.”.

8 (c) PROCEDURAL PROVISIONS.—

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

12 (A) in the case of a joint resolution de-
13 scribed in subsection (b)(1), the Congress
14 adopts and transmits the joint resolution to the
15 President before the end of the 90-day period
16 (excluding any day described in section 154(b)
17 of the Trade Act of 1974) beginning on the
18 date on which the Congress receives an affirma-
19 tive report from the Commission pursuant to
20 section 4(b)(2); or

21 (B) in the case of a joint resolution de-
22 scribed in subsection (b)(2), the Commission
23 has submitted 3 affirmative reports pursuant to
24 section 4(b)(2) during a 5-year period, and the
25 Congress adopts and transmits the joint resolu-

1 tion to the President before the end of the 90-
2 day period (excluding any day described in sec-
3 tion 154(b) of the Trade Act of 1974) begin-
4 ning on the date on which the Congress receives
5 the third such affirmative report.

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

17 (3) INTRODUCTION.—

18 (A) TIME.—A joint resolution to which
19 this section applies may be introduced at any
20 time on or after the date on which the Commis-
21 sion transmits to the Congress an affirmative
22 report pursuant to section 4(b)(2), and before
23 the end of the 90-day period referred to in sub-
24 paragraph (A) or (B) of paragraph (1), as the
25 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. DEFINITIONS.**

15 For purposes of this title:

16 (1) ADVERSE FINDING.—The term “adverse
17 finding” means—

18 (A) in a panel or Appellate Body proceed-
19 ing initiated against the United States, a find-
20 ing by the panel or the Appellate Body that any
21 law or regulation of, or application thereof by,
22 the United States is inconsistent with the obli-
23 gations of the United States under a Uruguay
24 Round Agreement (or nullifies or impairs bene-

1 fits accruing to a WTO member under such an
2 Agreement); or

3 (B) in a panel or Appellate Body proceed-
4 ing in which the United States is a complaining
5 party, any finding by the panel or the Appellate
6 Body that a measure of the party complained
7 against is not inconsistent with that party's ob-
8 ligations under a Uruguay Round Agreement
9 (or does not nullify or impair benefits accruing
10 to the United States under such an Agree-
11 ment).

12 (2) AFFIRMATIVE REPORT.—The term “affirm-
13 ative report” means a report described in section
14 4(b)(2) which contains affirmative determinations
15 made by the Commission under paragraph (3) of
16 section 4(a).

17 (3) APPELLATE BODY.—The term “Appellate
18 Body” means the Appellate Body established by the
19 Dispute Settlement Body pursuant to Article 17.1 of
20 the Dispute Settlement Understanding.

21 (4) DISPUTE SETTLEMENT BODY.—The term
22 “Dispute Settlement Body” means the Dispute Set-
23 tlement Body established pursuant to the Dispute
24 Settlement Understanding.

1 (5) 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 (6) DISPUTE SETTLEMENT UNDERSTANDING.—
6 The term “Dispute Settlement Understanding”
7 means the Understanding on Rules and Procedures
8 Governing the Settlement of Disputes referred to in
9 section 101(d)(16) of the Uruguay Round Agree-
10 ments Act.

11 (7) TERMS OF REFERENCE.—The term “terms
12 of reference” has the meaning given such term in
13 the Dispute Settlement Understanding.

14 (8) TRADE REPRESENTATIVE.—The term
15 “Trade Representative” means the United States
16 Trade Representative.

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

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

1 (11) WTO AGREEMENT.—The term “WTO
2 Agreement” means the Agreement Establishing the
3 World Trade Organization entered into on April 15,
4 1994.

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