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Providing that any agreement relating to trade and investment that is negotiated by the executive branch with another country comply with certain minimum standards.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2007

Mr. FEINGOLD submitted the following concurrent resolution; which was referred to the Committee on Finance

CONCURRENT RESOLUTION

Providing that any agreement relating to trade and investment that is negotiated by the executive branch with another country comply with certain minimum standards.

Whereas there is general consensus among the people of the United States and the global community that, with respect to international trade and investment rules—

(1) global environmental, labor, health, food security, and other public interest standards must be strengthened to prevent a global “race to the bottom”;

(2) domestic environmental, labor, health, food security, and other public interest standards and policies must not be undermined, including those based on the use of the precautionary principle (the internationally recognized legal principle that holds that, when there is scientific uncertainty regarding the potential adverse ef-

fects of an action, a product, or a technology, a government should act in a way that minimizes the risk of harm to human health and the environment);

(3) provision and regulation of public services such as education, health care, transportation, energy, water, and other utilities are basic functions of democratic government and must not be undermined;

(4) raising standards in developing countries requires additional assistance and respect for diversity of policies and priorities;

(5) countries must be allowed to design and implement policies to sustain family farms and achieve food security;

(6) healthy national economies are essential to a healthy global economy, and the right of governments to pursue policies to maintain and create jobs must be upheld;

(7) the right of State and local and comparable regional governments of all countries to create and enforce diverse policies must be safeguarded from imposed downward harmonization; and

(8) rules for the global economy must be developed and implemented democratically and with transparency and accountability;

Whereas many international trade and investment agreements in existence and currently being negotiated do not serve these interests; and

Whereas many international trade and investment agreements in existence have caused substantial harm to the health and well-being of communities in the United States and within countries that are trading partners of the United States: Now, therefore, be it

1 *Resolved by the Senate (the House of Representatives*
2 *concurring)*, That any agreement relating to trade and in-
3 vestment that is negotiated by the executive branch with
4 another country should comply with the following:

5 (1) REQUIREMENTS APPLYING TO ALL COUN-
6 TRIES.—

7 (A) INVESTOR AND INVESTMENT POL-
8 ICY.—If the agreement includes any provision
9 relating to foreign investment, the agreement
10 may not permit a foreign investor to challenge
11 or seek compensation because of a measure of
12 a government at the national, State, or local
13 level that protects the public interest, including
14 a measure that protects public health, safety,
15 and welfare, the environment, and worker pro-
16 tections, unless a foreign investor demonstrates
17 that the measure was enacted or applied pri-
18 marily for the purpose of discriminating against
19 a foreign investor or foreign investment.

20 (B) SERVICES.—The agreement, to the ex-
21 tent applicable, shall comply with the following:

22 (i) IN GENERAL.—The agreement may
23 not provide for disciplinary action against
24 a government measure relating to—

1 (I) a public service, including
2 public services for which the govern-
3 ment is not the sole provider;

4 (II) a service that requires exten-
5 sive regulation;

6 (III) an essential human service;
7 and

8 (IV) a service that has an essen-
9 tially social component.

10 (ii) SERVICES DESCRIBED.—A service
11 described in clause (i) includes a public
12 benefit program, health care, health insur-
13 ance, public health, child care, education
14 and training, the distribution of a con-
15 trolled substance or product (including al-
16 cohol, tobacco, and firearms), research and
17 development on a natural or social science,
18 a utility (including an energy utility, water,
19 waste disposal, and sanitation), national
20 security, maritime, air, surface, and other
21 transportation services, a postal service,
22 energy extraction and any related service,
23 and a correctional service.

24 (iii) REVISION OF COMMITMENTS.—
25 The agreement shall permit a country that

1 has made a commitment in an area de-
2 scribed in clause (i) to revise that commit-
3 ment for the purposes of public interest
4 regulation without any financial or other
5 trade-related penalty.

6 (iv) SUBSIDIES AND GOVERNMENT
7 PROCUREMENT.—The agreement shall en-
8 sure that any rule governing a subsidy or
9 government procurement fully protects the
10 ability of a government to support and
11 purchase a service in a way that promotes
12 economic development, social justice and
13 equity, public health, environmental qual-
14 ity, human rights, and the rights of work-
15 ers.

16 (v) REGULATION OF FOREIGN INVES-
17 TORS.—The agreement shall guarantee
18 that all governments that are parties to
19 the agreement may regulate foreign inves-
20 tors in services and other service providers
21 in order to protect public health and safe-
22 ty, consumers, the environment, and work-
23 ers' rights, without requiring the govern-
24 ments to establish their regulations to be

1 the least burdensome option for foreign
2 service providers.

3 (C) ENVIRONMENTAL, LABOR, AND OTHER
4 PUBLIC INTEREST STANDARDS.—The agree-
5 ment—

6 (i) may not supersede the rights and
7 obligations of parties under multilateral
8 environmental, labor, and human rights
9 agreements;

10 (ii) shall, to the extent applicable, in-
11 clude commitments—

12 (I) to adhere to specified work-
13 ers' rights and environmental stand-
14 ards;

15 (II) to enforce existing domestic
16 labor and environmental provisions;
17 and

18 (III) to abide by the core labor
19 standards of the International Labor
20 Organization; and

21 (iii) shall subject the commitments de-
22 scribed in clause (ii) to binding enforce-
23 ment on the same terms as commercial
24 provisions.

1 (D) FOOD SAFETY.—The agreement may
2 not—

3 (i) require international harmoni-
4 zation of food safety standards in a man-
5 ner that undermines the level of human
6 health protection provided under the laws
7 of a country; or

8 (ii) restrict the ability of governments
9 to enact policies to guarantee the right of
10 consumers to know where and how food is
11 produced.

12 (E) AGRICULTURE AND FOOD SECURITY.—
13 The agreement may not, with respect to food
14 and other agricultural commodities—

15 (i) contain provisions that prevent
16 countries from—

17 (I) establishing domestic and
18 global reserves;

19 (II) managing supply;

20 (III) enforcing antidumping pro-
21 visions;

22 (IV) ensuring fair market prices;

23 or

1 (V) vigorously enforcing antitrust
2 laws, in order to guarantee competi-
3 tive markets for family farmers; or

4 (ii) prevent countries from developing
5 the necessary sanitary and phytosanitary
6 standards to prevent the introduction of
7 pathogens or other potentially invasive spe-
8 cies that may adversely affect agriculture,
9 human health, or the environment.

10 (F) GOVERNMENTAL AUTHORITY.—The
11 agreement may not contain provisions that bind
12 national, State, local, or comparable regional
13 governments to limiting regulatory, taxation,
14 spending, or procurement authority—

15 (i) without sufficient transparency as
16 described in paragraph (4), including an
17 opportunity for public review and com-
18 ment; and

19 (ii) without the explicit, informed con-
20 sent of the national, State, local, or com-
21 parable regional legislative body concerned.

22 (G) ACCESS TO MEDICINES AND SEEDS.—

23 (i) MEDICINES.—The agreement may
24 not contain provisions that prevent coun-

1 tries from taking measures to protect pub-
 2 lic health by ensuring access to medicines.

3 (ii) SEEDS.—The agreement may not
 4 constrain the rights of farmers to save,
 5 use, exchange, or sell farm-saved seeds and
 6 other publicly available seed varieties.

7 (2) REQUIREMENTS APPLYING TO ONLY THE
 8 UNITED STATES.—

9 (A) TEMPORARY ENTRY OF WORKERS.—

10 The agreement may not—

11 (i) make a new commitment on the
 12 temporary entry of workers, because such
 13 policies should be determined by the Con-
 14 gress, after consideration by the congres-
 15 sional committees with jurisdiction over
 16 immigration, to avoid an array of incon-
 17 sistent policies; or

18 (ii) include any policy that fails to—

19 (I) include labor market tests
 20 that ensure that the employment of
 21 temporary workers will not adversely
 22 affect other similarly employed work-
 23 ers;

24 (II) involve labor unions in the
 25 labor certification process imple-

1 mented under the immigration pro-
2 gram for temporary workers granted
3 nonimmigrant status under section
4 101(a)(15)(H)(i)(b) of the Immigra-
5 tion and Nationality Act (8 U.S.C.
6 1101(a)(H)(i)(b)), including the filing
7 by an employer of an application
8 under section 212(n)(1) of that Act (8
9 U.S.C. 1182(n)(1)); or

10 (III) guarantee the same work-
11 place protections for temporary work-
12 ers that are available to all workers.

13 (B) POLICIES TO SUPPORT UNITED
14 STATES WORKERS AND SMALL, MINORITY, AND
15 WOMEN-OWNED BUSINESSES.—The agreement
16 shall preserve the right of Federal, State, and
17 local governments to maintain or establish poli-
18 cies to support United States workers and
19 small, minority, or women-owned businesses, in-
20 cluding policies with respect to government pro-
21 curement, loans, and subsidies.

22 (C) UNITED STATES TRADE LAWS.—The
23 agreement may not—

24 (i) contain a provision that modifies
25 or amends, or requires a modification of or

1 an amendment to, any law of the United
2 States regarding safeguards from unfair
3 foreign trade practices, including any law
4 providing for—

5 (I) the imposition of counter-
6 vailing or antidumping duties;

7 (II) protection from unfair meth-
8 ods of competition or unfair acts in
9 the importation of articles;

10 (III) relief from injury caused by
11 import competition;

12 (IV) relief from unfair trade
13 practices; or

14 (V) the imposition of import re-
15 strictions to protect national security;

16 or

17 (ii) weaken the existing terms of the
18 Agreement on Implementation of Article
19 VI of the General Agreement on Tariffs
20 and Trade 1994, or the Agreement on
21 Subsidies and Countervailing Measures, of
22 the World Trade Organization, including
23 through the domestic implementation of
24 rulings of dispute settlement bodies.

1 (D) FOOD SAFETY.—The agreement may
2 not—

3 (i) restrict the ability of the United
4 States to ensure that food products enter-
5 ing the United States are rigorously in-
6 spected to establish that they meet all food
7 safety standards in the United States, in-
8 cluding inspection standards; or

9 (ii) force the United States to accept
10 different food safety standards as “equiva-
11 lent”, in a manner that undermines the
12 level of human health protection provided
13 under domestic law.

14 (3) TREATMENT OF DEVELOPING COUN-
15 TRIES.—The agreement shall grant special and dif-
16 ferential treatment for developing countries with re-
17 gard to the timeframe for implementation of the
18 agreement as well as other concerns.

19 (4) TRANSPARENCY.—

20 (A) IN GENERAL.—The process of negoti-
21 ating the agreement shall be open and trans-
22 parent, including through—

23 (i) prompt and regular disclosure of
24 full negotiating texts; and

1 (ii) prompt and regular disclosure of
2 negotiating positions of the United States.

3 (B) PUBLIC AVAILABILITY OF OFFERS AND
4 REQUESTS.—In negotiating the agreement, any
5 request or offer relating to investment, procure-
6 ment, or trade in services must be made public
7 within 10 days after its submission if such re-
8 quest or offer—

9 (i) proposes that specific Federal,
10 State, or local laws or regulations in the
11 United States, including subsidies, tax
12 rules, procurement rules, professional
13 standards, and rules on temporary entry of
14 persons, be changed, eliminated, or sched-
15 uled under the agreement;

16 (ii) proposes to cover under the agree-
17 ment—

18 (I) specific essential public serv-
19 ices, including public benefits pro-
20 grams, health care, education, na-
21 tional security, sanitation, water, en-
22 ergy, and other utilities; or

23 (II) private service sectors that
24 require extensive regulation or have
25 an inherently social component, in-

1 including maritime, air transport, truck-
2 ing, and other transportation services,
3 postal services, utilities such as water,
4 energy, and sanitation, corrections,
5 education and childcare, and health
6 care; or

7 (iii) proposes an action or process of
8 general application that may interfere with
9 the ability of the United States or State,
10 local, or tribal governments to adopt, im-
11 plement, or enforce laws and regulations
12 identified in clause (ii)(I) or to provide or
13 regulate services identified in clause
14 (ii)(II).

15 (C) REPRESENTATION OF INTERESTS.—

16 The broad array of constituencies representing
17 the majority of the people of the United States,
18 including labor unions, environmental organiza-
19 tions, consumer groups, family farm groups,
20 public health advocates, faith-based organiza-
21 tions, and civil rights groups, must have at
22 least the same representation on trade advisory
23 committees and the same access to trade nego-
24 tiators and negotiating fora as those constitu-
25 encies representing commercial interests.

1 (D) DISPUTE RESOLUTION MECHA-
2 NISMS.—Any dispute resolution mechanism es-
3 tablished in the agreement shall be open and
4 transparent, including through disclosure to the
5 public of documents and access to hearings, and
6 must permit participation by nonparties
7 through the filing of amicus briefs, as well as
8 provide for standing for State and local govern-
9 ments as intervenors.

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