

104TH CONGRESS
1ST SESSION

S. 16

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

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

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

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:

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

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

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

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

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

23 (6) The continued support of the Congress for
24 the WTO is dependent upon a WTO dispute settle-
25 ment system that—

1 (A) operates in a fair and impartial man-
2 ner;

3 (B) does not add to the obligations of or
4 diminish the rights of the United States under
5 the Uruguay Round agreements; and

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

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

12 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

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

17 (b) MEMBERSHIP.—

18 (1) COMPOSITION.—The Commission shall be
19 composed of 5 members all of whom shall be judges
20 of the Federal judicial circuits and shall be ap-
21 pointed by the President, after consultation with the
22 Majority Leader and Minority Leader of the House
23 of Representatives, the Majority Leader and Minor-
24 ity Leader of the Senate, the chairman and ranking
25 member of the Committee on Ways and Means of

1 the House of Representatives, and the chairman and
2 ranking member of the Committee on Finance of the
3 Senate.

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

7 (c) PERIOD OF APPOINTMENT; VACANCIES.—

8 (1) IN GENERAL.—Members of the Commission
9 first appointed shall each be appointed for a term of
10 5 years. After the initial 5-year term, 3 members of
11 the Commission shall be appointed for terms of 3
12 years and the remaining 2 members shall be ap-
13 pointed for terms of 2 years.

14 (2) VACANCIES.—

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

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

23 (d) INITIAL MEETING.—No later than 30 days after
24 the date on which all members of the Commission have

1 been appointed, the Commission shall hold its first meet-
2 ing.

3 (e) MEETINGS.—The Commission shall meet at the
4 call of the Chairman.

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

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

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

12 (a) REVIEW OF WTO DISPUTE SETTLEMENT RE-
13 PORTS.—

14 (1) IN GENERAL.—The Commission shall re-
15 view—

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

22 (B) upon request of the United States
23 Trade Representative, any other report of a dis-
24 pute settlement panel or the Appellate Body

1 which is adopted by the Dispute Settlement
2 Body.

3 (2) SCOPE OF REVIEW.—In the case of reports
4 described in paragraph (1), the Commission shall re-
5 view the report and determine whether—

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

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

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

20 (D) the report of the panel or the Appel-
21 late Body, as the case may be, deviated from
22 the applicable standard of review, including in
23 antidumping, countervailing duty, and other un-
24 fair trade remedy cases, the standard of review
25 set forth in Article 17.6 of the Agreement on

1 Implementation of Article VI of the General
2 Agreement on Tariffs and Trade 1994.

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

11 (b) DETERMINATION; REPORT.—

12 (1) DETERMINATION.—No later than 120 days
13 after the date of a report of a panel or Appellate
14 Body described in subsection (a)(1) is adopted by
15 the Dispute Settlement Body, the Commission shall
16 make a written determination with respect to mat-
17 ters described in subsections (a)(2) and (a)(3).

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

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

24 (a) HEARINGS.—The Commission may hold such
25 hearings, sit and act at such times and places, take such

1 testimony, and receive such evidence as the Commission
2 considers advisable to carry out the purposes of this Act.

3 (b) INFORMATION FROM INTERESTED PARTIES AND
4 FEDERAL AGENCIES.—

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

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

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

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

12 (a) AFFIRMATIVE REPORT BY COMMISSION.—

13 (1) IN GENERAL.—If a joint resolution de-
14 scribed in subsection (b)(1) is enacted into law pur-
15 suant to the provisions of subsection (c), the Presi-
16 dent shall undertake negotiations to amend or mod-
17 ify the rules and procedures of the Understanding
18 on Rules and Procedures Governing the Settlement
19 of Disputes to which such joint resolution relates.

20 (2) 3 AFFIRMATIVE REPORTS BY COMMIS-
21 SION.—If a joint resolution described in subsection
22 (b)(2) is enacted into law pursuant to the provisions
23 of subsection (c), the approval of the Congress, pro-
24 vided under section 101(a) of the Uruguay Round
25 Agreements Act, of the WTO Agreement shall cease

1 to be effective in accordance with the provisions of
2 the joint resolution and the United States shall
3 cease to be a member of the WTO.

4 (b) JOINT RESOLUTIONS DESCRIBED.—

5 (1) IN GENERAL.—For purposes of subsection
6 (a)(1), a joint resolution is described in this para-
7 graph, if it is a joint resolution of the 2 Houses of
8 Congress and the matter after the resolving clause
9 of such joint resolution is as follows: “That the Con-
10 gress authorizes and directs the President to under-
11 take negotiations to amend or modify the rules and
12 procedures of the Understanding on Rules and Pro-
13 cedures Governing the Settlement of Disputes relat-
14 ing to ____ with respect to the affirmative deter-
15 mination submitted to the Congress by the WTO
16 Dispute Settlement Review Commission on ____”,
17 the first blank space being filled with the specific
18 rules and procedures with respect to which the
19 President is to undertake negotiations and the sec-
20 ond blank space being filled with the date of the af-
21 firmative determination submitted to the Congress
22 by the Commission pursuant to section 4(b) which
23 has given rise to the joint resolution.

24 (2) WITHDRAWAL RESOLUTION.—For purposes
25 of subsection (a)(2), a joint resolution is described

1 in this paragraph, if it is a joint resolution of the
2 Houses of Congress and the matter after the re-
3 solving clause of such joint resolution is as follows:
4 “That the Congress authorizes and directs the Presi-
5 dent to undertake negotiations to amend or modify
6 the rules and procedures of the Understanding on
7 Rules and Procedures Governing the Settlement of
8 Disputes relating to ____ with respect to the affirm-
9 ative report submitted to the Congress by the WTO
10 Dispute Settlement Review Commission on ____ and
11 if such negotiations do not result in a satisfactory
12 solution by ____, the Congress withdraws its ap-
13 proval, provided under section 101(a) of the Uru-
14 guay Round Agreements Act, of the WTO Agree-
15 ment as defined in section 2(9) of that Act”, the
16 first blank space being filled with the specific rules
17 and procedures with respect to which the President
18 is to undertake negotiations, the second blank space
19 being filled with the date of the affirmative deter-
20 mination submitted to the Congress by the Commis-
21 sion pursuant to section 4(b) which has given rise to
22 the joint resolution, and the third blank space being
23 filled with the date the Congress withdraws its ap-
24 proval of the WTO Agreement.

25 (c) PROCEDURAL PROVISIONS.—

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

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

13 (B) in the case of a joint resolution de-
14 scribed in subsection (b)(2), the Commission
15 has made 3 affirmative determinations de-
16 scribed in section 4(b) during a 5-year period,
17 and the Congress adopts and transmits the
18 joint resolution to the President before the end
19 of the 90-day period (excluding any day de-
20 scribed in section 154(b) of the Trade Act of
21 1974), beginning on the date on which the Con-
22 gress receives the third such affirmative deter-
23 mination.

24 (2) PRESIDENTIAL VETO.—In any case in
25 which the President vetoes the joint resolution, the

1 requirements of this subsection are met, if each
2 House of Congress votes to override that veto on or
3 before the later of the last day of the 90-day period
4 referred to in subparagraph (A) or (B), whichever is
5 applicable, or the last day of the 15-day period (ex-
6 cluding any day described in section 154(b) of the
7 Trade Act of 1974) beginning on the date on which
8 the Congress receives the veto message from the
9 President.

10 (3) INTRODUCTION.—

11 (A) TIME.—A joint resolution to which
12 this section applies may be introduced at any
13 time on or after the date on which the Commis-
14 sion transmits to the Congress an affirmative
15 determination described in section 4(b), and be-
16 fore the end of the 90-day period referred to in
17 subparagraph (A) or (B), as the case may be.

18 (B) ANY MEMBER MAY INTRODUCE.—A
19 joint resolution described in subsection (b) may
20 be introduced in either House of the Congress
21 by any Member of such House.

22 (4) EXPEDITED PROCEDURES.—

23 (A) GENERAL RULE.—Subject to the pro-
24 visions of this subsection, the provisions of sub-
25 sections (b), (d), (e), and (f) of section 152 of

1 the Trade Act of 1974 (19 U.S.C. 2192(b), (d),
2 (e), and (f)) apply to joint resolutions described
3 in subsection (b) to the same extent as such
4 provisions apply to resolutions under such sec-
5 tion.

6 (B) REPORT OR DISCHARGE OF COMMIT-
7 TEE.—If the committee of either House to
8 which a joint resolution has been referred has
9 not reported it by the close of the 45th day
10 after its introduction (excluding any day de-
11 scribed in section 154(b) of the Trade Act of
12 1974), such committee shall be automatically
13 discharged from further consideration of the
14 joint resolution and it shall be placed on the ap-
15 propriate calendar.

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

18 (i) the Senate to consider any joint
19 resolution unless it has been reported by
20 the Committee on Finance or the commit-
21 tee has been discharged under subpara-
22 graph (B); or

23 (ii) the House of Representatives to
24 consider any joint resolution unless it has
25 been reported by the Committee on Ways

1 and Means or the committee has been dis-
2 charged under subparagraph (B).

3 (D) SPECIAL RULE FOR HOUSE.—A mo-
4 tion in the House of Representatives to proceed
5 to the consideration of a joint resolution may
6 only be made on the second legislative day after
7 the calendar day on which the Member making
8 the motion announces to the House his or her
9 intention to do so.

10 (5) CONSIDERATION OF SECOND RESOLUTION
11 NOT IN ORDER.—It shall not be in order in either
12 the House of Representatives or the Senate to con-
13 sider a joint resolution (other than a joint resolution
14 received from the other House), if that House has
15 previously adopted a joint resolution under this sec-
16 tion relating to the same matter.

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

19 (1) as an exercise of the rulemaking power of
20 the House of Representatives and the Senate, re-
21 spectively, and as such is deemed a part of the rules
22 of each House, respectively, and such procedures su-
23 persede other rules only to the extent that they are
24 inconsistent with such other rules; and

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

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

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

10 (1) to enforce United States rights under a
11 multilateral trade agreement, or

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

14 a private United States person that is supportive of the
15 United States Government’s position before the panel or
16 Appellate Body and that has a direct economic interest
17 in the panel’s or Appellate Body’s resolution of the mat-
18 ters in dispute shall be permitted to participate in con-
19 sultations and panel proceedings. The Trade Representa-
20 tive shall issue regulations, consistent with subsections (b)
21 and (c), ensuring full and effective participation by any
22 such private person.

23 (b) ACCESS TO INFORMATION.—The United States
24 Trade Representative shall make available to persons de-
25 scribed in subsection (a) all information presented to or

1 otherwise obtained by the Trade Representative in connec-
2 tion with a WTO dispute settlement proceeding. The
3 United States Trade Representative shall promulgate reg-
4 ulations implementing a protective order system to protect
5 information designated by the submitting member as con-
6 fidential.

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

10 (1) consult in advance with such person regard-
11 ing the content of written submissions from the
12 United States to the WTO panel concerned or to the
13 other member countries involved;

14 (2) include, where appropriate, such person or
15 its appropriate representative as an advisory mem-
16 ber of the delegation in sessions of the dispute set-
17 tlement panel;

18 (3) allow such special delegation member, where
19 such member would bring special knowledge to the
20 proceeding, to appear before the panel, directly or
21 through counsel, under the supervision of responsible
22 United States Government officials; and

23 (4) in proceedings involving confidential infor-
24 mation, allow appearance of such person only

1 through counsel as a member of the special delega-
2 tion.

3 **SEC. 8. DEFINITIONS.**

4 For purposes of this Act:

5 (1) APPELLATE BODY.—The term “Appellate
6 Body” means the Appellate Body established under
7 Article 17.1 of the Dispute Settlement Understand-
8 ing.

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

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

22 (4) DISPUTE SETTLEMENT BODY.—The term
23 “Dispute Settlement Body” means the Dispute Set-
24 tlement Body administering the rules and proce-

1 dures set forth in the Dispute Settlement Under-
2 standing.

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

9 (6) URUGUAY ROUND AGREEMENT.—The term
10 “Uruguay Round Agreement” means one or more of
11 the agreements described in section 101(d) of the
12 Uruguay Round Agreements Act.

13 (7) WORLD TRADE ORGANIZATION; WTO.—The
14 terms “World Trade Organization” and “WTO”
15 mean the organization established pursuant to the
16 WTO Agreement.

17 (8) WTO AGREEMENT.—The term “WTO
18 Agreement” means the Agreement Establishing the
19 World Trade Organization entered into on April 15,
20 1994.

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