

111TH CONGRESS
1ST 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.

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

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.

○