

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.—

Sec. 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; NE-
 GOTIATING 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.

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

3 (A) IN GENERAL.—The Trade Representa-
4 tive shall make available to the Commission all
5 submissions and relevant documents relating to
6 the panel or Appellate Body report, including
7 any information contained in submissions iden-
8 tified by the provider of the information as pro-
9 prietary information or information treated as
10 confidential by a foreign government.

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

16 (4) ASSISTANCE FROM FEDERAL AGENCIES;
17 CONFIDENTIALITY.—

18 (A) ADMINISTRATIVE ASSISTANCE.—Any
19 agency or department of the United States that
20 is designated by the President shall provide ad-
21 ministrative services, funds, facilities, staff, or
22 other support services to the Commission to as-
23 sist the Commission with the performance of
24 the Commission's functions.

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

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—

1 (i) the Senate to consider any joint
2 resolution unless it has been reported by
3 the Committee on Finance or the com-
4 mittee has been discharged under subpara-
5 graph (B); or

6 (ii) the House of Representatives to
7 consider any joint resolution unless it has
8 been reported by the Committee on Ways
9 and Means or the committee has been dis-
10 charged under subparagraph (B).

11 (D) SPECIAL RULE FOR HOUSE.—A mo-
12 tion in the House of Representatives to proceed
13 to the consideration of a joint resolution may
14 only be made on the second legislative day after
15 the calendar day on which the Member making
16 the motion announces to the House his or her
17 intention to do so.

18 (5) CONSIDERATION OF SECOND RESOLUTION
19 NOT IN ORDER.—It shall not be in order in either
20 the House of Representatives or the Senate to con-
21 sider a joint resolution (other than a joint resolution
22 received from the other House), if that House has
23 previously adopted a joint resolution under this sec-
24 tion relating to the same matter.

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

3 (1) as an exercise of the rulemaking power of
4 the House of Representatives and the Senate, re-
5 spectively, and as such is deemed a part of the rules
6 of each House, respectively, and such procedures su-
7 persede other rules only to the extent that they are
8 inconsistent with such other rules; and

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

14 **SEC. 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 nego-
4 tiating 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 impartially 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.

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