

108TH CONGRESS  
1ST SESSION

# S. 1258

To improve United States litigation efforts at the WTO, establish a WTO Dispute Settlement Review Commission, promote reform of the WTO dispute settlement process, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2003

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

---

## A BILL

To improve United States litigation efforts at the WTO, establish a WTO Dispute Settlement Review Commission, promote reform of the WTO dispute settlement process, 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; TABLE OF CONTENTS.**

4       (a) IN GENERAL.—This Act may be cited as the

5       “Stand With American Workers Act”.

6       (b) TABLE OF CONTENTS.—

See. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—ROLE OF UNITED STATES TRADE REPRESENTATIVE

Sec. 101. Role of USTR.  
Sec. 102. Deputy USTR for litigation.  
Sec. 103. Amendments to URAA.

**TITLE II—WTO DISPUTE SETTLEMENT REVIEW COMMISSION; NEGOTIATING OBJECTIVES OF THE UNITED STATES FOR REFORM OF DISPUTE SETTLEMENT PROCEEDINGS**

Subtitle A—General Provisions

Sec. 201. Definitions.

Subtitle B—WTO Dispute Settlement Review Commission

Sec. 211. Establishment of Commission.  
Sec. 212. Duties of the Commission.  
Sec. 213. Powers of the Commission.  
Sec. 214. Review of dispute settlement procedures.  
Sec. 215. Participation in WTO panel proceedings.

Subtitle C—Negotiating Objectives of the United States and Reform of Dispute Settlement Proceedings

Sec. 221. Reform of dispute settlement proceedings.  
Sec. 222. Ethics requirements.

**1 SEC. 2. FINDINGS.**

2 Congress finds the following:

3                 (1) The United States joined the World Trade  
4 Organization (in this Act referred to as the “WTO”)  
5 as an original member with the goal of creating an  
6 improved global trading system that would provide  
7 mutual trade benefits through more open foreign  
8 markets.

9                 (2) Congress passed the Uruguay Round Agree-  
10 ments Act based on its understanding that existing  
11 United States trade remedies would be consistent  
12 with WTO agreements. Effective trade remedy rules  
13 are a cornerstone of the multilateral trading system

1 and an essential bulwark for American industries  
2 against unfair trade and damaging import surges.

3 (3) Since the WTO's founding, foreign govern-  
4 ments have used the WTO's dispute settlement sys-  
5 tem to launch an unanticipated and unwarranted se-  
6 ries of attacks against United States trade laws,  
7 particularly the antidumping, countervailing duty,  
8 and safeguard laws.

9 (4) In the overwhelming number of such cases,  
10 WTO panel and Appellate Body rulings have gone  
11 against the United States. These decisions are often  
12 based upon obligations that do not exist under exist-  
13 ing WTO agreements.

14 (5) The one-sided record in dispute settlement  
15 proceedings is particularly disturbing because the  
16 right to act against dumped, subsidized, and surging  
17 imports is a fundamental part of the multilateral  
18 trade regime, having been codified in Articles VI and  
19 XIX of the General Agreement on Tariffs and Trade  
20 1947.

21 (6) To address this problem, the United States  
22 must ensure that it is aggressively defending United  
23 States trade remedy laws at the WTO and pro-  
24 moting a WTO dispute settlement system that both  
25 acts within its limitations under existing WTO

1 agreements and operates in a more fair and trans-  
2 parent manner.

3 **TITLE I—ROLE OF UNITED**  
4 **STATES TRADE REPRESENTA-**  
5 **TIVE**

6 **SEC. 101. ROLE OF USTR.**

7 (a) IN GENERAL.—Chapter 4 of title I of the Trade  
8 Act of 1974 (19 U.S.C. 2171) is amended by inserting  
9 after section 141, the following new section:

10 **“SEC. 142. SPECIAL PROVISIONS RELATING TO THE WORLD**  
11 **TRADE ORGANIZATION.**

12 “(a) DEFINITIONS.—In this chapter:

13 “(1) ADVERSE FINDING.—The term ‘adverse  
14 finding’ means—

15 “(A) in a panel or Appellate Body pro-  
16 ceeding initiated against the United States, a  
17 finding by the panel or the Appellate Body that  
18 any law or regulation of, or application thereof  
19 by, the United States is inconsistent with the  
20 obligations of the United States under a Uru-  
21 guay Round Agreement (or nullifies or impairs  
22 benefits accruing to a WTO member under such  
23 an Agreement); or

24 “(B) in a panel or Appellate Body pro-  
25 ceeding in which the United States is a com-

1 plaining party, any finding by the panel or the  
2 Appellate Body that a measure of the party  
3 complained against is not inconsistent with that  
4 party's obligations under a Uruguay Round  
5 Agreement (or does not nullify or impair bene-  
6 fits accruing to the United States under such  
7 an Agreement).

8 “(2) APPELLATE BODY, ETC.—The terms ‘Ap-  
9 pellate Body’, ‘dispute settlement panel’, and ‘Dis-  
10 pute Settlement Body’, have the meanings given  
11 those terms in section 121 of the Uruguay Round  
12 Agreements Act (19 U.S.C. 3531).

13 “(3) APPROPRIATE CONGRESSIONAL COMMIT-  
14 TEES.—The term ‘appropriate congressional com-  
15 mittees’ means the Committee on Finance of the  
16 Senate and the Committee on Ways and Means of  
17 the House of Representatives.

18 “(4) DISPUTE SETTLEMENT BODY.—The term  
19 ‘Dispute Settlement Body’ means the Dispute Set-  
20 tlement Body established pursuant to the Dispute  
21 Settlement Understanding.

22 “(5) DISPUTE SETTLEMENT PANEL; PANEL.—  
23 The terms ‘dispute settlement panel’ and ‘panel’  
24 mean a panel established pursuant to Article 6 of  
25 the Dispute Settlement Understanding.

1           “(6) DISPUTE SETTLEMENT PROCEEDING.—

2         The term ‘dispute settlement proceeding’ means any  
3         procedure initiated, or decision rendered, pursuant  
4         to the Dispute Settlement Understanding.

5           “(7) DISPUTE SETTLEMENT UNDER-

6         STANDING.—The term ‘Dispute Settlement Under-  
7         standing’ means the Understanding on Rules and  
8         Procedures Governing the Settlement of Disputes re-  
9         ferred to in section 101(d)(16) of the Uruguay  
10      Round Agreements Act.

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

14           “(9) URUGUAY ROUND AGREEMENT.—The term  
15         ‘Uruguay Round Agreement’ means any of the  
16         Agreements described in section 101(d) of the Uru-  
17         guay Round Agreements Act.

18           “(10) WTO AGREEMENT.—The term ‘WTO  
19         Agreement’ means the Agreement Establishing the  
20         World Trade Organization entered into on April 15,  
21         1994.

22           “(11) WTO, ETC.—The terms ‘WTO’, ‘World  
23         Trade Organization’, and ‘WTO member country’  
24         have the meaning given those terms in section 2 of

1       the Uruguay Round Agreements Act (19 U.S.C.  
2       3501).

3       “(b) RESPONSIBILITY OF USTR.—In addition to the  
4 responsibilities described in section 141, the United States  
5 Trade Representative shall be the primary government of-  
6 ficial responsible for all dispute settlement proceedings be-  
7 fore the World Trade Organization that involve the United  
8 States.

9       “(c) ADDITIONAL ATTORNEYS.—

10       “(1) INCREASE IN STAFF.—The United States  
11      Trade Representative may hire 10 additional attor-  
12      neys to assist the United States Trade Representa-  
13      tive in carrying out the responsibilities described in  
14      subsection (b).

15       “(2) PANEL OF OUTSIDE ATTORNEYS.—The  
16      United States Trade Representative may, pursuant  
17      to section 141(e)(2), employ private attorneys who  
18      have the expertise and experience to represent the  
19      United States before dispute settlement panels and  
20      the Appellate Body.”.

21       (b) CONFORMING AMENDMENT.—The table of con-  
22 tents of the Trade Act of 1974 (19 U.S.C. 2101 et seq.)  
23 is amended by inserting after the item relating to section  
24 141 the following new item:

“Sec. 142. Special provisions relating to the World Trade Organization.”.

1   **SEC. 102. DEPUTY USTR FOR LITIGATION.**

2       (a) IN GENERAL.—Section 141(b) of the Trade Act  
3   of 1974 (19 U.S.C. 2171(b)) is amended by inserting after  
4   paragraph (5), the following new paragraph:

5           “(6) The United States Trade Representative shall  
6   designate 1 of the Deputy United States Trade Represent-  
7   atives whose sole responsibility shall be to oversee—

8              “(A) all dispute settlement proceedings involv-  
9   ing the United States before the World Trade Orga-  
10   nization; and

11              “(B) any negotiations involving modifications  
12   to, or amendments of, the Understanding on Rules  
13   and Procedures Governing the Settlement of Dis-  
14   putes.”.

15       (b) CONFORMING AMENDMENT.—Section 141(b) of  
16   such Act is amended by moving paragraph (5) 2 ems to  
17   the left.

18   **SEC. 103. AMENDMENTS TO URAA.**

19       (a) MAINTENANCE OF BIOGRAPHICAL MATERIAL.—  
20   Section 123(a) of the Uruguay Round Agreements Act (19  
21   U.S.C. 3533(a)) is amended—

22              (1) by striking “The President” and inserting:  
23              “(1) REVIEW BY PRESIDENT.—The President”;

24              (2) by moving the text of paragraph (1) of sec-  
25   tion 123(a), as redesignated by paragraph (1), 2  
26   ems to the right; and

1                             (3) by adding at the end the following new  
2                             paragraph:

3                             “(2) MAINTENANCE OF ROSTER BY USTR.—The  
4                             Trade Representative shall maintain and make avail-  
5                             able to the public a current list of WTO panelists,  
6                             including persons serving on the Appellate Body.  
7                             The list shall include pertinent biographical informa-  
8                             tion on each person, including panel decisions made  
9                             by the person, the person’s dispute settlement expe-  
10                             rience, and any relevant speeches, articles, or books  
11                             of the person.”.

12                             (b) NOTIFICATION REQUIREMENTS.—Section 123(d)  
13                             of the Uruguay Round Agreements Act (19 U.S.C.  
14                             3533(d)) is amended—

15                             (1) in the matter preceding paragraph (1), by  
16                             inserting “or regulation, or practice of a department  
17                             or agency of the United States,” after “Federal or  
18                             State law”; and

19                             (2) in paragraph (1), by inserting “or regula-  
20                             tion, or practice of a department or agency of the  
21                             United States,” after “State or Federal law”.

22                             (c) ACTIONS UPON CIRCULATION OF REPORTS.—  
23                             Section 123(f) of the Uruguay Round Agreements Act (19  
24                             U.S.C. 3533(f)) is amended—

1                             (1) by striking “and” at the end of paragraph  
2                             (2);

3                             (2) in paragraph (3), by inserting “, before the  
4                             United States communicates its intentions regarding  
5                             its compliance with the panel or Appellate body re-  
6                             port under Article 21(3) of the Dispute Settlement  
7                             Understanding,” before “consult with”;

8                             (3) by striking the period at the end of para-  
9                             graph (3) and inserting “; and”; and

10                             (4) by adding at the end the following new  
11                             paragraph:

12                             “(4) as part of the consultations described in  
13                             paragraph (3), provide the appropriate congressional  
14                             committees with a written analysis of the rights or  
15                             obligations of the United States affected by the re-  
16                             port, as well as an analysis of whether, in the opin-  
17                             ion of the Trade Representative, the panel or Appel-  
18                             late Body violated the standard of review or its  
19                             terms of reference in reaching its decision, and  
20                             whether the measure being challenged has any ad-  
21                             verse trade effects for the United States.”.

22                             (d) REQUIREMENTS FOR AGENCY ACTION.—Section  
23                             123(g)(1)(E) of the Uruguay Round Agreements Act (19  
24                             U.S.C. 3533(g)(1)(E)) is amended to read as follows:

1                 “(E) not later than 60 days before the  
2                 publication required by subparagraph (C), the  
3                 Trade Representative has submitted to the ap-  
4                 propriate congressional committees a report and  
5                 the Trade Representative and the head of the  
6                 relevant department or agency have consulted  
7                 with such committees regarding the proposed  
8                 content of the final rule or other modification,  
9                 the reasons for the rule or modification, and the  
10                 advice obtained under subparagraph (B) with  
11                 respect to the rule or modification; and”.

12         (e) CONSENT TO APPELLATE BODY APPOINT-  
13 MENTS.—Section 123 of the Uruguay Round Agreements  
14 Act (19 U.S.C. 3533) is amended by adding at the end  
15 the following new subsection:

16         “(i) CONGRESSIONAL CONSENT TO APPELLATE  
17 BODY APPOINTMENTS.—

18                 “(1) REPORT TO COMMITTEES.—Not later than  
19                 60 days (or as early as practicable) before the Dis-  
20                 pute Settlement Body considers for appointment or  
21                 reappointment a person to the Appellate Body, the  
22                 Trade Representative shall report to the appropriate  
23                 congressional committees regarding the person being  
24                 considered for appointment or reappointment.

1           “(2) CONTENT OF REPORT.—The report re-  
2         quired by paragraph (1) shall include information on  
3         the suitability of each person being considered for  
4         appointment and the Trade Representative’s rec-  
5         ommendation regarding the person. The rec-  
6         ommendation shall include an assessment of each  
7         person’s ability to understand and abide by the limi-  
8         tations imposed by the standard of review and the  
9         terms of reference under which the Appellate Body  
10        must decide its cases. If a person is being considered  
11        for reappointment, the Trade Representative shall  
12        report on the person’s record on the Appellate Body,  
13        including the cases handled and the decisions ren-  
14        dered by that person.

15           “(3) CONSENT BY COMMITTEES.—Unless a ma-  
16         jority of the members of each of the congressional  
17         committees vote in favor of the appointment or re-  
18         appointment of the person to the Appellate Body,  
19         the Trade Representative shall oppose the appoint-  
20         ment or reappointment at the WTO.”.

1   **TITLE II—WTO DISPUTE SETTLE-**  
2   **MENT REVIEW COMMISSION;**  
3   **NEGOTIATING OBJECTIVES**  
4   **OF THE UNITED STATES FOR**  
5   **REFORM OF DISPUTE SET-**  
6   **TLEMENT PROCEEDINGS**

7   **Subtitle A—General Provisions**

8   **SEC. 201. DEFINITIONS.**

9       In this title:

10           (1) ADVERSE TO THE UNITED STATES.—The  
11       term “adverse to the United States” means—

12                  (A) in a panel or Appellate Body pro-  
13       ceeding initiated against the United States, a  
14       finding by the panel or the Appellate Body that,  
15       any law or regulation of, or application thereof  
16       by, the United States, or any State, is incon-  
17       sistent with the obligations of the United States  
18       under a Uruguay Round Agreement (or nullifies  
19       or impairs benefits accruing to a WTO member  
20       under such an Agreement); or

21                  (B) in a panel or Appellate Body pro-  
22       ceeding in which the United States is a com-  
23       plaining party, any finding by the panel or the  
24       Appellate Body that a measure of the party  
25       complained against is not inconsistent with that

1           party's obligations under a Uruguay Round  
2           Agreement (or does not nullify or impair bene-  
3           fits accruing to the United States under such  
4           an Agreement).

5           (2) AFFIRMATIVE REPORT.—The term “affirm-  
6           ative report” means a report described in section  
7           212(b)(2) which contains affirmative determinations  
8           made by the Commission under paragraph (3) of  
9           section 212(a).

10          (3) APPELLATE BODY.—The term “Appellate  
11          Body” means the Appellate Body established by the  
12          Dispute Settlement Body pursuant to Article 17.1 of  
13          the Dispute Settlement Understanding.

14          (4) DISPUTE SETTLEMENT BODY.—The term  
15          “Dispute Settlement Body” means the Dispute Set-  
16          tlement Body established pursuant to the Dispute  
17          Settlement Understanding.

18          (5) 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          (6) DISPUTE SETTLEMENT PROCEEDING.—The  
23          term “dispute settlement proceeding” means any  
24          procedure initiated, or decision rendered, pursuant  
25          to the Dispute Settlement Understanding.

## 1                   (7) DISPUTE SETTLEMENT UNDERSTANDING.—

2         The term “Dispute Settlement Understanding”  
3         means the Understanding on Rules and Procedures  
4         governing the Settlement of Disputes referred to in  
5         section 101(d)(16) of the Uruguay Round Agree-  
6         ments Act.

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

10                  (9) TRADE REPRESENTATIVE.—The term  
11         “Trade Representative” means the United States  
12         Trade Representative.

13                  (10) URUGUAY ROUND AGREEMENT.—The term  
14         “Uruguay Round Agreement” means any of the  
15         Agreements described in section 101(d) of the Uru-  
16         guay Round Agreements Act.

17                  (11) WORLD TRADE ORGANIZATION; WTO.—The  
18         terms “World Trade Organization” and “WTO”  
19         mean the organization established pursuant to the  
20         WTO Agreement.

21                  (12) WTO AGREEMENT.—The term “WTO  
22         Agreement” means the Agreement Establishing the  
23         World Trade Organization entered into on April 15,  
24         1994.

1           **Subtitle B—WTO Dispute**  
2           **Settlement Review Commission**

3   **SEC. 211. ESTABLISHMENT OF COMMISSION.**

4           (a) ESTABLISHMENT.—There is established a com-  
5 mission to be known as the World Trade Organization  
6 Dispute Settlement Review Commission (in this Act re-  
7 ferred to as the “Commission”).

8           (b) MEMBERSHIP.—

9           (1) COMPOSITION.—The Commission shall be  
10 composed of 5 members, all of whom shall be retired  
11 judges of the Federal judicial circuits, and who shall  
12 be appointed by the President, after consultation  
13 with the Majority Leader and Minority Leader of  
14 the House of Representatives, the Majority Leader  
15 and Minority Leader of the Senate, the chairman  
16 and ranking member of the Committee on Ways and  
17 Means of the House of Representatives, and the  
18 chairman and ranking member of the Committee on  
19 Finance of the Senate.

20           (2) DATE OF APPOINTMENT.—The appoint-  
21 ments of the members of the Commission shall be  
22 made not later than 90 days after the date of enact-  
23 ment of this Act.

24           (c) PERIOD OF APPOINTMENT; VACANCIES.—

1                   (1) IN GENERAL.—Members of the Commission  
2 first appointed shall each be appointed for a term of  
3 5 years.

4                   (2) SUBSEQUENT TERMS.—After the initial 5-  
5 year term, 3 members of the Commission shall be  
6 appointed for terms of 3 years and the remaining 2  
7 members shall be appointed for terms of 2 years.

8                   (3) VACANCIES.—

9                   (A) IN GENERAL.—Any vacancy on the  
10 Commission shall not affect its powers, but  
11 shall be filled in the same manner as the origi-  
12 nal appointment and shall be subject to the  
13 same conditions as the original appointment.

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

17 (d) MEETINGS.—

18                   (1) INITIAL MEETING.—Not later than 30 days  
19 after the date on which all members of the Commis-  
20 sion have been appointed, the Commission shall hold  
21 its first meeting.

22                   (2) SUBSEQUENT MEETINGS.—The Commission  
23 shall meet subsequently at the call of the chair-  
24 person.

1       (e) QUORUM.—A majority of the members of the  
2 Commission shall constitute a quorum, but a lesser num-  
3 ber of members may hold hearings.

4       (f) CHAIRPERSON AND VICE CHAIRPERSON.—The  
5 Commission shall select a chairperson and vice chair-  
6 person from among its members.

7       (g) AFFIRMATIVE DETERMINATIONS.—An affirma-  
8 tive vote by a majority of the members of the Commission  
9 shall be required for any affirmative determination by the  
10 Commission under section 212.

**11 SEC. 212. DUTIES OF THE COMMISSION.**

12       (a) REVIEW OF WORLD TRADE ORGANIZATION DIS-  
13 PUTE SETTLEMENT REPORTS.—

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

16                   (A) all reports of dispute settlement panels  
17                   and the Appellate Body of the WTO in pro-  
18                   ceedings initiated by other parties to the WTO  
19                   that are adverse to the United States and that  
20                   are adopted by the Dispute Settlement Body;  
21                   and

22                   (B) upon request of the Trade Representa-  
23                   tive, the chairman or ranking member of the  
24                   Committee on Ways and Means of the House of  
25                   Representatives, or the chairman or ranking

1 member of the Committee on Finance of the  
2 Senate, any other report of a dispute settlement  
3 panel, or the Appellate Body that is adopted by  
4 the Dispute Settlement Body.

5 (2) SCOPE OF REVIEW.—In the case of a report  
6 described in paragraph (1), the Commission shall  
7 conduct a complete review and determine whether  
8 the panel or Appellate Body, as the case may be—

9 (A) exceeded its authority or its terms of  
10 reference;

11 (B) added to the obligations, or diminished  
12 the rights of the United States under the Uru-  
13 guay Round Agreement that is the subject of  
14 the report;

15 (C) acted arbitrarily or capriciously, en-  
16 gaged in misconduct, or demonstrably departed  
17 from the procedures specified for panels and  
18 the Appellate Body in the applicable Uruguay  
19 Round Agreement; and

20 (D) deviated from the applicable standard  
21 of review, including in antidumping, counter-  
22 vailing duty, and other unfair trade remedy  
23 cases, the standard of review set forth in Article  
24 17.6 of the Agreement on Implementation of

1           Article VI of the General Agreement on Tariffs  
2           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.—Not later than 120 days  
13           after the date that a report of a panel or the Appel-  
14           late Body described in subsection (a) is adopted by  
15           the Dispute Settlement Body, the Commission shall  
16           make a written determination with respect to mat-  
17           ters described in subsection (a) (2) and (3).

18           (2) REPORTS.—The Commission shall report  
19           the determination 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. 213. POWERS OF THE COMMISSION.**

24          (a) HEARINGS.—The Commission may hold any  
25          hearings, sit and act at any time and place, take any testi-

1 mony, and receive any evidence as the Commission con-  
2 siders advisable to carry out the purposes of this Act. The  
3 Commission shall provide reasonable notice of a hearing  
4 held pursuant to this subsection.

5 (b) INFORMATION FROM INTERESTED PARTIES AND  
6 FEDERAL AGENCIES.—

7 (1) NOTICE OF PANEL OR APPELLATE BODY  
8 REPORT.—The Trade Representative shall advise the  
9 Commission not later than 5 days after the date the  
10 Dispute Settlement Body adopts the report of a  
11 panel or the Appellate Body that is adverse to the  
12 United States and shall immediately publish notice  
13 of that advice in the Federal Register, along with  
14 notice of an opportunity for interested parties to  
15 submit comments to the Commission.

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



## **9 SEC. 214. REVIEW OF DISPUTE SETTLEMENT PROCEDURES.**

10 (a) AFFIRMATIVE REPORT BY COMMISSION.—

11 (1) IN GENERAL.—If the Commission makes 3  
12 affirmative determinations under section 212(b) in a  
13 5-year period, the President shall, not later than 90  
14 days after the third affirmative determination, sub-  
15 mit to Congress a proposal for the fundamental re-  
16 form of the dispute settlement system at the WTO  
17 and the rights and obligations of WTO member  
18 countries under that system, and a plan on how to  
19 achieve such fundamental reform. Except as pro-  
20 vided in paragraph (2), the provisions of section 151  
21 of the Trade Act of 1974 (and the trade authorities  
22 procedures provided for in section 2103(b)(3) of the  
23 Bipartisan Trade Promotion Authority Act of 2002  
24 (19 U.S.C. 3801 et seq.)) shall cease to apply to im-  
25 plementing bills until a joint resolution described in

1 subsection (b) is enacted into law pursuant to the  
2 provisions of subsection (c).

3 (2) EXCEPTION.—Notwithstanding paragraph  
4 (1), the trade authorities procedures provided for in  
5 the Bipartisan Trade Promotion Authority Act of  
6 2002 shall continue to apply to the implementation  
7 of any agreement with respect to which the Presi-  
8 dent has notified the House of Representatives and  
9 the Senate of the President's intent pursuant to sec-  
10 tion 2105(a)(1)(A).

11 (b) JOINT RESOLUTIONS DESCRIBED.—For purposes  
12 of subsection (a)(1), a joint resolution is described in this  
13 paragraph if it is a joint resolution of the 2 Houses of  
14 Congress and the matter after the resolving clause of such  
15 joint resolution is as follows: “That the Congress approves  
16 the proposal of the President, submitted on \_\_\_, in re-  
17 sponse to the affirmative determination submitted to the  
18 Congress by the WTO Dispute Settlement Review Com-  
19 mission on \_\_\_, to seek the fundamental reform of the  
20 dispute settlement system at the WTO and the rights and  
21 obligations of WTO member countries under that system,  
22 and authorizes and directs the United States Trade Rep-  
23 resentative to undertake negotiations to achieve such fun-  
24 damental reform in accordance with the plan”, the first  
25 blank space being filled with the date the President sub-

1 mits the proposal, and the second blank space being filled  
2 with the date of the affirmative determination submitted  
3 to the Congress by the Commission pursuant to section  
4 212(b) which has given rise to the joint resolution.

5 (c) PROCEDURAL PROVISIONS.—

6 (1) IN GENERAL.—The requirements of this  
7 subsection are met if the joint resolution is enacted  
8 in accordance with this subsection, and the Congress  
9 adopts and transmits the joint resolution to the  
10 President.

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 last day of the 30-day period (excluding  
16 any day described in section 154(b) of the Trade Act  
17 of 1974) beginning on the date on which the Con-  
18 gress receives the veto message from the President.

19 (3) INTRODUCTION.—

20 (A) TIME.—A joint resolution to which  
21 this section applies may be introduced at any  
22 time on or before the date that is 90 days after  
23 the President submits the plan described in  
24 subsection (a).

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 a joint resolution de-  
11                                     scribed in subsection (b) to the same extent as  
12                                     such provisions apply to resolutions under such  
13                                     section.

14                                     (B) REPORT OR DISCHARGE OF COM-  
15                                     MITTEE.—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—

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. 215. PARTICIPATION IN WTO PANEL PROCEEDINGS.**

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

18                 (1) to enforce United States rights under a  
19 multilateral trade agreement, or

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

22 a private United States person that is supportive of the  
23 United States Government's position before the panel or  
24 Appellate Body and that has a direct economic interest  
25 in the panel's or Appellate Body's resolution of the mat-

1   ters in dispute shall be permitted to participate in con-  
2   sultations and panel proceedings. The Trade Representa-  
3   tive shall issue regulations, consistent with subsections (b)  
4   and (c), ensuring full and effective participation by any  
5   such private person.

6                 (b) ACCESS TO INFORMATION.—The United States  
7   Trade Representative shall make available to persons de-  
8   scribed in subsection (a) all information presented to or  
9   otherwise obtained by the Trade Representative in connec-  
10   tion with a WTO dispute settlement proceeding. The  
11   United States Trade Representative shall promulgate reg-  
12   ulations implementing a protective order system to protect  
13   information designated by the submitting member as con-  
14   fidential.

15                 (c) PARTICIPATION IN DISPUTE SETTLEMENT PRO-  
16   CEEDING.—Upon request from a person described in sub-  
17   section (a), the United States Trade Representative  
18   shall—

19                         (1) consult in advance with such person regard-  
20                         ing the content of written submissions from the  
21                         United States to the dispute settlement panel or Ap-  
22                         pellate Body concerned or to the other member  
23                         countries involved;

24                         (2) include, where appropriate, such person or  
25                         the appropriate representative of such person as an

1       advisory member of the delegation in sessions of the  
2       dispute settlement panel or Appellate Body;

3                 (3) allow such special delegation member, where  
4       such member would bring special knowledge to the  
5       proceeding, to appear before the panel or Appellate  
6       Body, directly or through counsel, under the super-  
7       vision of responsible United States Government offi-  
8       cials; and

9                 (4) in proceedings involving confidential infor-  
10      mation, allow appearance of such person only  
11      through counsel as a member of the special delega-  
12      tion.

13 **Subtitle C—Negotiating Objectives  
14       of the United States and Reform  
15       of Dispute Settlement Pro-  
16       ceedings**

17 **SEC. 221. REFORM OF DISPUTE SETTLEMENT PRO-  
18       CEEDINGS.**

19         (a) NEGOTIATIONS REGARDING REFORM OF THE  
20      WTO DISPUTE SETTLEMENT PROCEEDINGS.—The  
21      United States Trade Representative shall follow the prin-  
22      cipal negotiating objectives set forth in subsection (b) re-  
23      garding reform of the WTO dispute settlement pro-  
24      ceedings and pursue those objectives through all possible  
25      means, including negotiations to carry out the 4th World

1 Trade Organization Ministerial held in Doha, Qatar in  
2 November 2001.

3 (b) NEGOTIATING OBJECTIVES.—The principal negoti-  
4 ating objectives set forth in this subsection are as fol-  
5 lows:

6 (1) DEFERENCE TO MEMBER COUNTRY'S  
7 TRADE LAWS.—A principal negotiating objective of  
8 the United States is to amend Article 11 of the Dis-  
9 pute Settlement Understanding to require that in re-  
10 viewing a determination involving a trade remedy or  
11 safeguard law of a WTO member country, a dispute  
12 settlement panel or the Appellate Body shall set  
13 aside the determination only if the determination is  
14 not supported by substantial evidence or is expressly  
15 contrary to the applicable Uruguay Round Agree-  
16 ment.

17 (2) CREATING A SECRETARIAT.—A principal  
18 negotiating objective of the United States is the es-  
19 tablishment of a Secretariat in the Dispute Settle-  
20 ment Body who shall be responsible for selecting for  
21 nomination individuals to serve on dispute settle-  
22 ment panels and for providing individuals selected  
23 with technical support.

24 (3) ELIMINATION OF PARTICIPATION BY GOV-  
25 ERNMENT OFFICIALS.—A principal negotiating ob-

1 jective of the United States is to amend the Dispute  
2 Settlement Understanding to prohibit any individual  
3 employed by the government of a WTO member  
4 country from serving on a panel or on the Appellate  
5 Body.

6 (4) THIRD PARTY PARTICIPATION.—A principal  
7 negotiating objective of the United States is to es-  
8 tablish procedures to provide for the general accept-  
9 ance of amicus curiae submissions from interested  
10 outside parties by dispute settlement panels and the  
11 Appellate Body.

12 (5) PUBLIC ACCESS TO DISPUTE SETTLEMENT  
13 PROCEEDINGS.—A principal negotiating objective of  
14 the United States is to establish more open and  
15 transparent dispute settlement proceedings, by—

16 (A) allowing public access to proceedings  
17 before dispute settlement panels and the Appel-  
18 late Body, and to arbitration meetings;

19 (B) making nonconfidential submissions  
20 and written statements of oral presentations  
21 available to the public;

22 (C) providing timely access to final reports  
23 of dispute settlement panels; and

24 (D) maintaining in a central location for  
25 nonconfidential documents relating to dispute

1           settlement proceedings and making those docu-  
2           ments publicly available.

3       (c) REPORT.—Not later than 60 days before reaching  
4       an agreement involving a negotiating objective described  
5       in subsection (b), the Trade Representative shall report  
6       to Congress regarding the progress made in achieving the  
7       objective and the details of any agreement.

8       **SEC. 222. ETHICS REQUIREMENTS.**

9       (a) IN GENERAL.—The United States shall not agree  
10      to the appointment or reappointment of any individual to  
11      the Appellate Body or to the WTO panel roster until the  
12      WTO establishes and implements the reporting require-  
13      ments described in subsection (b).

14       (b) REPORTING REQUIREMENTS.—An individual may  
15      not serve on a panel or the Appellate Body without first  
16      submitting in writing the following information:

17           (1) Information regarding any interest, rela-  
18           tionship, or matter that is likely to affect the indi-  
19           vidual's independence or impartiality or that might  
20           reasonably create an appearance of impropriety or  
21           an apprehension of bias in the matter being consid-  
22           ered before the panel or Appellate Body.

23           (2) Information regarding financial or personal  
24           interest the individual has in, or related to, the mat-  
25           ter before the panel or Appellate Body.

1                             (3) Current and previous employment history  
2       and information regarding any financial or personal  
3       interest an employer, business associate, or family  
4       member may have in the matter before the panel or  
5       Appellate Body.

6                             (4) Information regarding the individual's rela-  
7       tionship with any government entity or official in-  
8       volved in the matter before the panel or Appellate  
9       Body.

10                           (5) Any position papers prepared by the indi-  
11       vidual or public advocacy of the individual relating  
12       to the matter or issue before the panel or Appellate  
13       Body.

14                           (c) AVAILABILITY TO WTO MEMBER COUNTRIES.—  
15       The information required by subsection (b) shall be made  
16       available to WTO member countries and the Trade Rep-  
17       resentative shall make the information available to persons  
18       described in section 215(a) under an appropriately drawn  
19       protective order designed to protect confidential informa-  
20       tion.

○