

110TH CONGRESS  
1ST SESSION

# S. 1919

To establish trade enforcement priorities for the United States, to strengthen the provisions relating to trade remedies, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2007

Mr. BAUCUS (for himself, Mr. HATCH, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To establish trade enforcement priorities for the United States, to strengthen the provisions relating to trade remedies, 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 “Trade Enforcement Act of 2007”.

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

Sec. 1. Short title; table of contents.

### TITLE I—TRADE ENFORCEMENT PRIORITIES

Sec. 101. Identification of trade enforcement priorities.

## TITLE II—WTO DISPUTE SETTLEMENT REVIEW COMMISSION

- Sec. 201. Definitions.  
 Sec. 202. Establishment of Commission.  
 Sec. 203. Membership.  
 Sec. 204. Duties of the Commission.  
 Sec. 205. Powers of the Commission.  
 Sec. 206. Changes in agency regulations or practice relating to adverse finding.

## TITLE III—MARKET DISRUPTION BY IMPORTS FROM CHINA

- Sec. 301. Limitation on presidential discretion.

TITLE IV—STRENGTHENING ANTIDUMPING AND  
COUNTERVAILING DUTY LAWS

- Sec. 401. Application of countervailing duties to nonmarket economies.  
 Sec. 402. Clarification of determination of material injury.

## TITLE V—TRADE ENFORCEMENT PERSONNEL

- Sec. 501. Chief Trade Enforcement Officer.  
 Sec. 502. Trade Enforcement Working Group.  
 Sec. 503. Authorization of appropriations.

TITLE VI—INTELLECTUAL PROPERTY ENFORCEMENT  
PERSONNEL

- Sec. 601. Section 337 judges.

## TITLE VII—INTERAGENCY TRADE ORGANIZATION

- Sec. 701. Clarification of role of interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962.

1 **TITLE I—TRADE ENFORCEMENT**  
 2 **PRIORITIES**

3 **SEC. 101. IDENTIFICATION OF TRADE ENFORCEMENT PRI-**  
 4 **ORITIES.**

5 (a) IN GENERAL.—Section 310 of the Trade Act of  
 6 1974 (19 U.S.C. 2420) is amended to read as follows:

7 **“SEC. 310. IDENTIFICATION OF TRADE ENFORCEMENT PRI-**  
 8 **ORITIES.**

9 “(a) IDENTIFICATION AND ANNUAL REPORT.—Not  
 10 later than 75 days after the date that the National Trade  
 11 Estimate under section 181(b) is required to be submitted

1 each calendar year, the United States Trade Representa-  
2 tive shall—

3 “(1) identify the trade enforcement priorities of  
4 the United States;

5 “(2) identify trade enforcement actions that the  
6 United States has taken during the previous year  
7 and provide an assessment of the impact those en-  
8 forcement actions have had in addressing foreign  
9 trade barriers;

10 “(3) identify the priority foreign country trade  
11 practices on which the Trade Representative will  
12 focus the trade enforcement efforts of the United  
13 States during the upcoming year; and

14 “(4) submit to the Committee on Finance of  
15 the Senate and the Committee on Ways and Means  
16 of the House of Representatives and publish in the  
17 Federal Register a report on the priorities, actions,  
18 assessments, and practices identified in paragraphs  
19 (1), (2), and (3).

20 “(b) FACTORS TO CONSIDER.—In identifying pri-  
21 ority foreign country trade practices under subsection  
22 (a)(3), the Trade Representative shall—

23 “(1) focus on those practices the elimination of  
24 which is likely to have the most significant potential  
25 to increase United States economic growth, either

1 directly or through the establishment of a beneficial  
2 precedent; and

3 “(2) take into account all relevant factors, in-  
4 cluding—

5 “(A) the major barriers and trade dis-  
6 torting practices described in the most recent  
7 National Trade Estimate required under section  
8 181(b);

9 “(B) the findings and practices described  
10 in the most recent report required under—

11 “(i) section 182;

12 “(ii) section 1377 of the Omnibus  
13 Trade and Competitiveness Act of 1988  
14 (19 U.S.C. 3106);

15 “(iii) section 3005 of the Omnibus  
16 Trade and Competitiveness Act of 1988  
17 (22 U.S.C. 5305); and

18 “(iv) section 421 of the U.S.-China  
19 Relations Act of 2000 (22 U.S.C. 6951);

20 “(C) the findings and practices described  
21 in any other report addressing international  
22 trade and investment barriers prepared by the  
23 Trade Representative or any other agency dur-  
24 ing the 12 months preceding the date on which

1 the report described in subsection (a)(4) is re-  
2 quired to be submitted;

3 “(D) a foreign country’s compliance with  
4 any trade agreements to which both the foreign  
5 country and the United States are parties;

6 “(E) a foreign country’s compliance with  
7 internationally recognized sanitary and  
8 phytosanitary standards;

9 “(F) the implications of a foreign country’s  
10 procurement plans and policies; and

11 “(G) the international competitive position  
12 and export potential of United States products  
13 and services.

14 “(c) CONSULTATION.—

15 “(1) IN GENERAL.—Not later than 45 days  
16 after the date that the National Trade Estimate  
17 under section 181(b) is required to be submitted, the  
18 Trade Representative shall consult with the Com-  
19 mittee on Finance of the Senate and the Committee  
20 on Ways and Means of the House of Representatives  
21 with respect to the priorities, actions, assessments,  
22 and practices required to be identified in the report  
23 under subsection (a).

24 “(2) VOTE OF COMMITTEE.—If, as a result of  
25 the consultations described in paragraph (1), either

1 the Committee on Finance of the Senate or the  
2 Committee on Ways and Means of the House of  
3 Representatives requests identification of a priority  
4 foreign country trade practice by majority vote of  
5 the Committee, the Trade Representative shall in-  
6 clude such identification in the report required  
7 under subsection (a).

8 “(3) DETERMINATION NOT TO INCLUDE PRI-  
9 ORITY FOREIGN COUNTRY TRADE PRACTICES.—The  
10 Trade Representative may determine not to include  
11 the priority foreign country trade practice requested  
12 under paragraph (2) in the report required under  
13 subsection (a) only if the Trade Representative finds  
14 that—

15 “(A) such practice is already being ad-  
16 dressed under provisions of United States trade  
17 law, under the Uruguay Round Agreements (as  
18 defined in section 2(7) of the Uruguay Round  
19 Agreements Act (19 U.S.C. 3501(7))), under a  
20 bilateral or regional trade agreement, or as part  
21 of trade negotiations with that foreign country  
22 or other countries, and progress is being made  
23 toward the elimination of such practice; or

24 “(B) identification of such practice as a  
25 priority foreign country trade practice would be

1           contrary to the interests of United States trade  
2           policy.

3           “(4) REASONS FOR DETERMINATION.—In the  
4           case of a determination made pursuant to paragraph  
5           (3), the Trade Representative shall set forth in de-  
6           tail the reasons for that determination in the report  
7           required under subsection (a).

8           “(d) INVESTIGATION AND RESOLUTION.—

9           “(1) IN GENERAL.—Upon submission of the re-  
10          port required under subsection (a), the Trade Rep-  
11          resentative shall, with respect to any priority foreign  
12          country trade practice identified, seek satisfactory  
13          resolution with the country concerned under the aus-  
14          pices of the World Trade Organization, pursuant to  
15          a bilateral or regional trade agreement to which the  
16          United States is a party, or by any other means. A  
17          satisfactory resolution may include elimination of the  
18          practice or, if not feasible, providing for compen-  
19          satory trade benefits.

20          “(2) CONSULTATIONS; INVESTIGATIONS.—Not  
21          later than 120 days after the date that the report  
22          described in subsection (a) is required to be sub-  
23          mitted, the Trade Representative shall, with respect  
24          to any priority foreign country trade practice identi-  
25          fied—

1           “(A) initiate dispute settlement consulta-  
2           tions in the World Trade Organization;

3           “(B) initiate dispute settlement consulta-  
4           tions under the applicable provisions of any bi-  
5           lateral or regional trade agreement to which the  
6           United States is a party;

7           “(C) initiate an investigation under section  
8           302(b)(1);

9           “(D) seek to negotiate an agreement that  
10          provides for the elimination of the priority for-  
11          eign country trade practice or, if elimination of  
12          the practice is not feasible, an agreement that  
13          provides for compensatory trade benefits; or

14          “(E) take any other action necessary to  
15          eliminate the priority foreign country trade  
16          practice.

17          “(3) REPORT.—If the Trade Representative  
18          takes action under subparagraph (E) of paragraph  
19          (2), the Trade Representative shall, on the same day  
20          the Trade Representative takes such action, trans-  
21          mit to Congress a report describing in detail the ac-  
22          tion, the reasons for taking the action, and the rea-  
23          sons why the Trade Representative did not take ac-  
24          tion under subparagraphs (A) through (D) of such  
25          paragraph.



1       “(e) ADDITIONAL REPORTING.—The Trade Rep-  
 2       resentative shall report to the Committee on Finance of  
 3       the Senate and the Committee on Ways and Means of the  
 4       House of Representatives every 6 months on the progress  
 5       being made to realize the trade enforcement priorities  
 6       identified in subsection (a)(1) and the steps being taken  
 7       to address the priority foreign country trade practices  
 8       identified in subsection (a)(3).”.

9       (b) CONFORMING AMENDMENT.—The table of con-  
 10      tents for the Trade Act of 1974 is amended by striking  
 11      the item relating to section 310, and inserting the fol-  
 12      lowing new item:

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

13      **TITLE II—WTO DISPUTE SETTLE-**  
 14      **MENT REVIEW COMMISSION**

15      **SEC. 201. DEFINITIONS.**

16      For purposes of this title—

17           (1) ADVERSE FINDING.—The term “adverse  
 18      finding” means a finding by a dispute settlement  
 19      panel or the Appellate Body that any law, regula-  
 20      tion, or practice of, or application thereof by, the  
 21      United States or any State is inconsistent with the  
 22      obligations of the United States under a Uruguay  
 23      Round Agreement (or nullifies or impairs benefits  
 24      accruing to a WTO Member under such an Agree-  
 25      ment).

1           (2) APPELLATE BODY.—The term “Appellate  
2 Body” means the Appellate Body established by the  
3 Dispute Settlement Body pursuant to Article 17.1 of  
4 the Dispute Settlement Understanding.

5           (3) DISPUTE SETTLEMENT BODY.—The term  
6 “Dispute Settlement Body” means the Dispute Set-  
7 tlement Body established pursuant to the Dispute  
8 Settlement Understanding.

9           (4) DISPUTE SETTLEMENT PANEL; PANEL.—  
10 The terms “dispute settlement panel” and “panel”  
11 mean a panel established pursuant to Article 6 of  
12 the Dispute Settlement Understanding.

13           (5) DISPUTE SETTLEMENT UNDERSTANDING.—  
14 The term “Dispute Settlement Understanding”  
15 means the Understanding on Rules and Procedures  
16 Governing the Settlement of Disputes referred to in  
17 section 101(d)(16) of the Uruguay Round Agree-  
18 ments Act (19 U.S.C. 3511(d)(16)).

19           (6) TERMS OF REFERENCE.—The term “terms  
20 of reference” has the meaning given such term in  
21 the Dispute Settlement Understanding.

22           (7) TRADE REPRESENTATIVE.—The term  
23 “Trade Representative” means the United States  
24 Trade Representative.

1           (8) URUGUAY ROUND AGREEMENT.—The term  
2           “Uruguay Round Agreement” means any of the  
3           Agreements described in section 101(d) of the Uru-  
4           guay Round Agreements Act (19 U.S.C. 3511(d)).

5           (9) WORLD TRADE ORGANIZATION; WTO.—The  
6           terms “World Trade Organization” and “WTO”  
7           mean the organization established pursuant to the  
8           WTO Agreement.

9           (10) WTO AGREEMENT.—The term “WTO  
10          Agreement” means the Agreement Establishing the  
11          World Trade Organization entered into on April 15,  
12          1994.

13          (11) WTO MEMBER.—The term “WTO Mem-  
14          ber” has the meaning given that term in section  
15          2(10) of the Uruguay Round Agreements Act (19  
16          U.S.C. 3501(10)).

17 **SEC. 202. ESTABLISHMENT OF COMMISSION.**

18          There is established a commission to be known as the  
19          WTO Dispute Settlement Review Commission (in this sec-  
20          tion referred to as the “Commission”).

21 **SEC. 203. MEMBERSHIP.**

22          (a) COMPOSITION.—The Commission shall be com-  
23          posed of 5 members, all of whom shall either be retired  
24          judges of the Federal judicial circuits or have substantial  
25          expertise in international trade law. The members shall

1 be appointed by the President, after consultation with the  
2 majority leader and minority leader of the Senate, the ma-  
3 jority leader and minority leader of the House of Rep-  
4 resentatives, the chairman and ranking member of the  
5 Committee on Finance of the Senate, and the chairman  
6 and ranking member of the Committee on Ways and  
7 Means of the House of Representatives.

8 (b) DATE OF APPOINTMENT.—The appointments of  
9 the initial members of the Commission shall be made not  
10 later than 90 days after the date of enactment of this Act.

11 (c) PERIOD OF APPOINTMENT; VACANCIES.—

12 (1) IN GENERAL.—Members of the Commission  
13 shall each be appointed for a term of 5 years, except  
14 that 3 of the initial members shall each be appointed  
15 for a term of 3 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.

25 (d) MEETINGS.—

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

5           (2) SUBSEQUENT MEETINGS.—The Commission  
6           shall meet subsequently at the call of the Chair-  
7           person.

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

11          (f) CHAIRPERSON AND VICE CHAIRPERSON.—The  
12          Commission shall select a Chairperson and Vice Chair-  
13          person from among its members.

14          (g) AFFIRMATIVE DETERMINATIONS.—An affirma-  
15          tive vote by a majority of the members of the Commission  
16          shall be required for any affirmative determination by the  
17          Commission under section 204.

18          (h) FUNDING.—Members of the Commission shall be  
19          allowed travel expenses, including per diem in lieu of sub-  
20          sistence at rates authorized for employees of agencies  
21          under subchapter I of chapter 57 of title 5, United States  
22          Code, while away from their homes or regular places of  
23          business in the performance of services for the Commis-  
24          sion.

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

2 (a) REVIEW OF WTO DISPUTE SETTLEMENT RE-  
3 PORTS.—

4 (1) IN GENERAL.—The Commission shall re-  
5 view—

6 (A) all reports of dispute settlement panels  
7 or the Appellate Body that contain adverse  
8 findings and that are adopted by the Dispute  
9 Settlement Body; and

10 (B) upon the request of the Trade Rep-  
11 resentative, the chairman or ranking member of  
12 the Committee on Finance of the Senate, or the  
13 chairman or ranking member of the Committee  
14 on Ways and Means of the House of Represent-  
15 atives, any other report of a dispute settlement  
16 panel or the Appellate Body that is adopted by  
17 the Dispute Settlement Body.

18 (2) SCOPE OF REVIEW.—The Commission shall  
19 conduct a complete review of the reports described  
20 in paragraph (1) and determine whether the panel  
21 or Appellate Body, as the case may be—

22 (A) exceeded its authority or its terms of  
23 reference;

24 (B) added to the obligations, or diminished  
25 the rights, of the United States under the Uru-

1           guay Round Agreement that is the subject of  
2           the report;

3           (C) acted arbitrarily or capriciously, en-  
4           gaged in misconduct, or demonstrably departed  
5           from the procedures specified for panels and  
6           the Appellate Body in the applicable Uruguay  
7           Round Agreement; or

8           (D) deviated from the applicable standard  
9           of review, including in antidumping, counter-  
10          vailing duty, and other unfair trade remedy  
11          cases, the standard of review set forth in Article  
12          17.6 of the Agreement on Implementation of  
13          Article VI of the General Agreement on Tariffs  
14          and Trade, 1994.

15          (3) NO DEFERENCE.—In making its determina-  
16          tion under paragraph (2), the Commission shall not  
17          accord deference to findings of law made by the dis-  
18          pute settlement panel or the Appellate Body, as the  
19          case may be.

20          (4) AFFIRMATIVE DETERMINATION.—If the  
21          Commission makes an affirmative determination  
22          with respect to the action of a panel or the Appellate  
23          Body under subparagraph (A), (B), (C), or (D) of  
24          paragraph (2), the Commission shall determine  
25          whether the action of the panel or Appellate Body

1 materially affected the outcome of the report of the  
2 panel or Appellate Body.

3 (b) DETERMINATION; REPORT.—

4 (1) DETERMINATION.—

5 (A) IN GENERAL.—Not later than 120  
6 days after the date on which the Commission  
7 receives notice of a finding or request under  
8 section 205(b), the Commission shall make a  
9 written determination with respect to matters  
10 described in subsection (a)(2) and (4), including  
11 a full analysis of the basis for its determination.  
12 A vote by a majority of the members of the  
13 Commission shall constitute a determination of  
14 the Commission, although the members need  
15 not agree on the basis for their vote.

16 (B) DISSENTING OR CONCURRING OPIN-  
17 IONS.—Any member of the Commission who  
18 disagrees with a determination of the Commis-  
19 sion or who concurs in such a determination on  
20 a basis different from that of the Commission  
21 or other members of the Commission may write  
22 an opinion expressing such disagreement or  
23 concurrence, as the case may be.

24 (2) REPORT.—The Commission shall promptly  
25 report the determinations described in paragraph



1 (1)(A) to the Committee on Finance of the Senate  
2 and the Committee on Ways and Means of the  
3 House of Representatives. The Commission shall in-  
4 clude with the report any opinions written under  
5 paragraph (1)(B) with respect to the determination  
6 and a summary of any comments submitted pursu-  
7 ant to section 205(b)(2)(A).

8 (3) AVAILABILITY TO THE PUBLIC.—Each re-  
9 port of the Commission under paragraph (2), to-  
10 gether with any opinions included with the report,  
11 shall be made available to the public.

12 **SEC. 205. POWERS OF THE COMMISSION.**

13 (a) HEARINGS.—The Commission may hold any  
14 hearings, sit and act at any time and place, take any testi-  
15 mony, and receive any evidence as the Commission con-  
16 siders advisable to carry out the purposes of this title. The  
17 Commission shall provide reasonable notice of a hearing  
18 held pursuant to this subsection.

19 (b) INFORMATION FROM INTERESTED PARTIES AND  
20 FEDERAL AGENCIES.—

21 (1) NOTIFICATION TO COMMISSION.—

22 (A) UNDER SECTION 204(a)(1)(A).—The  
23 Trade Representative shall advise the Commis-  
24 sion not later than 5 days after the date the  
25 Dispute Settlement Body adopts an adverse

1 finding that is to be reviewed by the Commis-  
2 sion under section 204(a)(1)(A).

3 (B) UNDER SECTION 204(a)(1)(B).—A re-  
4 quest made by the Trade Representative, the  
5 chairman or ranking member of the Committee  
6 on Finance of the Senate, or the chairman or  
7 ranking member of the Committee on Ways and  
8 Means of the House of Representatives under  
9 section 204(a)(1)(B) shall be made not later  
10 than 1 year after the Dispute Settlement Body  
11 adopts the report that is the subject of the re-  
12 quest.

13 (2) SUBMISSIONS AND REQUESTS FOR INFOR-  
14 MATION.—

15 (A) IN GENERAL.—The Commission shall  
16 promptly publish notice in the Federal Register  
17 of any notice or request received under para-  
18 graph (1), and provide notice of an opportunity  
19 for interested parties to submit comments to  
20 the Commission.

21 (B) COMMENTS AVAILABLE TO PUBLIC.—  
22 The Commission shall make comments sub-  
23 mitted pursuant to subparagraph (A) available  
24 to the public.

1           (C) INFORMATION FROM FEDERAL AGEN-  
2           CIES AND DEPARTMENTS.—The Commission  
3           may secure directly from any Federal depart-  
4           ment or agency any information the Commis-  
5           sion considers necessary to carry out the provi-  
6           sions of this title. Upon request of the Chair-  
7           person of the Commission, the head of the de-  
8           partment or agency shall furnish the requested  
9           information to the Commission in a timely man-  
10          ner.

11          (3) ACCESS TO PANEL AND APPELLATE BODY  
12          DOCUMENTS.—

13               (A) IN GENERAL.—The Trade Representa-  
14               tive shall make available to the Commission all  
15               submissions and relevant documents relating to  
16               the panel or Appellate Body report at issue, in-  
17               cluding any information contained in submis-  
18               sions and relevant documents identified by the  
19               provider of the information as proprietary infor-  
20               mation or information designated as confiden-  
21               tial by a foreign government.

22               (B) PUBLIC ACCESS.—Any document that  
23               the Trade Representative submits to the Com-  
24               mission shall be available to the public, except  
25               information that is identified as proprietary or

1 confidential or the disclosure of which would  
2 otherwise violate the rules of the WTO.

3 (4) ASSISTANCE FROM FEDERAL AGENCIES;  
4 CONFIDENTIALITY.—

5 (A) ADMINISTRATIVE ASSISTANCE.—Any  
6 agency or department of the United States that  
7 is designated by the President shall provide ad-  
8 ministrative services, funds, facilities, staff, or  
9 other support services to the Commission to as-  
10 sist the Commission with the performance of  
11 the Commission’s functions.

12 (B) CONFIDENTIALITY.—The Commission  
13 shall protect from disclosure any document or  
14 information submitted to it by a department or  
15 agency of the United States that the agency or  
16 department requests be kept confidential. The  
17 Commission shall not be considered to be an  
18 agency for purposes of section 552 of title 5,  
19 United States Code.

20 **SEC. 206. CHANGES IN AGENCY REGULATIONS OR PRAC-**  
21 **TICE RELATING TO ADVERSE FINDING.**

22 Section 123(g) of the Uruguay Round Agreements  
23 Act (19 U.S.C. 3533(g)) is amended in paragraph (1)—

24 (1) in subparagraph (E), by striking “and”;

1           (2) by redesignating subparagraph (F) as sub-  
2           paragraph (G); and

3           (3) by inserting after subparagraph (E) the fol-  
4           lowing new subparagraph:

5                   “(F) the Committee on Finance of the  
6           Senate and the Committee on Ways and Means  
7           of the House of Representatives have received  
8           the report on the determinations of the WTO  
9           Dispute Settlement Review Commission under  
10          section 204(b)(2) of the Trade Enforcement  
11          Act of 2007 with respect to the relevant dispute  
12          settlement panel or Appellate Body report;  
13          and”.

14   **TITLE III—MARKET DISRUPTION**  
15   **BY IMPORTS FROM CHINA**

16   **SEC. 301. LIMITATION ON PRESIDENTIAL DISCRETION.**

17          Section 421 of the Trade Act of 1974 (19 U.S.C.  
18   2451) is amended—

19               (1) in subsection (a)—

20                   (A) by inserting “any” before “increased  
21           duties”; and

22                   (B) by striking “, to the extent and for  
23           such period” and all that follows to the end pe-  
24           riod and inserting “recommended by the Inter-  
25           national Trade Commission”;

1           (2) in subsection (e), in the second sentence, by  
2 striking “agreed upon by either group” and all that  
3 follows to the end period and inserting “shall be con-  
4 sidered an affirmative determination under sub-  
5 section (b)”;

6           (3) in subsection (f)—

7           (A) in the heading, by striking “ON PRO-  
8 POSED REMEDIES” and inserting “FOR RE-  
9 LIEF”;

10          (B) in the first sentence—

11           (i) by striking “the President or  
12 Trade Representative may consider as”  
13 and inserting “is to be considered”; and

14           (ii) by striking “the Commission shall  
15 propose” and inserting “the Commission  
16 shall recommend”; and

17          (C) in the second sentence, by striking  
18 “proposed action” and inserting “recommended  
19 action”;

20          (4) in subsection (g)(2)(B)—

21           (A) by striking “or may be considered by  
22 the President or the Trade Representative as”  
23 and inserting “or if the determination is consid-  
24 ered to be”; and

1 (B) by striking “on proposed remedies”  
2 and inserting “for relief”;

3 (5) in subsection (h)—

4 (A) in the heading, by striking “PROPOSED  
5 MEASURE AND RECOMMENDATION TO THE  
6 PRESIDENT” and inserting “RECOMMENDED  
7 RELIEF AND REPORT BY TRADE REPRESENTA-  
8 TIVE”;

9 (B) in paragraph (1)—

10 (i) by striking “measure proposed by  
11 the Trade Representative to be taken pur-  
12 suant to subsection (a)” and inserting “re-  
13 lief recommended by the Commission  
14 under subsection (f)”;

15 (ii) by striking “proposed measure”  
16 and inserting “recommended relief”;

17 (C) in paragraph (2), by striking “on the  
18 measure proposed by the Trade Representative”  
19 and all that follows to the end period and in-  
20 serting “, shall transmit a report to the Presi-  
21 dent recommending what action to take under  
22 subsection (k)”;

23 (D) by adding at the end the following new  
24 paragraph:

1       “(3) The Trade Representative, after submitting a  
2 report to the President under paragraph (2), shall prompt-  
3 ly make the report available to the public, excluding any  
4 proprietary or confidential information. The Trade Rep-  
5 resentative shall publish a summary of the report in the  
6 Federal Register.”;

7           (6) in subsection (i)—

8           (A) in the flush sentence at the end of  
9 paragraph (1), by striking “agreed upon by ei-  
10 ther group” and all that follows to the end pe-  
11 riod and inserting “shall be considered an af-  
12 firmative determination of the Commission”;  
13 and

14           (B) by striking paragraphs (2), (3), and  
15 (4), and inserting the following:

16       “(2) On the date on which the Commission completes  
17 its determinations under paragraph (1), the Commission  
18 shall transmit a report on the determinations to the Presi-  
19 dent and the Trade Representative, including the reasons  
20 for its determinations. If the determinations under para-  
21 graph (1) are affirmative or if the determinations are con-  
22 sidered to be affirmative under paragraph (1), the Com-  
23 mission shall include in its report its recommendations on  
24 provisional relief to be taken to prevent or remedy the  
25 market disruption. Only those members of the Commission



1 who agreed to the affirmative determinations under para-  
2 graph (1) are eligible to vote on the recommended provi-  
3 sional relief to prevent or remedy market disruption. Mem-  
4 bers of the Commission who did not agree to the affirma-  
5 tive determinations may submit, in the report, dissenting  
6 or separate views regarding the determination and any  
7 recommendation of provisional relief referred to in this  
8 paragraph.

9 “(3) The provisional relief referred to in paragraph  
10 (2) may include—

11 “(A) the imposition of or increase in any duty;

12 “(B) any modification, or imposition of any  
13 quantitative restriction on the importation of any ar-  
14 ticle into the United States; or

15 “(C) any combination of actions under subpara-  
16 graph (A) or (B).

17 “(4) If the determinations under paragraph (1) are  
18 affirmative or if the determinations are considered to be  
19 affirmative under paragraph (1), the Trade Representa-  
20 tive shall, within 10 days after receipt of the Commission’s  
21 report, transmit a report to the President recommending  
22 what action to take with respect to provisional relief under  
23 subsection (k).

24 “(5)(A) The President shall proclaim any provisional  
25 relief recommended by the Commission not later than 10

1 days after the date the President receives the report de-  
2 scribed in paragraph (4) from the Trade Representative.

3 “(B) Any provisional relief proclaimed by the Presi-  
4 dent pursuant to a determination of critical circumstances  
5 shall remain in effect for a period not to exceed 200 days.

6 “(C) Provisional relief shall cease to apply upon the  
7 effective date of relief proclaimed under subsection (a),  
8 upon a decision by the President not to provide such relief  
9 under subsection (k), or upon a negative determination by  
10 the Commission under subsection (b).”;

11 (7) in subsection (j)—

12 (A) in paragraph (1), by striking “which  
13 the Trade Representative considers to be” and  
14 inserting “that is considered to be”;

15 (B) by striking paragraph (2) and insert-  
16 ing the following:

17 “(2) If no agreement is reached with the People’s Re-  
18 public of China pursuant to consultations under para-  
19 graph (1) in the time required for Presidential action  
20 under subsection (k), or if the President determines that  
21 an agreement reached pursuant to such consultations is  
22 not preventing or remedying the market disruption at  
23 issue in the time required for Presidential action under  
24 subsection (k), the President shall provide import relief  
25 in accordance with subsection (a).”.

1 (8) in subsection (k)—

2 (A) in the heading, by striking “STAND-  
3 ARD FOR PRESIDENTIAL ACTION” and inserting  
4 “TIMING FOR PRESIDENTIAL ACTION; EXCEP-  
5 TIONS”;

6 (B) in paragraph (1), by striking “a rec-  
7 ommendation from the Trade Representative”  
8 and all that follows to the end period and in-  
9 serting “a report from the Trade Representa-  
10 tive under subsection (h)(2), the President  
11 shall, pursuant to subsection (a), proclaim the  
12 relief recommended by the Commission”; and

13 (C) by amending paragraph (2) to read as  
14 follows:

15 “(2) The President may decline to proclaim relief  
16 pursuant to subsection (a), may proclaim relief pursuant  
17 to subsection (a) that differs from the relief recommended  
18 by the Commission, may decline to proclaim provisional  
19 relief pursuant to subsection (i), or may proclaim provi-  
20 sional relief pursuant to subsection (i) that differs from  
21 the relief recommended by the Commission—

22 “(A) only in extraordinary cases; and

23 “(B) only if the President determines that pro-  
24 viding relief or provisional relief pursuant to sub-  
25 section (a) or (i) or providing the relief rec-

1       ommended by the Commission pursuant to sub-  
2       section (a) or (i)—

3               “(i) would have an adverse impact on the  
4       United States economy that clearly and signifi-  
5       cantly outweighs the benefits of such action; or

6               “(ii) would cause serious harm to the na-  
7       tional security of the United States.”;

8       (9) in subsection (l), by amending paragraph  
9       (1) to read as follows:

10       “(1) The President’s decision under subsection (k)  
11 shall be submitted to the Committee on Finance of the  
12 Senate and the Committee on Ways and Means of the  
13 House of Representatives and shall be published in the  
14 Federal Register within 15 days of the decision. In the  
15 submission to the committees and in publication in the  
16 Federal Register, the President shall include the reasons  
17 for the decision and the scope and duration of any action  
18 taken. If the President takes action that differs from the  
19 action recommended by the Commission under subsection  
20 (f) or declines to take action pursuant to subsection  
21 (k)(2), the President shall state in detail the reasons for  
22 such action or inaction.”;

23               (10) by redesignating subsections (m) through  
24       (o) as subsections (n) through (p), respectively;

1           (11) by inserting after subsection (l) the fol-  
2           lowing new subsection:

3           “(m) IMPLEMENTATION OF ACTION RECOMMENDED  
4 BY COMMISSION.—(1) If the President takes action that  
5 differs from the action recommended by the Commission  
6 under subsection (f) or declines to take action pursuant  
7 to subsection (k)(2)(B)(i), the action recommended by the  
8 Commission under subsection (f) shall take effect (as pro-  
9 vided in subsection (n)(2)) upon the enactment of a joint  
10 resolution described in paragraph (2) within the 90-day  
11 period beginning on the date on which the President’s de-  
12 cision is transmitted to the Congress pursuant to sub-  
13 section (l).

14           “(2) For purposes of this section, the term ‘joint res-  
15 olution’ means a joint resolution of the 2 Houses of the  
16 Congress, the sole matter after the resolving clause of  
17 which is as follows: ‘That the Congress does not approve  
18 the action taken by, or the determination of, the President  
19 under section 421 of the Trade Act of 1974, notice of  
20 which was transmitted to the Congress on  
21 \_\_\_\_\_.’, with the blank space being filled with the  
22 appropriate date.

23           “(3) The provisions of section 152 (b), (d), (e), and  
24 (f) of the Trade Act of 1974 (19 U.S.C. 2192(b), (d), (e),  
25 and (f)) shall apply to joint resolutions under this section.

1 “(4) It is not in order for—

2 “(A) the Senate to consider any joint resolution  
3 not reported by the Committee on Finance; or

4 “(B) the House of Representatives to consider  
5 any joint resolution not reported by the Committee  
6 on Ways and Means.”;

7 (12) in subsection (n), as redesignated, by  
8 striking “Import relief under this section” and all  
9 that follows to the end period and inserting the fol-  
10 lowing:

11 “(1) Except as provided in paragraph (2), import re-  
12 lief under this section shall take effect not later than 15  
13 days after the President’s determination to provide such  
14 relief.

15 “(2) If the action recommended by the Commission  
16 takes effect pursuant to subsection (m), the President  
17 shall, within 15 days after the date of the enactment of  
18 the joint resolution referred to in subsection (m), proclaim  
19 the action recommended by the Commission under sub-  
20 section (f). Such action shall take effect not later than  
21 15 days after the date of the President’s proclamation.”;

22 (13) in subsection (o), as redesignated—

23 (A) in paragraph (1), by striking “6-  
24 month” and inserting “1-year”; and

1 (B) in paragraph (3), by inserting “or  
2 (m)” after “subsection (k)”; and

3 (14) in subsection (p), as redesignated—

4 (A) in paragraph (1), by inserting “or  
5 (m)” after “subsection (k);”; and

6 (B) in paragraph (3), by striking “sub-  
7 section (m)” and inserting “subsection (n)”.

8 **TITLE IV—STRENGTHENING**  
9 **ANTIDUMPING AND COUN-**  
10 **TERVAILING DUTY LAWS**

11 **SEC. 401. APPLICATION OF COUNTERVAILING DUTIES TO**  
12 **NONMARKET ECONOMIES.**

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

17 (b) **EFFECTIVE DATE.**—The amendment made by  
18 subsection (a) applies to petitions filed under section 702  
19 of the Tariff Act of 1930 (19 U.S.C. 1671a) on or after  
20 October 1, 2006.

21 **SEC. 402. CLARIFICATION OF DETERMINATION OF MATE-**  
22 **RIAL INJURY.**

23 Section 771(7) of the Tariff Act of 1930 (19 U.S.C.  
24 1677(7)) is amended by adding at the end the following  
25 new subparagraph:

1                   “(J) CLARIFICATION OF DETERMINATION  
 2                   OF MATERIAL INJURY.—In determining if there  
 3                   is material injury, or threat of material injury,  
 4                   by reason of imports of the subject merchan-  
 5                   dise, the Commission shall make its determina-  
 6                   tion without regard to—

7                               “(i) whether other imports are likely  
 8                               to replace the subject merchandise, or

9                               “(ii) the effect of a potential order on  
 10                              the domestic industry.”.

## 11 **TITLE V—TRADE ENFORCEMENT** 12 **PERSONNEL**

### 13 **SEC. 501. CHIEF TRADE ENFORCEMENT OFFICER.**

14           (a) ESTABLISHMENT OF POSITION.—Section  
 15 141(b)(2) of the Trade Act of 1974 (19 U.S.C.  
 16 2171(b)(2)) is amended to read as follows:

17           “(2) There shall be in the Office 3 Deputy United  
 18 States Trade Representatives, 1 Chief Agricultural Nego-  
 19 tiator, and 1 Chief Trade Enforcement Officer who shall  
 20 all be appointed by the President, by and with the advice  
 21 and consent of the Senate. As an exercise of the rule-  
 22 making power of the Senate, any nomination of a Deputy  
 23 United States Trade Representative, the Chief Agricul-  
 24 tural Negotiator, or the Chief Trade Enforcement Officer  
 25 submitted to the Senate for its advice and consent, and



1 referred to a committee, shall be referred to the Com-  
2 mittee on Finance. Each Deputy United States Trade  
3 Representative, the Chief Agricultural Negotiator, and the  
4 Chief Trade Enforcement Officer shall hold office at the  
5 pleasure of the President and shall have the rank of Am-  
6 bassador.”.

7 (b) FUNCTIONS OF POSITION.—Section 141(c) of the  
8 Trade Act of 1974 (19 U.S.C. 2171(c)) is amended by  
9 adding at the end the following new paragraph:

10 “(6) The principal function of the Chief Trade En-  
11 forcement Officer shall be to ensure that United States  
12 trading partners comply with trade agreements to which  
13 the United States is a party. The Chief Trade Enforce-  
14 ment Officer shall assist the United States Trade Rep-  
15 resentative in investigating and prosecuting disputes pur-  
16 suant to trade agreements to which the United States is  
17 a party, including before the World Trade Organization,  
18 and shall assist the United States Trade Representative  
19 in carrying out the Trade Representative’s functions  
20 under subsection (d). The Chief Trade Enforcement Offi-  
21 cer shall make recommendations with respect to the ad-  
22 ministration of United States trade laws relating to for-  
23 eign government barriers to United States goods, services,  
24 investment, and intellectual property, and with respect to  
25 government procurement and other trade matters. The

1 Chief Trade Enforcement Officer shall perform such other  
2 functions as the United States Trade Representative may  
3 direct.”.

4 (c) COMPENSATION.—Section 5314 of title 5, United  
5 States Code, is amended by inserting “Chief Trade En-  
6 forcement Officer” as a new item after “Chief Agricultural  
7 Negotiator”.

8 (d) TECHNICAL AMENDMENTS.—Section 141(e) of  
9 the Trade Act of 1974 (19 U.S.C. 2171(e)) is amended—

10 (1) in paragraph (1), by striking “5314” and  
11 inserting “5315”; and

12 (2) in paragraph (2), by striking “the max-  
13 imum rate of pay for grade GS–18, as provided in  
14 section 5332” and inserting “the maximum rate of  
15 pay for level IV of the Executive Schedule in section  
16 5315”.

17 **SEC. 502. TRADE ENFORCEMENT WORKING GROUP.**

18 (a) ESTABLISHMENT.—Not later than 90 days after  
19 the date of the enactment of this Act, the United States  
20 Trade Representative shall establish an interagency Trade  
21 Enforcement Working Group, which shall be chaired by  
22 the Chief Trade Enforcement Officer of the Office of the  
23 United States Trade Representative.

24 (b) MEMBERSHIP.—The Trade Enforcement Work-  
25 ing Group shall include representatives from the Depart-

1 ments of State, Treasury, Commerce, and Agriculture,  
2 and such other departments and agencies as the United  
3 States Trade Representative considers appropriate.

4 (c) RESPONSIBILITY.—The Trade Enforcement  
5 Working Group shall assist and advise the Chief Trade  
6 Enforcement Officer in carrying out the principal func-  
7 tions described in section 141(c)(6) of the Trade Act of  
8 1974. Although the Chief Trade Enforcement Officer shall  
9 carefully consider any advice provided by the Trade En-  
10 forcement Working Group, the Chief Trade Enforcement  
11 Officer shall not seek clearance or any other form of ap-  
12 proval from the Trade Enforcement Working Group for  
13 any actions the Chief Trade Enforcement Officer takes in  
14 carrying out the functions described in such section  
15 141(c)(6).

16 **SEC. 503. AUTHORIZATION OF APPROPRIATIONS.**

17 There is authorized to be appropriated \$5,000,000 to  
18 the Office of the United States Trade Representative to  
19 carry out the provisions of this title.

1 **TITLE VI—INTELLECTUAL PROP-**  
2 **ERTY ENFORCEMENT PER-**  
3 **SONNEL**

4 **SEC. 601. SECTION 337 JUDGES.**

5 Section 337 of the Tariff Act of 1930 (19 U.S.C.  
6 1337) is amended by adding at the end the following new  
7 subparagraph:

8 “(o) SECTION 337 JUDGES.—

9 “(1) IN GENERAL.—Notwithstanding the provi-  
10 sions of subsection 556(b) of title 5, United States  
11 Code, the Commission is authorized to appoint hear-  
12 ing officers, other than administrative law judges ap-  
13 pointed under section 3105 of title 5, United States  
14 Code, to preside at the taking of evidence at hear-  
15 ings required by this section and to make initial and  
16 recommended decisions in accordance with sections  
17 554, 556, and 557 of title 5, United States Code, in  
18 investigations under this section. The hearing offi-  
19 cers appointed under this subsection shall be known  
20 as section 337 judges.

21 “(2) QUALIFICATIONS.—A person appointed as  
22 a section 337 judge under paragraph (1) shall pos-  
23 sess a minimum of 7 years of legal experience and  
24 be licensed to practice law under the laws of a State,  
25 the District of Columbia, the Commonwealth of

1 Puerto Rico, or any territorial court established  
2 under the Constitution of the United States. The  
3 Commission may promulgate such other regulations  
4 as the Commission considers necessary with respect  
5 to the qualifications of section 337 judges, including  
6 technical expertise and experience in patent, trade-  
7 mark, copyright, and unfair competition law.

8 “(3) ROTATION.—Section 337 judges shall be  
9 assigned to cases in rotation to the extent prac-  
10 ticable or as otherwise provided for in the Commis-  
11 sion’s rules.

12 “(4) OTHER DUTIES.—A section 337 judge may  
13 not perform duties inconsistent with the duties and  
14 responsibilities of a section 337 judge.

15 “(5) REMOVAL.—A section 337 judge may only  
16 be removed for good cause shown upon a hearing  
17 conducted on the record by the Merit Systems Pro-  
18 tection Board. The failure of the Commission to  
19 adopt the initial or recommended decision of a sec-  
20 tion 337 judge shall not constitute good cause.

21 “(6) COMPETITIVE SERVICE.—Except as other-  
22 wise provided, the laws, rules, and regulations appli-  
23 cable to positions in the competitive service apply to  
24 section 337 judges. Upon appointment, a section  
25 337 judge shall be paid in accordance with the pay

1 rates of section 5372 of title 5, United States Code,  
 2 commensurate with the pay rate of an administra-  
 3 tive law judge with similar time in service. Section  
 4 337 judges shall not be Senior Executive Service po-  
 5 sitions for the purposes of sections 3131 and 3132  
 6 of title 5, United States Code.

7 “(7) PERFORMANCE EVALUATIONS.—Section  
 8 337 judges shall not receive performance evaluations  
 9 and shall not be compensated based on perform-  
 10 ance.”.

## 11 **TITLE VII—INTERAGENCY**

## 12 **TRADE ORGANIZATION**

### 13 **SEC. 701. CLARIFICATION OF ROLE OF INTERAGENCY**

### 14 **TRADE ORGANIZATION ESTABLISHED UNDER**

### 15 **SECTION 242(a) OF THE TRADE EXPANSION**

### 16 **ACT OF 1962.**

17 Section 141(c)(1)(I) of the Trade Act of 1974 (19  
 18 U.S.C. 2171(c)(1)(I)) is amended to read as follows:

19 “(I) be chairman of the interagency trade  
 20 organization established under section 242(a) of  
 21 the Trade Expansion Act of 1962, consult with  
 22 and carefully consider any advice provided by  
 23 such organization in the performance of the  
 24 functions of the United States Trade Rep-  
 25 resentative, but the United States Trade Rep-

1           representative shall not seek clearance or any other  
2           form of approval from the interagency trade or-  
3           ganization for any actions the United States  
4           Trade Representative takes in the performance  
5           of the functions described in this subsection;  
6           and”.

○