

108TH CONGRESS
1ST SESSION

S. 592

To establish an Office of Manufacturing in the Department of Commerce,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2003

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

A BILL

To establish an Office of Manufacturing in the Department
of Commerce, 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) **SHORT TITLE.**—This Act may be cited as the
5 “Save American Manufacturing Act of 2003”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—OFFICE OF MANUFACTURING

Sec. 101. Establishment of Office of Manufacturing.

TITLE II—WTO DISPUTE SETTLEMENT REVIEW COMMISSION

- Sec. 201. Congressional findings and purpose.
- Sec. 202. Establishment of Commission.
- Sec. 203. Duties of the Commission.
- Sec. 204. Powers of the Commission.
- Sec. 205. Review of dispute settlement procedures and participation in the WTO.
- Sec. 206. Participation in WTO panel proceedings.
- Sec. 207. Definitions.

TITLE III—REFORM OF EXPORT-IMPORT BANK AND OVERSEAS PRIVATE INVESTOR CORPORATION; ABOLITION OF INTERNATIONAL TRADE COMMISSION

- Sec. 301. Restrictions on Export-Import Bank assistance.
- Sec. 302. Restrictions on the Overseas Private Investment Corporation.
- Sec. 303. Abolition of International Trade Commission

TITLE IV—MISCELLANEOUS

- Sec. 401. Buy-American requirement imposed on Department of Homeland Security; exceptions.
- Sec. 402. Prohibition on sale of child-labor manufactured goods in interstate commerce.
- Sec. 403. Additional customs agents to combat inappropriate transshipment of textiles.
- Sec. 404. Sense of the Senate regarding Byrd Amendment.

TITLE V—INTERNAL REVENUE CODE AMENDMENTS

- Sec. 501. Disincentivization of corporate expatriation to avoid United States income tax.
- Sec. 502. Inclusion of income from U.S. imports in Subpart F income.
- Sec. 503. Denial of treaty benefits for certain deductible payments.

1 SEC. 101. ESTABLISHMENT OF OFFICE OF MANUFACTURING.

2 (a) IN GENERAL.—

3 (1) ESTABLISHMENT.—There is established

4 within the Department of Commerce an Office of

5 Manufacturing. The office shall be responsible for

6 gathering, coordinating, and analyzing all the infor-

7 mation necessary for the Secretary of Commerce to

8 make any determinations the Secretary is required

9 by law to make about the industrial base of the

10 United States.

11

1 (2) STAFF.—The Secretary shall ensure that
2 the office includes appropriate staff to carry out the
3 functions of the office under subsection (b), includ-
4 ing individuals with training, expertise, or experience
5 in—

6 (A) economic analysis;

7 (B) the industrial base of the United
8 States for national defense-related production;

9 (C) the industrial base of the United
10 States not related to national defense-related
11 production;

12 (D) technological developments;

13 (E) trends in manufacturing in the United
14 States; and

15 (F) national security.

16 (3) DETAILEES.—In addition to employees of
17 the Department of Commerce, the Secretary may ac-
18 cept, on nonreimbursable detail to the office, em-
19 ployees of other Federal departments and agencies.

20 (b) FUNCTIONS.—The office shall be responsible
21 for—

22 (1) developing policies designed to preserve and
23 enhance the industrial base of the United States;

1 (2) monitoring and evaluating worldwide tech-
2 nological developments in industry sectors critical to
3 the national security interests of the United States;

4 (3) conducting assessments of those sectors of
5 the industrial base of the United States that are in-
6 volved in national defense-related production, includ-
7 ing analysis of how those sectors are affected by
8 technological developments, technology transfers,
9 foreign competition, and imported goods;

10 (4) conducting assessments of—

11 (A) those sectors of the industrial base of
12 the United States that are of critical impor-
13 tance to the national security interests of the
14 United States; and

15 (B) the economy of the United States.

16 (c) REPORTS.—The Secretary shall make an annual
17 report to the Senate Committee on Commerce, Science,
18 and Technology and the House of Representatives Com-
19 mittee on Energy and Commerce that—

20 (1) describes the operations of the office during
21 the 12-month period to which the report relates; and

22 (2) sets forth the Secretary's views on the abil-
23 ity of the United States government to support the
24 industrial base of the United States.

1 **TITLE II—WTO DISPUTE SETTLE-**
2 **MENT REVIEW COMMISSION**

3 **SEC. 201. CONGRESSIONAL FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—The Congress finds the following:

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

8 (2) The American people must receive assur-
9 ances that United States sovereignty will be pro-
10 tected, and United States interests will be advanced,
11 within the global trading system which the WTO will
12 oversee.

13 (3) The survival of the new WTO requires the
14 ability to respond effectively to unfair or otherwise
15 harmful trade practices.

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

21 (5) Congress passed the Uruguay Round Agree-
22 ments Act based upon its understanding that effec-
23 tive trade remedies would not be eroded. These rem-
24 edies are essential to continue the process of opening
25 foreign markets to imports of goods and services and

1 to prevent harm to American industry and agri-
2 culture particularly through foreign dumping and
3 subsidization.

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

7 (A) operates in a fair and impartial man-
8 ner;

9 (B) does not add to the obligations of or
10 diminish the rights of the United States under
11 the Uruguay Round agreements; and

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

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

18 **SEC. 202. ESTABLISHMENT OF COMMISSION.**

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

23 (b) MEMBERSHIP.—

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

1 of the Federal judicial circuits and shall be ap-
2 pointed by the President, after consultation with the
3 Majority Leader and Minority Leader of the House
4 of Representatives, and the Majority Leader and Mi-
5 nority Leader of the Senate.

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

9 (c) PERIOD OF APPOINTMENT; VACANCIES.—

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

16 (2) VACANCIES.—

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

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

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

5 (e) MEETINGS.—The Commission shall meet at the
6 call of the Chairman.

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

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

13 **SEC. 203. DUTIES OF THE COMMISSION.**

14 (a) REVIEW OF WTO DISPUTE SETTLEMENT RE-
15 PORTS.—

16 (1) IN GENERAL.—The Commission shall re-
17 view—

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

24 (B) upon request of the United States
25 Trade Representative, any other report of a dis-

1 pute settlement panel or the Appellate Body
2 which is adopted by the Dispute Settlement
3 Body.

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

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

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

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

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

1 set forth in Article 17.6 of the Agreement on
2 Implementation of Article VI of the General
3 Agreement on Tariffs and Trade 1994.

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

12 (b) DETERMINATION; REPORT.—

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

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

1 **SEC. 204. POWERS OF THE COMMISSION.**

2 (a) HEARINGS.—The Commission may hold such
3 hearings, sit and act at such times and places, take such
4 testimony, and receive such evidence as the Commission
5 considers advisable to carry out the purposes of this title.

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

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

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

1 head of such department or agency shall furnish
2 such information to the Commission.

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

12 **SEC. 205. REVIEW OF DISPUTE SETTLEMENT PROCEDURES**
13 **AND PARTICIPATION IN THE WTO.**

14 (a) AFFIRMATIVE REPORT BY COMMISSION.—

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

22 (2) 3 AFFIRMATIVE REPORTS BY COMMIS-
23 SION.—If a joint resolution described in subsection
24 (b)(2) is enacted into law pursuant to the provisions
25 of subsection (c), the approval of the Congress, pro-

1 vided under section 101(a) of the Uruguay Round
2 Agreements Act, of the WTO Agreement shall cease
3 to be effective in accordance with the provisions of
4 the joint resolution and the United States shall
5 cease to be a member of the WTO.

6 (b) JOINT RESOLUTIONS DESCRIBED.—

7 (1) IN GENERAL.—For purposes of subsection
8 (a)(1), a joint resolution is described in this para-
9 graph, if it is a joint resolution of the 2 Houses of
10 Congress and the matter after the resolving clause
11 of such joint resolution is as follows: “That the Con-
12 gress authorizes and directs the President to under-
13 take negotiations to amend or modify the rules and
14 procedures of the Understanding on Rules and Pro-
15 cedures Governing the Settlement of Disputes relat-
16 ing to ____ with respect to the affirmative deter-
17 mination submitted to the Congress by the WTO
18 Dispute Settlement Review Commission on _____”,
19 the first blank space being filled with the specific
20 rules and procedures with respect to which the
21 President is to undertake negotiations and the sec-
22 ond blank space being filled with the date of the af-
23 firmative determination submitted to the Congress
24 by the Commission pursuant to section 203(b) which
25 has given rise to the joint resolution.

1 (2) WITHDRAWAL RESOLUTION.—For purposes
2 of subsection (a)(2), a joint resolution is described
3 in this paragraph, if it is a joint resolution of the
4 2 Houses of Congress and the matter after the re-
5 solving clause of such joint resolution is as follows:
6 “That the Congress authorizes and directs the Presi-
7 dent to undertake negotiations to amend or modify
8 the rules and procedures of the Understanding on
9 Rules and Procedures Governing the Settlement of
10 Disputes relating to _____ with respect to the affirm-
11 ative report submitted to the Congress by the WTO
12 Dispute Settlement Review Commission on _____ and
13 if such negotiations do not result in a satisfactory
14 solution by _____, the Congress withdraws its ap-
15 proval, provided under section 101(a) of the Uru-
16 guay Round Agreements Act, of the WTO Agree-
17 ment as defined in section 2(9) of that Act”, the
18 first blank space being filled with the specific rules
19 and procedures with respect to which the President
20 is to undertake negotiations, the second blank space
21 being filled with the date of the affirmative deter-
22 mination submitted to the Congress by the Commis-
23 sion pursuant to section 203(b) which has given rise
24 to the joint resolution, and the third blank space

1 being filled with the date the Congress withdraws its
2 approval of the WTO Agreement.

3 (c) PROCEDURAL PROVISIONS.—

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

7 (A) in the case of a joint resolution de-
8 scribed in subsection (b)(1) the Congress
9 adopts and transmits the joint resolution to the
10 President before the end of the 90-day period
11 (excluding any day described in section 154(b)
12 of the Trade Act of 1974), beginning on the
13 date on which the Congress receives an affirma-
14 tive determination from the Commission de-
15 scribed in section 203(b), or

16 (B) in the case of a joint resolution de-
17 scribed in subsection (b)(2), the Commission
18 has made 3 affirmative determinations de-
19 scribed in section 203(b) during a 5-year pe-
20 riod, and the Congress adopts and transmits
21 the joint resolution to the President before the
22 end of the 90-day period (excluding any day de-
23 scribed in section 154(b) of the Trade Act of
24 1974), beginning on the date on which the Con-

1 gress receives the third such affirmative deter-
2 mination.

3 (2) PRESIDENTIAL VETO.—In any case in
4 which the President vetoes the joint resolution, the
5 requirements of this subsection are met, if each
6 House of Congress votes to override that veto on or
7 before the later of the last day of the 90-day period
8 referred to in subparagraph (A) or (B), whichever
9 is applicable, or the last day of the 15-day period
10 (excluding any day described in section 154(b) of the
11 Trade Act of 1974) beginning on the date on which
12 the Congress receives the veto message from the
13 President.

14 (3) INTRODUCTION.—

15 (A) TIME.—A joint resolution to which
16 this section applies may be introduced at any
17 time on or after the date on which the Commis-
18 sion transmits to the Congress an affirmative
19 determination described in section 203(b), and
20 before the end of the 90-day period referred to
21 in subparagraph (A) or (B), as the case may
22 be.

23 (B) ANY MEMBER MAY INTRODUCE.—A
24 joint resolution described in subsection (b) may

1 be introduced in either House of the Congress
2 by any Member of such House.

3 (4) EXPEDITED PROCEDURES.—

4 (A) GENERAL RULE.—Subject to the pro-
5 visions of this subsection, the provisions of sub-
6 sections (b), (d), (e), and (f) of section 152 of
7 the Trade Act of 1974 (19 U.S.C. 2192(b), (d),
8 (e), and (f)) apply to joint resolutions described
9 in subsection (b) to the same extent as such
10 provisions apply to resolutions under such sec-
11 tion.

12 (B) REPORT OR DISCHARGE OF COM-
13 MITTEE.—If the committee of either House to
14 which a joint resolution has been referred has
15 not reported it by the close of the 45th day
16 after its introduction (excluding any day de-
17 scribed in section 154(b) of the Trade Act of
18 1974), such committee shall be automatically
19 discharged from further consideration of the
20 joint resolution and it shall be placed on the ap-
21 propriate calendar.

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

24 (i) the Senate to consider any joint
25 resolution unless it has been reported by

1 the Committee on Finance or the com-
2 mittee has been discharged under subpara-
3 graph (B); or

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

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

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

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

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

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

12 **SEC. 206. PARTICIPATION IN WTO PANEL PROCEEDINGS.**

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

16 (1) to enforce United States rights under a
17 multilateral trade agreement, or

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

20 a private United States person that is supportive of the
21 United States Government's position before the panel or
22 Appellate Body and that has a direct economic interest
23 in the panel's or Appellate Body's resolution of the mat-
24 ters in dispute shall be permitted to participate in con-
25 sultations and panel proceedings. The Trade Representa-

1 tive shall issue regulations, consistent with subsections (b)
2 and (c), ensuring full and effective participation by any
3 such private person.

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

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

16 (1) consult in advance with such person regard-
17 ing the content of written submissions from the
18 United States to the WTO panel concerned or to the
19 other member countries involved;

20 (2) include, where appropriate, such person or
21 its appropriate representative as an advisory mem-
22 ber of the delegation in sessions of the dispute set-
23 tlement panel;

24 (3) allow such special delegation member, where
25 such member would bring special knowledge to the

1 proceeding, to appear before the panel, directly or
2 through counsel, under the supervision of responsible
3 United States Government officials; and

4 (4) in proceedings involving confidential infor-
5 mation, allow appearance of such person only
6 through counsel as a member of the special delega-
7 tion.

8 **SEC. 207. DEFINITIONS.**

9 For purposes of this title:

10 (1) APPELLATE BODY.—The term “Appellate
11 Body” means the Appellate Body established under
12 Article 17.1 of the Dispute Settlement Under-
13 standing.

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

23 (3) DISPUTE SETTLEMENT PANEL; PANEL.—
24 The terms “dispute settlement panel” and “panel”

1 mean a panel established pursuant to Article 6 of
2 the Dispute Settlement Understanding.

3 (4) DISPUTE SETTLEMENT BODY.—The term
4 “Dispute Settlement Body” means the Dispute Set-
5 tlement Body administering the rules and proce-
6 dures set forth in the Dispute Settlement Under-
7 standing.

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

14 (6) URUGUAY ROUND AGREEMENT.—The term
15 “Uruguay Round Agreement” means one or more of
16 the agreements described in section 101(d) of the
17 Uruguay Round Agreements Act.

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

22 (8) WTO AGREEMENT.—The term “WTO
23 Agreement” means the Agreement Establishing the
24 World Trade Organization entered into on April 15,
25 1994.

1 **TITLE III—REFORM OF EXPORT-**
2 **IMPORT BANK AND OVER-**
3 **SEAS PRIVATE INVESTOR**
4 **CORPORATION**

5 **SEC. 301. RESTRICTIONS ON EXPORT-IMPORT BANK ASSIST-**
6 **ANCE.**

7 Section 2 of the Act of July 31, 1945 (12 U.S.C.
8 635) is amended by adding at the end the following:

9 “(g) UNITED STATES CONTENT REQUIREMENTS.—
10 Notwithstanding any other provision of law, the Bank may
11 not guarantee, insure, extend credit, or participate in the
12 extension of credit in connection with any project or activ-
13 ity in connection with the production of any commodity
14 less than 80 percent of the value of which is attributable
15 to content produced, manufactured, mined, or grown in
16 the United States.”.

17 **SEC. 302. RESTRICTIONS ON THE OVERSEAS PRIVATE IN-**
18 **VESTMENT CORPORATION.**

19 Section 231A of the Foreign Assistance Act of 1961
20 (22 U.S.C. 2191a) is amended—

21 (1) by redesignating subsection (c) as sub-
22 section (d); and

23 (2) by inserting after subsection (b) the fol-
24 lowing:

1 “(c) UNITED STATES CONTENT REQUIREMENTS.—
2 Notwithstanding any other provision of law, the Corpora-
3 tion may not insure, reinsure, guarantee, or finance a
4 project if the project involves the production of any com-
5 modity less than 80 percent of the value of which is attrib-
6 utable to content produced, manufactured, mined, or
7 grown in the United States.”.

8 **SEC. 303. ABOLITION OF INTERNATIONAL TRADE COMMIS-**
9 **SION FUNCTIONS.**

10 (a) ABOLISHMENT OF ITC.—Effective on the first
11 day of the seventh month beginning after the date of en-
12 actment of this Act, the United States International Trade
13 Commission established by section 330 of the Tariff Act
14 of 1930 (19 U.S.C. 1330) as in effect on the last day of
15 the sixth month beginning after the date of enactment of
16 this Act is abolished.

17 (b) TRANSFER OF FUNCTIONS.—Except as otherwise
18 provided in this Act, all functions that on the last day
19 of the sixth month beginning after the date of enactment
20 of this Act are authorized to be performed by the United
21 States International Trade Commission are transferred to
22 the Department of Commerce effective on the first day
23 of the seventh month beginning after the date of enact-
24 ment of this Act and shall be performed by the Assistant
25 Secretary of Commerce for Import Administration.

1 (c) DETERMINATION OF CERTAIN FUNCTIONS.—If
2 necessary, the Office of Management and Budget shall
3 make any determination of the functions that are trans-
4 ferred under this section.

5 (d) INCIDENTAL TRANSFERS.—The Director of the
6 Office of Management and Budget, in consultation with
7 the Secretary of Commerce, shall make such determina-
8 tions as may be necessary with regard to the functions,
9 offices, or portions thereof transferred by this Act, and
10 make such additional incidental dispositions of personnel,
11 assets, liabilities, grants, contracts, property, records, and
12 unexpended balances of appropriations, authorizations, al-
13 locations, and other funds held, used, arising from, avail-
14 able to, or to be made available in connection with such
15 functions, offices, or portions thereof, as may be necessary
16 to carry out this Act. The Director shall provide for the
17 termination of the affairs of all entities terminated by this
18 Act and, in consultation with the Administrator, for such
19 further measures and dispositions as may be necessary to
20 effectuate the purposes of this Act.

TITLE IV—MISCELLANEOUS**SEC. 401. BUY-AMERICAN REQUIREMENT IMPOSED ON DEPARTMENT OF HOMELAND SECURITY; EXCEPTIONS.**

(a) REQUIREMENT.—Except as provided in subsections (c) through (e), funds appropriated or otherwise available to the Department of Homeland Security may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, re-used, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing;

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

1 (E) any item of individual equipment man-
2 ufactured from or containing such fibers, yarns,
3 fabrics, or materials.

4 (2) Specialty metals, including stainless steel
5 flatware.

6 (3) Hand or measuring tools.

7 (c) AVAILABILITY EXCEPTION.—Subsection (a) does
8 not apply to the extent that the Secretary of Homeland
9 Security determines that satisfactory quality and suffi-
10 cient quantity of any such article or item described in sub-
11 section (b)(1) or specialty metals (including stainless steel
12 flatware) grown, reprocessed, reused, or produced in the
13 United States cannot be procured as and when needed at
14 United States market prices.

15 (d) EXCEPTION FOR CERTAIN PROCUREMENTS OUT-
16 SIDE THE UNITED STATES.—Subsection (a) does not
17 apply to the following:

18 (1) Procurements by vessels in foreign waters.

19 (2) Emergency procurements or procurements
20 of perishable foods by an establishment located out-
21 side the United States for the personnel attached to
22 such establishment.

23 (e) EXCEPTION FOR SMALL PURCHASES.—Sub-
24 section (a) does not apply to purchases for amounts not

1 greater than the simplified acquisition threshold referred
2 to in section 2304(g) of title 10, United States Code.

3 (f) APPLICABILITY TO CONTRACTS AND SUB-
4 CONTRACTS FOR PROCUREMENT OF COMMERCIAL
5 ITEMS.—This section is applicable to contracts and sub-
6 contracts for the procurement of commercial items not-
7 withstanding section 34 of the Office of Federal Procure-
8 ment Policy Act (41 U.S.C. 430).

9 (g) GEOGRAPHIC COVERAGE.—In this section, the
10 term “United States” includes the possessions of the
11 United States.

12 **SEC. 402. PROHIBITION ON SALE OF CHILD-LABOR MANU-**
13 **FACTURED GOODS IN INTERSTATE COM-**
14 **MERCE.**

15 (a) IN GENERAL.—It is unlawful to sell, or offer for
16 sale, in interstate commerce or affecting interstate com-
17 merce, any good, wares, article, or merchandise manufac-
18 tured wholly or in part by child labor. In this subsection,
19 the term “child labor” means the employment of a child
20 under the age of 12.

21 (b) PENALTY.—Violation of subsection (a) is punish-
22 able by a fine of \$100,000, multiplied by each item of
23 goods sold or offered for sale in violation of that section.

1 **SEC. 403. ADDITIONAL CUSTOMS AGENTS TO COMBAT INAP-**
2 **PROPRIATE TRANSSHIPMENT OF TEXTILES.**

3 The Secretary of the Treasury is authorized to in-
4 crease the staffing level of personnel of the United States
5 Customs Service performing customs revenue functions
6 (as defined in section 415 of the Homeland Security Act
7 of 2002) by 500 for the purpose of preventing the use
8 of transshipment and technical resourcing techniques—

9 (1) to avoid quota limitations on imports of tex-
10 tiles and textile products from any country; or

11 (2) to exploit the availability of lower rates of
12 customs duties applicable to such imports from any
13 country other than the country of original origin.

14 **SEC. 404. SENSE OF THE SENATE REGARDING BYRD**
15 **AMENDMENT.**

16 It is the sense of the Senate that section 754 of the
17 Trade Act of 1930 (19 U.S.C. 1675c), commonly known
18 as the Byrd Amendment, providing for the distribution of
19 duties assessed pursuant to an antidumping duty order
20 or a finding under the Antidumping Act of 1921 to af-
21 fected domestic producers is—

22 (1) consistent with the obligations of the United
23 States under the Agreement Establishing the World
24 Trade Organization;

1 (2) not in violation of the World Trade Organi-
2 zation Agreement on Subsidies and Countervailing
3 Measures;

4 (3) not inconsistent with the obligations of the
5 United States under the World Trade Organization
6 Dispute Settlement Understanding;

7 (4) a just, measured, and appropriate remedy;
8 and

9 (5) an important weapon in the arsenal of the
10 United States for combating further declines in the
11 United States industrial base attributable to preda-
12 tory trade practices of other countries.

13 **TITLE V—INTERNAL REVENUE**
14 **CODE AMENDMENTS.**

15 **SEC. 501. DISINCENTIVIZATION OF CORPORATE EXPATRIA-**
16 **TION TO AVOID UNITED STATES INCOME TAX.**

17 (a) IN GENERAL.—Paragraph (4) of section 7701(a)
18 of the Internal Revenue Code of 1986 (defining domestic)
19 is amended to read as follows:

20 “(4) DOMESTIC.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), the term ‘domestic’ when ap-
23 plied to a corporation or partnership means cre-
24 ated or organized in the United States or under
25 the law of the United States or of any State

1 unless, in the case of a partnership, the Sec-
2 retary provides otherwise by regulations.

3 “(B) CERTAIN CORPORATIONS TREATED
4 AS DOMESTIC.—

5 “(i) IN GENERAL.—The acquiring cor-
6 poration in a corporate expatriation trans-
7 action shall be treated as a domestic cor-
8 poration.

9 “(ii) CORPORATE EXPATRIATION
10 TRANSACTION.—For purposes of this sub-
11 paragraph, the term ‘corporate expatria-
12 tion transaction’ means any transaction
13 if—

14 “(I) a nominally foreign corpora-
15 tion (referred to in this subparagraph
16 as the ‘acquiring corporation’) ac-
17 quires, as a result of such transaction,
18 directly or indirectly substantially all
19 of the properties held directly or indi-
20 rectly by a domestic corporation, and

21 “(II) immediately after the trans-
22 action, more than 80 percent of the
23 stock (by vote or value) of the acquir-
24 ing corporation is held by former
25 shareholders of the domestic corpora-

1 tion by reason of holding stock in the
2 domestic corporation.

3 “(iii) LOWER STOCK OWNERSHIP RE-
4 QUIREMENT IN CERTAIN CASES.—Sub-
5 clause (II) of clause (ii) shall be applied by
6 substituting ‘50 percent’ for ‘80 percent’
7 with respect to any nominally foreign cor-
8 poration if—

9 “(I) such corporation does not
10 have substantial business activities
11 (when compared to the total business
12 activities of the expanded affiliated
13 group) in the foreign country in which
14 or under the law of which the corpora-
15 tion is created or organized, and

16 “(II) the stock of the corporation
17 is publicly traded and the principal
18 market for the public trading of such
19 stock is in the United States.

20 “(iv) PARTNERSHIP TRANSACTIONS.—
21 The term ‘corporate expatriation trans-
22 action’ includes any transaction if—

23 “(I) a nominally foreign corpora-
24 tion (referred to in this subparagraph
25 as the ‘acquiring corporation’) ac-

1 quires, as a result of such transaction,
2 directly or indirectly properties consti-
3 tuting a trade or business of a domes-
4 tic partnership,

5 “(II) immediately after the trans-
6 action, more than 80 percent of the
7 stock (by vote or value) of the acquir-
8 ing corporation is held by former
9 partners of the domestic partnership
10 or related foreign partnerships (deter-
11 mined without regard to stock of the
12 acquiring corporation which is sold in
13 a public offering related to the trans-
14 action), and

15 “(III) the acquiring corporation
16 meets the requirements of subclauses
17 (I) and (II) of clause (iii).

18 “(v) SPECIAL RULES.—For purposes
19 of this subparagraph—

20 “(I) a series of related trans-
21 actions shall be treated as 1 trans-
22 action, and

23 “(II) stock held by members of
24 the expanded affiliated group which
25 includes the acquiring corporation

1 shall not be taken into account in de-
2 termining ownership.

3 “(vi) OTHER DEFINITIONS.—For pur-
4 poses of this subparagraph—

5 “(I) NOMINALLY FOREIGN COR-
6 PORATION.—The term ‘nominally for-
7 eign corporation’ means any corpora-
8 tion which would (but for this sub-
9 paragraph) be treated as a foreign
10 corporation.

11 “(II) EXPANDED AFFILIATED
12 GROUP.—The term ‘expanded affili-
13 ated group’ means an affiliated group
14 (as defined in section 1504(a) without
15 regard to section 1504(b)).

16 “(III) RELATED FOREIGN PART-
17 NERSHIP.—A foreign partnership is
18 related to a domestic partnership if
19 they are under common control (with-
20 in the meaning of section 482), or
21 they shared the same trademark or
22 tradename.”.

23 (b) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendment made by
2 this section shall apply to corporate expatriation
3 transactions completed after September 11, 2001.

4 (2) SPECIAL RULE.—The amendment made by
5 this section shall also apply to corporate expatriation
6 transactions completed on or before September 11,
7 2001, but only with respect to taxable years of the
8 acquiring corporation beginning after December 31,
9 2003.

10 **SEC. 502. INCLUSION OF INCOME FROM U.S. IMPORTS IN**
11 **SUBPART F INCOME.**

12 (a) IN GENERAL.—Section 952(a) of the Internal
13 Revenue Code of 1986 (relating to definition of Subpart
14 F income) is amended—

15 (1) by striking “and” in paragraph (4);

16 (2) by striking “country.” in paragraph (5) and
17 inserting “country, and”; and

18 (3) inserting after paragraph (5) the following:

19 “(6) United States import income (as deter-
20 mined under section 954(j)).”.

21 (b) IMPORT INCOME DEFINED.—Section 954 of such
22 Code is amended—

23 (1) by striking “and” in subsection (a)(4);

1 (2) by striking “subsection (b)(5).” in sub-
 2 section (a)(5) and inserting “subsection (b)(5),
 3 and”;

4 (3) by adding at the end of subsection (a) the
 5 following:

6 “(6) the foreign base company United States
 7 import income for the taxable year (determined
 8 under subsection (j) and reduced as provided in sub-
 9 section (b)(5)).”; and

10 (4) by adding at the end the following:

11 “(j) FOREIGN BASE COMPANY UNITED STATES IM-
 12 PORT INCOME.—For purposes of subsection (a)(6):

13 “(1) IN GENERAL.—The term ‘foreign base
 14 company United States import income’ means gross
 15 income derived from the sale of goods manufactured,
 16 produced, grown, or extracted outside the United
 17 States and imported into the United States.

18 “(2) NOT TREATED AS ANOTHER KIND OF BASE
 19 COMPANY INCOME.—Income of a corporation which
 20 is foreign base company United States import in-
 21 come shall not be considered foreign base company
 22 income or foreign base company oil related income
 23 of such corporation.”.

24 (c) EFFECTIVE DATE.—The amendments made by
 25 this section apply to taxable years of controlled foreign

1 corporations beginning after the date of enactment of this
 2 Act and to taxable years of United States shareholders
 3 in which or with which such taxable years of controlled
 4 foreign corporations end.

5 **SEC. 503. DENIAL OF TREATY BENEFITS FOR CERTAIN DE-**
 6 **DUCTIBLE PAYMENTS.**

7 (a) IN GENERAL.—Section 894 of the Internal Rev-
 8 enue Code of 1986 (relating to income affected by treaty)
 9 is amended by adding at the end the following new sub-
 10 section:

11 “(d) DENIAL OF TREATY BENEFITS FOR CERTAIN
 12 DEDUCTIBLE PAYMENTS.—

13 “(1) IN GENERAL.—A foreign entity shall not
 14 be entitled under any income tax treaty of the
 15 United States with a foreign country to any reduced
 16 rate of any withholding tax imposed by this title on
 17 any deductible foreign payment unless such entity is
 18 predominantly owned by individuals who are resi-
 19 dents of such foreign country.

20 “(2) DEDUCTIBLE FOREIGN PAYMENT.—For
 21 purposes of paragraph (1), the term ‘deductible for-
 22 eign payment’ means any payment—

23 “(A) which is made by a domestic entity
 24 directly or indirectly to a related person which
 25 is a foreign entity, and

1 “(B) which is allowable as a deduction
2 under this chapter.

3 “(3) DOMESTIC AND FOREIGN ENTITIES; RE-
4 LATED PERSON.—For purposes of this subsection—

5 “(A) DOMESTIC ENTITY.—The term ‘do-
6 mestic entity’ means any domestic corporation
7 or domestic partnership.

8 “(B) FOREIGN ENTITY.—The term ‘for-
9 eign entity’ means any foreign corporation or
10 foreign partnership.

11 “(C) RELATED PERSON.—The term ‘re-
12 lated person’ has the meaning given such term
13 by section 954(d)(3) (determined by sub-
14 stituting ‘domestic entity’ for ‘controlled foreign
15 corporation’ each place it appears).

16 “(4) PREDOMINANT OWNERSHIP.—For pur-
17 poses of this subsection—

18 “(A) IN GENERAL.—An entity is predomi-
19 nantly owned by individuals who are residents
20 of a foreign country if—

21 “(i) in the case of a corporation, more
22 than 50 percent (by value) of the stock of
23 such corporation is owned (within the
24 meaning of section 883(c)(4)) by individ-

1 uals who are residents of such foreign
2 country, or

3 “(ii) in the case of a partnership,
4 more than 50 percent (by value) of the
5 beneficial interests in such partnership are
6 so owned.

7 “(B) PUBLICLY TRADED CORPORATIONS.—
8 A foreign corporation also shall be treated as
9 predominantly owned by individuals who are
10 residents of a foreign country if—

11 “(i)(I) the stock of such corporation is
12 primarily and regularly traded on an estab-
13 lished securities market in such foreign
14 country, and

15 “(II) such corporation has activities
16 within such foreign country which are sub-
17 stantial in relation to the total activities of
18 such corporation and its related persons,
19 or

20 “(ii) such corporation is wholly owned (di-
21 rectly or indirectly) by another foreign corpora-
22 tion which is described in clause (i).

23 “(5) CONDUIT PAYMENTS.—Under regulations
24 prescribed by the Secretary, paragraph (1) shall not

1 apply to a payment received by a foreign entity re-
2 ferred to in paragraph (1) if—

3 “(A) within a reasonable period after such
4 entity receives such payment, such entity makes
5 a comparable payment directly or indirectly to
6 another related person,

7 “(B) such related person is a resident of a
8 foreign country with which the United States
9 has an income tax treaty,

10 “(C) such related person is predominantly
11 owned by individuals who are residents of such
12 country, and

13 “(D) the withholding tax rate reduction
14 under such treaty is not less than the with-
15 holding tax rate reduction applicable (without
16 regard to this paragraph) to the payment re-
17 ceived by such foreign entity.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall take effect on the date of the enactment
20 of this Act.

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