

106TH CONGRESS  
2D SESSION

# H. R. 4706

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

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 2000

Mr. CARDIN 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

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## 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 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. These dispute  
15          settlement rules will help ensure that the United  
16          States will reap the full benefits of its participation  
17          in the WTO.

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

23          (5) Congress passed the Uruguay Round Agree-  
24          ments Act based on its understanding that effective  
25          trade remedies would not be eroded. These remedies

1 are essential to continue the process of opening for-  
2 eign markets to imports of goods and services and  
3 to prevent harm to American industry and agri-  
4 culture.

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

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

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

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

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

18 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

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

23 (b) MEMBERSHIP.—

24 (1) COMPOSITION.—The Commission shall be  
25 composed of 5 members all of whom shall be judges

1 of the Federal judicial circuits and shall be ap-  
2 pointed by the President, after consultation with the  
3 Speaker and Minority Leader of the House of Rep-  
4 resentatives, the Majority Leader and Minority  
5 Leader of the Senate, the chairman and ranking  
6 member of the Committee on Ways and Means of  
7 the House of Representatives, and the chairman and  
8 ranking member of the Committee on Finance of the  
9 Senate.

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

14 (c) PERIOD OF APPOINTMENT; VACANCIES.—

15 (1) IN GENERAL.—Members of the Commission  
16 shall each be appointed for a term of 5 years, except  
17 that of the members first appointed, 3 members  
18 shall be appointed for terms of 3 years and the re-  
19 maining 2 members shall be appointed for terms of  
20 2 years.

21 (2) VACANCIES.—

22 (A) IN GENERAL.—Any vacancy on the  
23 Commission shall not affect its powers, but  
24 shall be filled in the same manner as the origi-

1           nal appointment and shall be subject to the  
2           same conditions as the original appointment.

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

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

10          (e) MEETINGS.—The Commission shall meet at the  
11          call of the Chairperson.

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

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

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

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

23          (a) REVIEW OF WTO DISPUTE SETTLEMENT RE-  
24          PORTS.—

1           (1) IN GENERAL.—The Commission shall  
2 review—

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

6           (i) adopted by the Dispute Settlement  
7 Body, and

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

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

14           (i) which is adopted by the Dispute  
15 Settlement Body, and

16           (ii) in which the United States is a  
17 complaining party.

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

23           (A) demonstrably exceeded its authority or  
24 its terms of reference;

1 (B) added to the obligations, or diminished  
2 the rights, of the United States under the Uru-  
3 guay Round Agreement which is the subject of  
4 the report;

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

10 (D) deviated from the applicable standard  
11 of review, including in antidumping cases, the  
12 standard of review set forth in Article 17.6 of  
13 the Agreement on Implementation of Article VI  
14 of the General Agreement on Tariffs and Trade  
15 1994.

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

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

1 (B) the action of the panel or the Appel-  
2 late Body materially affected the outcome of the  
3 report of the panel or Appellate Body.

4 (b) DETERMINATION; REPORT.—

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

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

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

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



1 (b) INFORMATION FROM INTERESTED PARTIES AND  
2 FEDERAL AGENCIES.—

3 (1) NOTICE OF PANEL OR APPELLATE BODY  
4 REPORT.—The Trade Representative shall advise the  
5 Commission no later than 5 business days after the  
6 date the Dispute Settlement Body adopts a report of  
7 a panel or the Appellate Body that is to be reviewed  
8 by the Commission under section 4(a)(1).

9 (2) SUBMISSIONS AND REQUESTS FOR INFOR-  
10 MATION.—

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

19 (B) INFORMATION FROM FEDERAL AGEN-  
20 CIES AND DEPARTMENTS.—The Commission  
21 may also secure directly from any Federal de-  
22 partment or agency such information as the  
23 Commission considers necessary to carry out  
24 the provisions of this Act. Upon the request of  
25 the Chairperson of the Commission, the head of

1           such department or agency shall furnish the in-  
2           formation requested to the Commission.

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

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

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

19          (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-  
20       FIDENTIALITY.—

21          (1) ADMINISTRATIVE ASSISTANCE.—Any agency  
22          or department of the United States that is des-  
23          ignated by the President shall provide administrative  
24          services, funds, facilities, staff, or other support

1 services to the Commission to assist the Commission  
2 with the performance of the Commission's functions.

3 (2) CONFIDENTIALITY.—The Commission shall  
4 protect from disclosure any document or information  
5 submitted to it by a department or agency of the  
6 United States which the agency or department re-  
7 quests be kept confidential. The Commission shall  
8 not be considered to be an agency for purposes of  
9 section 552 of title 5, United States Code.

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 should undertake negotiations to amend or  
17 modify the Uruguay Round Agreement to which  
18 such joint resolution relates.

19 (2) 3 AFFIRMATIVE REPORTS BY COMMIS-  
20 SION.—If a joint resolution described in subsection  
21 (b)(2) is enacted into law pursuant to the provisions  
22 of subsection (c), the approval of the Congress, pro-  
23 vided for under section 101(a) of the Uruguay  
24 Round Agreements Act, of the WTO Agreement

1 shall cease to be effective in accordance with the  
2 provisions of the joint resolution.

3 (b) JOINT RESOLUTIONS DESCRIBED.—

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

22 (2) WITHDRAWAL RESOLUTION.—For purposes  
23 of subsection (a)(2), a joint resolution is described  
24 in this paragraph if it is a joint resolution of the 2  
25 Houses of Congress and the matter after the resolv-

ing clause of such joint resolution is as follows:

“That, in light of the affirmative reports submitted to the Congress by the WTO Dispute Settlement Review Commission during the preceding 5-year period, and the failure to remedy the problems identified in the reports through negotiations, it is no longer in the overall national interest of the United States to be a member of the WTO, and accordingly the Congress withdraws its approval, provided under section 101(a) of the Uruguay Round Agreements Act, of the WTO Agreement as defined in section 2(9) of that Act.”.

(c) PROCEDURAL PROVISIONS.—

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

(A) in the case of a joint resolution described in subsection (b)(1), the Congress adopts and transmits the joint resolution to the President before the end of the 90-day period (excluding any day described in section 154(b) of the Trade Act of 1974) beginning on the date on which the Congress receives an affirmative report from the Commission pursuant to section 4(b)(2); or

1           (B) in the case of a joint resolution de-  
2           scribed in subsection (b)(2), the Commission  
3           has submitted 3 affirmative reports pursuant to  
4           section 4(b)(2) during a 5-year period, and the  
5           Congress adopts and transmits the joint resolu-  
6           tion to the President before the end of the 90-  
7           day period (excluding any day described in sec-  
8           tion 154(b) of the Trade Act of 1974) begin-  
9           ning on the date on which the Congress receives  
10          the third such affirmative report.

11          (2) PRESIDENTIAL VETO.—In any case in  
12          which the President vetoes the joint resolution, the  
13          requirements of this subsection are met if each  
14          House of Congress votes to override that veto on or  
15          before the later of the last day of the 90-day period  
16          referred to in subparagraph (A) or (B) of paragraph  
17          (1), whichever is applicable, or the last day of the  
18          15-day period (excluding any day described in sec-  
19          tion 154(b) of the Trade Act of 1974) beginning on  
20          the date on which the Congress receives the veto  
21          message from the President.

22          (3) INTRODUCTION.—

23                 (A) TIME.—A joint resolution to which  
24                 this section applies may be introduced at any  
25                 time on or after the date on which the Commis-

1 sion transmits to the Congress an affirmative  
2 report pursuant to section 4(b)(2), and—

3 (i) in the case of a joint resolution de-  
4 scribed in subsection (b)(1), before the end  
5 of the 90-day period referred to in para-  
6 graph (1)(A); and

7 (ii) in the case of a joint resolution  
8 described in subsection (b)(2), before the  
9 end of the 90-day period referred to in  
10 paragraph (1)(B).

11 (B) ANY MEMBER MAY INTRODUCE.—A  
12 joint resolution described in subsection (b) may  
13 be introduced in either House of the Congress  
14 by any Member of such House.

15 (4) EXPEDITED PROCEDURES.—

16 (A) GENERAL RULE.—Subject to the pro-  
17 visions of this subsection, the provisions of sub-  
18 sections (b), (d), (e), and (f) of section 152 of  
19 the Trade Act of 1974 (19 U.S.C. 2192(b), (d),  
20 (e), and (f)) apply to joint resolutions described  
21 in subsection (b) to the same extent as such  
22 provisions apply to resolutions under such sec-  
23 tion.

24 (B) REPORT OR DISCHARGE OF COM-  
25 MITTEE.—If the committee of either House to

1           which a joint resolution has been referred has  
2           not reported it by the close of the 45th day  
3           after its introduction (excluding any day de-  
4           scribed in section 154(b) of the Trade Act of  
5           1974), such committee shall be automatically  
6           discharged from further consideration of the  
7           joint resolution and it shall be placed on the  
8           appropriate calendar.

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

11                 (i) the Senate to consider any joint  
12                 resolution unless it has been reported by  
13                 the Committee on Finance or the com-  
14                 mittee has been discharged under subpara-  
15                 graph (B); or

16                 (ii) the House of Representatives to  
17                 consider any joint resolution unless it has  
18                 been reported by the Committee on Ways  
19                 and Means or the committee has been dis-  
20                 charged under subparagraph (B).

21           (D) SPECIAL RULE FOR HOUSE.—A mo-  
22           tion in the House of Representatives to proceed  
23           to the consideration of a joint resolution may  
24           only be made on the second legislative day after  
25           the calendar day on which the Member making



1 the motion announces to the House his or her  
2 intention to do so.

3 (5) CONSIDERATION OF SECOND RESOLUTION  
4 NOT IN ORDER.—It shall not be in order in either  
5 the House of Representatives or the Senate to con-  
6 sider a joint resolution (other than a joint resolution  
7 received from the other House), if that House has  
8 previously adopted a joint resolution under this sec-  
9 tion relating to the same matter.

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

12 (1) as an exercise of the rulemaking power of  
13 the House of Representatives and the Senate, re-  
14 spectively, and as such is deemed a part of the rules  
15 of each House, respectively, and such procedures su-  
16 persede other rules only to the extent that they are  
17 inconsistent with such other rules; and

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

23 **SEC. 7. DEFINITIONS.**

24 For purposes of this Act:

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

3           (A) in a panel or Appellate Body pro-  
4 ceeding initiated against the United States, a  
5 finding by the panel or the Appellate Body that  
6 any law or regulation of, or application thereof  
7 by, the United States, or any State, is incon-  
8 sistent with the obligations of the United States  
9 under a Uruguay Round Agreement (or nullifies  
10 or impairs benefits accruing to a WTO member  
11 under such an Agreement); or

12           (B) in a panel or Appellate Body pro-  
13 ceeding in which the United States is a com-  
14 plaining party, any finding by the panel or the  
15 Appellate Body that a measure of the party  
16 complained against is not inconsistent with that  
17 party’s obligations under a Uruguay Round  
18 Agreement (or does not nullify or impair bene-  
19 fits accruing to the United States under such  
20 an Agreement).

21           (2) AFFIRMATIVE REPORT.—The term “affirm-  
22 ative report” means a report described in section  
23 4(b)(2) which contains affirmative determinations  
24 made by the Commission under paragraph (3) of  
25 section 4(a).

1           (3) APPELLATE BODY.—The term “Appellate  
2       Body” means the Appellate Body established by the  
3       Dispute Settlement Body pursuant to Article 17.1 of  
4       the Dispute Settlement Understanding.

5           (4) DISPUTE SETTLEMENT BODY.—The term  
6       “Dispute Settlement Body” means the Dispute Set-  
7       tlement Body established pursuant to the Dispute  
8       Settlement Understanding.

9           (5) DISPUTE SETTLEMENT PANEL; PANEL.—  
10      The terms “dispute settlement panel” and “panel”  
11      mean a panel established pursuant to Article 6 of  
12      the Dispute Settlement Understanding.

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

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

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

1           (9) URUGUAY ROUND AGREEMENT.—The term  
2           “Uruguay Round Agreement” means any of the  
3           Agreements described in section 101(d) of the Uru-  
4           guay Round Agreements Act.

5           (10) WORLD TRADE ORGANIZATION; WTO.—The  
6           terms “World Trade Organization” and “WTO”  
7           mean the organization established pursuant to the  
8           WTO Agreement.

9           (11) WTO AGREEMENT.—The term “WTO  
10          Agreement” means the Agreement Establishing the  
11          World Trade Organization entered into on April 15,  
12          1994.

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