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1ST SESSION

S. 101

To promote trade in United States agricultural commodities, livestock, and value-added products, and to prepare for future bilateral and multilateral trade negotiations.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. LUGAR (for himself, Mr. ROBERTS, Mr. CRAIG, Mr. FITZGERALD, and Mr. COCHRAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To promote trade in United States agricultural commodities, livestock, and value-added products, and to prepare for future bilateral and multilateral trade negotiations.

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 “United States Agricul-
5 tural Trade Act of 1999”.

6 **SEC. 2. OBJECTIVES FOR AGRICULTURAL NEGOTIATIONS.**

7 It is the sense of the Congress that—

8 The principal agricultural trade negotiating objec-
9 tives of the United States for future multilateral and bilat-

1 eral trade negotiations, including the World Trade Organi-
2 zation, shall be to achieve, on an expedited basis, and to
3 the maximum extent feasible, more open and fair condi-
4 tions for trade in agricultural commodities by—

5 (1) developing, strengthening, and clarifying
6 rules for agricultural trade, including disciplines on
7 restrictive or trade-distorting import and export
8 practices, including—

9 (A) enhancing the operation and effective-
10 ness of the relevant Uruguay Round Agree-
11 ments designed to define, deter, and discourage
12 the persistent use of unfair trade practices; and

13 (B) enforcing and strengthening rules of
14 the World Trade Organization regarding—

15 (i) trade-distorting practices of state
16 trading enterprises; and

17 (ii) the acts, practices, or policies of a
18 foreign government which unreasonably—

19 (I) require that substantial direct
20 investment in the foreign country be
21 made as a condition for carrying on
22 business in the foreign country;

23 (II) require that intellectual
24 property be licensed to the foreign

1 country or to any firm of the foreign
2 country; or

3 (III) delay or preclude implemen-
4 tation of a report of a dispute panel
5 of the World Trade Organization;

6 (2) increasing United States agricultural ex-
7 ports by eliminating barriers to trade (including
8 transparent and nontransparent barriers);

9 (3) eliminating other specific constraints to fair
10 trade and more open markets access in foreign mar-
11 kets, such as export subsidies, quotas, and other
12 nontariff import barriers;

13 (4) developing, strengthening, and clarifying
14 rules that address practices that unfairly limit
15 United States market access opportunities or distort
16 agricultural markets to the detriment of the United
17 States, including—

18 (A) unfair or trade-distorted activities of
19 state trading enterprises and other administra-
20 tive mechanisms that result in inadequate price
21 transparency;

22 (B) unjustified restrictions or commercial
23 requirements affecting new technologies, includ-
24 ing biotechnology;

1 (C) unjustified sanitary or phytosanitary
2 restrictions; and

3 (D) restrictive rules in the establishment
4 and administration of tariff-rate quotas;

5 (5) ensuring that there are reliable suppliers of
6 agricultural commodities in international commerce
7 by encouraging countries to treat foreign buyers no
8 less favorably than domestic buyers of the commod-
9 ity or product involved; and

10 (6) eliminating barriers for meeting the food
11 needs of an increasing world population through the
12 use of biotechnology by ensuring access to United
13 States commodities derived from biotechnology that
14 is scientifically defensible, opposing the establish-
15 ment of protectionist trade measures disguised as
16 health standards, and protecting continual delays by
17 other countries in their approval processes—which
18 constitute non-tariff trade barriers.

19 **SEC. 3. DEFINITIONS.**

20 As used in this Act, the terms “agricultural commod-
21 ity” and “United States agricultural commodity” have the
22 meanings provided in section 102 (1) and (7) of the Agri-
23 cultural Trade Act of 1978, respectively.

1 **SEC. 4. AGRICULTURAL COMMODITIES, LIVESTOCK, AND**
2 **PRODUCTS EXEMPT FROM SANCTIONS.**

3 (a) DEFINITION.—Unilateral Economic Sanction.
4 The term “unilateral economic sanction” means any pro-
5 hibition, restriction, or condition on economic activity, in-
6 cluding economic assistance, with respect to a foreign
7 country or foreign entity that is imposed by the United
8 States for reasons of foreign policy or national security,
9 except in a case in which the United States imposes the
10 measure pursuant to a multilateral regime and the other
11 members of that regime have agreed to impose substan-
12 tially equivalent measures.

13 (b) EXEMPTION.—

14 (1) IN GENERAL.—Subject to paragraph (2),
15 and notwithstanding any other provision of law, in
16 the case of a unilateral economic sanction imposed
17 by the United States on another country, the follow-
18 ing shall be exempt from the unilateral economic
19 sanction—

20 (A) programs administered through Public
21 Law 480 (7 U.S.C. 1701 et seq.);

22 (B) programs administered through section
23 416 of the Agricultural Act of 1949 (7 U.S.C.
24 1431);

1 (C) the program administered through sec-
2 tion 1113 of the Food Security Act of 1985 (7
3 U.S.C. 1736–1); and

4 (D) commercial sales and humanitarian as-
5 sistance involving agricultural commodities.

6 (2) DETERMINATION BY PRESIDENT.—If the
7 President determines that the exemption under
8 paragraph (1) should not apply to the unilateral eco-
9 nomic sanction for reasons of foreign policy or na-
10 tional security, the President may include the activi-
11 ties described in paragraph (1) in the unilateral eco-
12 nomic sanction.

13 (c) CURRENT SANCTIONS.—

14 (1) IN GENERAL.—Subject to paragraph (2),
15 the exemption under subsection (b) shall apply to
16 unilateral economic sanctions that are in effect as of
17 the date of the enactment of this Act.

18 (2) PRESIDENTIAL REVIEW.—The President
19 shall, within 90 days of the date of enactment of
20 this Act, review all unilateral economic sanctions
21 under this subsection to determine whether the ex-
22 emption under subsection (b) should apply to the
23 sanction.

24 (3) EFFECTIVE DATE.—The exemption under
25 subsection (b) shall become effective for unilateral

1 economic sanctions that are in effect on the date of
2 enactment of this Act 180 days after the date of en-
3 actment of this Act unless the President has deter-
4 mined that the exemption should not apply to the
5 sanction.

6 (d) REPORT.—

7 (1) IN GENERAL.—If the President determines
8 that the exemption under subsection (b) should not
9 apply to a unilateral economic sanction, the Presi-
10 dent shall provide a report to the Committee on Ag-
11 riculture in the House of Representatives, and the
12 Committee on Agriculture, Nutrition, and Forestry
13 in the Senate—

14 (A) in the case of a unilateral economic
15 sanction reviewed under subsection (c), within
16 15 days from the date of the determination in
17 paragraph (2) of that subsection; and

18 (B) in the case of a unilateral economic
19 sanction that is imposed after the date of enact-
20 ment of this Act, at the time of the imposition
21 of the sanction.

22 (2) CONTENTS OF REPORT.—The report shall
23 contain—

24 (A) an explanation why, because of reasons
25 of foreign policy or national security, the ex-

1 emption should not apply to the unilateral eco-
2 nomic sanction; and

3 (B) an assessment by the Secretary of
4 Agriculture—

5 (i) regarding export sales—

6 (I) in the case of a sanction in
7 effect as of the date of enactment of
8 this Act, whether markets in the sanc-
9 tioned country or countries present a
10 substantial trade opportunity for ex-
11 port sales of an United States agricul-
12 tural commodity; or

13 (II) in the case of any other
14 sanction, the extent to which any
15 country or countries to be sanctioned
16 or likely to be sanctioned are markets
17 that accounted for, in the preceding
18 calendar year, more than 3 percent of
19 all export sales from the United
20 States of an agricultural commodity;

21 (ii) regarding the effect on United
22 States agricultural commodities—

23 (I) in the case of a sanction in
24 effect as of the date of enactment of
25 this Act, the potential for exports of

1 United States commodities in the
2 sanctioned country or countries; and

3 (II) in the case of any other
4 sanction, the likelihood that exports of
5 agricultural commodities from the
6 United States will be affected by the
7 unilateral economic sanction or by re-
8 taliation by any country to be sanc-
9 tioned or likely to be sanctioned, and
10 specific commodities which are most
11 likely to be affected;

12 (iii) regarding producer income—

13 (I) in the case of a sanction in
14 effect as of the date of enactment of
15 this Act, the potential for increasing
16 the income of producers of the com-
17 modities involved; and

18 (II) in the case of any other
19 sanction, the likely effect on incomes
20 of producers of the commodities in-
21 volved;

22 (iv) regarding displacement of United
23 States suppliers—

24 (I) in the case of a sanction in
25 effect as of the date of enactment of

1 this Act, the potential for increased
2 competition for United States suppli-
3 ers of the agricultural commodity in
4 countries that are not subject to a
5 sanction; and

6 (II) in the case of any other
7 sanction, the extent to which the uni-
8 lateral economic sanction would per-
9 mit foreign suppliers to replace
10 United States suppliers; and

11 (v) regarding the reputation of United
12 States farmers as reliable suppliers—

13 (I) in the case of a sanction in
14 effect as of the date of enactment of
15 this Act, whether removing the sanc-
16 tion would increase the reputation of
17 United States farmers as reliable sup-
18 pliers of agricultural commodities in
19 general, and of specific commodities
20 identified by the Secretary; and

21 (II) in the case of any other
22 sanction, the likely effect of the pro-
23 posed sanction on the reputation of
24 United States farmers as reliable sup-
25 pliers of agricultural commodities in

1 general, and of specific commodities
2 identified by the Secretary.

3 (e) EFFECTIVE DATE.—Except as provided in sub-
4 section (c)(3), this section shall become effective upon the
5 date of enactment of this Act.

6 **SEC. 5. CONGRESSIONAL OVERSIGHT AND CONSULTATION**
7 **FOR AGRICULTURAL NEGOTIATIONS.**

8 Section 161 of the Trade Act of 1974 (19 U.S.C.
9 2211) is amended by adding at the end a new subsection
10 (d) that reads as follows:

11 “(d) CONGRESSIONAL OVERSIGHT GROUP FOR AGRI-
12 CULTURAL NEGOTIATIONS.—

13 “(1) There is established a Congressional Over-
14 sight Group for Agricultural Negotiations (Oversight
15 Group) that shall provide oversight and guidance
16 with respect to agricultural trade policy and negotia-
17 tion of agricultural trade issues.

18 “(A) Subject to clauses (i) and (ii), the
19 Oversight Group shall consist of 3 members of
20 the Committee on Agriculture, Nutrition, and
21 Forestry of the Senate and 3 members of the
22 Committee on Agriculture of the House of Rep-
23 resentatives.

24 “(i) The President pro tempore of the
25 Senate, upon the recommendation of the

1 Chairman of the Committee on Agri-
2 culture, Nutrition, and Forestry, shall se-
3 lect two members from the majority party,
4 and one member from the minority party,
5 of the Senate.

6 “(ii) The Speaker of the House of
7 Representatives, upon the recommendation
8 of the Chairman of the Committee on Ag-
9 riculture, shall select 2 members from the
10 majority party, and one member from the
11 minority party, of the House of Represent-
12 atives.

13 “(B) Members of the House and Senate
14 who are selected as members of the Oversight
15 Group shall be accredited by the United States
16 Trade Representative as official advisers to the
17 United States delegations to international con-
18 ferences, meetings, and negotiating sessions re-
19 lating to agricultural trade policy and negotia-
20 tion of agricultural trade issues.

21 “(2) All negotiating proposals by the United
22 States and negotiations that affect agricultural trade
23 shall be reviewed by the Oversight Group prior to an
24 agreement being initiated by the President.

1 “(3) All information about negotiating propos-
2 als by the United States and foreign countries af-
3 fecting agricultural trade negotiations shall be made
4 available to the Oversight Group by the United
5 States Trade Representative.

6 “(4) Within 60 days of enactment of this Act,
7 the United States Trade Representative shall estab-
8 lish guidelines for ensuring the useful and timely
9 supply of information to the Oversight Group and
10 the communication of the oversight and guidance by
11 the Oversight Group to the United States Trade
12 Representative.

13 “(A) The guidelines shall establish proce-
14 dures for the United States Trade Representa-
15 tive to provide to the Oversight Group—

16 “(i) information regarding the prin-
17 cipal multilateral and bilateral negotiating
18 objectives affecting agricultural trade, and
19 the progress being made toward their
20 achievement;

21 “(ii) information regarding the imple-
22 mentation, administration, and effective-
23 ness of recently concluded multilateral and
24 bilateral agricultural trade agreements and

1 the resolution of agricultural trade dis-
2 putes;

3 “(iii) a schedule for an initial meeting,
4 prior to the commencement of negotiations
5 involving agricultural trade, between the
6 Oversight Group and the United States
7 Trade Representative, about the objectives
8 of the negotiations;

9 “(iv) written or oral briefings about
10 the status of ongoing negotiations involving
11 agricultural trade;

12 “(v) prior to the President initialing
13 the trade agreement, written or oral brief-
14 ings about the results of negotiations in-
15 volving agricultural trade;

16 “(vi) information about changes in
17 United States laws that are necessary as a
18 result of the negotiations; and

19 “(vii) a schedule and procedure for
20 the Oversight Group to provide advice and
21 guidance to the United States Trade Rep-
22 resentative regarding—

23 “(I) the negotiations involving
24 agricultural trade; and

1 “(II) changes in United States
2 laws that are necessary as a result of
3 the negotiations.

4 “(B) The United States Trade Representa-
5 tive shall meet with the Oversight Group at a
6 minimum on a quarterly basis, and as needed
7 during a negotiation involving agricultural
8 trade.

9 “(C) If determined necessary by either
10 party, consultations between the Oversight
11 Group and the United States Trade Represent-
12 ative may be conducted in executive session.”.

13 **SEC. 6. SALE OR BARTER OF FOOD ASSISTANCE.**

14 It is the sense of Congress that—

15 The amendment to section 203 of the Agricultural
16 Trade Development and Assistance Act of 1954 (Pub. L.
17 480) made in section 208 of the Federal Agriculture Im-
18 provement and Reform Act of 1996 (Pub. L. 101–127)
19 was intended to allow the sale or barter of United States
20 agricultural commodities included in United States food
21 assistance only within the recipient country or countries
22 adjacent to the recipient country, unless such sale or bar-
23 ter within the recipient country or adjacent countries—

24 (1) is not practicable; and

1 (2) will not disrupt commercial markets for the
2 agricultural commodity involved.

3 **SEC. 7. TREATMENT OF UNITED STATES AGRICULTURAL**
4 **COMMODITIES, LIVESTOCK, AND AGRICUL-**
5 **TURAL PRODUCTS.**

6 (a) IDENTIFICATION REQUIRED.—Chapter 8 of title
7 I of the Trade Act of 1974 is amended by adding at the
8 end the following:

9 **“SEC. 183. IDENTIFICATION OF COUNTRIES THAT ENGAGE**
10 **IN UNFAIR TRADE PRACTICES AFFECTING**
11 **UNITED STATES AGRICULTURAL COMMOD-**
12 **ITIES.**

13 “(a) IN GENERAL.—Not later than the date that is
14 30 days after the date on which the annual report is re-
15 quired to be submitted to congressional committees under
16 section 181(b), the United States Trade Representative
17 (hereafter in this section referred to as the ‘Trade Rep-
18 resentative’) shall identify—

19 “(1) those foreign countries that—

20 “(A) deny fair and equitable market access
21 to United States agricultural commodities
22 through discriminatory nontariff trade barriers;

23 “(B) employ unfair export subsidies that
24 adversely affect market share of United States
25 exports of agricultural commodities; or

1 “(C) unreasonably delay or preclude imple-
2 mentation of a report of a dispute panel of the
3 World Trade Organization; or

4 “(2) those foreign countries identified under
5 paragraph (1) that are determined by the Trade
6 Representative to be priority foreign countries.

7 “(b) SPECIAL RULES FOR IDENTIFICATION.—

8 “(1) CRITERIA.—In identifying priority foreign
9 countries under subsection (a)(2), the Trade Rep-
10 representative shall only identify those foreign countries
11 that—

12 “(A) engage in or have the most onerous
13 or egregious acts, policies, or practices that
14 deny fair and equitable market access to United
15 States agricultural commodities;

16 “(B) engage in discriminatory nontariff
17 trade barriers for the importation of United
18 States agricultural commodities that are not
19 based on public health concerns or cannot be
20 substantiated by reliable analytical methods;

21 “(C) use unfair export subsidies;

22 “(D) unreasonably delay or preclude imple-
23 mentation of a report of a dispute panel of the
24 World Trade Organization;

1 “(E) whose acts, policies, or practices de-
2 scribed in subparagraphs (A)–(D) have the
3 greatest adverse impact (actual or potential) on
4 the relevant United States agricultural com-
5 modities; or

6 “(F) that are not negotiating in good faith
7 about adopting fair and equitable trade prac-
8 tices, or making significant progress in bilateral
9 or multilateral negotiations, in regard to United
10 States agricultural commodities.

11 “(2) CONSULTATION AND CONSIDERATION RE-
12 QUIREMENTS.—In identifying priority foreign coun-
13 tries under subsection (a)(2), the Trade Representa-
14 tive shall—

15 “(A) consult with the Secretary of Agri-
16 culture and other appropriate officers of the
17 Federal Government; and

18 “(B) take into account information from
19 such sources as may be available to the Trade
20 Representative and such information as may be
21 submitted to the Trade Representative by inter-
22 ested persons, including information contained
23 in reports submitted under section 181(b) and
24 petitions submitted under section 302.

1 “(3) FACTUAL BASIS REQUIREMENT.—The
2 Trade Representative may identify a foreign country
3 under subsection (a)(1) only if the Trade Represent-
4 ative finds that there is a factual basis for identify-
5 ing the foreign country as engaging in a trade prac-
6 tice under subsection (a)(1).

7 “(4) CONSIDERATION OF HISTORICAL FAC-
8 TORS.—In identifying foreign countries under para-
9 graphs (1) and (2) of subsection (a), the Trade Rep-
10 resentative shall take into account—

11 “(A) the history of agricultural trade rela-
12 tions with the foreign country, including any
13 previous identification under subsection (a)(2);
14 and

15 “(B) the history of efforts of the United
16 States, and the response of the foreign country,
17 to achieve fair trade practices affecting trade in
18 the United States agricultural commodities.

19 “(c) REVOCATIONS AND ADDITIONAL IDENTIFICA-
20 TIONS.—

21 “(1) AUTHORITY TO ACT AT ANY TIME.—If in-
22 formation available to the Trade Representative indi-
23 cates that such action is appropriate, the Trade
24 Representative may at any time—

1 “(A) revoke the identification of any for-
2 eign country as a priority foreign country under
3 this section; or

4 “(B) identify any foreign country as a pri-
5 ority foreign country under this section.

6 “(2) REVOCATION REPORTS.—The Trade Rep-
7 resentative shall include in the semiannual report
8 submitted to the Congress under section 309(3) a
9 detailed explanation of the reasons for the revocation
10 under paragraph (1) of the identification of any for-
11 eign country as a priority foreign country under this
12 section.

13 “(d) DEFINITIONS.—For purposes of this section, the
14 terms ‘agricultural commodity’ and ‘United States agricul-
15 tural commodity’ have the meanings provided in section
16 102 (1) and (7) of the Agricultural Trade Act of 1978,
17 respectively.

18 “(e) PUBLICATION.—The Trade Representative shall
19 publish in the Federal Register a list of foreign countries
20 identified under subsection (a) and shall make such revi-
21 sions to the list as may be required by reason of the action
22 under subsection (c).

23 “(f) ANNUAL REPORT.—The Trade Representative
24 shall, not later than the date by which countries are identi-
25 fied under subsection (a), transmit to the Committee on

1 Ways and Means and the Committee on Agriculture of the
2 House of Representatives and the Committee on Finance
3 and the Committee on Agriculture, Nutrition, and For-
4 estry of the Senate, a report on the actions taken under
5 this section during the 12 months preceding such report,
6 and the reasons for such actions, including a description
7 of progress made in achieving fair and equitable market
8 access for United States agricultural commodities.”.

9 (b) REMEDIAL ACTIONS TO UNFAIR TRADE PRAC-
10 TICES INVOLVING UNITED STATES AGRICULTURAL COM-
11 MODITIES, LIVESTOCK, AND AGRICULTURAL PROD-
12 UCTS.—

13 (1) Section 301 of the Trade Act of 1974 (19
14 U.S.C. 2411) is amended—

15 (A) in subsection (a)(1) by inserting “sec-
16 tion 183(a) or” after “determines under”;

17 (B) in subsection (b) by inserting “section
18 183(a) or” after “determines under”;

19 (C) in subsection (c)(1)—

20 (i) in subparagraph (C) by striking
21 “section; or” and inserting “section;”

22 (ii) in subparagraph (D) by striking
23 “paragraph (4).” and inserting “paragraph
24 (4); or”; and

1 (iii) by adding a new subparagraph
2 (E) as follows:

3 “(E) with respect to an investigation of a
4 country identified under section 183(a)—

5 “(I) take any action authorized
6 under this subsection; and

7 “(II) to request that the Sec-
8 retary of Agriculture target the use of
9 existing United States export pro-
10 grams that are administered within
11 the Department of Agriculture to the
12 commodity that is subject to the un-
13 fair trade practice by the priority for-
14 eign country.”.

15 (c) CLERICAL AMENDMENT.—The table of contents
16 for the Trade Act of 1974 is amended by inserting after
17 the item relating to section 182 the following:

“Sec. 183. Identification of Countries That Engage in Unfair Trade Practices
Affecting United States Agricultural Commodities.”.

18 (d) INVESTIGATION REQUIRED.—Subparagraph (A)
19 of section 302(b)(2) of the Trade Act of 1974 (19 U.S.C.
20 2412(b)(2)(A)) is amended by inserting “or 183(a)(2)”
21 after “section 182(a)(2)” in the matter preceding clause
22 (i).

23 (e) CONFORMING AMENDMENTS.—

1 (1) Subparagraph (D) of section 302(b)(2) of
2 such Act is amended by inserting “concerning intel-
3 lectual property rights that is” after “any investiga-
4 tion”.

5 (2) Subparagraph (B) of section 304(a)(3) of
6 such Act is amended—

7 (A) by striking “or” at the end of clause
8 (ii);

9 (B) by inserting “or” at the end of clause
10 (iii); and

11 (C) by inserting immediately after clause
12 (iii) the following new clause:

13 “(iv) the foreign country involved in
14 the investigation is making substantial
15 progress in drafting or implementing legis-
16 lative or administrative measures that en-
17 sure the country engages in fair and equi-
18 table trade practices affecting United
19 States agricultural commodities.”.

20 **SEC. 8. REALLOCATION OF UNOBLIGATED FUNDS.**

21 (a) IN GENERAL.—The Secretary of Agriculture
22 shall, on or about April 1 and July 1 of each fiscal year
23 determine whether unobligated funds exist out of funds
24 made available for the fiscal year for the Export Enhance-
25 ment Program.

1 (b) TRANSFER TO FOOD ASSISTANCE.—The Sec-
2 retary may, on or about April 1 and July 1 of each fiscal
3 year, with respect to any unobligated funds identified
4 under subsection (a), apply the funds to—

5 (1) one or more of the programs administered
6 through Public Law 480 (7 U.S.C. 1701 et seq.);

7 (2) the purchase of agricultural commodities for
8 donation through one of the programs administered
9 through section 416 of the Agricultural Act of 1949
10 (7 U.S.C. 1431); and

11 (3) programs administered through Title II of
12 the Trade Act of 1978 (7 U.S.C. 5621–5641).

13 (c) USE WITHIN SAME FISCAL YEAR.—All funds
14 identified under subsection (a) shall be obligated within
15 the same fiscal year. Such funds may not be transferred
16 under subsection (b) in a fiscal year subsequent to the
17 fiscal year of the determination in subsection (a).

○