

111TH CONGRESS
1ST SESSION

S. 2821

To require a review of existing trade agreements and renegotiation of existing trade agreements based on the review, to establish terms for future trade agreements, to express the sense of the Congress that the role of Congress in making trade policy should be strengthened, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2009

Mr. BROWN (for himself, Mr. FEINGOLD, Mr. WHITEHOUSE, Mr. DORGAN, Mr. CASEY, Mr. SANDERS, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To require a review of existing trade agreements and renegotiation of existing trade agreements based on the review, to establish terms for future trade agreements, to express the sense of the Congress that the role of Congress in making trade policy should be strengthened, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Trade Reform, Ac-
3 countability, Development, and Employment Act of 2009”
4 or the “TRADE Act of 2009”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) **CORE LABOR RIGHTS.**—The term “core
8 labor rights” means the core labor rights as stated
9 in the International Labour Organization conven-
10 tions dealing with—

11 (A) freedom of association and the effec-
12 tive recognition of the right to collective bar-
13 gaining;

14 (B) the elimination of all forms of forced
15 or compulsory labor;

16 (C) the effective abolition of child labor;
17 and

18 (D) the elimination of discrimination with
19 respect to employment and occupation.

20 (2) **MAJOR U.S. TRADING PARTNERS.**—The
21 term “major U.S. trading partners” means the top
22 10 countries that represent the largest trade in dol-
23 lar value of imports into the United States and ex-
24 ports from the United States, excluding petroleum
25 and petroleum products, based on data compiled by
26 the Department of Commerce for the most recent

1 12-month period preceding the date of the enact-
2 ment of this Act.

3 (3) MULTILATERAL ENVIRONMENTAL AGREE-
4 MENT.—The term “multilateral environmental
5 agreement” means any international agreement or
6 provision thereof to which the United States is a
7 party and which is intended to protect, or has the
8 effect of protecting, the environment or human
9 health.

10 (4) STATE.—The term “State” means each of
11 the several States, the District of Columbia, and any
12 commonwealth, territory, or possession of the United
13 States.

14 (5) TRADE AGREEMENT.—

15 (A) IN GENERAL.—The term “trade agree-
16 ment” includes the following:

17 (i) The North American Free Trade
18 Agreement.

19 (ii) The Agreement between the
20 United States of America and the
21 Hashemite Kingdom of Jordan on the Es-
22 tablishment of a Free Trade Area.

23 (iii) The Dominican Republic-Central
24 America-United States Free Trade Agree-
25 ment.

1 (B) URUGUAY ROUND AGREEMENTS.—The
2 term “trade agreement” includes the following
3 agreements resulting from the Uruguay Round
4 of Multilateral trade negotiations:

5 (i) The General Agreement on Tariffs
6 and Trade (GATT 1994) annexed to the
7 WTO Agreement.

8 (ii) The WTO Agreement described in
9 section 2(9) of the Uruguay Round Agree-
10 ments Act (19 U.S.C. 3501(9)).

11 (iii) Each of the agreements described
12 in section 101(d) of the Uruguay Round
13 Agreements Act (19 U.S.C. 3511(d)).

14 (iv) Any multilateral agreement en-
15 tered into under the auspices of the World
16 Trade Organization dealing with informa-
17 tion technology, telecommunications, or fi-
18 nancial services.

19 (6) TRADE AGREEMENT COUNTRY.—The term
20 “trade agreement country” means a country that
21 is—

22 (A) a party to an agreement described in
23 paragraph (5)(A); or

1 (B) a major U.S. trading partner that is a
2 party to an agreement described in paragraph
3 (5)(B).

4 (7) TRIPS AGREEMENT.—The term “TRIPS
5 Agreement” means the Agreement on Trade-Related
6 Aspects of Intellectual Property Rights described in
7 section 101(d)(15) of the Uruguay Round Agree-
8 ments Act (19 U.S.C. 3511(d)(5)).

9 (8) WORLD TRADE ORGANIZATION.—The term
10 “World Trade Organization” means the organization
11 established pursuant to the WTO Agreement.

12 **SEC. 3. REVIEW AND REPORT ON EXISTING TRADE AGREE-**
13 **MENTS.**

14 (a) REVIEW AND REPORT.—

15 (1) IN GENERAL.—Not later than June 30,
16 2011, the Comptroller General of the United States
17 shall conduct a review, and submit a report to the
18 Committee on Finance of the Senate and the Com-
19 mittee on Ways and Means of the House of Rep-
20 resentatives, with respect to each trade agreement
21 described in section 2(5)(A) and each trade agree-
22 ment described in section 2(5)(B) to the extent such
23 agreement is in effect with respect to a major U.S.
24 trading partner. The report shall include an evalua-
25 tion of the economic, employment, environmental,

1 national security, health, safety, and other effects of
2 each such agreement.

3 (2) COOPERATION OF AGENCIES.—The Secre-
4 taries of State, Agriculture, Commerce, Labor, and
5 the Treasury, and the heads of other executive de-
6 partments and agencies shall cooperate with the
7 Comptroller General in providing access to officials
8 and documents to facilitate the preparation of the
9 report.

10 (b) INFORMATION WITH RESPECT TO TRADE
11 AGREEMENTS.—The report required by subsection (a)
12 shall, with respect to each trade agreement described in
13 subsection (a), to the extent practicable, include the fol-
14 lowing information covering the period between the date
15 on which the agreement entered into force with respect
16 to the United States and the date on which the Comp-
17 troller General completes the review:

18 (1) An analysis of indicators of the economic
19 impact of each trade agreement, including the fol-
20 lowing:

21 (A) The dollar value of goods exported
22 from the United States and imported for con-
23 sumption into the United States by sector, year,
24 and trade agreement country, including a list of
25 those goods for which there has been a change

1 in 10 percent or more in bilateral trade with
2 each such country.

3 (B) The employment effects of the agree-
4 ment, including job gains and losses in the
5 United States by sector and changes in wage
6 levels in the United States in dollars by sector
7 and year, and the employment effects of the
8 agreement in each trade agreement country.

9 (C) The share of global production, pro-
10 ductive capacity, investment, exports, employ-
11 ment, and other indicators of the competitive
12 position of industries in the United States sig-
13 nificantly affected by each such trade agree-
14 ment, taking into account changes in sourcing
15 patterns before and after entry into force of the
16 trade agreement.

17 (2) The effect of each trade agreement on agri-
18 culture, including—

19 (A) the trend on a year-to-year basis of—

20 (i) the prices and production volumes
21 of agricultural commodities, food products,
22 and ingredients in the United States and
23 in each trade agreement country;

24 (ii) the prices and volumes of such
25 commodities, products, and ingredients ex-

1 ported from the United States to each
2 such trade agreement country; and

3 (iii) the prices and volumes of such
4 commodities, products, and ingredients im-
5 ported into the United States from each
6 such trade agreement country;

7 (B) the number of farms operating in the
8 United States detailed by farm typology and
9 sales level and the number of acres under pro-
10 duction by crop used to produce agricultural
11 commodities that are exported from the United
12 States to a country that is a party to each
13 agreement listed in section 2(5)(A) on a year-
14 to-year basis; and

15 (C) changes in United States meat exports
16 and the employment impacts of meat exports.

17 (3) An analysis of the progress being made in
18 implementing the commitments contained in each
19 agreement and the record of compliance with the
20 terms of each agreement in effect between the
21 United States and a trade agreement country.

22 (4) A description of any outstanding disputes
23 between the United States and any trade agreement
24 country, including a description of laws, regulations,
25 or policies of the United States or any State that a

1 trade agreement country has challenged, or threat-
2 ened to challenge, under a trade agreement.

3 (5) An analysis of the ability of the United
4 States to ensure that any trade agreement country
5 complies with laws and regulations of the United
6 States, including—

7 (A) the customs laws of the United States;

8 (B) laws relating to the payment of duties
9 on goods imported into the United States;

10 (C) health, safety, and inspection require-
11 ments with respect to food and other products
12 imported into the United States; and

13 (D) prohibitions on the transshipment of
14 goods that are ultimately imported into the
15 United States.

16 (6) An analysis of any privatization of public
17 sector services in the United States and in each
18 trade agreement country if the service involved is
19 covered by the investment, financial services, or serv-
20 ices provisions of a trade agreement. The analysis
21 shall include any effect privatization has on con-
22 sumer access to essential services, such as health
23 care, electricity, gas, water, telephone service, or
24 other utilities.

1 (7) An assessment of the impact the intellectual
2 property provisions of each trade agreement has on
3 consumer access to pharmaceuticals and on the re-
4 tail price of pharmaceuticals in each trade agree-
5 ment country and the effect, if any, that changes in
6 the price of pharmaceuticals have had on access by
7 consumers to pharmaceuticals.

8 (8) An analysis of the impact of the government
9 procurement provision of each trade agreement on
10 the procurement of goods and services by Federal
11 and State agencies and by each trade agreement
12 country.

13 (9) An assessment of the consequences of sig-
14 nificant currency movements of each trade agree-
15 ment country and a determination of whether the
16 currency of the country is misaligned deliberately to
17 promote a competitive advantage in international
18 trade for that country.

19 (c) INFORMATION ON COUNTRIES THAT ARE PAR-
20 TIES TO TRADE AGREEMENTS.—In addition to the infor-
21 mation required by subsection (b), the report required
22 under subsection (a) shall include, with respect to each
23 trade agreement country, information regarding whether
24 the country—

25 (1) has a democratic form of government;

1 (2) has adopted into domestic law and regula-
2 tions the core labor rights and effectively enforces
3 those rights as reflected in reports of the Committee
4 of Experts on the Application of Conventions and
5 Recommendations, the Conference Committee on the
6 Application of Standards, and the Committee on
7 Freedom of Association of the International Labour
8 Organization;

9 (3) respects fundamental human rights, as re-
10 flected in the annual Country Reports on Human
11 Rights Practices of the Department of State;

12 (4) is designated as a country of particular con-
13 cern with respect to religious freedom under section
14 402(b)(1) of the International Religious Freedom
15 Act of 1998 (22 U.S.C. 6442(b)(1));

16 (5) is on a list described in subparagraph (B)
17 or (C) of section 110(b)(1) of the Trafficking Vic-
18 tims Protection Act of 2000 (22 U.S.C. 7107(b)(1))
19 (commonly known as tier 2 or tier 3 of the Traf-
20 ficking in Persons List of the Department of State);

21 (6) has taken effective measures to combat and
22 prevent public and private corruption, including
23 measures with respect to tax evasion and money
24 laundering and has ratified the Convention on Com-
25 bating Bribery of Foreign Public Officials in Inter-

1 national Business Transactions of the Organization
2 for Economic Cooperation and Development;

3 (7) complies with the multilateral environmental
4 agreements to which the country is a party;

5 (8) has in force adequate environmental laws
6 and regulations, has devoted sufficient resources to
7 implementing such laws and regulations, and has an
8 adequate record of enforcement of such law and reg-
9 ulations;

10 (9) enforces the rights and flexibilities of the
11 TRIPS Agreement; and

12 (10) provides for government transparency, due
13 process of law, and respect for international agree-
14 ments.

15 (d) NATIONAL SECURITY ANALYSIS.—The report re-
16 quired by subsection (a) shall include with respect to each
17 trade agreement country an assessment of the country's
18 transfer of technology, production, and services and an
19 analysis of whether the country poses a potential concern
20 to the national security of the United States.

21 (e) RECOMMENDATIONS.—Each report required
22 under subsection (a) shall include recommendations of the
23 Comptroller General for addressing the problems identi-
24 fied under subsections (b), (c), and (d) with respect to
25 each trade agreement. The recommendations shall include

1 suggestions for renegotiating the agreement based on the
2 requirements described in section 4(b).

3 (f) CITATIONS.—The Comptroller General shall in-
4 clude in the report required under subsection (a) citations
5 to the sources of data used in preparing the report and
6 a description of the methodologies employed in preparing
7 each report.

8 (g) PUBLIC COMMENT.—In preparing each report re-
9 quired under subsection (a), the Comptroller General
10 shall—

11 (1) hold hearings that are open to the public;

12 and

13 (2) provide an opportunity for members of the
14 public to testify and submit written comments.

15 (h) PUBLIC AVAILABILITY.—Each report required
16 under subsection (a) shall be made available to the public
17 not later than 14 days after the Comptroller General com-
18 pletes the report.

19 **SEC. 4. INCLUSION OF CERTAIN PROVISIONS IN TRADE**
20 **AGREEMENTS.**

21 (a) IN GENERAL.—Notwithstanding section 151 of
22 the Trade Act of 1974 (19 U.S.C. 2191) or any other pro-
23 vision of law, any bill implementing a trade agreement be-
24 tween the United States and another country that is intro-
25 duced in Congress after the date of the enactment of this

1 Act shall be subject to a point of order pursuant to sub-
2 section (c) unless the trade agreement meets the require-
3 ments described in subsection (b).

4 (b) REQUIREMENTS.—Each trade agreement between
5 the United States and another country with respect to
6 which an implementing bill is introduced on or after the
7 date of the enactment of this Act shall meet the following
8 requirements:

9 (1) LABOR STANDARDS.—The labor provisions
10 of the agreement shall—

11 (A) be included in the core text of the
12 agreement;

13 (B) require each country that is a party to
14 the agreement—

15 (i) to adopt and maintain laws and
16 regulations (including laws applicable to
17 any designated zone in the country) that
18 establish core labor rights; and

19 (ii) to effectively enforce laws relating
20 to core labor rights and laws relating to
21 acceptable conditions of work (including
22 laws relating to minimum wages, hours of
23 work, and occupational safety and health);

24 (C) prohibit a country that is a party to
25 the agreement from waiving or otherwise dero-

1 gating from, or offering to waive or otherwise
2 derogate from, the country's laws and regula-
3 tions relating to the core labor rights and ac-
4 ceptable conditions of work described in sub-
5 paragraph (B);

6 (D) provide that failures to meet the labor
7 requirements of the agreement, regardless of
8 the effect that failure has on trade, shall be
9 subject to the dispute resolution and enforce-
10 ment mechanisms and penalties of the agree-
11 ment;

12 (E) provide that enforcement mechanisms
13 and penalties for failures described in subpara-
14 graph (D) are included in the core text of the
15 agreement and are at least as effective as the
16 mechanisms and penalties that apply to the
17 commercial provisions of the agreement;

18 (F) strengthen the capacity of each coun-
19 try that is a party to the agreement to promote,
20 protect, and enforce core labor rights;

21 (G) require that each country that is a
22 party to the agreement have a national contact
23 point for every labor complaint, produce a re-
24 port that addresses all the issues raised in the
25 complaint and include recommendations on all

1 confirmed allegations, including specific rec-
2 ommendations for employers directly or indi-
3 rectly implicated in the complaint; and

4 (H) require that—

5 (i) there is a full and expeditious re-
6 mediation of all labor complaints; and

7 (ii) the remediation plan is satisfac-
8 tory to all parties and conforms to the
9 findings and recommendations of the na-
10 tional contact point described in subpara-
11 graph (G).

12 (2) ENVIRONMENTAL AND PUBLIC SAFETY
13 STANDARDS.—The environmental provisions of the
14 agreement shall—

15 (A) be included in the text of the agree-
16 ment;

17 (B) prohibit each country that is a party
18 to the agreement from weakening, eliminating,
19 or failing to enforce domestic environmental or
20 other public interest standards to promote trade
21 or attract investment;

22 (C) require each such country to imple-
23 ment and enforce fully and effectively the coun-
24 try's obligations under multilateral environ-

1 mental agreements and provide for the enforce-
2 ment of such obligations under the agreement;

3 (D) prohibit the trade of products that are
4 illegally harvested or extracted and the trade of
5 goods derived from illegally harvested or ex-
6 tracted natural resources, including timber and
7 timber products, fish, wildlife, and associated
8 products, mineral resources, or other environ-
9 mentally sensitive goods;

10 (E) provide that the failure to meet the en-
11 vironmental standards required by the agree-
12 ment be subject to dispute resolution and en-
13 forcement mechanisms and penalties that are at
14 least as effective as the mechanisms and pen-
15 alties that apply to the commercial provisions of
16 the agreement; and

17 (F) allow each country that is a party to
18 the agreement to adopt and implement environ-
19 mental, health, and safety standards, recog-
20 nizing the legitimate right of governments to
21 protect the environment and public health and
22 safety.

23 (3) FOOD AND PRODUCT HEALTH AND SAFETY
24 STANDARDS.—If the agreement contains health and

1 safety laws and regulations for food and other prod-
2 ucts, the agreement shall—

3 (A) establish that food, feed, food ingredi-
4 ents, and other products relating to food may
5 be imported into the United States from a
6 country that is a party to the agreement only
7 if such food and related products meet or ex-
8 ceed United States laws and regulations with
9 respect to food safety, pesticides, inspections,
10 packaging, and labeling;

11 (B) establish that nonfood products may
12 be imported into the United States from a
13 country that is a party to the agreement only
14 if such products meet or exceed United States
15 laws and regulations with respect to health and
16 safety, inspection, packaging, and labeling;

17 (C) authorize the Commissioner of the
18 Food and Drug Administration (in this Act, re-
19 ferred to as the “Commissioner”) and the Con-
20 sumer Product Safety Commission (in this Act,
21 referred to as the “Commission”) to assess the
22 regulatory system of each country that is a
23 party to the agreement to determine whether
24 the regulatory system of that country provides
25 the same or better protection of health and

1 safety for food and other products as provided
2 under the regulatory system of the United
3 States;

4 (D) if the Commissioner or the Commis-
5 sion determines that the regulatory system of a
6 country does not provide the same or better
7 protection of health and safety for food and
8 other products as provided under the regulatory
9 system of the United States, the agreement
10 shall provide that the President may tempo-
11 rarily suspend the importation into the United
12 States of food and other products from that
13 country;

14 (E) provide a process for inspecting and
15 approving facilities in countries that the Com-
16 missioner or the Commission have found do not
17 meet United States laws and regulations with
18 respect to health and safety in order to allow
19 products from approved facilities to be imported
20 into the United States; and

21 (F) if harmonization of food or product
22 health or safety laws and regulations is nec-
23 essary to facilitate trade, the agreement shall
24 provide that such harmonization shall be based

1 on standards that are no less stringent than
2 United States laws and regulations.

3 (4) SERVICES PROVISIONS.—If the agreement
4 contains provisions relating to services, such provi-
5 sions shall—

6 (A) preserve the right of Federal, State,
7 and local governments to maintain essential
8 public services and to regulate, for the benefit
9 of the public, services provided to consumers;

10 (B)(i) provide that a service is not subject
11 to the agreement unless a country that is a
12 party to the agreement establishes a positive
13 list of each service sector that will be subject to
14 the obligations of the country under the agree-
15 ment; and

16 (ii) apply the agreement only to the service
17 sectors that are on the list described in clause
18 (i);

19 (C) establish a general exception to the
20 market access obligations contained in the
21 agreement by allowing a country that is a party
22 to the agreement to maintain or establish a ban
23 on services that the country considers harmful
24 to public health or safety, the environment, or
25 public morals if the ban is applied to domestic

1 and foreign services and service providers equal-
2 ly;

3 (D) require service providers in a country
4 that is a party to the agreement that provide
5 services through a commercial presence in the
6 United States to consumers in the United
7 States to comply with applicable United States
8 environmental, land use, safety, privacy, trans-
9 parency, professional qualification, and con-
10 sumer access laws and regulations;

11 (E) require that services provided to con-
12 sumers in the United States that would be sub-
13 ject to privacy laws and regulations in the
14 United States may only be provided by service
15 providers in other countries if those countries
16 have privacy protections and protections regard-
17 ing confidential information that are equal to or
18 exceed the protections provided by United
19 States privacy laws and regulations;

20 (F) provide that privatization of public
21 services in any country that is a party to the
22 agreement or the deregulation of a service is
23 not required, including services relating to na-
24 tional security, social security, health, public

1 safety, education, water, sanitation, other utili-
2 ties, ports, or transportation; and

3 (G) provide that local governments are not
4 subject to the service sector obligations under
5 the agreement.

6 (5) INVESTMENT PROVISIONS.—If the agree-
7 ment contains provisions relating to investment,
8 such provisions shall—

9 (A) preserve the ability of each country
10 that is a party to the agreement to regulate for-
11 eign investment in a manner consistent with the
12 needs and priorities of the country;

13 (B) preserve the ability of each country to
14 place prudential restrictions on speculative cap-
15 ital to promote financial stability;

16 (C) ensure that foreign investors operating
17 in the United States are not afforded greater
18 procedural or substantive rights under the trade
19 agreement than those afforded to domestic in-
20 vestors under the Constitution and laws of the
21 United States;

22 (D) ensure that the adoption or application
23 by any government of a nondiscriminatory
24 measure intended to serve a public purpose is

1 not prohibited by the agreement and is not a
2 violation of the agreement;

3 (E) provide that the term “investment”
4 only means a commitment of capital or the ac-
5 quisition of real property as understood under
6 the laws of the country that is a party to the
7 agreement and excludes the assumption of risk
8 or expectation of gain or profit;

9 (F) provide that the term “investor”
10 means only a person who makes a commitment
11 or an acquisition described in subparagraph
12 (E);

13 (G) limit protections against expropriations
14 to direct expropriation of real property and pro-
15 vide that “direct expropriation” means govern-
16 ment action that does not merely diminish the
17 value of real property but destroys all value of
18 the real property permanently; and

19 (H) define the standard of minimum treat-
20 ment to provide that foreign investors do not
21 have greater legal rights than United States
22 citizens possess under the due process clause of
23 section 1 of the 14th Amendment to the Con-
24 stitution.

1 (6) PROCUREMENT STANDARDS.—If the agree-
2 ment contains government procurement provisions,
3 such provisions shall—

4 (A) provide that an industry sector, goods,
5 and services are not subject to an agreement
6 unless a country that is a party to the agree-
7 ment establishes a positive list of industry sec-
8 tors, goods, and services that will be subject to
9 the obligations of the country under the agree-
10 ment;

11 (B) with respect to the United States,
12 apply only to a State that specifically agrees to
13 the agreement and only to the industry sectors,
14 goods, and services specifically identified by the
15 State government and shall not apply to local
16 governments; and

17 (C) include only technical specifications for
18 goods or services, or supplier qualifications or
19 other conditions for receiving government con-
20 tracts that do not undermine—

- 21 (i) prevailing wage policies;
22 (ii) recycled content policies;
23 (iii) sustainable harvest policies;
24 (iv) renewable energy policies;
25 (v) human rights; or

1 (vi) project labor agreements.

2 (7) INTELLECTUAL PROPERTY REQUIRE-
3 MENTS.—If the agreement contains provisions re-
4 lated to the protection of intellectual property rights,
5 such provisions shall—

6 (A) promote adequate and effective protec-
7 tion of intellectual property rights;

8 (B) include only terms relating to patents
9 that do not, overtly or in application, limit the
10 flexibilities and rights established in the Dec-
11 laration on the TRIPS Agreement and Public
12 Health, adopted by the World Trade Organiza-
13 tion at the Fourth Ministerial Conference at
14 Doha, Qatar, on November 14, 2001, particu-
15 larly the flexibilities and rights relating to the
16 promotion of access to medicines and the
17 issuance of compulsory licenses on grounds de-
18 termined by member states; and

19 (C) require that any provisions relating to
20 the patenting of traditional knowledge be con-
21 sistent with the Convention on Biological Diver-
22 sity, concluded at Rio de Janeiro June 5, 1992.

23 (8) AGRICULTURAL STANDARDS.—If the agree-
24 ment contains provisions relating to agriculture,
25 such provisions shall—

1 (A) protect the right of each country that
2 is a party to the agreement to establish policies
3 with respect to food and agriculture that allow
4 for inventory management and strategic food
5 and renewable energy reserves, if such policies
6 do not contribute to or allow the dumping of
7 agricultural commodities in world markets at
8 prices lower than the cost of production;

9 (B) protect the right of each country that
10 is a party to the agreement to prevent dumping
11 of agricultural commodities at below the cost of
12 production through border regulations or other
13 mechanisms and policies;

14 (C) ensure that all laws relating to anti-
15 trust and anti-competitive business practices re-
16 main fully in effect, and that enforceability of
17 those laws is neither preempted nor com-
18 promised in any manner;

19 (D) ensure adequate and affordable sup-
20 plies of safe food for consumers;

21 (E) protect the right of each country that
22 is a party to the agreement to encourage con-
23 servation through the use of best practices with
24 respect to the management and production of
25 agricultural commodities;

1 (F) ensure fair treatment of farm laborers
2 in each such country; and

3 (G) not conflict with agricultural policy es-
4 tablished in the laws of the United States.

5 (9) TRADE REMEDIES AND SAFEGUARDS.—If
6 the agreement contains trade remedy provisions,
7 such provisions shall—

8 (A) preserve fully the ability of the United
9 States to enforce the trade laws of the United
10 States, including antidumping and counter-
11 vailing duty laws and safeguard laws;

12 (B) ensure the continued effectiveness of
13 domestic and international prohibitions on un-
14 fair trade, especially prohibitions on dumping
15 and subsidies, and domestic and international
16 safeguard provisions;

17 (C) establish mechanisms to address and
18 remedy market distortions that lead to dumping
19 and subsidization, including overcapacity, car-
20 telization, and market-access barriers, by im-
21 posing strong sanctions against subsidies, in-
22 cluding applying countervailing duty laws in
23 cases where exporters receive tax rebates for in-
24 direct taxes upon export;

1 (D) allow the United States to maintain
2 adequate safeguards to ensure that surges of
3 imported goods do not result in economic bur-
4 dens on workers, firms, or farmers in the
5 United States, including providing that such
6 safeguards go into effect automatically based on
7 certain criteria;

8 (E) establish mechanisms among the par-
9 ties to the agreement to examine the trade con-
10 sequences of significant currency movements
11 and to scrutinize whether a country's currency
12 is misaligned in order to promote a competitive
13 advantage in international trade; and

14 (F) if the currency of a country that is a
15 party to the agreement is deliberately mis-
16 aligned, establish safeguard remedies that apply
17 automatically to offset substantial and sus-
18 tained currency movements.

19 (10) DISPUTE RESOLUTION AND ENFORCEMENT
20 PROVISIONS.—If the agreement contains provisions
21 relating to dispute resolution, such provisions
22 shall—

23 (A) incorporate the due process protections
24 of the Constitution, as well as provisions relat-

1 ing to access to documents, open hearings,
2 transparency, and fair and impartial tribunals;

3 (B) require that any dispute settlement
4 panel, including an appellate panel, dealing with
5 intellectual property rights or environmental,
6 health, labor, and other public law issues in-
7 clude panelists with expertise in the issues that
8 are the subject of the dispute; and

9 (C) provide that dispute resolution pro-
10 ceedings are open to the public and provide
11 timely public access to information regarding
12 enforcement, disputes, and ongoing negotiations
13 relating to disputes.

14 (11) TECHNICAL ASSISTANCE.—If the agree-
15 ment contains technical assistance provisions, such
16 provisions shall—

17 (A) be designed to raise standards in de-
18 veloping countries by providing assistance in a
19 manner that ensures diversity of development;

20 (B) be designed to empower civil society
21 and democratic governments to create sustain-
22 able, vibrant economies and respect basic
23 rights; and

24 (C) not supplant economic assistance or
25 promote the exportation of goods produced with

1 the exploitation of labor or methods that sup-
2 port unsustainable natural resources.

3 (12) EXCEPTIONS FOR NATIONAL SECURITY
4 AND OTHER REASONS.—Each agreement shall—

5 (A) include an essential security exception
6 to the provisions of the agreement that permits
7 a country that is a party to the agreement to
8 apply measures that the country considers nec-
9 essary for the maintenance or restoration of
10 international peace or security, or the protec-
11 tion of its essential security interests;

12 (B) explicitly state that if a country in-
13 vokes the essential security exception in a dis-
14 pute settlement proceeding relating to any mat-
15 ter other than compliance with the agreement’s
16 worker rights, environment, human rights,
17 health, or safety provisions, the dispute settle-
18 ment body hearing the matter shall find that
19 the exception applies;

20 (C) include the following language: “Not-
21 withstanding any other provision of this agree-
22 ment, a provision of law that is nondiscrim-
23 inatory on its face and relates to domestic
24 health, consumer safety, the environment, labor
25 rights, worker health and safety, consumer ac-

1 cess, the provision of goods or services, or in-
2 vestment, shall not be subject to challenge
3 under the dispute resolution mechanism estab-
4 lished under this agreement, unless a principal
5 purpose of the law is to discriminate with re-
6 spect to market access.”; and

7 (D) include a provision that gives priority
8 to the implementation of bilateral or multilat-
9 eral agreements relating to public health,
10 human and labor rights, the environment, or
11 other public interest goals in the event of any
12 inconsistency between the trade agreement and
13 such bilateral or multilateral agreement.

14 (13) FEDERALISM.—The trade agreement may
15 only require a State government in the United
16 States to comply with procurement, investment, or
17 services provisions contained in the trade agreement
18 if the State government has been consulted in full
19 and has given explicit consent to be bound by such
20 provisions.

21 (c) POINT OF ORDER IN SENATE.—The Senate shall
22 cease consideration of a bill to implement a trade agree-
23 ment introduced on or after the date of enactment of this
24 Act if—

1 (1) a point of order is made by any Senator
2 against the bill based on the noncompliance of the
3 trade agreement with the requirements of subsection
4 (b); and

5 (2) the point of order is sustained by the Pre-
6 siding Officer.

7 (d) WAIVERS AND APPEALS.—

8 (1) WAIVERS.—Before the Presiding Officer
9 rules on a point of order described in subsection (c),
10 any Senator may move to waive the point of order
11 and the motion to waive shall not be subject to
12 amendment. A point of order described in subsection
13 (c) is waived only by the affirmative vote of 60
14 Members of the Senate, duly chosen and sworn.

15 (2) APPEALS.—After the Presiding Officer
16 rules on a point of order described in subsection (c),
17 any Senator may appeal the ruling of the Presiding
18 Officer on the point of order as it applies to some
19 or all of the provisions on which the Presiding Offi-
20 cer ruled. A ruling of the Presiding Officer on a
21 point of order described in subsection (c) is sus-
22 tained unless 60 Members of the Senate, duly cho-
23 sen and sworn, vote not to sustain the ruling.

24 (3) DEBATE.—Debate on the motion to waive
25 under paragraph (1) or on an appeal of the ruling

1 of the Presiding Officer under paragraph (2) shall
2 be limited to 1 hour. The time shall be equally di-
3 vided between, and controlled by, the majority leader
4 and the minority leader of the Senate, or their des-
5 ignees.

6 **SEC. 5. RENEGOTIATION OF EXISTING TRADE AGREE-**
7 **MENTS.**

8 The President shall submit to Congress a plan for
9 renegotiating each trade agreement that is in effect on the
10 date of the enactment of this Act to bring the trade agree-
11 ment into compliance with the requirements of section
12 4(b) not later than 90 days before the earlier of the day
13 on which the President—

14 (1) initiates negotiations with a foreign country
15 with respect to a new trade agreement; or

16 (2) submits a bill to Congress to implement a
17 trade agreement.

18 **SEC. 6. SENSE OF CONGRESS ON IMPROVING THE PROCESS**
19 **FOR UNITED STATES TRADE NEGOTIATIONS.**

20 It is the sense of Congress that if Congress considers
21 legislation to provide for special procedures for the consid-
22 eration of bills to implement trade agreements, that legis-
23 lation shall include—

24 (1) criteria for the President to use in deter-
25 mining whether a country—

1 (A) is able to meet its obligations under a
2 trade agreement;

3 (B) meets the requirements described in
4 section 3(c); and

5 (C) is willing and able to meet the require-
6 ments described in section 4(b);

7 (2) a process by which the Committee on Fi-
8 nance of the Senate and the Committee on Ways
9 and Means of the House of Representatives review
10 the determination of the President described in
11 paragraph (1) to verify that the country meets the
12 criteria;

13 (3) requirements for consultation with Congress
14 during trade negotiations that require more frequent
15 consultations than required by the Bipartisan Trade
16 Promotion Authority Act of 2002 (19 U.S.C. 3801
17 et seq.), including a process for consultation with
18 any committee of Congress with jurisdiction over
19 any area covered by the negotiations;

20 (4) binding negotiating objectives and require-
21 ments outlining what must and must not be included
22 in a trade agreement, including the requirements de-
23 scribed in section 4(b);

24 (5) a process for review and certification by
25 Congress to ensure that the negotiating objectives

1 described in paragraph (4) have been met during the
2 negotiations;

3 (6) a process—

4 (A) by which a State may give informed
5 consent to be bound by nontariff provisions in
6 a trade agreement that relate to investment, the
7 service sector, and procurement; and

8 (B) that prevents a State from being
9 bound by the provisions described in subpara-
10 graph (A) if the State has not consented; and

11 (7) a requirement that a trade agreement be
12 approved by a majority vote in both Houses of Con-
13 gress before the President may sign the agreement.

○