

118TH CONGRESS  
1ST SESSION

# S. 446

To provide the President with authority to enter into certain plurilateral trade agreements with benefits only applying to signatories of those agreements, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2023

Mr. COONS (for himself and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide the President with authority to enter into certain plurilateral trade agreements with benefits only applying to signatories of those agreements, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trading System Pres-  
5 ervation Act”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress makes the following find-  
8 ings:

1           (1) The World Trade Organization (in this sec-  
2           tion referred to as the “WTO”) was established to  
3           be a forum for multilateral trade negotiations be-  
4           tween member countries.

5           (2) Scant negotiating progress has been made  
6           at the WTO since its creation in 1995, including  
7           through the failed Doha Round, which was initiated  
8           in 2001.

9           (3) The inability to reach negotiated outcomes  
10          at the WTO has pushed the multilateral trading sys-  
11          tem to the brink of irrelevance and created incen-  
12          tives for members of the WTO to pursue their trade  
13          policy objectives through litigation rather than nego-  
14          tiation.

15          (4) That lack of negotiating progress can be  
16          generally attributed to a small minority of WTO  
17          members that, for a variety of reasons, have exer-  
18          cised an effective veto over negotiations, effectively  
19          prohibiting agreement on new rules to discipline dis-  
20          crimatory practices.

21          (5) Most favored nation (in this section referred  
22          to as “MFN”) obligations, strictly defined, which  
23          appear to generally require equal treatment of all  
24          WTO members, make it difficult to achieve high-  
25          quality plurilateral agreements because of concerns

1 about free ridership by WTO members who are not  
2 party to those agreements.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-  
4 gress that—

5 (1) the WTO system affords a variety of flexi-  
6 bilities for WTO members to negotiate and conclude  
7 plurilateral agreements without extending the bene-  
8 fits negotiated therein to the entire membership of  
9 the WTO on an MFN basis;

10 (2) to reinvigorate the multilateral trading sys-  
11 tem and advance its trade interests, the United  
12 States should exercise its rights to negotiate new  
13 sectoral trade agreements with other interested  
14 WTO members on a plurilateral basis;

15 (3) to facilitate those negotiations, enable a  
16 high level of ambition, and avoid lowest common de-  
17 nominator outcomes, any new benefits negotiated  
18 under those new agreements should be limited to the  
19 participants and not extended to the entire member-  
20 ship of the WTO; and

21 (4) pursuing plurilateral agreements that are  
22 not subject to unconditional MFN will enable the  
23 United States to work with like-minded countries  
24 within the framework of the WTO to develop new  
25 rules to discipline discriminatory, trade distorting,

1 and non-market practices, restore the relevance of  
2 the multilateral trading system, and expand trade to  
3 the benefit of the citizens of the United States.

4 **SEC. 3. BRIEFING ON PLURILATERAL AGREEMENTS WITH**  
5 **BENEFITS APPLYING ONLY TO SIGNATORIES**  
6 **OF THOSE AGREEMENTS.**

7 (a) IN GENERAL.—Not later than 120 days after the  
8 date of the enactment of this Act, the United States Trade  
9 Representative shall provide to the Committee on Finance  
10 of the Senate and the Committee on Ways and Means of  
11 the House of Representatives a classified briefing on the  
12 feasibility and advisability of pursuing and adopting cov-  
13 ered plurilateral trade agreements.

14 (b) ELEMENTS.—The briefing required under sub-  
15 section (a) shall include a discussion of the opportunities,  
16 obstacles, feasibility, and advisability of negotiating and  
17 adopting covered plurilateral trade agreements.

18 (c) DEFINITIONS.—In this section:

19 (1) COVERED PLURILATERAL TRADE AGREE-  
20 MENT.—The term “covered plurilateral trade agree-  
21 ment” means a sector-specific agreement within the  
22 framework of the World Trade Organization involv-  
23 ing foreign countries or foreign territories that form  
24 a subset of the members of the World Trade Organi-

1 zation that does not extend benefits on a most fa-  
2 vored nation basis.

3 (2) MOST FAVORED NATION.—The term “most  
4 favored nation”, with respect to requirements relat-  
5 ing to a trade agreement, means requirements under  
6 the World Trade Organization for nondiscriminatory  
7 trade treatment among all parties to the agreement.

8 **SEC. 4. NEGOTIATING AND TRADE AGREEMENTS AUTHOR-**  
9 **ITY FOR CERTAIN PLURILATERAL AGREE-**  
10 **MENTS WITH BENEFITS APPLYING ONLY TO**  
11 **SIGNATORIES OF THOSE AGREEMENTS.**

12 (a) INITIATION OF NEGOTIATIONS.—

13 (1) IN GENERAL.—In order to enhance the eco-  
14 nomic well-being of the United States, the President  
15 shall initiate negotiations for a covered plurilateral  
16 trade agreement under this section when the Presi-  
17 dent determines that it is in the national interest to  
18 do so.

19 (2) LIMITATION.—The President may not ini-  
20 tiate negotiations for a covered plurilateral trade  
21 agreement under this section until the date on which  
22 the United States Trade Representative provides the  
23 briefing required by section 3(a).

24 (b) AUTHORITY FOR AGREEMENTS.—

1           (1) IN GENERAL.—To strengthen the economic  
2           competitiveness of the United States by improving  
3           trade relations with countries similarly interested,  
4           the President may enter into covered plurilateral  
5           trade agreements in a sector of the economy speci-  
6           fied in subsection (d).

7           (2) TERMINATION OF AUTHORITY.—The au-  
8           thority under paragraph (1) terminates on July 1,  
9           2028.

10          (c) MODIFICATIONS PERMITTED.—

11           (1) IN GENERAL.—Subject to paragraph (2),  
12           the President may proclaim such modification or  
13           continuance of any existing duty or continuance of  
14           existing duty-free or excise treatment as the Presi-  
15           dent determines to be required or appropriate to  
16           carry out an agreement entered into under sub-  
17           section (b).

18           (2) LIMITATION.—Substantial modifications to,  
19           or substantial additional provisions of, an agreement  
20           entered into after July 1, 2028, are not covered by  
21           the authority under paragraph (1).

22          (d) SECTORS OF THE ECONOMY SPECIFIED.—A sec-  
23          tor of the economy specified in this subsection is any of  
24          the following sectors:

25           (1) E-commerce and digital services.

1           (2) Pharmaceuticals and medical counter-  
2           measures.

3           (3) Environmental goods.

4           (4) Services.

5           (5) Any sector that is subject to substantial in-  
6           terference by a foreign government, including  
7           through excessive subsidies or state-owned enter-  
8           prises.

9           (e) CONSULTATION WITH AND NOTIFICATION TO  
10          CONGRESS.—The President shall consult with Congress  
11          regarding, and notify Congress of, the intention of the  
12          President to enter into an agreement under subsection (b)  
13          or to make a proclamation under subsection (c).

14          (f) PARTICIPATING COUNTRIES.—

15                 (1) IN GENERAL.—Subject to paragraph (2),  
16                 the President may determine which foreign countries  
17                 or foreign territories to negotiate with toward an  
18                 agreement under this section and, after the imple-  
19                 mentation of any such agreement, the President  
20                 may, as conditions warrant, identify and engage in  
21                 negotiations with additional countries or territories  
22                 that wish to accede to the agreement.

23                 (2) NON-MARKET ECONOMY COUNTRY.—

24                         (A) IN GENERAL.—The President may not  
25                         negotiate an agreement under this section with

1 a foreign country or foreign territory deter-  
 2 mined to be a non-market economy country  
 3 pursuant to section 771(18) of the Tariff Act of  
 4 1930 (19 U.S.C. 1677(18)).

5 (B) AFTER ENTRY INTO FORCE.—A for-  
 6 eign country or foreign territory described in  
 7 subparagraph (A) may accede to a completed  
 8 agreement negotiated pursuant to this section  
 9 after entry into force of the agreement if a joint  
 10 resolution is first enacted approving the acces-  
 11 sion of that country to the agreement.

12 (g) BILLS QUALIFYING FOR TRADE AUTHORITIES  
 13 PROCEDURES.—

14 (1) IMPLEMENTING BILLS.—

15 (A) IN GENERAL.—The provisions of sec-  
 16 tion 151 of the Trade Act of 1974 (19 U.S.C.  
 17 2191) apply to a bill of either House of Con-  
 18 gress which contains provisions described in  
 19 subparagraph (B) to the same extent as such  
 20 section 151 applies to implementing bills under  
 21 that section. A bill to which this paragraph ap-  
 22 plies shall hereafter in this section be referred  
 23 to as an “implementing bill”.

24 (B) PROVISIONS SPECIFIED.—The provi-  
 25 sions described in this subparagraph are—



1 (i) a provision approving a trade  
2 agreement entered into under this section  
3 and approving the statement of adminis-  
4 trative action, if any, proposed to imple-  
5 ment such trade agreement; and

6 (ii) if changes in existing laws or new  
7 statutory authority are required to imple-  
8 ment such trade agreement or agreements,  
9 only such provisions as are strictly nec-  
10 essary or appropriate to implement such  
11 trade agreement or agreements, either re-  
12 pealing or amending existing laws or pro-  
13 viding new statutory authority.

14 (2) DEADLINE FOR SUBMISSION OF BILL.—The  
15 procedures under paragraph (1) apply to imple-  
16 menting bills submitted with respect to trade agree-  
17 ments entered into under this section before July 1,  
18 2028.

19 (h) RELATIONSHIP TO BIPARTISAN CONGRESSIONAL  
20 TRADE PRIORITIES AND ACCOUNTABILITY ACT OF  
21 2015.—An agreement under this section shall not enter  
22 into force with respect to the United States and an imple-  
23 menting bill shall not qualify for trade authorities proce-  
24 dures under subsection (g), including an agreement that  
25 does not require changes to United States law or an imple-

1 menting bill in connection therewith, unless the following  
2 requirements under the Bipartisan Congressional Trade  
3 Priorities and Accountability Act of 2015 (19 U.S.C. 4201  
4 et seq.) are carried out with respect to that agreement  
5 or implementing bill to the same extent as would be re-  
6 quired of an agreement entered into under section 103(b)  
7 of that Act (19 U.S.C. 4202(b)), notwithstanding the expi-  
8 ration of authority to enter into an agreement under such  
9 section 103(b):

10 (1) The trade negotiating objectives under sec-  
11 tion 102 of that Act (19 U.S.C. 4201).

12 (2) The congressional oversight and consulta-  
13 tion requirements under section 104 of that Act (19  
14 U.S.C. 4203).

15 (3) The notification, consultation, and reporting  
16 requirements under section 105 of that Act (19  
17 U.S.C. 4204).

18 (4) The implementation procedures under sec-  
19 tion 106 of that Act (19 U.S.C. 4205).

20 (i) DEFINITIONS.—In this section:

21 (1) COVERED PLURILATERAL TRADE AGREE-  
22 MENT.—The term “covered plurilateral trade agree-  
23 ment” means a sector-specific agreement within the  
24 framework of the World Trade Organization involv-  
25 ing foreign countries or foreign territories that form

1 a subset of the members of the World Trade Organi-  
2 zation that does not extend benefits on a most fa-  
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4 (2) MOST FAVORED NATION.—The term “most  
5 favored nation”, with respect to requirements relat-  
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