

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 496

To amend United States trade laws to eliminate foreign barriers to exports of United States goods and services, to restore rights under trade remedy laws, to strengthen enforcement of United States intellectual property rights and health and safety laws at United States borders, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2009

Mr. RANGEL (for himself, Mr. LEVIN, Mr. NEAL of Massachusetts, Ms. BERKLEY, Ms. SCHWARTZ, Mr. DAVIS of Alabama, Mr. VISCLOSKY, Mr. TIM MURPHY of Pennsylvania, Mr. ALTMIRE, and Mr. SCHAUER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Rules and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend United States trade laws to eliminate foreign barriers to exports of United States goods and services, to restore rights under trade remedy laws, to strengthen enforcement of United States intellectual property rights and health and safety laws at United States borders, 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 AND TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Trade Enforcement Act of 2009”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title and table of contents.

**TITLE I—ELIMINATION OF FOREIGN BARRIERS TO EXPORTS OF  
U.S. GOODS AND SERVICES**

Sec. 101. Identification of trade expansion priorities.

Sec. 102. Office of the Congressional Trade Enforcer.

Sec. 103. Appointment of General Counsel of the U.S. Trade Representative.

Sec. 104. Identification of countries that maintain unfair technical barriers to  
trade or unfair sanitary or phytosanitary measures.

**TITLE II—RESTORATION OF RIGHTS UNDER TRADE REMEDY  
LAWS**

Sec. 201. Application of countervailing duties to nonmarket economy countries  
and strengthening application of the law.

Sec. 202. Treatment of individual business enterprises in nonmarket economy  
countries.

Sec. 203. Revocation of nonmarket economy country status.

Sec. 204. WTO Appellate Body rulings requiring offsets for non-dumped com-  
parisons.

Sec. 205. Role of WTO Appellate Body rulings in the WTO dispute settlement  
system.

Sec. 206. Clarification regarding material injury by reason of imports of subject  
merchandise.

Sec. 207. Standard for presidential action on ITC finding of market disruption.

Sec. 208. Application of amendments to goods from Canada and Mexico.

Sec. 209. Rule of construction.

**TITLE III—ENFORCEMENT OF HEALTH AND SAFETY LAWS AND  
INTELLECTUAL PROPERTY RIGHTS AT U.S. BORDERS**

**Subtitle A—Import Safety**

Sec. 301. Definitions.

Sec. 302. Obtaining data on goods destined for importation into the United  
States.

Sec. 303. Interagency coordination.

Sec. 304. Development of import safety program.

Sec. 305. Information exchange process.

Sec. 306. Training.

Sec. 307. Sanctions on certain suppliers.

Sec. 308. Report to Congress.

**Subtitle B—Strengthening Enforcement of Intellectual Property Rights at  
U.S. Borders**

CHAPTER 1—COORDINATION OF ENFORCEMENT OF INTELLECTUAL  
PROPERTY RIGHTS

- Sec. 311. Definitions.
- Sec. 312. Director of Intellectual Property Rights Enforcement.
- Sec. 313. Strategic plan for the enforcement of intellectual property rights.
- Sec. 314. CBP and ICE coordinators.

CHAPTER 2—REGULATORY AND POLICY IMPROVEMENTS AGAINST  
COUNTERFEITING AND PIRACY

- Sec. 321. In general.
- Sec. 322. Identification of certain unlawful goods.
- Sec. 323. Training in new technologies.
- Sec. 324. Disclosure of information and samples of shipments to intellectual property owners.
- Sec. 325. Improvements to recordation process.
- Sec. 326. Identification of low-risk shippers.
- Sec. 327. “Watch List” database.
- Sec. 328. Civil fines for importation of pirated or counterfeit goods.

CHAPTER 3—TRAINING ENHANCEMENTS

- Sec. 331. International training and technical assistance enhancements.

CHAPTER 4—NEW LEGAL TOOLS FOR BORDER ENFORCEMENT

- Sec. 341. Expanded prohibitions on importation or exportation of counterfeit or pirated goods.
- Sec. 342. Declarations regarding counterfeit and infringing merchandise.

CHAPTER 5—REGULATORY AUTHORITY

- Sec. 351. Regulatory authority.

Subtitle C—Administrative Provisions

- Sec. 361. Definitions.
- Sec. 362. Advisory Committee on Import Safety and Intellectual Property Enforcement.
- Sec. 363. Staffing enhancements at CBP.
- Sec. 364. Staffing enhancements at ICE.

Subtitle D—Authorization of Appropriations

- Sec. 371. Authorization of appropriations.

1 **TITLE I—ELIMINATION OF FOR-**  
2 **EIGN BARRIERS TO EXPORTS**  
3 **OF U.S. GOODS AND SERVICES**

4 **SEC. 101. IDENTIFICATION OF TRADE EXPANSION PRIOR-**  
5 **ITIES.**

6 (a) IDENTIFICATION OF TRADE EXPANSION PRIOR-  
7 ITIES.—Section 310 of the Trade Act of 1974 is amended  
8 to read as follows:

9 **“SEC. 310. IDENTIFICATION OF TRADE EXPANSION PRIOR-**  
10 **ITIES.**

11 “(a) IDENTIFICATION.—

12 “(1) IDENTIFICATION AND REPORT.—Within 30  
13 days after the submission in each calendar year of  
14 the report required by section 181(b), the Trade  
15 Representative shall—

16 “(A) review United States trade expansion  
17 priorities;

18 “(B) identify priority foreign country prac-  
19 tices the elimination of which is likely to have  
20 the most significant potential to increase  
21 United States exports, either directly or  
22 through the establishment of a beneficial prece-  
23 dent; and

24 “(C) submit to the Congressional Trade  
25 Enforcer, the Committee on Finance of the

1 Senate, and the Committee on Ways and Means  
2 of the House of Representatives and publish in  
3 the Federal Register a report on the priority  
4 foreign country practices so identified.

5 “(2) FACTORS.—In identifying priority foreign  
6 country practices under paragraph (1), the Trade  
7 Representative shall take into account all relevant  
8 factors, including—

9 “(A) the major barriers and trade dis-  
10 torting practices described in the National  
11 Trade Estimate Report required under section  
12 181(b);

13 “(B) the trade agreements to which a for-  
14 eign country is a party and its compliance with  
15 those agreements;

16 “(C) the medium- and long-term implica-  
17 tions of foreign government procurement plans;  
18 and

19 “(D) the international competitive position  
20 and export potential of United States products  
21 and services.

22 “(3) CONTENTS OF REPORT.—The Trade Rep-  
23 resentative may include in the report, if appro-  
24 priate—

1           “(A) a description of foreign country prac-  
2           tices that may in the future warrant identifica-  
3           tion as priority foreign country practices; and

4           “(B) a statement about other foreign coun-  
5           try practices that were not identified because  
6           they are already being addressed by provisions  
7           of United States trade law, by existing bilateral  
8           trade agreements, or as part of trade negotia-  
9           tions with other countries, and because progress  
10          is being made toward the elimination of such  
11          practices.

12          “(b) INITIATION OF CONSULTATIONS.—By no later  
13          than the date that is 21 days after the date on which a  
14          report is submitted to the Congressional Trade Enforcer  
15          and the appropriate congressional committees under sub-  
16          section (a)(1)(C), the Trade Representative should seek  
17          consultations with each foreign country identified in the  
18          report as engaging in priority foreign country practices for  
19          the purpose of reaching a satisfactory resolution of such  
20          priority practices.

21          “(c) INITIATION OF INVESTIGATION.—If the Trade  
22          Representative seeks consultations under subsection (b)  
23          and a satisfactory resolution of the priority foreign coun-  
24          try practices involved has not been reached within 90 days  
25          after the date on which a report is submitted to the appro-

1 priate congressional committees under subsection (a)(1),  
2 the Trade Representative shall initiate under section  
3 302(b)(1) an investigation under this chapter with respect  
4 to such priority foreign country practices.

5 “(d) AGREEMENTS FOR THE ELIMINATION OF BAR-  
6 RIERS.—In the consultations with a foreign country that  
7 the Trade Representative is required to request under sec-  
8 tion 303(a) with respect to an investigation initiated by  
9 reason of subsection (c), the Trade Representative shall  
10 seek to negotiate an agreement that provides for the elimi-  
11 nation of the practices that are the subject of the inves-  
12 tigation as quickly as possible or, if elimination of the  
13 practices is not feasible, an agreement that provides for  
14 compensatory trade benefits.

15 “(e) REPORTS.—The Trade Representative shall in-  
16 clude in the semiannual report required by section 309(3)  
17 a report on the status of any investigations initiated pur-  
18 suant to subsection (c) and, where appropriate, the extent  
19 to which such investigations have led to increased opportu-  
20 nities for the export of products and services of the United  
21 States.

22 “(f) DEFINITION.—For purposes of this section, the  
23 term ‘Congressional Trade Enforcer’ means the head of  
24 the Office of the Congressional Trade Enforcer established

1 under section 102 of the Trade Enforcement Act of  
2 2009.”.

3 (b) CONFORMING AMENDMENT.—The item relating  
4 to section 310 in the table of contents of the Trade Act  
5 of 1974 is amended to read as follows:

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

6 **SEC. 102. OFFICE OF THE CONGRESSIONAL TRADE EN-**  
7 **FORCER.**

8 (a) ESTABLISHMENT.—There is established in the  
9 legislative branch an Office of the Congressional Trade  
10 Enforcer (in this section referred to as the “Office”).

11 (b) CONGRESSIONAL TRADE ENFORCER.—

12 (1) APPOINTMENT AND TERMS.—The head of  
13 the Office shall be a Congressional Trade Enforcer,  
14 who shall be appointed to a term of 2 years begin-  
15 ning on the first day of each new Congress. Appoint-  
16 ments in odd-numbered Congresses shall be made by  
17 the Speaker of the House of Representatives, in con-  
18 sultation with the minority leader of the House of  
19 Representatives, the majority leader of the Senate,  
20 and the minority leader of the Senate, after consid-  
21 ering recommendations received from the Committee  
22 on Ways and Means of the House of Representatives  
23 and the Committee on Finance of the Senate. Ap-  
24 pointments in even-numbered Congresses shall be  
25 made by the majority leader of the Senate, in con-



1 sultation with the minority leader of the Senate, the  
2 Speaker of the House of Representatives, and the  
3 minority leader of the House of Representatives,  
4 after considering recommendations received from the  
5 Committee on Finance of the Senate and the Com-  
6 mittee on Ways and Means of the House of Rep-  
7 resentatives. The Congressional Trade Enforcer  
8 shall be appointed without regard to political affili-  
9 ation and solely on the basis of fitness to perform  
10 the functions described in subsection (d).

11 (2) CONTINUED SERVICE.—An individual may  
12 serve as the Congressional Trade Enforcer for more  
13 than one term, and the person making the appoint-  
14 ment under paragraph (1) should look favorably  
15 upon reappointing the individual serving as the Con-  
16 gressional Trade Enforcer. An individual serving as  
17 Congressional Trade Enforcer at the expiration of a  
18 term may continue to serve until a successor is ap-  
19 pointed. The Congressional Trade Enforcer may be  
20 removed by either the House of Representatives or  
21 the Senate by resolution.

22 (3) COMPENSATION.—The Congressional Trade  
23 Enforcer shall receive compensation at an annual  
24 rate of pay that is equal to the lower of—

1 (A) the highest annual rate of compensa-  
2 tion of any officer of the Senate; or

3 (B) the highest annual rate of compensa-  
4 tion of any officer of the House of Representa-  
5 tives.

6 (c) PERSONNEL.—The Congressional Trade Enforcer  
7 shall appoint and fix the compensation of such personnel  
8 as may be necessary to carry out the functions described  
9 in subsection (d). All personnel of the Office shall be ap-  
10 pointed without regard to political affiliation and solely on  
11 the basis of their fitness to perform their duties. The Con-  
12 gressional Trade Enforcer may prescribe the duties and  
13 responsibilities of the personnel of the Office, and delegate  
14 to them authority to perform any of the duties, powers,  
15 and functions imposed on the Office. For purposes of pay  
16 (other than the pay of the Congressional Trade Enforcer)  
17 and employment benefits, rights, and privileges, all per-  
18 sonnel of the Office shall be treated as if they were em-  
19 ployees of the House of Representatives.

20 (d) PURPOSE AND FUNCTIONS.—

21 (1) PURPOSE.—The purpose of the Congres-  
22 sional Trade Enforcer shall be to ensure compliance  
23 by trading partners of the United States with trade  
24 agreements to which the United States and such  
25 trading partners are parties.

1 (2) FUNCTIONS; ACTIONS BY USTR.—

2 (A) IN GENERAL.—The Congressional  
3 Trade Enforcer shall have the authority to in-  
4 vestigate foreign trade practices that are bar-  
5 riers to United States exports and issue indict-  
6 ments in cases where such practices violate any  
7 of the Uruguay Round Agreements or any bilat-  
8 eral or regional trade agreement to which the  
9 United States is a party.

10 (B) SUBMISSION OF INDICTMENTS.—The  
11 Congressional Trade Enforcer shall submit in-  
12 dictments referred to in subparagraph (A) to  
13 the Committee on Ways and Means of the  
14 House of Representatives, the Committee on  
15 Finance of the Senate, and the United States  
16 Trade Representative.

17 (C) ACTION PURSUANT TO INDICTMENT.—  
18 Within 30 days after receiving an indictment  
19 under subparagraph (B), the Trade Representa-  
20 tive should commence dispute resolution proce-  
21 dures in the appropriate forum against the  
22 country or countries that are the subject of the  
23 indictment unless—

24 (i) before the date of filing, the for-  
25 eign country or countries involved enter

1           into an agreement with the United States  
2           to eliminate the practice that is incon-  
3           sistent with its international obligations; or

4           (ii) in extraordinary cases, the filing  
5           of the case would cause serious harm to  
6           the national security of the United States.

7           (D) REPORT.—If the Trade Representative  
8           does not commence dispute resolution proce-  
9           dures under subparagraph (C) pursuant to an  
10          indictment under subparagraph (B), the Trade  
11          Representative shall, not later than 60 days  
12          after receiving the indictment, submit to the  
13          Committee on Ways and Means of the House of  
14          Representatives and the Committee on Finance  
15          of the Senate a report containing the reasons  
16          therefor and shall publish notice of the decision,  
17          together with a summary of such reasons, in  
18          the Federal Register.

19          (3) VOTE BY CONGRESSIONAL COMMITTEES.—  
20          During the 60-day period after the Trade Represent-  
21          ative submits a report under subparagraph (D), the  
22          Committee on Ways and Means of the House of  
23          Representatives and the Committee on Finance of  
24          the Senate may each vote to indicate the agreement  
25          or disagreement of the committee with the decision

1 of the Trade Representative not to commence dis-  
2 pute resolution procedures.

3 (4) DEFINITIONS.—In this subsection:

4 (A) INDICTMENT.—The term “indictment”  
5 means a formal written analysis setting forth  
6 the legal explanation of the manner in which a  
7 foreign trade practice of a country or countries  
8 violates any of the Uruguay Round Agreements  
9 or any bilateral or regional trade agreement to  
10 which the United States is a party.

11 (B) URUGUAY ROUND AGREEMENTS.—The  
12 term “Uruguay Round Agreements” means any  
13 of the agreements approved by the Congress  
14 under section 101(a)(1) of the Uruguay Round  
15 Agreements Act (19 U.S.C. 3511(a)(1)).

16 (e) OFFICE OF MARKET ACCESS ASSISTANCE.—

17 (1) ESTABLISHMENT.—There is established in  
18 the Office of the Congressional Trade Enforcer an  
19 Office of Market Access Assistance.

20 (2) FUNCTIONS.—The Office of Market Access  
21 Assistance shall provide technical and legal assist-  
22 ance and advice to eligible small businesses to enable  
23 such small businesses to prepare and file petitions  
24 (other than those which, in the opinion of the Office

1 of Market Access Assistance, are frivolous) under  
2 section 302 of the Trade Act of 1974.

3 (3) DEFINITION.—In this subsection, the term  
4 “eligible small business” means any business con-  
5 cern which, in the judgment of the Office of Market  
6 Access Assistance, due to its small size, has neither  
7 adequate internal resources nor financial ability to  
8 obtain qualified outside assistance in preparing and  
9 filing petitions and complaints under section 302 of  
10 the Trade Act of 1974. In determining whether a  
11 business concern is an “eligible small business,” the  
12 Office of Market Access Assistance may consult with  
13 the Administrator of the Small Business Administra-  
14 tion and the heads of other appropriate Federal de-  
15 partments and agencies.

16 (f) RELATIONSHIP TO EXECUTIVE BRANCH.—The  
17 Congressional Trade Enforcer is authorized to secure in-  
18 formation, data, estimates, and statistics directly from the  
19 various departments, agencies, and establishments of the  
20 executive branch of Government and the regulatory agen-  
21 cies and commissions of the Government. All such depart-  
22 ments, agencies, establishments, and regulatory agencies  
23 and commissions shall furnish the Congressional Trade  
24 Enforcer with any available material that the Congres-  
25 sional Trade Enforcer determines to be necessary in the

1 performance of the functions of the Office. The Congres-  
2 sional Trade Enforcer is also authorized, upon agreement  
3 with the head of any such department, agency, establish-  
4 ment, or regulatory agency or commission, to use its serv-  
5 ices, facilities, and personnel, with or without reimburse-  
6 ment; and the head of each such department, agency, es-  
7 tablishment, or regulatory agency or commission is au-  
8 thorized to provide to the Office such services, facilities,  
9 and personnel.

10 (g) RELATIONSHIP TO OTHER AGENCIES OF CON-  
11 GRESS.—In carrying out the functions of the Office, and  
12 for the purpose of coordinating the operations of the Of-  
13 fice with those of other congressional agencies with a view  
14 to using most effectively the information, services, and ca-  
15 pabilities of all such agencies in carrying out the respon-  
16 sibilities assigned to each, the Congressional Trade En-  
17 forcer is authorized to obtain information, data, estimates,  
18 and statistics developed by the Government Accountability  
19 Office and the Library of Congress, and (upon agreement  
20 with them) to use their services, facilities, and personnel,  
21 with or without reimbursement. The Comptroller General  
22 and the Librarian of Congress are authorized to provide  
23 the Office with the information, data, estimates, and sta-  
24 tistics, and the services, facilities, and personnel, referred  
25 to in the preceding sentence.

1 (h) AUTHORIZATIONS OF APPROPRIATIONS.—There  
2 are authorized to be appropriated to the Office such sums  
3 as may be necessary for each fiscal year to carry out this  
4 section.

5 **SEC. 103. APPOINTMENT OF GENERAL COUNSEL OF THE**  
6 **U.S. TRADE REPRESENTATIVE.**

7 (a) ESTABLISHMENT OF POSITION.—Section  
8 141(b)(2) of the Trade Act of 1974 (19 U.S.C.  
9 2171(b)(2)) is amended to read as follows:

10 “(2) There shall be in the Office 3 Deputy United  
11 States Trade Representatives, 1 Chief Agriculture Nego-  
12 tiator, and 1 General Counsel. The 3 Deputy United  
13 States Trade Representatives, the Chief Agriculture Nego-  
14 tiator, and the General Counsel shall be appointed by the  
15 President, by and with the advice and consent of the Sen-  
16 ate. As an exercise of the rulemaking of the Senate, any  
17 nomination of a Deputy United States Trade Representa-  
18 tive, the Chief Agricultural Negotiator, or the General  
19 Counsel submitted to the Senate for its advice and con-  
20 sent, and referred to a committee, shall be referred to the  
21 Committee on Finance. Each Deputy United States Trade  
22 Representative, the Chief Agricultural Negotiator, and the  
23 General Counsel shall hold office at the pleasure of the  
24 President and shall have the rank of Ambassador.”.



1 (b) FUNCTIONS OF POSITION.—Section 141(c) of the  
2 Trade Act of 1974 (19 U.S.C. 2171(c)) is amended—

3 (1) by aligning paragraph (5) with paragraph  
4 (4); and

5 (2) by adding at the end the following new  
6 paragraph:

7 “(6) The principal function of the General Counsel  
8 shall be to ensure that United States trading partners  
9 comply with trade agreements to which the United States  
10 and such trading partners are parties (including by inves-  
11 tigating and prosecuting disputes before the World Trade  
12 Organization and pursuant to other trade agreements to  
13 which the United States is a party), to defend the United  
14 States in dispute settlement proceedings under such trade  
15 agreements, and otherwise to provide legal advice to the  
16 United States Trade Representative. The General Counsel  
17 shall perform such other functions as the United States  
18 Trade Representative may direct.”.

19 (c) COMPENSATION.—Section 5314 of title 5, United  
20 States Code, is amended by inserting after “Chief Agricul-  
21 tural Negotiator” the following:

22 “General Counsel.”.

1 **SEC. 104. IDENTIFICATION OF COUNTRIES THAT MAINTAIN**  
2 **UNFAIR TECHNICAL BARRIERS TO TRADE OR**  
3 **UNFAIR SANITARY OR PHYTOSANITARY**  
4 **MEASURES.**

5 (a) IDENTIFICATION REQUIRED.—

6 (1) IN GENERAL.—Chapter 8 of title I of the  
7 Trade Act of 1974 is amended by adding at the end  
8 the following:

9 **“SEC. 183. IDENTIFICATION OF COUNTRIES THAT MAINTAIN**  
10 **UNFAIR TECHNICAL BARRIERS TO TRADE OR**  
11 **UNFAIR SANITARY OR PHYTOSANITARY**  
12 **MEASURES.**

13 “(a) IN GENERAL.—Not later than the date that is  
14 30 days after the date on which the annual report is re-  
15 quired to be submitted to Congressional committees under  
16 section 181(b), the United States Trade Representative  
17 (in this section referred to as the ‘Trade Representative’)  
18 shall identify—

19 “(1) those foreign countries that maintain tech-  
20 nical barriers to trade, or sanitary or phytosanitary  
21 measures, that deny fair and equitable market ac-  
22 cess to United States products; and

23 “(2) those foreign countries identified under  
24 paragraph (1) that are determined by the Trade  
25 Representative to be priority foreign countries.

26 “(b) SPECIAL RULES FOR IDENTIFICATIONS.—

1           “(1) CRITERIA.—In identifying priority foreign  
2 countries under subsection (a)(2), the Trade Rep-  
3 resentative shall identify only those foreign coun-  
4 tries—

5                   “(A) that have the most onerous or egre-  
6 gious acts, policies, or practices that deny fair  
7 and equitable market access to United States  
8 products;

9                   “(B) whose acts, policies, or practices de-  
10 scribed in subparagraph (A) have the greatest  
11 adverse impact (actual or potential) on the rel-  
12 evant United States products; and

13                   “(C) that are not—

14                           “(i) entering into good faith negotia-  
15 tions, or

16                           “(ii) making significant progress in  
17 bilateral or multilateral negotiations,

18 to provide fair and equitable market access to  
19 United States products.

20           “(2) CONSULTATION AND CONSIDERATION RE-  
21 QUIREMENTS.—In identifying priority foreign coun-  
22 tries under subsection (a)(2), the Trade Representa-  
23 tive shall—

24                   “(A) consult with the Secretary of Com-  
25 merce, the Secretary of Agriculture, the Admin-

1           istrator of the Food and Drug Administration,  
2           and the heads of other appropriate Federal  
3           agencies; and

4           “(B) take into account information pro-  
5           vided by such other sources as may be available  
6           to the Trade Representative and such informa-  
7           tion as may be submitted to the Trade Rep-  
8           resentative by interested persons, including in-  
9           formation contained in reports submitted under  
10          section 181(b) and petitions submitted under  
11          section 302.

12          “(3) CONSIDERATION OF HISTORICAL FAC-  
13          TORS.—In identifying foreign countries under para-  
14          graphs (1) and (2) of subsection (a), the Trade Rep-  
15          resentative shall take into account—

16                 “(A) the history of unfair technical bar-  
17                 riers to trade and unfair sanitary or  
18                 phytosanitary measures of the foreign country,  
19                 including any previous identification under sub-  
20                 section (a)(2); and

21                 “(B) the history of efforts of the United  
22                 States, and the response of the foreign country,  
23                 to remove unfair technical barriers to trade, or  
24                 sanitary or phytosanitary measures, that deny

1 fair and equitable market access to United  
2 States products.

3 “(c) REVOCATIONS AND ADDITIONAL IDENTIFICA-  
4 TIONS.—

5 “(1) AUTHORITY TO ACT AT ANY TIME.—If in-  
6 formation available to the Trade Representative indi-  
7 cates that such action is appropriate, the Trade  
8 Representative may at any time—

9 “(A) revoke the identification of any for-  
10 eign country as a priority foreign country under  
11 this section; or

12 “(B) identify any foreign country as a pri-  
13 ority foreign country under this section.

14 “(2) REVOCATION REPORTS.—The Trade Rep-  
15 resentative shall include in the semiannual report  
16 submitted to the Congress under section 309(3) a  
17 detailed explanation of the reasons for the revocation  
18 under paragraph (1) of the identification of any for-  
19 eign country as a priority foreign country under this  
20 section.

21 “(d) DEFINITIONS.—In this section:

22 “(1) SANITARY OR PHYTOSANITARY MEAS-  
23 URE.—The term ‘sanitary or phytosanitary measure’  
24 means a sanitary or phytosanitary measure as de-  
25 fined by Annex A of the Agreement on the Applica-

1 tion of Sanitary and Phytosanitary Measures (de-  
2 scribed in section 101(d)(3) of the Uruguay Round  
3 Agreements Act (19 U.S.C. 3511(d)(3)).

4 “(2) TECHNICAL BARRIERS TO TRADE.—The  
5 term ‘technical barriers to trade’ means technical  
6 regulations, standards, and conformity assessment  
7 procedures as defined by Annex 1 of the Agreement  
8 on Technical Barriers to Trade (described in section  
9 101(d)(5) of the Uruguay Round Agreements Act  
10 (19 U.S.C. 3511(d)(5)).

11 “(3) DENIAL OF FAIR AND EQUITABLE MARKET  
12 ACCESS.—

13 “(A) IN GENERAL.—A technical barrier to  
14 trade or a sanitary or phytosanitary measure  
15 may deny fair and equitable market access to  
16 United States products regardless of whether it  
17 is in violation of, or inconsistent with, the inter-  
18 national legal rights of the United States.

19 “(B) EXAMPLES OF UNFAIR AND INEQUI-  
20 TABLE TECHNICAL BARRIERS TO TRADE.—A  
21 technical barrier to trade that denies fair and  
22 equitable market access to United States prod-  
23 ucts may include, but is not limited to, one  
24 that—

1           “(i) is more restrictive than necessary  
2 to achieve a legitimate objective of the for-  
3 eign country, or are applied more strictly  
4 than necessary;

5           “(ii) is not based on international  
6 standards, and there is no basis to con-  
7 clude that the international standards  
8 would be an ineffective or inappropriate  
9 means for the fulfilment of the legitimate  
10 objectives pursued;

11           “(iii) fails to give positive consider-  
12 ation to equivalent technical regulations of  
13 the United States that adequately fulfil the  
14 objectives of the regulations of the foreign  
15 country;

16           “(iv) establishes requirements in  
17 terms of design or descriptive characteris-  
18 tics, rather than performance;

19           “(v) is not transparent, such as a  
20 measure that is not published or does not  
21 provide meaningful opportunity for com-  
22 ment; or

23           “(vi) unjustifiably discriminates or  
24 has the effect of discriminating between  
25 imported and domestically produced prod-

1           ucts, or products imported from different  
2           countries.

3           “(C) EXAMPLES OF UNFAIR AND INEQUI-  
4           TABLE SANITARY OR PHYTOSANITARY MEAS-  
5           URES.—A sanitary or phytosanitary measure  
6           that denies fair and equitable market access to  
7           United States products may include, but is not  
8           limited to, one that—

9                   “(i) is not based on scientific prin-  
10                  ciples or is maintained without sufficient  
11                  scientific evidence;

12                   “(ii) discriminates arbitrarily or  
13                  unjustifiably where identical or similar con-  
14                  ditions prevail, or is applied in a manner  
15                  that would constitute a disguised restric-  
16                  tion on international trade;

17                   “(iii) is not based on an assessment of  
18                  the risks to human, animal, or plant life or  
19                  health, or does not take into account risk  
20                  assessment techniques developed by any  
21                  relevant international organizations; or

22                   “(iv) is not transparent, such as a  
23                  measure that is not published or does not  
24                  provide meaningful opportunity for com-  
25                  ment.



1           “(e) PUBLICATION.—The Trade Representative shall  
2 publish in the Federal Register a list of foreign countries  
3 identified under subsection (a) and shall make such revi-  
4 sions to the list as may be required by reason of action  
5 under subsection (c).

6           “(f) ANNUAL REPORT.—The Trade Representative  
7 shall, not later than the date by which countries are identi-  
8 fied under subsection (a), transmit to the Committee on  
9 Ways and Means of the House of Representatives and the  
10 Committee on Finance of the Senate, a report on the ac-  
11 tions taken under this section during the 12 months pre-  
12 ceding such report, and the reasons for such actions, in-  
13 cluding a description of progress made toward ensuring  
14 that technical barriers to trade and sanitary or  
15 phytosanitary measures do not deny fair and equitable  
16 market access for United States products.”.

17           (2) CLERICAL AMENDMENT.—The table of con-  
18 tents for the Trade Act of 1974 is amended by in-  
19 serting after the item relating to section 182 the fol-  
20 lowing:

“Sec. 183. Identification of countries that maintain unfair technical barriers to  
trade or unfair sanitary or phytosanitary measures.”.

21           (b) ACTIONS BY UNITED STATES TRADE REP-  
22 RESENTATIVE.—Section 301(d)(3)(B) of the Trade Act of  
23 1974 (19 U.S.C. 2411(d)(3)(B)) is amended—

24           (1) in clause (ii), by striking “or” at the end;

1           (2) in clause (iii), by striking the period at the  
2           end and inserting “or”; and

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

4                   “(iv) are technical barriers to trade, or  
5                   sanitary or phytosanitary measures, that deny  
6                   fair and equitable market access to United  
7                   States products.”.

8           (c) INITIATION OF INVESTIGATIONS.—Section  
9           302(b)(2) of the Trade Act of 1974 (19 U.S.C.  
10           2412(b)(2)) is amended—

11                   (1) in subparagraph (A), in the matter pre-  
12                   ceding clause (i), by inserting “or 183(a)(2)” after  
13                   “section 182(a)(2);”;

14                   (2) in subparagraph (D), by inserting “con-  
15                   cerning intellectual property rights that is” after  
16                   “any investigation”; and

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

18                           “(E) The Trade Representative shall consult  
19                           with the Secretary of Commerce, the Secretary of  
20                           Agriculture, the Administrator of the Food and  
21                           Drug Administration, and the heads of other appro-  
22                           priate Federal agencies, during any investigation  
23                           concerning technical barriers to trade or sanitary or  
24                           phytosanitary measures that is initiated under this  
25                           chapter by reason of subparagraph (A).”.

1 **TITLE II—RESTORATION OF**  
2 **RIGHTS UNDER TRADE REM-**  
3 **EDY LAWS**

4 **SEC. 201. APPLICATION OF COUNTERVAILING DUTIES TO**  
5 **NONMARKET ECONOMY COUNTRIES AND**  
6 **STRENGTHENING APPLICATION OF THE LAW.**

7 (a) APPLICATION OF COUNTERVAILING DUTIES TO  
8 NONMARKET ECONOMIES.—Section 701(a)(1) of the Tar-  
9 iff Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by in-  
10 serting “(including a nonmarket economy country)” after  
11 “country” each place it appears.

12 (b) RECOGNITION OF COUNTERAVAILABLE SUBSIDIES  
13 IN NONMARKET ECONOMY COUNTRIES.—Section  
14 771(5)(C) of the Tariff Act of 1930 (19 U.S.C.  
15 1677(5)(E)) is amended to read as follows:

16 “(C) OTHER FACTORS.—(i) The deter-  
17 mination of whether a subsidy exists shall be  
18 made without regard to—

19 “(I) whether the recipient of the  
20 subsidy is publicly or privately owned;

21 “(II) whether the subsidy is pro-  
22 vided directly or indirectly on the  
23 manufacture, production, or export of  
24 merchandise; and

1                   “(III)(aa) whether the country is  
2                   a nonmarket economy country, or

3                   “(bb) the level of economic re-  
4                   forms in a country that is a non-  
5                   market economy country,  
6                   at the time the subsidy is provided.

7                   “(ii) The administering authority is  
8                   not required to consider the effect of the  
9                   subsidy in determining whether a subsidy  
10                  exists under this paragraph.”.

11           (c) USE OF ALTERNATE METHODOLOGIES INVOLV-  
12   ING CHINA.—Section 771(5)(E) of the Tariff Act of 1930  
13   (19 U.S.C. 1677(5)(E)) is amended by adding at the end  
14   the following:

15           “If the administering authority encounters spe-  
16           cial difficulties in identifying and calculating  
17           the amount of a benefit under clauses (i)  
18           through (iv) with respect to an investigation or  
19           review involving the People’s Republic of China,  
20           irrespective of whether the administering au-  
21           thority determines that China is a nonmarket  
22           economy country under paragraph (18) of this  
23           section, the administering authority shall use  
24           methodologies to identify and calculate the  
25           amount of the benefit that take into account

1 the possibility that terms and conditions pre-  
2 vailing in China may not always be available as  
3 appropriate benchmarks. In applying such  
4 methodologies, where practicable, the admin-  
5 istering authority should take into account and  
6 adjust terms and conditions prevailing in China  
7 before using terms and conditions prevailing  
8 outside of China. If the administering authority  
9 has determined that China is a nonmarket  
10 economy country under paragraph (18) of this  
11 section, the administering authority shall pre-  
12 sume that special difficulties exist in calculating  
13 the amount of a benefit under clauses (i)  
14 through (iv) with respect to an investigation or  
15 review involving China and that it is not prac-  
16 ticable to take into account and adjust terms  
17 and conditions prevailing in China, and the ad-  
18 ministering authority shall use terms and condi-  
19 tions prevailing outside of China.”.

20 (d) SUBSIDIES PROVIDED TO STATE-OWNED ENTER-  
21 PRISES IN THE PEOPLE’S REPUBLIC OF CHINA.—Section  
22 771(5A) of the Tariff Act of 1930 (19 U.S.C. 1677(5A))  
23 is amended by adding at the end the following:

24 “For purposes of this paragraph, subsidies provided  
25 to state-owned enterprises in the People’s Republic

1 of China shall be deemed to be specific if, inter alia,  
2 state-owned enterprises are the predominant recipi-  
3 ents of such subsidies or state-owned enterprises re-  
4 ceive disproportionately large amounts of such sub-  
5 sidies.”.

6 (e) ANTIDUMPING PROVISIONS NOT AFFECTED.—  
7 The amendments made by this section shall not affect the  
8 status of a country as a nonmarket economy country for  
9 the purposes of any matter relating to antidumping duties  
10 under subtitle B of title VII of the Tariff Act of 1930  
11 (19 U.S.C. 1673 et seq.).

12 (f) EFFECTIVE DATE.—The amendments made by  
13 this section apply to petitions filed under section 702 of  
14 the Tariff Act of 1930 (19 U.S.C. 1671a) on or after Oc-  
15 tober 1, 2006.

16 **SEC. 202. TREATMENT OF INDIVIDUAL BUSINESS ENTER-**  
17 **PRISES IN NONMARKET ECONOMY COUN-**  
18 **TRIES.**

19 Section 771(18) of the Tariff Act of 1930 (19 U.S.C.  
20 1677(18)) is amended—

21 (1) by redesignating subparagraphs (D) and  
22 (E) as subparagraph (E) and (F), respectively; and

23 (2) by inserting after subparagraph (C) the fol-  
24 lowing:

1           “(D) TREATMENT OF INDIVIDUAL BUSI-  
2           NESS ENTERPRISES.—The administering au-  
3           thority shall not consider requests for market  
4           economy treatment at the individual business  
5           enterprise level in an antidumping proceeding  
6           involving a foreign country determined to be a  
7           nonmarket economy country.”.

8 **SEC. 203. REVOCATION OF NONMARKET ECONOMY COUN-**  
9           **TRY STATUS.**

10           (a) AMENDMENT OF DEFINITION OF “NONMARKET  
11           ECONOMY COUNTRY”.—Section 771(18)(C)(i) of the Tar-  
12           iff Act of 1930 (19 U.S.C. 1677(18)(C)(i)) is amended  
13           to read as follows:

14                       “(i) Any determination that a foreign  
15                       country is a nonmarket economy country  
16                       shall remain in effect until—

17                               “(I) the administering authority  
18                               makes a final determination to revoke  
19                               the determination under subparagraph  
20                               (A); and

21                               “(II) a joint resolution is enacted  
22                               into law pursuant to subsections (b)  
23                               through (i) of section 203 of the  
24                               Trade Enforcement Act of 2009.”.

1 (b) NOTIFICATION BY PRESIDENT; JOINT RESOLU-  
2 TION.—Whenever the administering authority (as such  
3 term is defined in section 771(1) of the Tariff Act of 1930  
4 (19 U.S.C. 1677(1)) makes a final determination under  
5 section 771(18)(C)(i)(I) of the Tariff Act of 1930 (as  
6 added by subsection (a) of this section) to revoke the de-  
7 termination that a foreign country is a nonmarket econ-  
8 omy country—

9 (1) the President shall notify the Committee on  
10 Finance of the Senate and the Committee on Ways  
11 and Means of the House of Representatives of the  
12 administering authority’s final determination not  
13 later than 10 days after the publication of the final  
14 determination in the Federal Register;

15 (2) the President shall transmit to the Congress  
16 a request that a joint resolution be introduced pur-  
17 suant to this section; and

18 (3) a joint resolution shall be introduced in the  
19 Congress pursuant to this section.

20 (c) DEFINITION.—For purposes of this section, the  
21 term “joint resolution” means only a joint resolution of  
22 the 2 Houses of the Congress, the matter after the resolv-  
23 ing clause of which is as follows: “That the Congress ap-  
24 proves the change of nonmarket economy status with re-  
25 spect to the products of \_\_\_\_\_ transmitted by the



1 President to the Congress on \_\_\_\_\_.”, the first  
2 blank space being filled in with the name of the country  
3 with respect to which a determination has been made  
4 under section 771(18)(C)(i) of the Tariff Act of 1930 (19  
5 U.S.C. 1677(18)(C)(i)), and the second blank space being  
6 filled with the date on which the President notified the  
7 Committee on Finance of the Senate and the Committee  
8 on Ways and Means of the House of Representatives  
9 under subsection (b)(1).

10 (d) INTRODUCTION.—A joint resolution shall be in-  
11 troduced (by request) in the House of Representatives by  
12 the majority leader of the House, for himself, or by Mem-  
13 bers of the House designated by the majority leader of  
14 the House, and shall be introduced (by request) in the  
15 Senate by the majority leader of the Senate, for himself,  
16 or by Members of the Senate designated by the majority  
17 leader of the Senate.

18 (e) AMENDMENTS PROHIBITED.—No amendment to  
19 a joint resolution shall be in order in either the House  
20 of Representatives or the Senate, and no motion to sus-  
21 pend the application of this subsection shall be in order  
22 in either House, nor shall it be in order in either House  
23 for the presiding officer to entertain a request to suspend  
24 the application of this subsection by unanimous consent.

1 (f) PERIOD FOR COMMITTEE AND FLOOR CONSIDER-  
2 ATION.—

3 (1) IN GENERAL.—If the committee or commit-  
4 tees of either House to which a joint resolution has  
5 been referred have not reported the joint resolution  
6 at the close of the 45th day after its introduction,  
7 such committee or committees shall be automatically  
8 discharged from further consideration of the joint  
9 resolution and it shall be placed on the appropriate  
10 calendar. A vote on final passage of the joint resolu-  
11 tion shall be taken in each House on or before the  
12 close of the 15th day after the joint resolution is re-  
13 ported by the committee or committees of that  
14 House to which it was referred, or after such com-  
15 mittee or committees have been discharged from fur-  
16 ther consideration of the joint resolution. If, prior to  
17 the passage by one House of a joint resolution of  
18 that House, that House receives the same joint reso-  
19 lution from the other House, then—

20 (A) the procedure in that House shall be  
21 the same as if no joint resolution had been re-  
22 ceived from the other House, but

23 (B) the vote on final passage shall be on  
24 the joint resolution of the other House.

1           (2) COMPUTATION OF DAYS.—For purposes of  
2 paragraph (1), in computing a number of days in ei-  
3 ther House, there shall be excluded any day on  
4 which that House is not in session.

5 (g) FLOOR CONSIDERATION IN THE HOUSE.—

6           (1) MOTION PRIVILEGED.—A motion in the  
7 House of Representatives to proceed to the consider-  
8 ation of a joint resolution shall be highly privileged  
9 and not debatable. An amendment to the motion  
10 shall not be in order, nor shall it be in order to move  
11 to reconsider the vote by which the motion is agreed  
12 to or disagreed to.

13           (2) DEBATE LIMITED.—Debate in the House of  
14 Representatives on a joint resolution shall be limited  
15 to not more than 20 hours, which shall be divided  
16 equally between those favoring and those opposing  
17 the joint resolution. A motion further to limit debate  
18 shall not be debatable. It shall not be in order to  
19 move to recommit a joint resolution or to move to  
20 reconsider the vote by which a joint resolution is  
21 agreed to or disagreed to.

22           (3) MOTIONS TO POSTPONE.—Motions to post-  
23 pone, made in the House of Representatives with re-  
24 spect to the consideration of a joint resolution, and

1 motions to proceed to the consideration of other  
2 business, shall be decided without debate.

3 (4) APPEALS.—All appeals from the decisions  
4 of the Chair relating to the application of the Rules  
5 of the House of Representatives to the procedure re-  
6 lating to a joint resolution shall be decided without  
7 debate.

8 (5) OTHER RULES.—Except to the extent spe-  
9 cifically provided in the preceding provisions of this  
10 subsection, consideration of a joint resolution shall  
11 be governed by the Rules of the House of Represent-  
12 atives applicable to other bills and resolutions in  
13 similar circumstances.

14 (h) FLOOR CONSIDERATION IN THE SENATE.—

15 (1) MOTION PRIVILEGED.—A motion in the  
16 Senate to proceed to the consideration of a joint res-  
17 olution shall be privileged and not debatable. An  
18 amendment to the motion shall not be in order, nor  
19 shall it be in order to move to reconsider the vote  
20 by which the motion is agreed to or disagreed to.

21 (2) DEBATE LIMITED.—Debate in the Senate  
22 on a joint resolution, and all debatable motions and  
23 appeals in connection therewith, shall be limited to  
24 not more than 20 hours. The time shall be equally

1 divided between, and controlled by, the majority  
2 leader and the minority leader or their designees.

3 (3) CONTROL OF DEBATE.—Debate in the Sen-  
4 ate on any debatable motion or appeal in connection  
5 with a joint resolution shall be limited to not more  
6 than 1 hour, to be equally divided between, and con-  
7 trolled by, the mover and the manager of the joint  
8 resolution, except that in the event the manager of  
9 the joint resolution is in favor of any such motion  
10 or appeal, the time in opposition thereto shall be  
11 controlled by the minority leader or his designee.  
12 Such leaders, or either of them, may, from time  
13 under their control on the passage of a joint resolu-  
14 tion, allot additional time to any Senator during the  
15 consideration of any debatable motion or appeal.

16 (4) OTHER MOTIONS.—A motion in the Senate  
17 to further limit debate is not debatable. A motion to  
18 recommit a joint resolution is not in order.

19 (i) RULES OF HOUSE OF REPRESENTATIVES AND  
20 SENATE.—Subsections (c) through (h) are enacted by the  
21 Congress—

22 (1) as an exercise of the rulemaking power of  
23 the House of Representatives and the Senate, re-  
24 spectively, and as such subsections (c) through (h)  
25 are deemed a part of the rules of each House, re-

1       spectively, but applicable only with respect to the  
2       procedure to be followed in that House in the case  
3       of joint resolutions described in subsection (c), and  
4       subsections (c) through (h) supersede other rules  
5       only to the extent that they are inconsistent there-  
6       with; and

7               (2) with full recognition of the constitutional  
8       right of either House to change the rules (so far as  
9       relating to the procedure of that House) at any time,  
10      in the same manner and to the same extent as in  
11      the case of any other rule of that House.

12 **SEC. 204. WTO APPELLATE BODY RULINGS REQUIRING OFF-**  
13 **SETS FOR NON-DUMPED COMPARISONS.**

14      (a) FINDINGS.—Congress finds the following:

15               (1) The Contracting Parties of the General  
16      Agreements on Tariffs and Trade agreed in 1947,  
17      and the Members of the World Trade Organization  
18      (WTO) reaffirmed in 1994, that dumping, by which  
19      products of one country are introduced into the com-  
20      merce of another country at less than fair value, “is  
21      to be condemned” if it causes or threatens material  
22      injury to, or materially retards the establishment of,  
23      a domestic industry.

24               (2) Since the adoption of the first United  
25      States antidumping law in 1921, the United States

1 has treated groups of sales that are above “fair  
2 value” as not dumped (i.e., having a dumping mar-  
3 gin of zero). Virtually every other government that  
4 applies antidumping measures has used a similar  
5 practice of “zeroing” sales above fair value.

6 (3) In a series of recent dispute settlement pro-  
7 ceedings, the WTO Appellate Body has repeatedly  
8 overturned the rulings of several panels of anti-  
9 dumping experts that have found that the long-  
10 standing practice of zeroing is not inconsistent with  
11 the WTO agreements. The WTO Appellate Body has  
12 found that the United States is required to recognize  
13 “negative dumping” (the amount by which certain  
14 groups of sales may exceed “fair value”) and thereby  
15 imposed a new mandate that the United States must  
16 offset dumped sales.

17 (4) The United States has described these deci-  
18 sions of the WTO Appellate Body as “devoid of legal  
19 merit,” “fatally flawed,” and “very troubling.”

20 (5) Despite these criticisms, the U.S. Depart-  
21 ment of Commerce implemented the recommenda-  
22 tions of the WTO Appellate Body by creating man-  
23 datory offsets for dumping with respect to certain  
24 comparisons made in antidumping investigations, ef-  
25 fective February 22, 2007. The Department of Com-

1 merce did not make any other modifications to its  
2 methodologies to ensure that dumping is addressed  
3 fully and in all instances under United States anti-  
4 dumping law.

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

7 (1) in negotiations and dispute settlement pro-  
8 ceedings at the WTO, the United States should—

9 (A) restore the balance between rights and  
10 obligations that was struck during the Uruguay  
11 Round of Multilateral Trade Negotiations, as  
12 reflected in the Agreement on Implementation  
13 of Article VI of the General Agreement on Tar-  
14iffs and Trade 1994, including by eliminating  
15 the requirement to offset dumped sales with  
16 non-dumped sales; and

17 (B) preserve the ability of the United  
18 States to enforce rigorously its trade laws, in-  
19 cluding the antidumping, countervailing duty,  
20 and safeguard laws;

21 (2) the Department of Commerce should revisit  
22 its decision to modify its methodology in anti-  
23 dumping investigations with respect to the calcula-  
24 tion of the weighted-average dumping margin, effec-  
25 tive February 22, 2007;



1           (3) a revised modification should seek to ensure  
2           that 100 percent of dumping is addressed under  
3           United States antidumping duty law and practice,  
4           while also ensuring that the United States complies  
5           with its WTO obligations.

6           (c) REQUIREMENTS FOR AGENCY ACTION.—

7           (1) CHANGES IN ANTIDUMPING METHOD-  
8           OLOGY.—The Department of Commerce may not im-  
9           plement any revised methodology in antidumping in-  
10          vestigations with respect to the calculation of  
11          weighted-average dumping margins unless and until  
12          the procedures set forth in section 123(g)(1) of the  
13          Uruguay Round Agreements Act (19 U.S.C.  
14          3533(g)(1)) have been followed and completed.

15          (2) EFFECTIVE DATE OF MODIFICATION.—A  
16          final rule or other modification to which paragraph  
17          (1) applies may not go into effect before the end of  
18          the 60-day period beginning on the date on which  
19          consultations under section 123(g)(1)(E) of the Uru-  
20          guay Round Agreements Act (19 U.S.C.  
21          3533(g)(1)(E)) begin.

22          (3) VOTE BY CONGRESSIONAL COMMITTEES.—  
23          During the 60-day period described in paragraph  
24          (2), the Committee on Ways and Means of the  
25          House of Representatives and the Committee on Fi-

1 nance of the Senate may vote to indicate the agree-  
2 ment or disagreement of the committee with the pro-  
3 posed contents of the final rule or other modifica-  
4 tion. Any such vote shall not be binding on the de-  
5 partment or agency which is implementing the rule  
6 or other modification.

7 (d) GRACE PERIOD FOR ORIGINAL MODIFICATION.—  
8 The final modification announced in “Antidumping Pro-  
9 ceedings: Calculation of the Weighted-Average Dumping  
10 Margin During an Antidumping Investigation; Final  
11 Modification,” 71 Fed. Reg. 77722 (December 27, 2006)  
12 shall remain in force until March 1, 2009. On that date,  
13 the Department of Commerce shall return to the method-  
14 ology it applied before adopting the Final Modification,  
15 unless or until it issues a Revised Modification, in accord-  
16 ance with the procedures described in subsection (c).

17 **SEC. 205. ROLE OF WTO APPELLATE BODY RULINGS IN THE**  
18 **WTO DISPUTE SETTLEMENT SYSTEM.**

19 (a) FINDINGS.—Congress finds the following:

20 (1) The United States and other members of  
21 the World Trade Organization made clear when they  
22 established the World Trade Organization that the  
23 text of the WTO agreements, and not interpreta-  
24 tions of those agreements by the Appellate Body or  
25 any other international tribunal, establishes the

1 rights and obligations of WTO members. The WTO  
2 members determined that “in their findings and rec-  
3 ommendations, the panel and Appellate Body cannot  
4 add to or diminish the rights and obligations” in the  
5 text of an agreement. Instead, a dispute settlement  
6 panel is to make an “objective assessment of the  
7 matter before it, including an objective assessment  
8 of the facts of the case and the applicability of and  
9 conformity with the relevant covered agreements”.  
10 The WTO members themselves, by a three-fourths  
11 majority, have the “exclusive authority” to adopt  
12 binding interpretations of the WTO agreements.

13 (2) Accordingly, in 1996, the WTO Appellate  
14 Body stated that past dispute settlement decisions  
15 “create legitimate expectations among WTO Mem-  
16 bers, and, therefore, should be taken into account  
17 where they are relevant to any dispute. However,  
18 they are not binding, except with respect to resolving  
19 the particular dispute between the parties to that  
20 dispute.”.

21 (3) In 2008, however, the Appellate Body criti-  
22 cized a dispute settlement panel for conducting its  
23 own objective assessment of a legal issue and refus-  
24 ing to follow the Appellate Body’s past interpreta-  
25 tions of provisions of WTO agreements. The Appel-

1 late Body stated that it was “deeply concerned about  
2 the Panel’s decision to depart from well-established  
3 Appellate Body jurisprudence clarifying the interpre-  
4 tation of the same legal issues”.

5 (4) The notion that a dispute settlement panel  
6 is obligated to follow Appellate Body precedent,  
7 rather than its own objective assessment of the rel-  
8 evant WTO agreements, is inconsistent with the text  
9 of those agreements and ultimately may have a  
10 chilling effect on future negotiations to further open  
11 markets and strengthen the global trading system.

12 (b) SENSE OF CONGRESS.—It is the sense of the  
13 Congress that the United States should state unequivoco-  
14 cally that—

15 (1) it is inconsistent with the express mandate  
16 of limited authority to the WTO Appellate Body  
17 under the Understanding on Rules and Procedures  
18 Governing the Settlement of Disputes for the Appel-  
19 late Body to establish a new legal standard that dis-  
20 pute settlement panels must apply in deciding cases;  
21 and

22 (2) a dispute settlement panel is obligated to  
23 follow the text of an agreement negotiated by the  
24 WTO members themselves, and not the “jurispru-  
25 dence” of the WTO Appellate Body.

1 (c) DEFINITIONS.—In this section:

2 (1) WTO AGREEMENTS.—The term “WTO  
3 agreements” means the agreements approved by the  
4 Congress under section 101(a)(1) of the Uruguay  
5 Round Agreements Act (19 U.S.C. 3511(a)(1)).

6 (2) WTO MEMBER.—The term “WTO mem-  
7 ber” has the meaning given that term in section 2  
8 of the Uruguay Round Agreements Act (19 U.S.C.  
9 3501).

10 (3) APPELLATE BODY; DISPUTE SETTLEMENT  
11 PANEL.—The terms “Appellate Body” and “dispute  
12 settlement panel” have the meanings given those  
13 terms in section 121 of the Uruguay Round Agree-  
14 ments Act (19 U.S.C. 3531).

15 (4) UNDERSTANDING ON RULES AND PROCE-  
16 DURES GOVERNING THE SETTLEMENT OF DIS-  
17 PUTES.—The term “Understanding on Rules and  
18 Procedures Governing the Settlement of Disputes”  
19 means the agreement described in section  
20 101(d)(16) of the Uruguay Round Agreements Act  
21 (19 U.S.C. 3511(d)(16)).

1 **SEC. 206. CLARIFICATION REGARDING MATERIAL INJURY**  
2 **BY REASON OF IMPORTS OF SUBJECT MER-**  
3 **CHANDISE.**

4 Section 771(7) of the Tariff Act of 1930 (19 U.S.C.  
5 1677(7)) is amended by adding at the end the following:

6 “(J) **ADDITIONAL REQUIREMENTS.**—In  
7 evaluating whether there is material injury, or  
8 threat thereof, by reason of imports of the sub-  
9 ject merchandise, the Commission shall make  
10 its determination without regard to—

11 “(i) whether other imports would have  
12 replaced or are likely to replace subject im-  
13 ports if an order were issued or a suspen-  
14 sion agreement were accepted under this  
15 title; or

16 “(ii) the effect of a potential order or  
17 suspension agreement on the domestic in-  
18 dustry, except with respect to any finding  
19 required by subparagraph (F)(ii).”.

20 **SEC. 207. STANDARD FOR PRESIDENTIAL ACTION ON ITC**  
21 **FINDING OF MARKET DISRUPTION.**

22 Section 421 of the Trade Act of 1974 (19 U.S.C.  
23 2451) is amended—

24 (1) in subsection (a)—

25 (A) by inserting “any” before “increased  
26 duties”; and

1 (B) by striking “, to the extent and for  
2 such period” and all that follows to the end pe-  
3 riod and inserting “recommended by the Inter-  
4 national Trade Commission”;

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

10 (3) in subsection (f)—

11 (A) in the heading, by striking “ON PRO-  
12 POSED REMEDIES” and inserting “FOR RE-  
13 LIEF”;

14 (B) in the first sentence—

15 (i) by striking “the President or  
16 Trade Representative may consider as”  
17 and inserting “is to be considered”; and

18 (ii) by striking “the Commission shall  
19 propose” and inserting “the Commission  
20 shall recommend”; and

21 (C) in the second sentence, by striking  
22 “proposed action” and inserting “recommended  
23 action”;

24 (4) in subsection (g)(2)(B)—

1 (A) by striking “or may be considered by  
2 the President or the Trade Representative as”  
3 and inserting “or if the determination is consid-  
4 ered to be”; and

5 (B) by striking “on proposed remedies”  
6 and inserting “for relief”;

7 (5) in subsection (h)—

8 (A) in the heading, by striking “PROPOSED  
9 MEASURE AND RECOMMENDATION TO THE  
10 PRESIDENT” and inserting “RECOMMENDED  
11 RELIEF AND REPORT BY TRADE REPRESENTA-  
12 TIVE”;

13 (B) in paragraph (1)—

14 (i) by striking “measure proposed by  
15 the Trade Representative to be taken pur-  
16 suant to subsection (a)” and inserting “re-  
17 lief recommended by the Commission  
18 under subsection (f)”;

19 (ii) by striking “proposed measure”  
20 and inserting “recommended relief”;

21 (C) in paragraph (2), by striking “on the  
22 measure proposed by the Trade Representative”  
23 and all that follows to the end period and in-  
24 serting “, shall transmit a report to the Presi-



1           dent recommending what action to take under  
2           subsection (k)”; and

3                   (D) by adding at the end the following new  
4           paragraph:

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

11                   (6) in subsection (i)—

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

18                   (B) by striking paragraphs (2), (3), and  
19 (4), and inserting the following:

20           “(2) On the date on which the Commission completes  
21 its determinations under paragraph (1), the Commission  
22 shall transmit a report on the determinations to the Presi-  
23 dent and the Trade Representative, including the reasons  
24 for its determinations. If the determinations under para-  
25 graph (1) are affirmative or if the determinations are con-

1 sidered to be affirmative under paragraph (1), the Com-  
2 mission shall include in its report its recommendations on  
3 provisional relief to be taken to prevent or remedy the  
4 market disruption. Only those members of the Commission  
5 who agreed to the affirmative determinations under para-  
6 graph (1) are eligible to vote on the recommended provi-  
7 sional relief to prevent or remedy market disruption. Mem-  
8 bers of the Commission who did not agree to the affirma-  
9 tive determinations may submit, in the report, dissenting  
10 or separate views regarding the determination and any  
11 recommendation of provisional relief referred to in this  
12 paragraph.

13 “(3) The provisional relief referred to in paragraph  
14 (2) may include—

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

16 “(B) any modification, or imposition of any  
17 quantitative restriction on the importation of any ar-  
18 ticle into the United States; or

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

21 “(4) If the determinations under paragraph (1) are  
22 affirmative or if the determinations are considered to be  
23 affirmative under paragraph (1), the Trade Representa-  
24 tive shall, within 10 days after receipt of the Commission’s  
25 report, transmit a report to the President recommending

1 what action to take with respect to provisional relief under  
2 subsection (k).

3 “(5)(A) The President shall proclaim any provisional  
4 relief recommended by the Commission not later than 10  
5 days after the date the President receives the report de-  
6 scribed in paragraph (4) from the Trade Representative.

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

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

15 (7) in subsection (j)—

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

19 (B) by striking paragraph (2) and insert-  
20 ing the following:

21 “(2) If no agreement is reached with the People’s Re-  
22 public of China pursuant to consultations under para-  
23 graph (1) in the time required for Presidential action  
24 under subsection (k), or if the President determines that  
25 an agreement reached pursuant to such consultations is

1 not preventing or remedying the market disruption at  
2 issue in the time required for Presidential action under  
3 subsection (k), the President shall provide import relief  
4 in accordance with subsection (a).”;

5 (8) in subsection (k)—

6 (A) in the heading, by striking “STAND-  
7 ARD FOR PRESIDENTIAL ACTION” and inserting  
8 “TIMING FOR PRESIDENTIAL ACTION; EXCEP-  
9 TIONS”;

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

17 (C) by amending paragraph (2) to read as  
18 follows:

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

1           “(A) only in extraordinary cases; and

2           “(B) only if the President determines that pro-  
3       viding relief or provisional relief pursuant to sub-  
4       section (a) or (i) or providing relief recommended by  
5       the Commission pursuant to subsection (a) or (i)  
6       would cause serious harm to the economic interests  
7       or to the national security of the of the United  
8       States.”;

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

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

24           (10) by redesignating subsections (m) through  
25       (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 case number and date.

23           “(3) The provisions of section 152(b), (c), (d), (e),  
24 and (f) of the Trade Act of 1974 (19 U.S.C. 2192(b), (c),

1 (d), (e), and (f)) shall apply to joint resolutions under this  
2 section.”;

3 (12) in subsection (n), as redesignated, by  
4 striking “Import relief under this section” and all  
5 that follows to the end period and inserting the fol-  
6 lowing:

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

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

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

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

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

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

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

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

3 **SEC. 208. APPLICATION OF AMENDMENTS TO GOODS FROM**  
4 **CANADA AND MEXICO.**

5 Pursuant to section 1902 of the North American  
6 Free Trade Agreement and section 408 of the North  
7 American Free Trade Agreement Implementation Act (19  
8 U.S.C. 3438), any amendments made by this title to title  
9 VII of the Tariff Act of 1930 shall apply to goods from  
10 Canada and Mexico.

11 **SEC. 209. RULE OF CONSTRUCTION.**

12 The amendments made by this title shall not be con-  
13 strued to affect the interpretation of any provision of law  
14 amended by such sections as such provisions of law were  
15 in effect on the day before the date of the enactment of  
16 this Act.

17 **TITLE III—ENFORCEMENT OF**  
18 **HEALTH AND SAFETY LAWS**  
19 **AND INTELLECTUAL PROP-**  
20 **ERTY RIGHTS AT U.S. BOR-**  
21 **DERS**

22 **Subtitle A—Import Safety**

23 **SEC. 301. DEFINITIONS.**

24 In this subtitle:



1           (1) COMMISSIONER.—Except as otherwise pro-  
2           vided, the term “Commissioner” means the Commis-  
3           sioner responsible for U.S. Customs and Border  
4           Protection.

5           (2) INTERNATIONAL SUPPLY CHAIN.—The term  
6           “international supply chain” means the end-to-end  
7           process for transporting goods to or from the United  
8           States beginning with the point of origin (including  
9           manufacturer, supplier, or vendor) through the point  
10          of distribution to the destination.

11          (3) RELEVANT DEPARTMENTS AND AGEN-  
12          CIES.—The term “relevant departments or agencies”  
13          means—

14                   (A) the Department of Agriculture;

15                   (B) the Department of Commerce;

16                   (C) the Department of Health and Human  
17          Services;

18                   (D) the Department of Homeland Security;

19                   (E) the Department of Transportation;

20                   (F) the Consumer Product Safety Commis-  
21          sion;

22                   (G) the Environmental Protection Agency;

23                   (H) the Federal Trade Commission; and

24                   (I) any other appropriate department or  
25          agency, as determined by the Secretary, acting

1 through the Commissioner, with responsibilities  
2 regarding the health or safety of goods.

3 (4) SECRETARY.—Except as otherwise provided,  
4 the term “Secretary” means the Secretary of the  
5 Treasury.

6 **SEC. 302. OBTAINING DATA ON GOODS DESTINED FOR IM-**  
7 **PORTATION INTO THE UNITED STATES.**

8 (a) UNIFORM SYSTEM TO UNIQUELY IDENTIFY IM-  
9 PORTS AND PARTICIPANTS IN THE INTERNATIONAL SUP-  
10 PLY CHAIN.—

11 (1) ESTABLISHMENT.—The Secretary, acting  
12 through the Commissioner, shall, in consultation  
13 with the heads of the relevant departments and  
14 agencies, establish a government-wide, uniform data  
15 system to uniquely identify all goods imported or  
16 destined for importation into the United States and,  
17 with respect to such goods, all importers of record,  
18 foreign manufacturers, foreign processing facilities,  
19 foreign exporters, foreign suppliers, and ultimate  
20 consignees. The system shall contain unique identi-  
21 fiers for each participant in the international supply  
22 chain. The unique identifiers shall be incorporated  
23 into the International Trade Data System estab-  
24 lished under section 411(d) of the Tariff Act of  
25 1930 and into the Automated Commercial Environ-

1       ment, so as to permit departments and agencies to  
2       share and exchange authorized data on such goods,  
3       importers, manufacturers, facilities, exporters, and  
4       suppliers.

5               (2) TIMING AND REPORTS.—The Secretary, act-  
6       ing through the Commissioner, shall—

7                       (A) establish the uniform system under  
8                       paragraph (1) not later than one year after the  
9                       date of the enactment of this Act; and

10                      (B) report to the Congress, not later than  
11                      the end of the 120-day period beginning on  
12                      such date of enactment, and each 120-day pe-  
13                      riod thereafter until the uniform system has  
14                      been established, on the progress in establishing  
15                      the uniform system.

16       (b) CARGO INFORMATION.—Section 343(a) of the  
17 Trade Act of 2002 (19 U.S.C. 2071 note) is amended—

18               (1) in paragraph (2), by striking the period and  
19       inserting the following: “and, in the case of cargo  
20       destined for importation into the United States, to  
21       ensure that the cargo complies with those require-  
22       ments imposed by the laws and regulations of the  
23       United States with respect to health and safety that  
24       are administered by the Department of Agriculture,  
25       the Department of Health and Human Services, the

1 Department of Transportation, the Environmental  
2 Protection Agency, the Consumer Product Safety  
3 Commission, the Federal Trade Commission, and  
4 other relevant departments and agencies of the  
5 United States.”; and

6 (2) in paragraph (3)(F), by striking “cargo  
7 safety and security and” and inserting the following:  
8 “cargo safety and security, for ensuring that im-  
9 ported goods comply with requirements under the  
10 laws and regulations of the United States relating to  
11 health and safety, as described in paragraph (2),  
12 and for targeting by U.S. Customs and Border Pro-  
13 tection of cargo for failure to comply with such re-  
14 quirements, and for”.

15 (c) DEVELOPMENT OF HEALTH AND SAFETY RULE  
16 SETS FOR AUTOMATED TARGETING SYSTEM.—The Sec-  
17 retary, acting through the Commissioner, shall consult  
18 with the heads of the relevant departments and agencies  
19 to develop rule sets for identifying, including through the  
20 Automated Targeting System, cargo that violates laws or  
21 regulations of the United States with respect to health or  
22 safety that are administered by the relevant departments  
23 and agencies.

24 (d) REPORTS ON INTERNATIONAL TRADE DATA SYS-  
25 TEM.—Section 411(d)(4)(B) of the Tariff Act of 1930 (19

1 U.S.C. 1411(d)(4)(B)) is amended by inserting before the  
2 semicolon the following: “, in particular the progress of  
3 the United States Customs and Border Protection, the  
4 Department of Health and Human Services, the Depart-  
5 ment of Transportation, the Environmental Protection  
6 Agency, the Consumer Product Safety Commission, the  
7 Federal Trade Commission, and other appropriate depart-  
8 ments and agencies in implementing ITDS”.

9 **SEC. 303. INTERAGENCY COORDINATION.**

10 (a) ACCESS TO ACE.—The Commissioner shall en-  
11 sure that appropriate officials of the relevant departments  
12 and agencies have access to the Automated Commercial  
13 Environment for purposes of identifying cargo destined for  
14 importation into the United States as “high risk” with  
15 respect to public health or safety under the laws adminis-  
16 tered by those departments and agencies.

17 (b) COMMUNICATION AND RESPONSE PROTOCOLS.—  
18 The Secretary, acting through the Commissioner, shall  
19 take the necessary steps to implement protocols with the  
20 heads of the relevant departments and agencies that en-  
21 sure rapid communication with and response by those de-  
22 partments and agencies upon the discovery of goods des-  
23 tined for importation into the United States that may pose  
24 a risk to public health or safety.

1           (c)           INTERDEPARTMENTAL           PROCEDURES;  
2 LEVERAGING OF RESOURCES AT PORTS OF ENTRY.—The  
3 Secretary, acting through the Commissioner, shall, in con-  
4 sultation with the heads of the relevant departments and  
5 agencies—

6           (1) develop uniform interagency procedures,  
7 where appropriate, for clearing and controlling im-  
8 ported goods at ports of entry, including procedures  
9 to streamline the entry process and facilitate the ex-  
10 change of information and intelligence, processing of  
11 samples, providing training (where necessary) to  
12 keep the relevant departments and agencies updated  
13 on import requirements at the border, and other  
14 forms of interagency cooperation; and

15           (2) take the necessary steps so that, in order to  
16 ensure that imported cargo does not pose risks to  
17 the public health or safety under laws administered  
18 by the relevant departments and agencies, personnel  
19 of the relevant department or agency or U.S. Cus-  
20 toms and Border Protection officers are available to  
21 inspect and sample the cargo at the port of entry in  
22 the United States.

23 The Secretary shall enter into such arrangements as are  
24 appropriate to ensure that U.S. Customs and Border Pro-

1 tection officers are authorized to inspect and sample cargo  
2 under paragraph (2).

3 **SEC. 304. DEVELOPMENT OF IMPORT SAFETY PROGRAM.**

4 (a) ESTABLISHMENT.—The Secretary, acting  
5 through the Commissioner, shall, in consultation with the  
6 Advisory Committee on Import Safety and Intellectual  
7 Property Rights Enforcement established pursuant to sec-  
8 tion 362 of this Act, establish a voluntary government-  
9 private sector program (to be known as the “Import Safe-  
10 ty Program”) to ensure that all goods in the international  
11 supply chain do not pose risks to public health or safety,  
12 and to facilitate the movement of such goods through the  
13 international supply chain. Under the program—

14 (1) eligible entities described in subsection (d)  
15 voluntarily agree to abide by the minimum require-  
16 ments under subsection (b); and

17 (2) the Secretary agrees to expedite the move-  
18 ment of the goods of such persons through the in-  
19 spection process and to provide other benefits to  
20 participants meeting or exceeding the requirements  
21 of the Import Safety Program.

22 (b) MINIMUM REQUIREMENTS.—

23 (1) IN GENERAL.—The Secretary, acting  
24 through the Commissioner, shall establish the min-  
25 imum requirements for eligible entities described in

1 subsection (d) seeking to participate in the Import  
2 Safety Program and review such requirements at  
3 least once every year and update such requirements  
4 as necessary. In establishing such requirements, the  
5 Secretary shall—

6 (A) require that each such eligible entity  
7 applying be a participant in the C-TPAT pro-  
8 gram under subtitle B of title II of the SAFE  
9 Port Act (in this section referred to as “C-  
10 TPAT”; 6 U.S.C. 961 et seq.); and

11 (B) incorporate standards for the fol-  
12 lowing:

13 (i) Controls for ensuring the eligible  
14 entity’s compliance with health and safety  
15 standards under the laws and regulations  
16 of the United States for goods moved by  
17 the eligible entity through the international  
18 supply chain.

19 (ii) Tracking and maintaining records  
20 on goods moved by the eligible entity  
21 through the international supply chain.

22 (iii) Documentation of controls re-  
23 ferred to in clause (i), including mainte-  
24 nance of testing results.



1 (iv) Access by the Secretary to the eli-  
2 gible entity's business records for review.

3 (v) Access by the Secretary to vendor  
4 and supplier information.

5 (vi) Such other factors as the Sec-  
6 retary determines are necessary.

7 (2) SPECIFIC REQUIREMENTS.—An applicant  
8 seeking to participate in the Import Safety Program  
9 must—

10 (A) demonstrate a history of moving cargo  
11 in the international supply chain in compliance  
12 with health and safety standards under the laws  
13 and regulations of the United States;

14 (B) have procedures in place to ensure  
15 that the cargo is not subject to an Import Alert  
16 of the Food and Drug Administration or to any  
17 voluntary or mandatory recall imposed because  
18 of a potential risk to public health or safety;

19 (C) have in place internal controls and  
20 product-testing regimes to ensure compliance  
21 with health and safety standards under the laws  
22 and regulations of the United States, including  
23 compliance by the applicant's suppliers with  
24 such health and safety standards; and

1           (D) conduct an assessment of its supply  
2 chain based upon health and safety criteria es-  
3 tablished by the Secretary, acting through the  
4 Commissioner.

5       (c) COORDINATION.—The Secretary shall coordinate  
6 with the heads of the relevant departments and agencies  
7 for purposes of verifying the compliance of imported goods  
8 with health and safety standards under subsection  
9 (b)(1)(B)(i).

10       (d) ELIGIBLE ENTITIES.—Importers, producers, sell-  
11 ers, ultimate consignees, and other entities in the inter-  
12 national supply chain and intermodal transportation sys-  
13 tem are eligible to apply to voluntarily enter into the Im-  
14 port Safety Program.

15       (e) VALIDATION.—The Secretary, acting through the  
16 Commissioner, shall validate the compliance of each par-  
17 ticipant in the Import Safety Program with the require-  
18 ments under this section. Such validation shall, to the ex-  
19 tent practicable, be completed no later than 1 year after  
20 the applicant is accepted into the Import Safety Program,  
21 in accordance with a schedule and guidelines that the Sec-  
22 retary, acting through the Commissioner, shall establish.

23       (f) REVALIDATION.—The Secretary, acting through  
24 the Commissioner, shall develop and implement—

1           (1) a revalidation process for all participants in  
2           the Import Safety Program that shall be conducted  
3           not less frequently than once during each 5-year pe-  
4           riod after the initial validation under subsection (e);  
5           and

6           (2) an annual plan for revalidation that in-  
7           cludes—

8                     (A) performance measures;

9                     (B) an assessment of the personnel needed  
10           to perform the revalidations; and

11                    (C) the number of participants that will be  
12           revalidated during the following year.

13 **SEC. 305. INFORMATION EXCHANGE PROCESS.**

14           The Secretary, acting through the Commissioner,  
15           shall work with importers and other interested persons  
16           and other entities in the private and public sectors to de-  
17           velop a process through which—

18                    (1) persons and other entities in the private and  
19           public sectors can report critical information relating  
20           to the safety of imported goods in a timely manner  
21           at one virtual location through existing information-  
22           sharing systems; and

23                    (2) the Secretary can share such information  
24           with private and public entities, consistent with the  
25           protection of business confidential information.

1 **SEC. 306. TRAINING.**

2       The Secretary, acting through the Commissioner,  
3 shall ensure that U.S. Customs and Border Protection  
4 personnel receive appropriate training in order to carry  
5 out this subtitle and the amendments made by this sub-  
6 title.

7 **SEC. 307. SANCTIONS ON CERTAIN SUPPLIERS.**

8       (a) LIST OF SUPPLIERS WITH INADMISSABLE IM-  
9 PORTED PRODUCTS.—Upon the development of unique  
10 identifiers under section 302(a), the Secretary, acting  
11 through the Commissioner, shall establish and maintain  
12 a list of importers of record, foreign manufacturers, for-  
13 eign processing facilities, foreign exporters, and foreign  
14 suppliers whose imported products have been determined  
15 to be inadmissible into the United States or have been the  
16 subject of recalls in the United States because of violations  
17 of health or safety standards.

18       (b) SANCTIONS.—

19           (1) IN GENERAL.—The Secretary, acting  
20 through the Commissioner, shall establish sanctions  
21 to be imposed on entities on the list described in  
22 subsection (a), taking into account the number of  
23 occurrences on which the products of the entity con-  
24 cerned have been determined to be inadmissible or  
25 have been the subject of recalls in the United States  
26 and the severity of the violation of law that was the

1 basis for such determination or recall. Such sanc-  
2 tions shall include the following:

3 (A) In the case of a first occurrence, an in-  
4 crease in the bond required to be posted for im-  
5 ports of the products of the entity concerned.

6 (B) Increased inspection of up to 100 per-  
7 cent of the products of the entity concerned, in  
8 the case of a second occurrence of a violation  
9 within 6 months after the first occurrence of  
10 the same violation; and

11 (C) A prohibition on imports of the prod-  
12 ucts of an entity whose products have repeat-  
13 edly been the subject of such a determination or  
14 recall, or in a case in which the products con-  
15 cerned caused bodily injury or death, for a pe-  
16 riod of time determined by the Secretary, acting  
17 through the Commissioner, but generally not  
18 less than 6 months or until the relevant depart-  
19 ment or agency with the authority to determine  
20 the admissibility of the products verifies that  
21 the banned products are in compliance with the  
22 relevant health or safety standards. Products  
23 subject to the prohibition shall be the same type  
24 of products as those determined to be inadmis-  
25 sible or subject to the recall, and any other type

1           of product that is subject to the same standard  
2           as the one violated by the entity.

3           (2) DETERMINATION OF “REPEATEDLY”.—In  
4           determining under paragraph (1)(C) whether the  
5           products of an entity have “repeatedly” been the  
6           subject of a determination of inadmissibility or re-  
7           call, the Secretary, acting through the Commis-  
8           sioner, shall take into account not only the number  
9           of such determinations but the seriousness of the  
10          violation of health or safety standards that gave rise  
11          to any such determination.

12          (c) AVAILABILITY TO PUBLIC.—

13           (1) IN GENERAL.—The Secretary, acting  
14           through the Commissioner, shall make public, in-  
15           cluding through the official website of U.S. Customs  
16           and Border Protection and, as appropriate, any  
17           other Federal department or agency website relating  
18           to health or safety matters, the names of all import-  
19           ers of record, foreign manufacturers, foreign proc-  
20           essing facilities, foreign exporters, and foreign sup-  
21           pliers who have been made subject to a prohibition  
22           on imports under subsection (b)(1)(C) that has be-  
23           come final under subsection (f), and the products  
24           that are subject to the prohibition. If an entity sub-  
25           ject to such a prohibition files, in the appropriate

1 Federal court, an appeal of the determination of the  
2 Secretary imposing the prohibition, such appeal shall  
3 also be made public in accordance with the preceding  
4 sentence.

5 (2) UPDATING.—The information made public  
6 under paragraph (1) shall be updated as frequently  
7 as necessary to keep the information current.

8 (d) ALERT SYSTEM IN ACE.—The Commissioner  
9 shall establish in the Automated Commercial Environment  
10 an alert system notifying the relevant departments and  
11 agencies of the identity of all importers of record, foreign  
12 manufacturers, foreign processing facilities, foreign ex-  
13 porters, and foreign suppliers described in subsections (a)  
14 and (b).

15 (e) MITIGATING ACTIONS.—The Secretary, acting  
16 through the Commissioner, in consultation with the heads  
17 of the relevant departments and agencies, shall establish  
18 actions that an entity that is on the list established under  
19 subsection (a) or is subject to a sanction under subsection  
20 (b) may take to warrant removal from the list or removal  
21 of the sanction, as the case may be.

22 (f) ADMINISTRATIVE APPEAL.—Any importer of  
23 record, foreign manufacturer, foreign processing facility,  
24 foreign exporter, or foreign supplier may appeal a decision  
25 of the Secretary under subsection (a) or (b) by filing the

1 appeal not later than 30 days after the date of the deci-  
2 sion. The Secretary shall issue a determination on the ap-  
3 peal not later than 90 days after the appeal is filed. The  
4 Secretary shall issue regulations establishing procedures  
5 for the appeals process under this subsection not later  
6 than 18 months after the date of the enactment of this  
7 Act.

8 **SEC. 308. REPORT TO CONGRESS.**

9 The Secretary, acting through the Commissioner,  
10 shall submit to the Congress, not later than September  
11 30 of each year, a report on the actions taken to carry  
12 out this subtitle.

13 **Subtitle B—Strengthening Enforce-**  
14 **ment of Intellectual Property**  
15 **Rights at U.S. Borders**

16 **CHAPTER 1—COORDINATION OF EN-**  
17 **FORCEMENT OF INTELLECTUAL**  
18 **PROPERTY RIGHTS**

19 **SEC. 311. DEFINITIONS.**

20 In this subtitle:

21 (1) **ADVISORY COMMITTEE.**—The term “Advi-  
22 sory Committee” means the Advisory Committee on  
23 Import Safety and Intellectual Property Rights En-  
24 forcement established pursuant to section 362 of  
25 this Act.



1           (2) ASSISTANT SECRETARY FOR ICE.—The term  
2           “Assistant Secretary for ICE” means the Assistant  
3           Secretary for U.S. Immigration and Customs En-  
4           forcement.

5           (3) COMMISSIONER.—The term “Commis-  
6           sioner” means the Commissioner responsible for  
7           U.S. Customs and Border Protection.

8           (4) COUNTERFEITING; COUNTERFEIT GOODS.—

9           (A) COUNTERFEITING.—The term “coun-  
10          terfeiting” means activities related to produc-  
11          tion of or trafficking in goods, including pack-  
12          aging, that bear a spurious mark or designation  
13          that is identical to or substantially indistin-  
14          guishable from a mark or designation protected  
15          under the trademark laws or related legislation.

16          (B) COUNTERFEIT GOODS.—The term  
17          “counterfeit goods” means those goods de-  
18          scribed in subparagraph (A).

19          (5) CBP.—The term “CBP” means U.S. Cus-  
20          toms and Border Protection.

21          (6) DIRECTOR.—The term “Director” means  
22          the Director of Intellectual Property Rights Enforce-  
23          ment of the Department of the Treasury established  
24          in section 312.

1           (7) ENFORCEMENT OF INTELLECTUAL PROP-  
2           ERTY RIGHTS.—The term “enforcement of intellec-  
3           tual property rights” means activities to enforce  
4           copyrights, patents, trademarks, and other forms of  
5           intellectual property, including activities to control  
6           counterfeiting and piracy, and activities to enforce  
7           exclusion orders issued by the United States Inter-  
8           national Trade Commission by reason of any of sub-  
9           paragraphs (B) through (E) of subsection (a)(1) of  
10          section 337 of the Tariff Act of 1930 (19 U.S.C.  
11          1337(a)(1)(B) through (E)).

12          (8) EXCLUSION ORDER.—The term “exclusion  
13          order” means an order of the United States Inter-  
14          national Trade Commission issued under section 337  
15          (d) or (e) of the Tariff Act of 1930 to exclude goods  
16          from entry into the United States.

17          (9) ICE.—The term “ICE” means U.S. Immi-  
18          gration and Customs Enforcement.

19          (10) PIRACY; PIRATED GOODS.—

20                 (A) PIRACY.—The term “piracy” means  
21                 activities related to production of or trafficking  
22                 in unauthorized copies or phonorecords of  
23                 works protected under copyright law or related  
24                 legislation.

1 (B) PIRATED GOODS.—The term “pirated  
2 goods” means those copies or phonorecords de-  
3 scribed in subparagraph (A).

4 (11) SECRETARY.—Except as otherwise pro-  
5 vided, the term “Secretary” means the Secretary of  
6 the Treasury.

7 **SEC. 312. DIRECTOR OF INTELLECTUAL PROPERTY RIGHTS**  
8 **ENFORCEMENT.**

9 (a) ESTABLISHMENT.—There is established within  
10 the Department of the Treasury the position of Director  
11 of Intellectual Property Rights Enforcement.

12 (b) APPOINTMENT.—The Director shall be appointed  
13 by the Secretary, and shall be responsible to and shall re-  
14 port directly to the Deputy Secretary of the Treasury.

15 (c) DUTIES.—The Director shall—

16 (1) coordinate all activities of the Department  
17 of the Treasury involving the enforcement of intel-  
18 lectual property rights, with particular reference to  
19 the activities of CBP and ICE;

20 (2) oversee the development and implementa-  
21 tion of the strategic plan for the enforcement of in-  
22 tellectual property rights required under section 313;

23 (3) coordinate the policy and regulatory  
24 changes set forth in chapter 4;

1           (4) serve as staff representative of the Depart-  
2           ment of the Treasury in interagency bodies with re-  
3           sponsibility for coordination of activities involving  
4           the enforcement of intellectual property rights;

5           (5) conduct an evaluation of the effectiveness of  
6           the organizational structure of CBP for reducing the  
7           entry into the United States of counterfeit or pirated  
8           goods, goods in violation of exclusion orders, and  
9           other goods in violation of other intellectual property  
10          rights; and

11          (6) carry out other duties, as assigned by the  
12          Secretary or Deputy Secretary of the Treasury, to  
13          improve the effectiveness of the efforts of the De-  
14          partment of the Treasury under the laws within its  
15          jurisdiction with respect to enforcement of intellec-  
16          tual property rights.

17 **SEC. 313. STRATEGIC PLAN FOR THE ENFORCEMENT OF IN-**  
18 **TELLECTUAL PROPERTY RIGHTS.**

19          (a) IN GENERAL.—The Director shall develop, for  
20          approval by the Deputy Secretary of the Treasury, an an-  
21          nual strategic plan for the enforcement of intellectual  
22          property rights.

23          (b) CONSULTATION.—In developing the annual stra-  
24          tegic plan required under subsection (a), the Director shall  
25          consult with—

1           (1) the CBP coordinator of intellectual property  
2 enforcement activities and the ICE coordinator of  
3 intellectual property enforcement authorities ap-  
4 pointed under section 314;

5           (2) all other entities within the Department of  
6 the Treasury with expertise and experience in the  
7 enforcement of intellectual property rights;

8           (3) the Advisory Committee;

9           (4) other agencies of the executive branch en-  
10 gaged in the enforcement of intellectual property  
11 rights, including any officials designated to coordi-  
12 nate such enforcement efforts on an interagency  
13 basis; and

14           (5) officials from foreign law enforcement agen-  
15 cies and international organizations, including the  
16 World Customs Organization, with experience and  
17 expertise in border control measures relating to the  
18 enforcement of intellectual property rights.

19       (c) CONTENTS OF PLAN.—The annual strategic plan  
20 shall set forth objectives, goals, and strategies for more  
21 effective use of the authorities of CBP and ICE relating  
22 to the enforcement of intellectual property rights, and  
23 shall—

24           (1) provide for specific measurement of the cur-  
25 rent effectiveness of enforcement tools, including

1 targeting, examination, post-entry auditing, and pen-  
2 alty actions;

3 (2) give priority to those enforcement tools de-  
4 termined under paragraph (1) to be most effective;

5 (3) identify best practices, both in the United  
6 States and abroad, in the enforcement of intellectual  
7 property rights, taking into account the practices of  
8 enforcement authorities of other countries, and im-  
9 plement those practices;

10 (4) identify and apply the specific performance  
11 measures to be used to evaluate the progress of CBP  
12 and ICE in improving the effectiveness of its efforts  
13 relating to the enforcement of intellectual property  
14 rights;

15 (5) address border control programs adminis-  
16 tered by CBP and ICE at ports of entry for pas-  
17 sengers and freight, and at points of entry for postal  
18 and courier services, as well as for goods in transit  
19 through United States ports and in the process of  
20 being exported from the United States;

21 (6) recommend the optimal feasible allocation of  
22 human, financial, physical, and technological re-  
23 sources that CBP and ICE should use to achieve the  
24 goals of the annual strategic plan;

1           (7) report on the key activities of CBP and ICE  
2           during the preceding year in the enforcement of in-  
3           tellectual property rights; and

4           (8) contain such other information as the Di-  
5           rector considers appropriate to convey what CBP  
6           and ICE will do, over the ensuing year, with respect  
7           to the enforcement of intellectual property rights  
8           and reduce the costs that violations of intellectual  
9           property rights impose on the United States econ-  
10          omy and public safety.

11          (d) SUBMISSION TO CONGRESS.—Upon the approval  
12          of the annual strategic plan by the Deputy Secretary of  
13          the Treasury, the Deputy Secretary of the Treasury, after  
14          ensuring its consistency with relevant interagency stra-  
15          tegic plans for the enforcement of intellectual property  
16          rights, shall transmit the annual strategic plan to the  
17          Committee on Finance of the Senate and the Committee  
18          on Ways and Means of the House of Representatives,  
19          along with any recommendations of the Department of the  
20          Treasury for statutory changes or funding authorizations  
21          needed to improve the effectiveness of the Department’s  
22          efforts in the enforcement of intellectual property rights.

23          (e) TIMING.—The Deputy Secretary of the Treasury  
24          shall submit the annual strategic plan under subsection

1 (d) not later than 180 days after the date of the enact-  
2 ment of this Act and annually thereafter.

3 **SEC. 314. CBP AND ICE COORDINATORS.**

4 (a) CBP COORDINATORS.—

5 (1) APPOINTMENT.—The Commissioner shall  
6 appoint a CBP coordinator of intellectual property  
7 rights enforcement activities (in this chapter re-  
8 ferred to as the “CBP Coordinator”), who shall re-  
9 port directly to the Commissioner.

10 (2) DUTIES.—The CBP Coordinator shall—

11 (A) assist the Director of Intellectual  
12 Property Rights Enforcement of the Depart-  
13 ment of the Treasury in the development of the  
14 annual strategic plan, and coordinate the imple-  
15 mentation of those aspects of the plan that in-  
16 volve CBP;

17 (B) coordinate all efforts, at all ports of  
18 entry and elsewhere, carried out by CBP in the  
19 enforcement of intellectual property rights, in-  
20 cluding training and staffing;

21 (C) supervise the implementation of those  
22 aspects of the regulatory and policy reforms set  
23 out in this title that involve CBP; and

24 (D) carry out such other duties, as as-  
25 signed by the Commissioner, the purpose of



1           which is to improve the performance of CBP in  
2           the enforcement of intellectual property rights.

3           (b) ICE COORDINATOR.—

4           (1) APPOINTMENT.—The Assistant Secretary  
5           for United States Immigration and Customs En-  
6           forcement shall appoint an ICE coordinator of intel-  
7           lectual property enforcement activities (referred to in  
8           this chapter as the “ICE Coordinator”), who shall  
9           report directly to the Assistant Secretary for ICE.

10          (2) DUTIES.—The ICE Coordinator shall—

11           (A) assist the Director of Intellectual  
12           Property Rights Enforcement of the Depart-  
13           ment of the Treasury in the development of the  
14           annual strategic plan, and coordinate the imple-  
15           mentation of those aspects of the plan that in-  
16           volve ICE;

17           (B) coordinate all efforts carried out by  
18           ICE the enforcement of intellectual property  
19           rights, including training and staffing;

20           (C) supervise the implementation of those  
21           aspects of the regulatory and policy reforms set  
22           out in this title that involve ICE; and

23           (D) carry out such other duties, as as-  
24           signed by the Assistant Secretary for ICE, the  
25           purpose which is to improve the performance of

1 ICE in the enforcement of intellectual property  
2 rights.

3 **CHAPTER 2—REGULATORY AND POLICY**  
4 **IMPROVEMENTS AGAINST COUNTER-**  
5 **FEITING AND PIRACY**

6 **SEC. 321. IN GENERAL.**

7 (a) COMMISSIONER’S RESPONSIBILITIES.—The Com-  
8 missioner, acting through the CBP Coordinator, shall un-  
9 dertake the initiatives provided in this chapter.

10 (b) CBP COORDINATOR’S RESPONSIBILITIES.—Ex-  
11 cept as otherwise provided in this chapter, the CBP Coor-  
12 dinator shall—

13 (1) prepare an annual report on activities car-  
14 ried out under this chapter; and

15 (2) provide the annual report to the Director of  
16 Intellectual Property Rights Enforcement of the De-  
17 partment of the Treasury in a timely manner that  
18 will permit its inclusion in the annual strategic plan  
19 prepared under section 313.

20 **SEC. 322. IDENTIFICATION OF CERTAIN UNLAWFUL GOODS.**

21 (a) IN GENERAL.—The Secretary, acting through the  
22 Commissioner, shall accelerate efforts to apply risk assess-  
23 ment modeling techniques to border enforcement activities  
24 to combat counterfeiting and piracy. These efforts shall  
25 include, but not be limited to—

1           (1) preparing a report and evaluation on CBP's  
2           pilot project in risk assessment modeling with re-  
3           spect to shipments of counterfeit or pirated prod-  
4           ucts;

5           (2) expanding the pilot project to include devel-  
6           opment of a rule set for the Automated Targeting  
7           System; and

8           (3) developing a plan for the development, test-  
9           ing, evaluation, and continuous improvement of risk  
10          assessment modeling techniques for purposes of tar-  
11          geting goods that violate intellectual property rights.

12          (b) INCLUSION IN STRATEGIC PLAN.—The report  
13          specified in subsection (a)(1), and the plan specified in  
14          subsection (a)(3), shall be included in the annual strategic  
15          plan that is prepared under section 313.

16          **SEC. 323. TRAINING IN NEW TECHNOLOGIES.**

17          (a) TRAINING OF PERSONNEL.—The Commissioner  
18          shall consult with the Advisory Committee to determine  
19          the feasibility of training CBP personnel in the use of new  
20          technological means for detecting and identifying, at ports  
21          of entry, counterfeit and pirated goods, and goods that  
22          are the subject of exclusion orders, whether for entry into  
23          the United States or in transit to other destinations.

1 (b) IDENTIFICATION OF TECHNOLOGIES AND  
2 SOURCES OF TRAINING.—In consultation with the Advi-  
3 sory Committee, the Commissioner shall identify—

4 (1) new technologies with the cost-effective ca-  
5 pability to detect and identify goods described in  
6 subsection (a) at ports of entry, and

7 (2) economical sources of training CBP per-  
8 sonnel in using such new technologies,  
9 to the extent such training is determined to be feasible  
10 under subsection (a).

11 (c) REGULATORY AND POLICY CHANGES.—The  
12 Comptroller General of the United States shall provide to  
13 the Congress a report analyzing the costs and benefits of  
14 allowing necessary regulatory and policy changes to enable  
15 the receipt of donations of hardware, software, equipment,  
16 and similar technologies, and the acceptance of training  
17 and other support services, from the private sector, to fa-  
18 cilitate the achievement of the purposes of this section.

19 **SEC. 324. DISCLOSURE OF INFORMATION AND SAMPLES OF**  
20 **SHIPMENTS TO INTELLECTUAL PROPERTY**  
21 **OWNERS.**

22 The Commissioner shall make the necessary regu-  
23 latory and policy changes to—

24 (1) increase disclosure to owners of copyrights,  
25 trademarks, patents, and other forms of intellectual

1 property of information about shipments of goods  
2 that have been detained at ports of entry on sus-  
3 picion that their importation into, or transit  
4 through, the United States would violate the intellec-  
5 tual property rights of the owners of those rights,  
6 including—

7 (A) disclosing the identities and contact in-  
8 formation of all parties involved in the ship-  
9 ments, including importers, exporters, declar-  
10 ants, consignees, freight forwarders, and ware-  
11 house owners;

12 (B) providing documents relating to the  
13 shipments; and

14 (C) identifying points of origin and des-  
15 tination of the shipments; and

16 (2) improve the process of making available to  
17 representatives of owners of copyrights, trademarks,  
18 patents, and other forms of intellectual property, in  
19 an efficient and cost-effective manner, samples of  
20 shipments of goods suspected of infringing intellec-  
21 tual property rights, for the purpose of inspection or  
22 analysis.

23 **SEC. 325. IMPROVEMENTS TO RECORDATION PROCESS.**

24 (a) **IMPROVEMENTS IN RECORDATION PROCESS.**—

25 The Commissioner shall make the necessary regulatory

1 and policy changes to ensure that the system for recorda-  
2 tion of copyrights, trademarks, and other forms of intellec-  
3 tual property that may be subject to recordation does not  
4 impede the rapid seizure of goods that infringe the rights  
5 of the owners of such copyrights, trademarks, and other  
6 forms of intellectual property.

7 (b) SIMULTANEOUS RECORDATION.—

8 (1) IN GENERAL.—In consultation with the  
9 Under Secretary of Commerce for Intellectual Prop-  
10 erty and Director of the United States Patent and  
11 Trademark Office, and the Register of Copyrights,  
12 the Commissioner shall provide a system whereby  
13 trademarks may be recorded with CBP simulta-  
14 neously with the issuance of trademark registration,  
15 and whereby copyrights of audiovisual works and  
16 sound recordings may be recorded with CBP simul-  
17 taneously with the filing of an application for a cer-  
18 tificate of copyright registration or an application  
19 for registration of another intellectual property right  
20 under title 17, United States Code.

21 (2) DEFINITIONS.—In this subsection, the  
22 terms “audiovisual works” and “sound recordings”  
23 have the meanings given those terms in section 101  
24 of title 17, United States Code.

1 **SEC. 326. IDENTIFICATION OF LOW-RISK SHIPPERS.**

2 (a) VOLUNTARY CERTIFICATION PROGRAM.—The  
3 Commissioner shall create a voluntary certification pro-  
4 gram, comparable to the Import Safety Program estab-  
5 lished under section 304, for low-risk shippers that have  
6 taken specific measures to strengthen and protect their  
7 supply chains to prevent the infiltration into the inter-  
8 national supply chain of counterfeit and pirated goods,  
9 goods that are the subject to exclusion orders, and goods  
10 that violate other forms of intellectual property rights.

11 (b) SELF-CERTIFICATIONS; VERIFICATIONS.—The  
12 program under subsection (a) shall generally operate on  
13 a self-certification basis, except that the Commissioner  
14 shall identify any circumstances in which third party  
15 verifications and attestations are required for inclusion in  
16 the program, which may include importations from the  
17 People’s Republic of China.

18 (c) EXPEDITED MOVEMENT.—The Commissioner  
19 shall create incentives for shippers to participate in the  
20 certification program, including providing expedited move-  
21 ment of the goods of the shippers through the customs  
22 inspection process.

23 (d) DEFINITION.—In this section, the term “inter-  
24 national supply chain” has the meaning given that term  
25 in section 301.

1 **SEC. 327. “WATCH LIST” DATABASE.**

2 (a) IN GENERAL.—The Commissioner shall prepare  
3 a plan for the implementation of a “Watch List” database  
4 of importers, shippers, freight forwarders, and other par-  
5 ticipants in the import, export, and transshipment process,  
6 whose activities merit additional scrutiny at ports of entry  
7 with respect to the risk of importation or transshipment  
8 of counterfeit or pirated goods and goods that are the sub-  
9 ject to exclusion orders.

10 (b) WORKING GROUPS.—The Commissioner shall  
11 consult with the Advisory Committee on the development  
12 of criteria for the “Watch List” database.

13 (c) INFORMATION SOURCES.—The plan under sub-  
14 section (a) shall identify legitimate information sources for  
15 the database from within CBP, from other law enforce-  
16 ment sources, and from the private sector.

17 (d) CRITERIA FOR ACCESS TO DATABASE.—The plan  
18 under subsection (a) shall specify criteria under which the  
19 database should be made available to qualified CBP and  
20 other law enforcement officers, for intelligence purposes,  
21 and for use in flagging and diverting for enhanced scru-  
22 tiny shipments to ports of entry that are associated with  
23 entities listed in the database.

24 (e) OTHER MATTERS.—The plan under subsection  
25 (a) shall identify any regulatory or policy changes that the  
26 Department of the Treasury would make in order to bring



1 the database into operation, as well as any recommenda-  
2 tions for needed changes to legislation to make the data-  
3 base more effective. The plan shall also include budget es-  
4 timates for implementation and operation of the database,  
5 and for evaluation of its effectiveness, and a timetable for  
6 such implementation.

7 (f) **TIMING.**—The Commissioner shall complete the  
8 plan in a timely fashion that will permit its inclusion in  
9 the first annual strategic plan prepared under section 313.

10 **SEC. 328. CIVIL FINES FOR IMPORTATION OF PIRATED OR**  
11 **COUNTERFEIT GOODS.**

12 (a) **LIMITATION ON MITIGATION, DISMISSAL, AND**  
13 **VACATION OF FINES.**—Unless otherwise ordered by a  
14 court of competent jurisdiction, any civil fine imposed pur-  
15 suant to section 526(f) of the Tariff Act of 1930 (19  
16 U.S.C. 1526(f))—

17 (1) may not be mitigated, except pursuant to  
18 regulations issued by the Commissioner; and

19 (2) may not be dismissed or vacated, except  
20 pursuant to regulations issued by the Commissioner  
21 that require the specific approval of the Commis-  
22 sioner or the Commissioner’s designee for such dis-  
23 missal or vacation.

24 (b) **EXTRAORDINARY CASES.**—In issuing regulations  
25 under subsection (a), the Commissioner shall ensure that

1 the mitigation, dismissal, or vacation of civil fines for in-  
2 volvement in the importation, exportation, or trans-  
3 shipment of pirated or counterfeit goods is limited to ex-  
4 traordinary cases in which the interests of justice will  
5 clearly be served by such action.

6 (c) REPORT TO CONGRESS.—The Commissioner  
7 shall, not later than 180 days after the date of the enact-  
8 ment of this Act, report to the Committee on Finance of  
9 the Senate and the Committee on Ways and Means of the  
10 House of Representatives on the following:

11 (1) Whether CBP currently has the authority to  
12 employ effective collection techniques for collecting  
13 civil fines it imposes on participants in the importa-  
14 tion, exportation, or transshipment of pirated or  
15 counterfeit goods.

16 (2) If CBP lacks such authority, the Commis-  
17 sioner's recommendations for legislation to provide  
18 CBP with such authority.

19 (3) If CBP has such authority, how CBP is  
20 using such authority, and with what results in terms  
21 of increased collections of fines imposed.

22 (4) The Commissioner's recommendations on  
23 whether, in specific cases, copyright or trademark  
24 owners should be authorized to pursue and collect  
25 fines imposed because of activities that infringe their

1 intellectual property rights, and whether such copy-  
2 right or trademark owners should be allowed to re-  
3 tain some or all of the funds that they collect.

4 (5) Any other recommendations for statutory,  
5 regulatory, or policy changes not under the control  
6 of CBP that would improve the ability of CBP to  
7 impose civil fines, at deterrent levels, on participants  
8 in trafficking in counterfeit or pirated goods, and to  
9 collect the fines imposed.

10 (d) DEFINITION.—As used in subsection (c), the term  
11 “effective collection techniques” includes—

12 (1) confiscation of the proceeds of acts for  
13 which civil fines can be imposed;

14 (2) seizure of and execution upon property ac-  
15 quired with such proceeds;

16 (3) imposition of liens on the real or personal  
17 property of persons upon whom civil fines are im-  
18 posed;

19 (4) use of bonds to secure full payment of fines;

20 (5) piercing the corporate veil of corporations  
21 upon which civil fines are imposed, in order to sat-  
22 isfy the fine from the assets of natural persons or  
23 of other legal persons; and

24 (6) engaging private sector entities to collect  
25 civil fines imposed.

1    **CHAPTER 3—TRAINING ENHANCEMENTS**

2    **SEC. 331. INTERNATIONAL TRAINING AND TECHNICAL AS-**  
3                   **SISTANCE ENHANCEMENTS.**

4           The Secretary shall take the necessary steps—

5               (1) to increase staffing and resources of offices  
6               of CBP and ICE engaged in providing training and  
7               technical assistance to the customs services and en-  
8               forcement agencies of other countries in order to im-  
9               prove the effectiveness of such foreign services and  
10              agencies in detecting, intercepting, and imposing de-  
11              terrent penalties upon the export, import, or trans-  
12              shipment of counterfeit or pirated goods, goods that  
13              are the subject to exclusion orders, and goods that  
14              violate other forms of intellectual property rights;

15             (2) to ensure that the Director, in order to  
16             make the most efficient and effective use of training  
17             and technical assistance resources—

18               (A) coordinates the international training  
19               and technical assistance activities of CBP and  
20               ICE as part of the Director’s coordination re-  
21               sponsibilities under subsections (c)(1) and  
22               (c)(3) of section 312;

23               (B) gives priority to such activities in those  
24               countries where such programs can be carried  
25               out most effectively and with the greatest ben-

1           efit to protecting the intellectual property rights  
2           of United States right holders;

3           (C) takes steps to minimize duplication,  
4           overlap, or inconsistency of international train-  
5           ing and technical assistance efforts; and

6           (D) coordinates such activities of the De-  
7           partment of the Treasury with international  
8           training and technical assistance activities  
9           against counterfeiting and piracy carried out by  
10          other agencies, and enhances the participation  
11          of Department of the Treasury personnel in  
12          interagency training and technical assistance  
13          activities in this field.

14           **CHAPTER 4—NEW LEGAL TOOLS FOR**  
15           **BORDER ENFORCEMENT**

16           **SEC. 341. EXPANDED PROHIBITIONS ON IMPORTATION OR**  
17           **EXPORTATION OF COUNTERFEIT OR PIRAT-**  
18           **ED GOODS.**

19           Section 526 of the Tariff Act of 1930 (19 U.S.C.  
20           1526) is amended—

21           (1) in the section heading, by inserting “**OR**  
22           **PROTECTED BY COPYRIGHT**” after “**TRADE-**  
23           **MARK**”;

1           (2) in subsection (e), by inserting “or exported  
2           from the United States” after “imported into the  
3           United States”;

4           (3) in subsection (f), by striking paragraph (1)  
5           and inserting the following:

6           “(1) Any person who engages in, directs, assists  
7           financially or otherwise, or aids and abets the impor-  
8           tation or exportation of merchandise that is seized  
9           under subsection (e) of this section, or under regula-  
10          tions issued pursuant to section 603(c) of title 17,  
11          United States Code, shall be subject to a civil fine.”;  
12          and

13          (4) in subsection (f)—

14                  (A) by redesignating paragraph (4) as  
15                  paragraph (5); and

16                  (B) by inserting after paragraph (3) the  
17                  following:

18          “(4) When the seizure giving rise to the civil fine is  
19          made under circumstances indicating that the importation  
20          or exportation was for the purpose of sale or public dis-  
21          tribution of the good seized, the maximum fine amounts  
22          set forth in paragraphs (2) and (3) shall be tripled.”.

1 **SEC. 342. DECLARATIONS REGARDING COUNTERFEIT AND**  
2 **INFRINGING MERCHANDISE.**

3 (a) DECLARATIONS.—Section 485(a) of the Tariff  
4 Act of 1930 (19 U.S.C. 1485(a)), is amended—

5 (1) in paragraph (1), by striking “Whether”  
6 and inserting “whether”;

7 (2) in paragraph (2), by striking “That” and  
8 inserting “that”;

9 (3) in paragraph (3)—

10 (A) by striking “That” and inserting  
11 “that”; and

12 (B) by striking “and” after the semicolon;

13 (4) in paragraph (4)—

14 (A) by striking “That” and inserting  
15 “that”; and

16 (B) by striking the period and inserting a  
17 semicolon; and

18 (5) by adding at the end the following:

19 “(5) that the merchandise being imported does  
20 not bear a mark that is counterfeit as that term is  
21 defined in section 45 of the Act of July 5, 1946  
22 (commonly referred to as the ‘Trademark Act of  
23 1946’; 15 U.S.C. 1127);

24 “(6) that the merchandise is not an infringing  
25 copy or phonorecord or one whose making would

1 have constituted an infringement of copyright if title  
 2 17, United States Code, had applied; and

3 “(7) that the merchandise—

4 “(A) does not violate an exclusion order of  
 5 the United States International Trade Commis-  
 6 sion under section 337 (d) or (e) by reason of  
 7 any of subparagraphs (B) through (E) of sub-  
 8 section (a)(1) of section 337; or

9 “(B) infringe any other intellectual prop-  
 10 erty right not covered by subparagraph (A) or  
 11 by paragraph (5) or (6).”.

12 (b) REGULATIONS.—The Secretary shall issue regula-  
 13 tions requiring that the declarations required by para-  
 14 graphs (5), (6), and (7) of section 485(a) of the Tariff  
 15 Act of 1930 be made by all persons arriving in the United  
 16 States with respect to articles carried on their person or  
 17 contained in their baggage.

## 18 **CHAPTER 5—REGULATORY AUTHORITY**

### 19 **SEC. 351. REGULATORY AUTHORITY.**

20 The Secretary may issue such regulations as are nec-  
 21 essary to carry out this subtitle.

## 22 **Subtitle C—Administrative** 23 **Provisions**

### 24 **SEC. 361. DEFINITIONS.**

25 In this subtitle:



1           (1) ASSISTANT SECRETARY FOR ICE.—The term  
2           “Assistant Secretary for ICE” means the Assistant  
3           Secretary for U.S. Immigration and Customs En-  
4           forcement.

5           (2) COMMISSIONER.—The term “Commis-  
6           sioner” means the Commissioner responsible for  
7           U.S. Customs and Border Protection.

8           (3) CBP.—The term “CBP” means U.S. Cus-  
9           toms and Border Protection.

10          (4) ICE.—The term “ICE” means U.S. Immi-  
11          gration and Customs Enforcement.

12          (5) SECRETARY.—The term “Secretary” means  
13          the Secretary of the Treasury.

14 **SEC. 362. ADVISORY COMMITTEE ON IMPORT SAFETY AND**  
15 **INTELLECTUAL PROPERTY ENFORCEMENT.**

16          (a) ESTABLISHMENT.—

17               (1) IN GENERAL.—The Secretary, acting  
18               through the Commissioner and the Assistant Sec-  
19               retary for ICE, shall establish an advisory committee  
20               which shall be known as the “Advisory Committee  
21               on Import Safety and Intellectual Property Rights  
22               Enforcement” (in this section referred to as the  
23               “Advisory Committee”).

24               (2) MEMBERSHIP.—The Advisory Committee  
25               shall consist of 20 members appointed by the Sec-

1       retary. In making appointments to the Advisory  
2       Committee, the Secretary shall ensure that—

3               (A) the membership of the Advisory Com-  
4               mittee is representative of the individuals and  
5               organizations affected by the enforcement of  
6               health or safety and intellectual property rights  
7               by CBP and ICE;

8               (B) at least one member of the Advisory  
9               Committee is a representative of organized  
10              labor;

11              (C) at least one member of the Advisory  
12              Committee is a representative of consumer  
13              groups; and

14              (D) a majority of the members of the Advi-  
15              sory Committee do not belong to the same polit-  
16              ical party.

17       (b) DUTIES.—The Advisory Committee shall—

18              (1) provide advice to the Secretary, the Com-  
19              missioner, and the Assistant Secretary for ICE on  
20              all matters involving the enforcement of import safe-  
21              ty and intellectual property rights by CBP and ICE;  
22              and

23              (2) submit an annual report to the Committee  
24              on Finance of the Senate and the Committee on

1 Ways and Means of the House of Representatives  
2 that shall—

3 (A) describe the operations of the Advisory  
4 Committee during the preceding year; and

5 (B) set forth any recommendations of the  
6 Advisory Committee regarding the enforcement  
7 of intellectual property rights by CBP and ICE.

8 (c) PRESIDING OFFICERS.—The Commissioner and  
9 the Assistant Secretary for ICE shall preside over meet-  
10 ings of the Advisory Committee.

11 **SEC. 363. STAFFING ENHANCEMENTS AT CBP.**

12 (a) AUTHORIZATION OF APPROPRIATIONS.—There  
13 are authorized to be appropriated to CBP such funds as  
14 may be necessary for additional personnel (as determined  
15 in accordance with the Resource Allocation Model estab-  
16 lished pursuant to section 301(h) of the Customs Proce-  
17 dural Reform and Simplification Act of 1978 (19 U.S.C.  
18 2075(h)) to carry out the additional responsibilities of  
19 CBP under this title regarding the importation, trans-  
20 shipment, and exportation of counterfeit or pirated goods,  
21 goods that are the subject to exclusion orders, goods that  
22 violate other forms of intellectual property rights, and  
23 goods that violate United States health or safety laws.

1 (b) AMENDMENT.—Section 301(h)(1) of the Customs  
2 Procedural Reform and Simplification Act of 1978 (19  
3 U.S.C. 2075(h)) is amended—

4 (1) in subparagraph (F), by striking “and” at  
5 the end;

6 (2) in subparagraph (G), by striking the period  
7 at the end and inserting “; and”; and

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

9 “(H) enforcing provisions of law relating  
10 to health and safety.”.

11 **SEC. 364. STAFFING ENHANCEMENTS AT ICE.**

12 There are authorized to be appropriated to ICE such  
13 funds as may be necessary for additional personnel to  
14 carry out the additional responsibilities of ICE under this  
15 title regarding the enforcement of United States health  
16 and safety laws and the enforcement of intellectual prop-  
17 erty rights, including for developing and implementing a  
18 training program with respect to United States health and  
19 safety laws and intellectual property rights for each ICE  
20 attaché office outside the United States.

1           **Subtitle D—Authorization of**  
2                           **Appropriations**

3 **SEC. 371. AUTHORIZATION OF APPROPRIATIONS.**

4           There are authorized to be appropriated for each fis-  
5 cal year such sums as may be necessary to carry out this  
6 title and the amendments made by this title.

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