

109TH CONGRESS
1ST SESSION

S. 1551

To clarify that the overall trade negotiating objectives of the United States include avoiding provisions in trade agreements that restrict the access of consumers in the United States to pharmaceutical imports, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2005

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

A BILL

To clarify that the overall trade negotiating objectives of the United States include avoiding provisions in trade agreements that restrict the access of consumers in the United States to pharmaceutical imports, 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 “Protecting Free Trade
5 in Pharmaceuticals Act of 2005”.

1 **SEC. 2. PHARMACEUTICAL IMPORTS; OBJECTIVES IN NEGO-**
2 **TIATION OF TRADE AGREEMENTS.**

3 (a) IN GENERAL.—Section 2102(a) of the Bipartisan
4 Trade Promotion Authority Act of 2002 (19 U.S.C.
5 3802(a)) is amended—

6 (1) by striking “and” at the end of paragraph
7 (8);

8 (2) by striking the period at the end of para-
9 graph (9) and inserting “; and”; and

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

11 “(10) to avoid negotiating trade agreements
12 that could restrict, or be interpreted to restrict, the
13 access of consumers in the United States to pharma-
14 ceutical imports from countries with a pharma-
15 ceutical infrastructure that is equivalent, or supe-
16 rior, to that of the United States—

17 “(A) by or through the use and develop-
18 ment of the doctrine of international patent ex-
19 haustion, as interpreted or applied by United
20 States courts on the date of enactment of this
21 Act; or

22 “(B) by making it a violation for the
23 United States to enact legislation permitting
24 pharmaceutical imports without the consent of
25 patent owners when the products involved have
26 been sold outside the United States.”.

1 (b) CERTAIN PROHIBITIONS.—Notwithstanding any
2 other provision of law, the United States Trade Represent-
3 ative—

4 (1) may not enter into a bilateral or multilat-
5 eral trade agreement that, with respect to the impor-
6 tation of pharmaceutical products without the con-
7 sent of the patent owners, includes provisions that
8 are the same or similar to the provisions of—

9 (A) paragraph 2 of Article 16.7 of the
10 United States-Singapore Free Trade Agree-
11 ment;

12 (B) paragraph 4 of Article 17.9 of the
13 United States-Australia Free Trade Agreement;
14 or

15 (C) paragraph 4 of Article 15.9 of the
16 United States-Morocco Free Trade Agreement;
17 and

18 (2) may not, with respect to the importation of
19 pharmaceutical products without the consent of the
20 patent owners, negotiate an agreement or under-
21 standing with respect to any of the provisions re-
22 ferred to in paragraph (1).

23 (c) INTELLECTUAL PROPERTY; ADVISORY COM-
24 MITTEE FOR UNITED STATES TRADE REPRESENTA-
25 TIVE.—With respect to the advisory committee established

1 to provide advice to the United States Trade Representa-
2 tive on matters relating to intellectual property, the Rep-
3 resentative shall ensure that, for each meeting that is held
4 after the date of the enactment of this Act and relates
5 or potentially relates to the importation of pharmaceutical
6 products into the United States—

7 (1) the membership of the committee includes
8 members who represent the interests of consumers
9 of such products; and

10 (2) the number of such members constitutes not
11 less than 10 percent of the membership of the com-
12 mittee.

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