

109TH CONGRESS  
1ST SESSION

# H. R. 3306

To amend the Tariff Act of 1930 and the Trade Act of 1974 to provide relief from certain practices by other countries, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 14, 2005

Mr. RANGEL (for himself, Ms. PELOSI, Mr. HOYER, Mr. MENENDEZ, Mr. CLYBURN, Mr. CARDIN, and Mr. LEVIN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on International Relations and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Tariff Act of 1930 and the Trade Act of 1974 to provide relief from certain practices by other countries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Trade with China  
5 Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

1           (1) The growth of the economy of the People's  
2           Republic of China is one of the most important de-  
3           velopments of the 21st century.

4           (2) The bilateral trade relationship between the  
5           United States and China is heavily imbalanced and  
6           is undermining the long-term economic health of the  
7           United States.

8           (3) The United States trade deficit with China  
9           has doubled since 2000, reaching \$162,000,000,000  
10          in 2004, the largest bilateral trade deficit in the  
11          world.

12          (4) As a consequence of the trade deficit, the  
13          United States has had to borrow massive amounts  
14          of money from foreign governments.

15          (5) The United States has accumulated more  
16          debt to foreign countries since 2000 than in the first  
17          220 years of the country's history.

18          (6) China has become a major purchaser of  
19          United States Treasury bonds, and United States  
20          indebtedness to the Government of China has grown  
21          by more than \$100,000,000,000 since 2000.

22          (7) The large amounts of United States dollars  
23          accumulated by the Government of China contribute  
24          to China's acquisitions of United States companies,

1 such as the proposed acquisition of Unocal Corpora-  
2 tion by the China National Offshore Oil Corporation.

3 (8) China continues to violate many of the com-  
4 mitments it made when it joined the World Trade  
5 Organization in 2001.

6 (9) China's inadequate enforcement of intellec-  
7 tual property rights is resulting in infringement lev-  
8 els of 90 percent or more for nearly all forms of in-  
9 tellectual property, and cost American companies  
10 more than \$2,500,000,000 in lost sales in 2004.

11 (10) China's industrial policies discriminate  
12 against foreign firms and products.

13 (11) The Government of China continues to  
14 heavily subsidize its manufacturing sector through  
15 tax incentives, preferential access to credit and cap-  
16 ital, subsidized utilities, and other measures.

17 (12) Since 1994, China has kept its currency  
18 pegged at approximately 8.3 renminbi to the United  
19 States dollar, which has caused the renminbi to be-  
20 come undervalued against the dollar by as much as  
21 40 percent, harming exports of United States goods  
22 and services to China and providing an unfair ad-  
23 vantage to Chinese exports to the United States.

24 (13) Current policies of the United States have  
25 failed to advance and protect the interests of Amer-

1        ican workers, farmers, and businesses in the United  
2        States-China trade relationship, failed to address ef-  
3        fectively China’s unfair trade practices and market  
4        access barriers to goods and services and its poor  
5        record at protecting intellectual property rights, and  
6        failed to stem or reverse the unsustainable United  
7        States trade deficit with China.

8                (14) It is critical that the United States develop  
9        and implement a comprehensive and coherent set of  
10       policies to address China’s unfair trading practices  
11       and failure to abide by its commitments as a mem-  
12       ber of the World Trade Organization.

13 **SEC. 3. APPLICATION OF COUNTERVAILING DUTIES TO**  
14 **NONMARKET ECONOMY COUNTRIES.**

15        (a) IN GENERAL.—Section 701(a)(1) of the Tariff  
16       Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by insert-  
17       ing “(including a nonmarket economy country)” after  
18       “country” each place it appears.

19        (b) EFFECTIVE DATE.—The amendments made by  
20       subsection (a) apply to petitions filed under section 702  
21       of the Tariff Act of 1930 on or after the date of the enact-  
22       ment of this Act.

23        (c) ANTIDUMPING PROVISIONS NOT AFFECTED.—  
24       The amendments made by subsection (a) shall not affect  
25       the status of a country as a nonmarket economy country

1 for purposes of any matter relating to antidumping duties  
2 under the Tariff Act of 1930.

3 **SEC. 4. TREATMENT OF CURRENCY MANIPULATION.**

4 (a) DEFINITION OF UNJUSTIFIABLE ACTS, POLICIES,  
5 AND PRACTICES.—Section 301(d)(4)(B) of the Trade Act  
6 of 1974 (19 U.S.C. 2411(d)(4)(B)) is amended to read  
7 as follows:

8 “(B)(i) Acts, policies, and practices that are un-  
9 justifiable include, but are not limited to, any act,  
10 policy, or practice described in subparagraph (A)  
11 which involves currency manipulation, or denies na-  
12 tional or most-favored nation treatment or the right  
13 of establishment or protection of intellectual prop-  
14 erty rights.

15 “(ii) In this subparagraph, the term ‘currency  
16 manipulation’ means the protracted large-scale inter-  
17 vention by an authority to undervalue its currency in  
18 the exchange market that prevents effective balance  
19 of payments adjustment or gains an unfair competi-  
20 tive advantage over the United States.”.

21 (b) INVESTIGATION INTO CURRENCY MANIPULATION  
22 BY THE PEOPLE’S REPUBLIC OF CHINA.—

23 (1) INVESTIGATION, DETERMINATIONS, AC-  
24 TIONS.—The United States Trade Representative  
25 shall—

1 (A) conduct an investigation, under sec-  
2 tions 302 and 303 of the Trade Act of 1974,  
3 of the currency practices of the People’s Repub-  
4 lic of China;

5 (B) make the applicable determinations  
6 under section 304 of that Act pursuant to that  
7 investigation; and

8 (C) implement any action, under section  
9 305 of that Act, in accordance with such deter-  
10 minations.

11 (2) INITIATION OF INVESTIGATION.—The  
12 United States Trade Representative shall initiate the  
13 investigation required by paragraph (1) not later  
14 than 90 days after the date of the enactment of this  
15 Act.

16 **SEC. 5. CLARIFICATION OF STANDARD FOR PRESIDENTIAL**  
17 **ACTION ON ITC FINDING OF MARKET DISRUP-**  
18 **TION.**

19 (a) AMENDMENTS TO STANDARD FOR TRADE REP-  
20 RESENTATIVE’S RECOMMENDATION TO THE PRESI-  
21 DENT.—Section 421(h)(2) of the Trade Act of 1974 (19  
22 U.S.C. 2451(h)(2)) is amended—

23 (1) by striking “(2) Within” and inserting  
24 “(2)(A) Within”; and

25 (2) by adding at the end the following:

1       “(B) In making a recommendation to the President  
2 under subparagraph (A), the Trade Representative shall  
3 consider the facts found, or conclusions drawn, by the  
4 Commission as they are reported to the Trade Representa-  
5 tive, and the Trade Representative may not conduct an  
6 additional review or reconsideration of the facts found or  
7 conclusions reached by the Commission.

8       “(C) If the Commission in its report makes an af-  
9 firmative finding of market disruption, the Trade Rep-  
10 resentative shall apply a presumption in favor of relief to  
11 prevent or remedy the market disruption.

12       “(D) The following factors may not be used as the  
13 basis of a recommendation by the Trade Representative  
14 to recommend denying relief under this section:

15               “(i) The presence or absence (whether actual or  
16 potential) of third-country imports of the product  
17 under investigation.

18               “(ii) Any results of the econometric model  
19 known as the Commercial Policy Analysis System  
20 (COMPAS) or equivalent model.”.

21       (b) AMENDMENTS TO STANDARD FOR PRESIDENTIAL  
22 ACTION.—Section 421(k) of the Trade Act of 1974 (19  
23 U.S.C. 2451(k)) is amended by adding at the end the fol-  
24 lowing:

1 “(3) The President’s determination shall be based on  
2 the facts found, or conclusions drawn, by the Commission  
3 as they are reported to the Trade Representative under  
4 subsection (g).

5 “(4) If the Commission in its report makes an affirm-  
6 ative finding of market disruption, the President shall  
7 apply a presumption in favor of relief to prevent or remedy  
8 the market disruption.

9 “(5) Any determination by the President under para-  
10 graph (1) that providing import relief is not in the na-  
11 tional economic interest of the United States may not be  
12 based on the following factors:

13 “(A) The presence or absence (whether actual  
14 or potential) of third-country imports of the product  
15 under investigation.

16 “(B) Any results of the econometric model  
17 known as the Commercial Policy Analysis System  
18 (COMPAS) or equivalent model.”.

19 **SEC. 6. IDENTIFICATION OF TRADE EXPANSION PRIOR-**  
20 **ITIES.**

21 (a) IDENTIFICATION OF TRADE EXPANSION PRIOR-  
22 ITIES.—Section 310 of the Trade Act of 1974 is amended  
23 to read as follows:

1 **“SEC. 310. IDENTIFICATION OF TRADE EXPANSION PRIOR-**  
2 **ITIES.**

3 “(a) IDENTIFICATION.—

4 “(1) IDENTIFICATION AND REPORT.—Within 30  
5 days after the submission in each calendar year of  
6 the report required by section 181(b), the Trade  
7 Representative shall—

8 “(A) review United States trade expansion  
9 priorities;

10 “(B) identify priority foreign country prac-  
11 tices, the elimination of which is likely to have  
12 the most significant potential to increase  
13 United States exports, either directly or  
14 through the establishment of a beneficial prece-  
15 dent; and

16 “(C) submit to the Committee on Finance  
17 of the Senate and the Committee on Ways and  
18 Means of the House of Representatives and  
19 publish in the Federal Register a report on the  
20 priority foreign country practices so identified.

21 “(2) FACTORS.—In identifying priority foreign  
22 country practices under paragraph (1), the Trade  
23 Representative shall take into account all relevant  
24 factors, including—

25 “(A) the major barriers and trade dis-  
26 torting practices described in the National

1 Trade Estimate Report required under section  
2 181(b);

3 “(B) the trade agreements to which a for-  
4 eign country is a party and its compliance with  
5 those agreements;

6 “(C) the medium- and long-term implica-  
7 tions of foreign government procurement plans;  
8 and

9 “(D) the international competitive position  
10 and export potential of United States products  
11 and services.

12 “(3) CONTENTS OF REPORT.—The Trade Rep-  
13 resentative may include in the report, if appro-  
14 priate—

15 “(A) a description of foreign country prac-  
16 tices that may in the future warrant identifica-  
17 tion as priority foreign country practices; and

18 “(B) a statement about other foreign coun-  
19 try practices that were not identified because  
20 they are already being addressed by provisions  
21 of United States trade law, by existing bilateral  
22 trade agreements, or as part of trade negotia-  
23 tions with other countries, and because progress  
24 is being made toward the elimination of such  
25 practices.

1       “(b) INITIATION OF CONSULTATIONS.—By no later  
2 than the date that is 21 days after the date on which a  
3 report is submitted to the appropriate congressional com-  
4 mittees under subsection (a)(1), the Trade Representative  
5 shall seek consultations with each foreign country identi-  
6 fied in the report as engaging in priority foreign country  
7 practices for the purpose of reaching a satisfactory resolu-  
8 tion of such priority practices.

9       “(c) INITIATION OF INVESTIGATION.—If a satisfac-  
10 tory resolution of priority foreign country practices has  
11 not been reached under subsection (b) within 90 days after  
12 the date on which a report is submitted to the appropriate  
13 congressional committees under subsection (a)(1), the  
14 Trade Representative shall initiate under section  
15 302(b)(1) an investigation under this chapter with respect  
16 to such priority foreign country practices.

17       “(d) AGREEMENTS FOR THE ELIMINATION OF BAR-  
18 RIERS.—In the consultations with a foreign country that  
19 the Trade Representative is required to request under sec-  
20 tion 303(a) with respect to an investigation initiated by  
21 reason of subsection (c), the Trade Representative shall  
22 seek to negotiate an agreement that provides for the elimi-  
23 nation of the practices that are the subject of the inves-  
24 tigation as quickly as possible or, if elimination of the

1 practices is not feasible, an agreement that provides for  
2 compensatory trade benefits.

3 “(e) REPORTS.—The Trade Representative shall in-  
4 clude in the semiannual report required by section 309  
5 a report on the status of any investigations initiated pur-  
6 suant to subsection (c) and, where appropriate, the extent  
7 to which such investigations have led to increased opportu-  
8 nities for the export of products and services of the United  
9 States.”.

10 (b) INITIAL REPORT ON CHINESE PRACTICES.—Not  
11 later than 90 days after the date of the enactment of this  
12 Act, the United States Trade Representative shall iden-  
13 tify, and report to the Congress on, priority foreign trade  
14 practices of the People’s Republic of China, in accordance  
15 with section 310 of the Trade Act of 1974, as amended  
16 by subsection (a) of this section.

17 (c) CONFORMING AMENDMENT.—The item relating  
18 to section 310 in the table of contents of the Trade Act  
19 of 1974 is amended to read as follows:

“Sec. 310. Identification of trade expansion priorities.”.

20 **SEC. 7. REQUIREMENT OF CASH DEPOSITS.**

21 Section 751(a)(1)(B) of the Tariff Act of 1930 (19  
22 U.S.C. 1675(a)(2)(B)) is amended—

23 (1) by striking clause (iii); and

24 (2) by redesignating clause (iv) as clause (iii).

1 **SEC. 8. ITC INVESTIGATION.**

2 (a) INVESTIGATION.—The United States Inter-  
3 national Trade Commission shall conduct a study, under  
4 section 332 of the Tariff Act of 1930 (19 U.S.C. 1332),  
5 regarding how the People’s Republic of China uses govern-  
6 ment intervention to promote investment, employment,  
7 and exports. The study shall comprehensively catalog, and  
8 when possible quantify, the practices and policies that cen-  
9 tral, provincial, and local government bodies in the Peo-  
10 ple’s Republic of China use to support and to attempt to  
11 influence decisionmaking in China’s manufacturing enter-  
12 prises and industries. Chapters of this study shall include,  
13 but not be limited to, the following:

- 14 (1) Privatization and private ownership.
- 15 (2) Price coordination.
- 16 (3) Targeting of industries.
- 17 (4) Banking and finance.
- 18 (5) Utility rates.
- 19 (6) Infrastructure development.
- 20 (7) Taxation.
- 21 (8) Restraints on imports and exports.
- 22 (9) Research and development.
- 23 (10) Worker training and retraining.
- 24 (11) Rationalization and closure of uneconomic  
25 enterprises.

1 (b) TIMING OF REPORTS ON INVESTIGATION.—The  
2 Congress requests that—

3 (1) not later than 9 months after the date of  
4 the enactment of this Act, the International Trade  
5 Commission complete its investigation under sub-  
6 section (a) and submit a report on the investigation  
7 to the Committee on Ways and Means of the House  
8 of Representatives and the Committee on Finance of  
9 the Senate; and

10 (2) not later than 1 year after the report under  
11 paragraph (1) is submitted, and annually thereafter  
12 through 2016, the International Trade Commission  
13 prepare and submit to the committees referred to in  
14 paragraph (1) an update of the report.

15 **SEC. 9. AMENDMENTS RELATING TO INTERNATIONAL FI-**  
16 **NANCIAL POLICY.**

17 (a) BILATERAL NEGOTIATIONS.—Section 3004(b) of  
18 the Exchange Rates and International Economic Policy  
19 Coordination Act of 1988 (22 U.S.C. 5304(b)) is amended  
20 in the second sentence by striking “(1) have material glob-  
21 al account surpluses; and (2)”.

22 (b) DEFINITION OF MANIPULATION.—Section 3006  
23 of the Exchange Rates and International Economic Policy  
24 Coordination Act of 1988 (22 U.S.C. 5306) is amended  
25 by adding at the end the following:

1           “(3) MANIPULATION OF RATE OF EXCHANGE.—  
2           A country shall be considered to be manipulating the  
3           rate of exchange between its currency and the  
4           United States dollar if there is a protracted large-  
5           scale intervention by an authority to undervalue its  
6           currency in the exchange market that prevents effec-  
7           tive balance of payments adjustment or gains an un-  
8           fair competitive advantage over the United States.”.

9           (c) REPORT.—Section 3005(b) of the Exchange  
10 Rates and International Economic Policy Coordination  
11 Act of 1988 (22 U.S.C. 5305(b)) is amended—

12           (1) by striking “and” at the end of paragraph  
13           (7);

14           (2) by striking the period at the end of para-  
15           graph (8) and inserting “; and”; and

16           (3) by adding at the end the following:

17           “(9) a detailed explanation of the test the Sec-  
18           retary uses to determine whether or not a country  
19           is manipulating the rate of exchange between that  
20           country’s currency and the dollar for purposes of  
21           preventing effective balance of payments adjustment  
22           or gaining an unfair competitive advantage over the  
23           United States.”.

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