

115TH CONGRESS
1ST SESSION

H. R. 2756

To amend the Trade Act of 1974 to strengthen trade enforcement, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2017

Mr. PASCARELL (for himself, Mr. LEVIN, Mr. HIGGINS of New York, Ms. SEWELL of Alabama, Ms. DELBENE, Ms. JUDY CHU of California, and Ms. SÁNCHEZ) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Rules, 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 the Trade Act of 1974 to strengthen trade
enforcement, and for other purposes.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Jobs and Trade Competitiveness Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—OFFICE OF THE CONGRESSIONAL TRADE ENFORCER

- Sec. 101. Establishment.
- Sec. 102. Congressional Trade Enforcer.
- Sec. 103. Personnel.
- Sec. 104. Functions.
- Sec. 105. Office of Market Access Assistance.
- Sec. 106. Relationship to executive branch.

TITLE II—TRADE ENFORCEMENT DIVISION AND DEPUTY UNITED STATES TRADE REPRESENTATIVE FOR TRADE ENFORCEMENT

- Sec. 201. Establishment of Trade Enforcement Division and Deputy United States Trade Representative for Trade Enforcement.
- Sec. 202. Establishment of Chief Manufacturing Negotiator.

TITLE III—CONGRESSIONAL ADVISORY COMMISSION ON WTO DISPUTE SETTLEMENT

- Sec. 301. Congressional findings and purpose.
- Sec. 302. Establishment of Commission.
- Sec. 303. Duties of the Commission.
- Sec. 304. Powers of the Commission.
- Sec. 305. Participation in WTO panel proceedings.
- Sec. 306. Definitions.

TITLE IV—IMPOSITION OF COUNTERVAILING DUTIES TO ADDRESS SUBSIDIES RELATING TO FUNDAMENTALLY UNDERVALUED CURRENCIES

- Sec. 401. Clarification regarding definition of countervailable subsidy.
- Sec. 402. Report on implementation of title.
- Sec. 403. Application to goods from Canada and Mexico.

TITLE V—PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS

- Sec. 501. Protection of business proprietary information.
- Sec. 502. Application to Canada and Mexico.

TITLE VI—MATTERS TO ENCOURAGE DOMESTIC INSOURCING AND DISCOURAGE FOREIGN OUTSOURCING

- Sec. 601. Credit for insourcing expenses.
- Sec. 602. Denial of deduction for outsourcing expenses.

TITLE VII—MATTERS RELATING TO ENVIRONMENTAL PROTECTIONS

- Sec. 701. Environmental protection in trade relations.
- Sec. 702. Identification of foreign country trade practices that negatively affect the environment.

TITLE VIII—OTHER MATTERS

- Sec. 801. Modification of availability of amounts from Trade Enforcement Trust Fund.
- Sec. 802. Government Accountability Office report on commitments under certain international fora.

Sec. 803. Government Accountability Office report on enforcement of child labor prohibition.

Sec. 804. Congressional advisory groups on enforcement.

1 **TITLE I—OFFICE OF THE CON-**
2 **GRESSIONAL TRADE EN-**
3 **FORCER**

4 **SEC. 101. ESTABLISHMENT.**

5 There is established in the legislative branch an Of-
6 fice of the Congressional Trade Enforcer (in this title re-
7 ferred to as the “Office”).

8 **SEC. 102. CONGRESSIONAL TRADE ENFORCER.**

9 (a) **APPOINTMENT.**—The head of the Office shall be
10 the Congressional Trade Enforcer, who shall be appointed
11 by the Speaker of the House of Representatives, the mi-
12 nority leader of the House of Representatives, the majority
13 leader of the Senate, and the minority leader of the Senate
14 after considering recommendations received from the
15 Committee on Ways and Means of the House of Rep-
16 resentatives and the Committee on Finance of the Senate,
17 without regard to political affiliation and solely on the
18 basis of fitness to perform the functions described in sec-
19 tion 104.

20 (b) **TERM.**—The term of office of the Congressional
21 Trade Enforcer shall be 5 years. An individual serving as
22 Congressional Trade Enforcer at the expiration of a term
23 may continue to serve until a successor is appointed. The

1 Congressional Trade Enforcer may be removed by either
2 the House of Representatives or the Senate by resolution.

3 (c) COMPENSATION.—The Congressional Trade En-
4 forcer shall receive compensation at an annual rate of pay
5 that is equal to the lower of—

6 (1) the highest annual rate of compensation of
7 any officer of the Senate; or

8 (2) the highest annual rate of compensation of
9 any officer of the House of Representatives.

10 **SEC. 103. PERSONNEL.**

11 (a) IN GENERAL.—The Congressional Trade En-
12 forcer shall appoint and fix the compensation of such per-
13 sonnel as may be necessary to carry out the functions de-
14 scribed in section 104. All personnel of the Office shall
15 be appointed without regard to political affiliation and
16 solely on the basis of their fitness to perform their duties.
17 The Congressional Trade Enforcer may prescribe the du-
18 ties and responsibilities of the personnel of the Office, and
19 delegate to them authority to perform any of the duties,
20 powers, and functions imposed on the Office.

21 (b) COVERAGE UNDER CONGRESSIONAL ACCOUNT-
22 ABILITY ACT OF 1995.—

23 (1) TREATMENT OF EMPLOYEES AS COVERED
24 EMPLOYEES.—Section 101(3) of the Congressional

1 Accountability Act of 1995 (2 U.S.C. 1301(3)) is
2 amended—

3 (A) by striking “or” at the end of subpara-
4 graph (H);

5 (B) by striking the period at the end of
6 subparagraph (I) and inserting “; or”; and

7 (C) by adding at the end the following new
8 subparagraph:

9 “(J) the Office of the Congressional Trade
10 Enforcer.”.

11 (2) TREATMENT OF OFFICE AS EMPLOYING OF-
12 FICE.—Subparagraph (D) of section 101(9) of such
13 Act (2 U.S.C. 1301(9)) is amended by striking “and
14 the Office of Technology Assessment” and inserting
15 “the Office of Technology Assessment, and the Of-
16 fice of the Congressional Trade Enforcer”.

17 **SEC. 104. FUNCTIONS.**

18 (a) PRINCIPLE FUNCTION.—The principle function
19 of the Congressional Trade Enforcer shall be to ensure
20 compliance by trading partners of the United States with
21 trade agreements to which the United States is a party.

22 (b) OTHER FUNCTIONS; ACTIONS BY USTR.—

23 (1) IN GENERAL.—The Congressional Trade
24 Enforcer shall have the authority to investigate for-
25 eign trade practices that are barriers to United

1 States exports and issue indictments in cases where
2 such practices violate any of the Uruguay Round
3 Agreements or any bilateral or regional trade agree-
4 ment to which the United States is a party.

5 (2) SUBMISSION OF INDICTMENTS.—The Con-
6 gressional Trade Enforcer shall submit indictments
7 referred to in paragraph (1) to the Committee on
8 Ways and Means of the House of Representatives,
9 the Committee on Finance of the Senate, and the
10 United States Trade Representative.

11 (3) ACTION PURSUANT TO INDICTMENT.—With-
12 in 30 days after receiving an indictment under para-
13 graph (2), the Trade Representative, acting through
14 the Deputy United States Trade Representative for
15 Trade Enforcement should, in accordance with sub-
16 section (c)(1) of section 142 of the Trade Act of
17 1974, as added by section 201 of this Act, com-
18 mence dispute resolution procedures in the appro-
19 priate forum against the country or countries that
20 are the subject of the indictment unless—

21 (A) prior to the date of filing, the foreign
22 country or countries involved enters into an
23 agreement with the United States to eliminate
24 the practice that is inconsistent with its inter-
25 national obligations; or

1 (B) in extraordinary cases, the filing of the
2 case would cause serious harm to the national
3 security of the United States.

4 (4) REPORT.—If the Trade Representative does
5 not commence dispute resolution procedures under
6 paragraph (3) pursuant to an indictment under
7 paragraph (3), the Trade Representative shall, not
8 later than 30 days after receiving the indictment,
9 submit to the Committee on Ways and Means of the
10 House of Representatives and the Committee on Fi-
11 nance of the Senate a report containing the reasons
12 therefor and shall publish notice of the decision, to-
13 gether with a summary of such reasons, in the Fed-
14 eral Register.

15 (c) ACTION PURSUANT TO JOINT RESOLUTION.—

16 (1) IN GENERAL.—If the Trade Representative
17 does not commence dispute resolution procedures
18 under subsection (b)(3) pursuant to an indictment
19 under subsection (b)(2), then the Trade Representa-
20 tive shall commence dispute resolution procedures in
21 the appropriate forum pursuant to the indictment
22 upon the enactment pursuant to the requirements of
23 paragraph (2) of a joint resolution described in
24 paragraph (3).

1 (2) REQUIREMENTS.—(A) The requirements of
2 this paragraph are met if the joint resolution is en-
3 acted under paragraph (3) and—

4 (i) the Congress adopts and transmits the
5 joint resolution to the President before the end
6 of the 90-day period (excluding any day de-
7 scribed in section 154(b) of the Trade Act of
8 1974), beginning on the date on which the Con-
9 gressional Trade Enforcer submits the indict-
10 ment under subsection (b)(2); and

11 (ii) if the President vetoes the joint resolu-
12 tion, each House of Congress votes to override
13 that veto on or before the later of the last day
14 of the 90-day period referred to in clause (i) or
15 the last day of the 15-day period (excluding any
16 day described in section 154(b) of the Trade
17 Act of 1974) beginning on the date on which
18 the Congress receives the veto message from the
19 President.

20 (B) A joint resolution to which this subsection
21 applies may be introduced at any time on or after
22 the end of the 30-day period described in subsection
23 (b)(3), and before the end of the 90-day period re-
24 ferred to in subparagraph (A).

25 (3) JOINT RESOLUTIONS.—

1 (A) JOINT RESOLUTIONS.—For purposes
2 of this subsection, the term “joint resolution”
3 means only a joint resolution of the 2 Houses
4 of Congress, the matter after the resolving
5 clause of which is as follows: “That the United
6 States Trade Representative shall commence
7 dispute resolution procedures against
8 _____ in _____ pursuant to
9 the indictment submitted under section
10 204(b)(2) of the Trade Enforcement Act of
11 2017 on _____.”, with the first blank
12 space being filled with the country or countries
13 that are the subject of the indictment, the sec-
14 ond blank space being filled with the appro-
15 priate forum, and the third blank space being
16 filled with the appropriate date.

17 (B) PROCEDURES.—(i) Joint resolutions
18 may be introduced in either House of the Con-
19 gress by any member of such House.

20 (ii) Subject to the provisions of this para-
21 graph, the provisions of subsections (b), (d),
22 (e), and (f) of section 152 of the Trade Act of
23 1974 (19 U.S.C. 2192 (b), (d), (e), and (f))
24 apply to joint resolutions to the same extent as

1 such provisions apply to resolutions under that
2 section.

3 (iii) If the committee of either House to
4 which a joint resolution has been referred has
5 not reported it by the close of the 45th day
6 after its introduction (excluding any day de-
7 scribed in section 154(b) of the Trade Act of
8 1974), such committee shall be automatically
9 discharged from further consideration of the
10 joint resolution and it shall be placed on the ap-
11 propriate calendar.

12 (iv) It is not in order for—

13 (I) the Senate to consider any joint
14 resolution unless it has been reported by
15 the Committee on Finance or the com-
16 mittee has been discharged under clause
17 (iii); or

18 (II) the House of Representatives to
19 consider any joint resolution unless it has
20 been reported by the Committee on Ways
21 and Means or the committee has been dis-
22 charged under clause (iii).

23 (v) A motion in the House of Representa-
24 tives to proceed to the consideration of a joint
25 resolution may only be made on the second leg-

1 islative day after the calendar day on which the
2 Member making the motion announces to the
3 House his or her intention to do so.

4 (C) CONSIDERATION OF SECOND RESOLU-
5 TION NOT IN ORDER.—It shall not be in order
6 in either the House of Representatives or the
7 Senate to consider a joint resolution (other than
8 a joint resolution received from the other
9 House), if that House has previously adopted a
10 joint resolution under this subsection.

11 (D) RULES OF HOUSE OF REPRESENTA-
12 TIVES AND SENATE.—This subsection is en-
13 acted by the Congress—

14 (i) as an exercise of the rulemaking
15 power of the House of Representatives and
16 the Senate, respectively, and as such is
17 deemed a part of the rules of each House,
18 respectively, and such procedures super-
19 sede other rules only to the extent that
20 they are inconsistent with such other rules;
21 and

22 (ii) with the full recognition of the
23 constitutional right of either House to
24 change the rules (so far as relating to the
25 procedures of that House) at any time, in

1 the same manner, and to the same extent
2 as any other rule of that House.

3 (d) DEFINITIONS.—In this section:

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

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

16 **SEC. 105. OFFICE OF MARKET ACCESS ASSISTANCE.**

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

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

1 sistance, are frivolous) under section 302 of the Trade Act
2 of 1974 (19 U.S.C. 2412).

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

14 **SEC. 106. RELATIONSHIP TO EXECUTIVE BRANCH.**

15 (a) INFORMATION.—The Congressional Trade En-
16 forcer may secure directly from any department or agency
17 of the United States information necessary to enable it
18 to carry out this title. Upon request of the Congressional
19 Trade Enforcer, the head of that department or agency
20 shall provide that information to the Congressional Trade
21 Enforcer.

22 (b) SERVICES, FACILITIES, AND PERSONNEL.—Upon
23 request of the Congressional Trade Enforcer, the head of
24 any Federal department or agency may provide or detail
25 any of the services, facilities, and personnel of that depart-

1 ment or agency to the Congressional Trade Enforcer to
 2 assist it in carrying out its duties under this title.

3 **TITLE II—TRADE ENFORCEMENT**
 4 **DIVISION AND DEPUTY**
 5 **UNITED STATES TRADE REP-**
 6 **RESENTATIVE FOR TRADE**
 7 **ENFORCEMENT**

8 **SEC. 201. ESTABLISHMENT OF TRADE ENFORCEMENT DIVI-**
 9 **SION AND DEPUTY UNITED STATES TRADE**
 10 **REPRESENTATIVE FOR TRADE ENFORCE-**
 11 **MENT.**

12 (a) ESTABLISHMENT.—Chapter 4 of title I of the
 13 Trade Act of 1974 (19 U.S.C. 2171) is amended by add-
 14 ing at the end the following:

15 **“SEC. 142. TRADE ENFORCEMENT DIVISION AND DEPUTY**
 16 **UNITED STATES TRADE REPRESENTATIVE**
 17 **FOR TRADE ENFORCEMENT.**

18 “(a) ESTABLISHMENT OF TRADE ENFORCEMENT DI-
 19 VISION.—There is established within the Office of the
 20 United States Trade Representative a Trade Enforcement
 21 Division (in this section referred to as the ‘Division’).

22 “(b) ESTABLISHMENT OF POSITION OF DEPUTY
 23 UNITED STATES TRADE REPRESENTATIVE FOR TRADE
 24 ENFORCEMENT.—

1 “(1) IN GENERAL.—The Division shall be head-
2 ed by a Deputy United States Trade Representative
3 for Trade Enforcement.

4 “(2) APPOINTMENT AND NOMINATION.—The
5 Deputy United States Trade Representative for
6 Trade Enforcement shall be appointed by the Presi-
7 dent, by and with the advice and consent of the Sen-
8 ate. As an exercise of the rulemaking power of the
9 Senate, any nomination of the Deputy United States
10 Trade Representative for Trade Enforcement sub-
11 mitted to the Senate for its advice and consent, and
12 referred to a committee, shall be referred to the
13 Committee on Finance.

14 “(3) RANK.—The Deputy United States Trade
15 Representative for Trade Enforcement shall hold of-
16 fice at the pleasure of the President and shall have
17 the rank of Ambassador.

18 “(c) FUNCTIONS OF DEPUTY UNITED STATES
19 TRADE REPRESENTATIVE FOR TRADE ENFORCEMENT.—

20 “(1) PRINCIPAL FUNCTION.—The principal
21 function of the Deputy United States Trade Rep-
22 resentative for Trade Enforcement shall be to ensure
23 that trading partners of the United States comply
24 with trade agreements to which the United States is
25 a party.

1 “(2) ADDITIONAL FUNCTIONS.—The Deputy
2 United States Trade Representative for Trade En-
3 forcement shall—

4 “(A) assist the United States Trade Rep-
5 resentative in investigating and prosecuting dis-
6 putes before the World Trade Organization and
7 pursuant to other bilateral or regional trade
8 agreements to which the United States is a
9 party;

10 “(B) assist the United States Trade Rep-
11 resentative in carrying out the United States
12 Trade Representative’s functions under section
13 141(d);

14 “(C) make recommendations with respect
15 to the administration of United States trade
16 laws relating to barriers imposed by foreign
17 governments to the importation of United
18 States goods, services, and intellectual property,
19 and other trade matters; and

20 “(D) perform such other functions as the
21 United States Trade Representative may direct.

22 “(d) OFFICE OF TRADE ASSISTANCE FOR SMALL
23 BUSINESS.—

1 “(1) ESTABLISHMENT.—There is established
2 within the Division the Office of Trade Assistance
3 for Small Business.

4 “(2) FUNCTIONS.—The Office of Trade Assist-
5 ance for Small Business shall provide technical and
6 legal assistance and advice to eligible small busi-
7 nesses to enable such small businesses to prepare
8 and file petitions (other than those that, in the opin-
9 ion of the Office, are frivolous) under section 302.

10 “(3) ELIGIBLE SMALL BUSINESS DEFINED.—
11 The term ‘eligible small business’ means any busi-
12 ness concern that, in the judgment of the Office of
13 Trade Assistance for Small Business, due to its size,
14 has neither adequate internal resources nor financial
15 ability to obtain qualified outside assistance in pre-
16 paring and filing petitions and complaints under sec-
17 tion 302. In determining whether a business concern
18 is an eligible small business, the Office of Trade As-
19 sistance for Small Business may consult with the
20 Administrator of the Small Business Administration
21 and the heads of other appropriate Federal depart-
22 ments and agencies.”.

23 (b) CONFORMING AMENDMENT.—The table of con-
24 tents for the Trade Act of 1974 is amended by inserting
25 after the item relating to section 141 the following:

“Sec. 142. Trade Enforcement Division and Deputy United States Trade Representative for Trade Enforcement.”.

1 (c) COMPENSATION FOR DEPUTY UNITED STATES
2 TRADE REPRESENTATIVE FOR TRADE ENFORCEMENT.—
3 Section 5314 of title 5, United States Code, is amended
4 by striking “Deputy United States Trade Representatives
5 (3).” and inserting “Deputy United States Trade Rep-
6 resentatives (4).”.

7 (d) CONFORMING REPEAL.—Section 2112 of the Bi-
8 partisan Trade Promotion Authority Act of 2002 (19
9 U.S.C. 3812) is repealed.

10 **SEC. 202. ESTABLISHMENT OF CHIEF MANUFACTURING NE-**
11 **GOTIATOR.**

12 (a) ESTABLISHMENT OF POSITIONS.—Section
13 141(b)(2) of the Trade Act of 1974 (19 U.S.C.
14 2171(b)(2)) is amended to read as follows:

15 “(2) There shall be in the Office four Deputy United
16 States Trade Representatives (including the Deputy
17 United States Trade Representative for Trade Enforce-
18 ment), one Chief Agricultural Negotiator, one Chief Inno-
19 vation and Intellectual Property Negotiator, and one Chief
20 Manufacturing Negotiator who shall all be appointed by
21 the President, by and with the advice and consent of the
22 Senate. As an exercise of the rulemaking power of the
23 Senate, any nomination of a Deputy United States Trade
24 Representative, the Chief Agricultural Negotiator, the

1 Chief Innovation and Intellectual Property Negotiator, or
2 the Chief Manufacturing Negotiator submitted to the Sen-
3 ate for its advice and consent, and referred to a com-
4 mittee, shall be referred to the Committee on Finance.
5 Each Deputy United States Trade Representative, the
6 Chief Agricultural Negotiator, the Chief Innovation and
7 Intellectual Property Negotiator, and the Chief Manufac-
8 turing Negotiator shall hold office at the pleasure of the
9 President and shall have the rank of Ambassador.”.

10 (b) FUNCTIONS OF CHIEF MANUFACTURING NEGO-
11 TIATOR.—Section 141(c) of the Trade Act of 1974 (19
12 U.S.C. 2171(c)) is amended by adding at the end the fol-
13 lowing:

14 “(7)(A) The principal function of the Chief Manufac-
15 turing Negotiator shall be to conduct trade negotiations
16 and to enforce trade agreements relating to United States
17 manufacturing products and services. The Chief Manufac-
18 turing Negotiator shall promote manufacturing activities
19 in the United States, shall serve as a vigorous advocate
20 on behalf of United States manufacturing firms and work-
21 ers, and shall perform such other functions as the United
22 States Trade Representative may direct.

23 “(B) Not later than one year after the date of the
24 enactment of this paragraph, and not less frequently than
25 annually thereafter, the Chief Manufacturing Negotiator

1 shall submit to the Committee on Finance of the Senate
2 and the Committee on Ways and Means of the House of
3 Representatives a report on the actions taken by the Chief
4 Manufacturing Negotiator in the preceding year.”.

5 (c) COMPENSATION.—Section 5314 of title 5, United
6 States Code, is amended—

7 (1) by striking “Deputy United States Trade
8 Representatives (3).” and inserting “Deputy United
9 States Trade Representatives (4).”; and

10 (2) by inserting “Chief Manufacturing Nego-
11 tiator.” after “Chief Agricultural Negotiator.”.

12 (d) CONFORMING AMENDMENT.—Section 141(c)(4)
13 of the Trade Act of 1974 (19 U.S.C. 2171(c)(4)) is
14 amended by inserting “(other than the Deputy United
15 States Trade Representative for Trade Enforcement)”
16 after “Deputy United States Trade Representative”.

17 (e) TECHNICAL AMENDMENTS.—Section 141(e) of
18 the Trade Act of 1974 (19 U.S.C. 2171(e)) is amended—

19 (1) in paragraph (1), by striking “5314” and
20 inserting “5315”; and

21 (2) in paragraph (2), by striking “the max-
22 imum rate of pay for grade GS–18, as provided in
23 section 5332” and inserting “the maximum rate of
24 pay for level IV of the Executive Schedule in section
25 5315”.

1 **TITLE III—CONGRESSIONAL AD-**
2 **VISORY COMMISSION ON WTO**
3 **DISPUTE SETTLEMENT**

4 **SEC. 301. CONGRESSIONAL FINDINGS AND PURPOSE.**

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

6 (1) The United States joined the World Trade
7 Organization as an original member with the goal of
8 creating an improved global trading system and pro-
9 viding expanded economic opportunities for United
10 States workers, farmers, and businesses.

11 (2) The dispute settlement rules of the WTO
12 were created to enhance the likelihood that govern-
13 ments will observe their WTO obligations.

14 (3) These dispute settlement rules help ensure
15 that the United States can reap the full benefits of
16 its participation in the WTO.

17 (4) Successful operation of the WTO dispute
18 settlement system was critical to congressional ap-
19 proval of the Uruguay Round Agreements and is
20 critical to continued support by the United States
21 for the WTO. In particular, it is imperative that dis-
22 pute settlement panels and the Appellate Body—

23 (A) operate with fairness and in an impar-
24 tial manner;

1 (B) strictly observe the terms of reference
2 and any applicable standard of review set forth
3 in the Uruguay Round Agreements; and

4 (C) not add to the obligations, or diminish
5 the rights, of WTO members under the Uru-
6 guay Round Agreements in violation of Articles
7 3.2 and 19.2 of the Dispute Settlement Under-
8 standing.

9 (5) An increasing number of reports by dispute
10 settlement panels and the Appellate Body have
11 raised serious concerns within the Congress about
12 the ability of the WTO dispute settlement system to
13 operate in accordance with paragraph (4).

14 (6) In particular, several reports of dispute set-
15 tlement panels and the Appellate Body have added
16 to the obligations and diminished the rights of WTO
17 members, particularly under the Agreement on Im-
18 plementation of Article VI of the General Agreement
19 on Tariffs and Trade 1994, the Agreement on Sub-
20 sidies and Countervailing Measures, and the Agree-
21 ment on Safeguards.

22 (7) In order to come into compliance with re-
23 ports of dispute settlement panels and the Appellate
24 Body that have been adopted by the Dispute Settle-
25 ment Body, the Congress may need to amend or re-

1 peal statutes of the United States. In such cases, the
2 Congress must have a high degree of confidence that
3 the reports are in accordance with paragraph (4).

4 (8) The Congress needs impartial, objective,
5 and juridical advice to determine the appropriate re-
6 sponse to reports of dispute settlement panels and
7 the Appellate Body.

8 (9) The United States remains committed to
9 the multilateral, rules-based trading system.

10 (b) PURPOSE.—It is the purpose of this Act to pro-
11 vide for the establishment of the Congressional Advisory
12 Commission on WTO Dispute Settlement to provide objec-
13 tive and impartial advice to the Congress on the operation
14 of the dispute settlement system of the World Trade Orga-
15 nization.

16 **SEC. 302. ESTABLISHMENT OF COMMISSION.**

17 (a) ESTABLISHMENT.—There is established a com-
18 mission to be known as the Congressional Advisory Com-
19 mission on WTO Dispute Settlement (in this title referred
20 to as the “Commission”).

21 (b) MEMBERSHIP.—

22 (1) COMPOSITION.—The Commission shall be
23 composed of 5 members, all of whom shall be judges
24 or former judges of the Federal judicial circuits and
25 shall be appointed by the Speaker of the House of

1 Representatives and the President pro tempore of
2 the Senate after considering the recommendations of
3 the Chairman and ranking member of the Com-
4 mittee on Finance of the Senate and the Chairman
5 and ranking member of the Committee on Ways and
6 Means of the House of Representatives. Commis-
7 sioners shall be chosen without regard to political af-
8 filiation and solely on the basis of each Commis-
9 sioner's fitness to perform the duties of a Commis-
10 sioner.

11 (2) DATE.—The appointments of the initial
12 members of the Commission shall be made not later
13 than 90 days after the date of the enactment of this
14 Act.

15 (c) PERIOD OF APPOINTMENT; VACANCIES.—

16 (1) IN GENERAL.—Members of the Commission
17 shall each be appointed for a term of 5 years, except
18 that of the members first appointed, 3 members
19 shall be appointed for terms of 3 years.

20 (2) VACANCIES.—

21 (A) IN GENERAL.—Any vacancy on the
22 Commission shall not affect its powers, but
23 shall be filled in the same manner as the origi-
24 nal appointment was made and shall be subject

1 to the same conditions as the original appoint-
2 ment.

3 (B) UNEXPIRED TERM.—An individual
4 chosen to fill a vacancy shall be appointed for
5 the unexpired term of the member replaced.

6 (d) INITIAL MEETING.—Not later than 30 days after
7 the date on which all members of the Commission have
8 been appointed, the Commission shall hold its first meet-
9 ing.

10 (e) MEETINGS.—The Commission shall meet at the
11 call of the Chairperson.

12 (f) QUORUM.—A majority of the members of the
13 Commission shall constitute a quorum, but a lesser num-
14 ber of members may hold hearings.

15 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The
16 Commission shall select a Chairperson and Vice Chair-
17 person from among its members.

18 (h) FUNDING.—Members of the Commission shall be
19 allowed travel expenses, including per diem in lieu of sub-
20 sistence at rates authorized for employees of agencies
21 under subchapter I of chapter 57 of title 5, United States
22 Code, while away from their homes or regular places of
23 business in the performance of services for the Commis-
24 sion.

1 **SEC. 303. DUTIES OF THE COMMISSION.**

2 (a) ADVISING CONGRESS ON THE OPERATION OF
3 THE WTO DISPUTE SETTLEMENT SYSTEM.—

4 (1) IN GENERAL.—The Commission shall re-
5 view—

6 (A) all adverse reports of dispute settle-
7 ment panels and the Appellate Body which
8 are—

9 (i) adopted by the Dispute Settlement
10 Body; and

11 (ii) the result of a proceeding initiated
12 against the United States by a WTO mem-
13 ber; and

14 (B) upon the request of the Committee on
15 Ways and Means of the House of Representa-
16 tives or the Committee on Finance of the Sen-
17 ate—

18 (i) any adverse report of a dispute
19 settlement panel or the Appellate Body—

20 (I) which is adopted by the Dis-
21 pute Settlement Body; and

22 (II) in which the United States is
23 a complaining party; or

24 (ii) any other finding which is con-
25 tained in a report of a dispute settlement

1 panel or the Appellate Body that is adopt-
2 ed by the Dispute Settlement Body.

3 (2) SCOPE OF REVIEW.—The Commission shall
4 advise the Congress in connection with each adverse
5 finding or other finding under paragraph (1)(B)
6 only whether—

7 (A) the dispute settlement panel or the Ap-
8 pellate Body, as the case may be—

9 (i) exceeded its authority or its terms
10 of reference;

11 (ii) added to the obligations, or dimin-
12 ished the rights, of the United States
13 under the Uruguay Round Agreement
14 which is the subject of the finding;

15 (iii) acted arbitrarily or capriciously,
16 engaged in misconduct, or demonstrably
17 departed from the procedures specified for
18 panels and the Appellate Body in the ap-
19 plicable Uruguay Round Agreement; and

20 (iv) deviated from the applicable
21 standard of review, including in anti-
22 dumping, countervailing duty, and other
23 unfair trade remedy cases, the standard of
24 review set forth in Article 17.6 of the
25 Agreement on Implementation of Article

1 VI of the General Agreement on Tariffs
2 and Trade 1994; and

3 (B) the finding is consistent with the origi-
4 nal understanding by the United States of the
5 Uruguay Round Agreement that is the subject
6 of the finding as explained in the statement of
7 administrative action approved under section
8 101(a) of the Uruguay Round Agreements Act
9 (19 U.S.C. 3511(a)).

10 (3) NO DEFERENCE.—Applying the standards
11 set forth in paragraph (2) requires that the Commis-
12 sion not accord deference to findings of law made by
13 the dispute settlement panel or the Appellate Body,
14 as the case may be.

15 (b) DETERMINATION; REPORT.—

16 (1) DETERMINATION.—

17 (A) IN GENERAL.—Not later than 150
18 days after the date on which the Commission
19 receives notice of a report or request under sec-
20 tion 304(b), the Commission shall make a writ-
21 ten determination with respect to the matters
22 described in paragraph (2) of subsection (a), in-
23 cluding a full analysis of the basis for its deter-
24 mination. A vote by a majority of the members
25 of the Commission shall constitute a determina-

1 tion of the Commission, although the members
2 need not agree on the basis for their vote.

3 (B) DISSENTING OR CONCURRING OPIN-
4 IONS.—Any member of the Commission who
5 disagrees with a determination of the Commis-
6 sion or who concurs in such a determination on
7 a basis different from that of the Commission
8 or other members of the Commission, may write
9 an opinion expressing such disagreement or
10 concurrence, as the case may be.

11 (2) REPORT.—The Commission shall promptly
12 report the determinations described in paragraph
13 (1)(A) to the Committee on Ways and Means of the
14 House of Representatives and the Committee on Fi-
15 nance of the Senate. The Commission shall include
16 with the report any opinions written under para-
17 graph (1)(B) with respect to the determination.

18 (c) AVAILABILITY TO THE PUBLIC.—Each report of
19 the Commission under subsection (b)(2), together with the
20 opinions included with the report, shall be made available
21 to the public.

22 **SEC. 304. POWERS OF THE COMMISSION.**

23 (a) HEARINGS.—The Commission may hold a public
24 hearing to solicit views concerning a report of a dispute
25 settlement panel or the Appellate Body described in sec-

1 tion 303(a)(1), if the Commission considers such hearing
2 to be necessary to carry out the purpose of this Act. The
3 Commission shall provide reasonable notice of a hearing
4 held pursuant to this subsection.

5 (b) INFORMATION FROM INTERESTED PARTIES AND
6 FEDERAL AGENCIES.—

7 (1) NOTICE TO COMMISSION.—

8 (A) UNDER SECTION 303(a)(1)(A).—The
9 Trade Representative shall advise the Commis-
10 sion not later than 5 business days after the
11 date the Dispute Settlement Body adopts a re-
12 port of a panel or the Appellate Body that is
13 to be reviewed by the Commission under section
14 303(a)(1)(A).

15 (B) UNDER SECTION 303(a)(1)(B).—The
16 Committee on Ways and Means or the Com-
17 mittee on Finance, as the case may be, may
18 make and notify the Commission of a request
19 under section 303(a)(1)(B) not later than 1
20 year after the Dispute Settlement Body adopts
21 the report that is the subject of the request.

22 (C) REPORTS ADOPTED PRIOR TO AP-
23 POINTMENT OF COMMISSION.—With respect to
24 any report to which section 303(a)(1)(B) ap-
25 plies and that is adopted before the date on

1 which the first members of the Commission are
2 appointed under section 302(b)(2), the Com-
3 mittee on Ways and Means or the Committee
4 on Finance, as the case may be, may make and
5 notify the Commission of a request under sec-
6 tion 303(a)(1)(B) with respect to that report
7 not later than 1 year after the date on which
8 the first members of the Commission are ap-
9 pointed under section 302(b)(2).

10 (2) SUBMISSIONS AND REQUESTS FOR INFOR-
11 MATION.—

12 (A) IN GENERAL.—The Commission shall
13 promptly publish in the Federal Register notice
14 of the notice received under paragraph (1) from
15 the Trade Representative, the Committee on
16 Ways and Means, or the Committee on Fi-
17 nance, as the case may be, along with notice of
18 an opportunity for interested parties to submit
19 written comments to the Commission. The
20 Commission shall make comments submitted
21 pursuant to the preceding sentence available to
22 the public.

23 (B) INFORMATION FROM FEDERAL AGEN-
24 CIES AND DEPARTMENTS.—The Commission
25 may also secure directly from any Federal de-

1 partment or agency such information as the
2 Commission considers necessary to carry out
3 the provisions of this Act. Upon the request of
4 the chairperson of the Commission, the head of
5 such department or agency shall furnish the in-
6 formation requested to the Commission in a
7 timely manner.

8 (3) ACCESS TO PANEL AND APPELLATE BODY
9 DOCUMENTS.—

10 (A) IN GENERAL.—The Trade Representa-
11 tive shall make available to the Commission all
12 submissions and relevant documents relating to
13 a report of a panel or the Appellate Body de-
14 scribed in section 303(a)(1), including any in-
15 formation contained in such submissions identi-
16 fied by the provider of the information as pro-
17 prietary information or information designated
18 as confidential by a foreign government.

19 (B) PUBLIC ACCESS.—Any document
20 which the Trade Representative submits to the
21 Commission shall be available to the public, ex-
22 cept information which is identified as propri-
23 etary or confidential or the disclosure of which
24 would otherwise violate the rules of the WTO.

1 (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-
2 FIDENTIALITY.—

3 (1) ADMINISTRATIVE ASSISTANCE.—Any agency
4 or department of the United States that is des-
5 ignated by the President shall provide administrative
6 services, funds, facilities, staff, or other support
7 services to the Commission to assist the Commission
8 with the performance of the Commission’s functions.

9 (2) CONFIDENTIALITY.—The Commission shall
10 protect from disclosure any document or information
11 submitted to it by a department or agency of the
12 United States which the agency or department re-
13 quests be kept confidential. The Commission shall
14 not be considered to be an agency for purposes of
15 section 552 of title 5, United States Code.

16 **SEC. 305. PARTICIPATION IN WTO PANEL PROCEEDINGS.**

17 (a) IN GENERAL.—If the United States Trade Rep-
18 resentative, in proceedings before a dispute settlement
19 panel or the Appellate Body of the WTO, seeks to enforce
20 United States rights under a multilateral trade agreement
21 or to defend a challenged action or determination of the
22 United States Government, a United States citizen or an
23 alien lawfully admitted for permanent residence to the
24 United States that—

1 (1) is supportive of the United States Govern-
2 ment's position before the panel or Appellate Body;
3 and

4 (2) has a direct economic interest in the panel's
5 or Appellate Body's resolution of the matters in dis-
6 pute,
7 shall, to the extent appropriate, be permitted to partici-
8 pate in consultations and panel proceedings. The Trade
9 Representative shall issue regulations, consistent with sub-
10 sections (b) and (c), ensuring full and effective participa-
11 tion by any such private person.

12 (b) ACCESS TO INFORMATION.—The United States
13 Trade Representative shall make available to persons de-
14 scribed in subsection (a) all information presented to or
15 otherwise obtained by the Trade Representative in connec-
16 tion with a WTO dispute settlement proceeding. The
17 United States Trade Representative shall promulgate reg-
18 ulations implementing a protective order system to protect
19 information designated by the submitting member as con-
20 fidential.

21 (c) PARTICIPATION IN PANEL PROCESS.—Upon re-
22 quest from a person described in subsection (a), the
23 United States Trade Representative shall—

24 (1) consult in advance with such person regard-
25 ing the content of written submissions from the

1 United States to the WTO panel concerned or to the
2 other member countries involved;

3 (2) include, where appropriate, such person or
4 its appropriate representative as an advisory mem-
5 ber of the delegation in sessions of the dispute set-
6 tlement panel;

7 (3) allow such special delegation member, where
8 such member would bring special knowledge to the
9 proceeding, to appear before the panel, directly or
10 through counsel, under the supervision of responsible
11 United States Government officials; and

12 (4) in proceedings involving confidential infor-
13 mation, allow appearance of such person only
14 through counsel as a member of the special delega-
15 tion.

16 **SEC. 306. DEFINITIONS.**

17 In this title:

18 (1) **ADVERSE FINDING.**—The term “adverse
19 finding” means—

20 (A) in a proceeding of a panel or the Ap-
21 pellate Body that is initiated against the United
22 States, a finding by the panel or the Appellate
23 Body that any law or regulation of, or applica-
24 tion thereof by, the United States, or any State,
25 is inconsistent with the obligations of the

1 United States under a Uruguay Round Agree-
2 ment (or nullifies or impairs benefits accruing
3 to a WTO member under such an Agreement);
4 or

5 (B) in a proceeding of a panel or the Ap-
6 pellate Body in which the United States is a
7 complaining party, any finding by the panel or
8 the Appellate Body that a measure of the party
9 complained against is not inconsistent with that
10 party's obligations under a Uruguay Round
11 Agreement (or does not nullify or impair bene-
12 fits accruing to the United States under such
13 an Agreement).

14 (2) APPELLATE BODY.—The term “Appellate
15 Body” means the Appellate Body established by the
16 Dispute Settlement Body pursuant to Article 17.1 of
17 the Dispute Settlement Understanding.

18 (3) DISPUTE SETTLEMENT BODY.—The term
19 “Dispute Settlement Body” means the Dispute Set-
20 tlement Body established pursuant to the Dispute
21 Settlement Understanding.

22 (4) DISPUTE SETTLEMENT PANEL; PANEL.—
23 The terms “dispute settlement panel” and “panel”
24 mean a panel established pursuant to Article 6 of
25 the Dispute Settlement Understanding.

1 (5) DISPUTE SETTLEMENT UNDERSTANDING.—

2 The term “Dispute Settlement Understanding”
3 means the Understanding on Rules and Procedures
4 Governing the Settlement of Disputes referred to in
5 section 101(d)(16) of the Uruguay Round Agree-
6 ments Act (19 U.S.C. 3511(d)(16)).

7 (6) TERMS OF REFERENCE.—The term “terms
8 of reference” has the meaning given that term in the
9 Dispute Settlement Understanding.

10 (7) TRADE REPRESENTATIVE.—The term
11 “Trade Representative” means the United States
12 Trade Representative.

13 (8) URUGUAY ROUND AGREEMENT.—The term
14 “Uruguay Round Agreement” means any of the
15 Agreements described in section 101(d) of the Uru-
16 guay Round Agreements Act.

17 (9) WORLD TRADE ORGANIZATION; WTO.—The
18 terms “World Trade Organization” and “WTO”
19 mean the organization established pursuant to the
20 WTO Agreement.

21 (10) WTO AGREEMENT.—The term “WTO
22 Agreement” means the Agreement Establishing the
23 World Trade Organization entered into on April 15,
24 1994.

1 (11) WTO MEMBER.—The term “WTO mem-
 2 ber” has the meaning given that term in section
 3 2(10) of the Uruguay Round Agreements Act (19
 4 U.S.C. 3501(10)).

5 **TITLE IV—IMPOSITION OF**
 6 **COUNTERVAILING DUTIES TO**
 7 **ADDRESS SUBSIDIES RELAT-**
 8 **ING TO FUNDAMENTALLY UN-**
 9 **DERVALUED CURRENCIES**

10 **SEC. 401. CLARIFICATION REGARDING DEFINITION OF**
 11 **COUNTERVAILABLE SUBSIDY.**

12 (a) BENEFIT CONFERRED.—Section 771(5)(E) of
 13 the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amend-
 14 ed—

15 (1) in clause (iii), by striking “and” at the end;

16 (2) in clause (iv), by striking the period at the
 17 end and inserting “, and”; and

18 (3) by inserting after clause (iv) the following
 19 new clause:

20 “(v) in the case in which the currency
 21 of a country in which the subject merchan-
 22 dise is produced is exchanged for foreign
 23 currency obtained from export trans-
 24 actions, and the currency of such country
 25 is a fundamentally undervalued currency,

1 as defined in paragraph (37), the dif-
2 ference between the amount of the cur-
3 rency of such country provided and the
4 amount of the currency of such country
5 that would have been provided if the real
6 effective exchange rate of the currency of
7 such country were not undervalued, as de-
8 termined pursuant to paragraph (38).”.

9 (b) EXPORT SUBSIDY.—Section 771(5A)(B) of the
10 Tariff Act of 1930 (19 U.S.C. 1677(5A)(B)) is amended
11 by adding at the end the following new sentence: “In the
12 case of a subsidy relating to a fundamentally undervalued
13 currency, the fact that the subsidy may also be provided
14 in circumstances not involving export shall not, for that
15 reason alone, mean that the subsidy cannot be considered
16 contingent upon export performance.”.

17 (c) DEFINITION OF FUNDAMENTALLY UNDER-
18 VALUED CURRENCY.—Section 771 of the Tariff Act of
19 1930 (19 U.S.C. 1677) is amended by adding at the end
20 the following new paragraph:

21 “(37) FUNDAMENTALLY UNDERVALUED CUR-
22 RENCY.—The administering authority shall deter-
23 mine that the currency of a country in which the
24 subject merchandise is produced is a ‘fundamentally
25 undervalued currency’ if—

1 “(A) the government of the country (in-
2 cluding any public entity within the territory of
3 the country) engages in protracted, large-scale
4 intervention in one or more foreign exchange
5 markets during part or all of the 18-month pe-
6 riod that represents the most recent 18 months
7 for which the information required under para-
8 graph (38) is reasonably available, but that
9 does not include any period of time later than
10 the final month in the period of investigation or
11 the period of review, as applicable;

12 “(B) the real effective exchange rate of the
13 currency is undervalued by at least 5 percent,
14 on average and as calculated under paragraph
15 (38), relative to the equilibrium real effective
16 exchange rate for the country’s currency during
17 the 18-month period;

18 “(C) during the 18-month period, the
19 country has experienced significant and per-
20 sistent global current account surpluses; and

21 “(D) during the 18-month period, the for-
22 eign asset reserves held by the government of
23 the country exceed—

1 “(i) the amount necessary to repay all
2 debt obligations of the government falling
3 due within the coming 12 months;

4 “(ii) 20 percent of the country’s
5 money supply, using standard measures of
6 M2; and

7 “(iii) the value of the country’s im-
8 ports during the previous 4 months.”.

9 (d) DEFINITION OF REAL EFFECTIVE EXCHANGE
10 RATE UNDERVALUATION.—Section 771 of the Tariff Act
11 of 1930 (19 U.S.C. 1677), as amended by subsection (c)
12 of this section, is further amended by adding at the end
13 the following new paragraph:

14 “(38) REAL EFFECTIVE EXCHANGE RATE
15 UNDERVALUATION.—The calculation of real effective
16 exchange rate undervaluation, for purposes of para-
17 graph (5)(E)(v) and paragraph (37), shall—

18 “(A)(i) rely upon, and where appropriate
19 be the simple average of, the results yielded
20 from application of the approaches described in
21 the guidelines of the International Monetary
22 Fund’s Consultative Group on Exchange Rate
23 Issues; or

24 “(ii) if the guidelines of the International
25 Monetary Fund’s Consultative Group on Ex-

1 change Rate Issues are not available, be based
2 on generally accepted economic and econometric
3 techniques and methodologies to measure the
4 level of undervaluation;

5 “(B) rely upon data that are publicly avail-
6 able, reliable, and compiled and maintained by
7 the International Monetary Fund or, if the
8 International Monetary Fund cannot provide
9 the data, by other international organizations or
10 by national governments; and

11 “(C) use inflation-adjusted, trade-weighted
12 exchange rates.”.

13 **SEC. 402. REPORT ON IMPLEMENTATION OF TITLE.**

14 (a) IN GENERAL.—Not later than 9 months after the
15 date of the enactment of this Act, the Comptroller General
16 of the United States shall submit to Congress a report
17 on the implementation of the amendments made by this
18 title.

19 (b) MATTERS TO BE INCLUDED.—The report re-
20 quired by subsection (a) shall include a description of the
21 extent to which United States industries that have been
22 materially injured by reason of imports of subject mer-
23 chandise produced in foreign countries with fundamentally
24 undervalued currencies have received relief under title VII

1 of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.), as
2 amended by this title.

3 **SEC. 403. APPLICATION TO GOODS FROM CANADA AND**
4 **MEXICO.**

5 Pursuant to article 1902 of the North American Free
6 Trade Agreement and section 408 of the North American
7 Free Trade Agreement Implementation Act of 1993 (19
8 U.S.C. 3438), the amendments made by section 501 of
9 this title shall apply to goods from Canada and Mexico.

10 **TITLE V—PROCEDURES FOR IN-**
11 **VESTIGATING CLAIMS OF**
12 **EVASION OF ANTIDUMPING**
13 **AND COUNTERVAILING DUTY**
14 **ORDERS**

15 **SEC. 501. PROTECTION OF BUSINESS PROPRIETARY INFOR-**
16 **MATION.**

17 Section 517(b) of the Tariff Act of 1930 (19 U.S.C.
18 1517(b)) is amended by adding at the end the following:

19 “(8) BUSINESS PROPRIETARY INFORMATION.—

20 “(A) ESTABLISHMENT OF PROCEDURES.—

21 For each investigation conducted under para-
22 graph (1), the Commissioner shall establish
23 procedures for the submission of business pro-
24 prietary information under an administrative
25 protective order that—

1 “(i) protects against public disclosure
2 of such information; and

3 “(ii) for purposes of submitting com-
4 ments to the Commissioner, provides lim-
5 ited access to such information for—

6 “(I) the person that submitted
7 the petition under paragraph (2); and

8 “(II) the person alleged to have
9 entered covered merchandise into the
10 customs territory of the United States
11 through evasion.

12 “(B) ADMINISTRATION IN ACCORDANCE
13 WITH OTHER PROCEDURES.—The procedures
14 established under subparagraph (A) shall be ad-
15 ministered, to the maximum extent practicable,
16 in accordance with administrative protective
17 order procedures under section 777 by the ad-
18 ministering authority.

19 “(C) DISCLOSURE OF BUSINESS PROPRI-
20 ETARY INFORMATION.—The Commissioner
21 shall, in accordance with the procedures estab-
22 lished under subparagraph (A), make all busi-
23 ness proprietary information presented to, or
24 obtained by, the Commissioner during an inves-
25 tigation available to the persons specified in

1 “(b) ELIGIBLE INSOURCING EXPENSES.—For pur-
2 poses of this section—

3 “(1) IN GENERAL.—The term ‘eligible
4 insourcing expenses’ means—

5 “(A) eligible expenses paid or incurred by
6 the taxpayer in connection with the elimination
7 of any business unit of the taxpayer (or of any
8 member of any expanded affiliated group in
9 which the taxpayer is also a member) located
10 outside the United States, and

11 “(B) eligible expenses paid or incurred by
12 the taxpayer in connection with the establish-
13 ment of any business unit of the taxpayer (or
14 of any member of any expanded affiliated group
15 in which the taxpayer is also a member) located
16 within the United States,

17 if such establishment constitutes the relocation of
18 the business unit so eliminated. For purposes of the
19 preceding sentence, a relocation shall not be treated
20 as failing to occur merely because such elimination
21 occurs in a different taxable year than such estab-
22 lishment.

23 “(2) ELIGIBLE EXPENSES.—The term ‘eligible
24 expenses’ means—

1 “(A) any amount for which a deduction is
2 allowed to the taxpayer under section 162, and

3 “(B) permit and license fees, lease broker-
4 age fees, equipment installation costs, and, to
5 the extent provided by the Secretary, other
6 similar expenses.

7 Such term does not include any compensation which
8 is paid or incurred in connection with severance
9 from employment and, to the extent provided by the
10 Secretary, any similar amount.

11 “(3) BUSINESS UNIT.—The term ‘business unit’
12 means—

13 “(A) any trade or business, and

14 “(B) any line of business, or functional
15 unit, which is part of any trade or business.

16 “(4) EXPANDED AFFILIATED GROUP.—The
17 term ‘expanded affiliated group’ means an affiliated
18 group as defined in section 1504(a), determined
19 without regard to section 1504(b)(3) and by sub-
20 stituting ‘more than 50 percent’ for ‘at least 80 per-
21 cent’ each place it appears in section 1504(a). A
22 partnership or any other entity (other than a cor-
23 poration) shall be treated as a member of an ex-
24 panded affiliated group if such entity is controlled
25 (within the meaning of section 954(d)(3)) by mem-

1 bers of such group (including any entity treated as
2 a member of such group by reason of this para-
3 graph).

4 “(5) EXPENSES MUST BE PURSUANT TO
5 INSOURCING PLAN.—Amounts shall be taken into ac-
6 count under paragraph (1) only to the extent that
7 such amounts are paid or incurred pursuant to a
8 written plan to carry out the relocation described in
9 paragraph (1).

10 “(6) OPERATING EXPENSES NOT TAKEN INTO
11 ACCOUNT.—Any amount paid or incurred in connec-
12 tion with the ongoing operation of a business unit
13 shall not be treated as an amount paid or incurred
14 in connection with the establishment or elimination
15 of such business unit.

16 “(c) INCREASED DOMESTIC EMPLOYMENT REQUIRE-
17 MENT.—No credit shall be allowed under this section un-
18 less the number of full-time equivalent employees of the
19 taxpayer for the taxable year for which the credit is
20 claimed exceeds the number of full-time equivalent em-
21 ployees of the taxpayer for the last taxable year ending
22 before the first taxable year in which such eligible
23 insourcing expenses were paid or incurred. For purposes
24 of this subsection, full-time equivalent employees has the
25 meaning given such term under section 45R(d) (and the

1 applicable rules of section 45R(e)), determined by only
2 taking into account wages (as otherwise defined in section
3 45R(e)) paid with respect to services performed within the
4 United States. All employers treated as a single employer
5 under subsection (b), (c), (m), or (o) of section 414 shall
6 be treated as a single employer for purposes of this sub-
7 section.

8 “(d) CREDIT ALLOWED UPON COMPLETION OF
9 INSOURCING PLAN.—

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), eligible insourcing expenses shall be taken
12 into account under subsection (a) in the taxable year
13 during which the plan described in subsection (b)(5)
14 has been completed and all eligible insourcing ex-
15 penses pursuant to such plan have been paid or in-
16 curred.

17 “(2) ELECTION TO APPLY EMPLOYMENT TEST
18 AND CLAIM CREDIT IN FIRST FULL TAXABLE YEAR
19 AFTER COMPLETION OF PLAN.—If the taxpayer
20 elects the application of this paragraph, eligible
21 insourcing expenses shall be taken into account
22 under subsection (a) in the first taxable year after
23 the taxable year described in paragraph (1).

24 “(e) POSSESSIONS TREATED AS PART OF THE
25 UNITED STATES.—For purposes of this section, the term

1 ‘United States’ shall be treated as including each posses-
 2 sion of the United States (including the Commonwealth
 3 of Puerto Rico and the Commonwealth of the Northern
 4 Mariana Islands).

5 “(f) REGULATIONS.—The Secretary shall prescribe
 6 such regulations or other guidance as may be necessary
 7 or appropriate to carry out the purposes of this section.”.

8 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 9 CREDIT.—Section 38(b) of such Code is amended by strik-
 10 ing “plus” at the end of paragraph (35), by striking the
 11 period at the end of paragraph (36) and inserting “, plus”,
 12 and by adding at the end the following new paragraph:

13 “(37) the insourcing expenses credit determined
 14 under section 45S(a).”.

15 (c) CLERICAL AMENDMENT.—The table of sections
 16 for subpart D of part IV of subchapter A of chapter 1
 17 of such Code is amended by adding at the end the fol-
 18 lowing new item:

“Sec. 45S. Credit for insourcing expenses.”.

19 (d) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to amounts paid or incurred after
 21 the date of the enactment of this Act.

22 (e) APPLICATION TO UNITED STATES POSSES-
 23 SIONS.—

24 (1) PAYMENTS TO POSSESSIONS.—

1 (A) MIRROR CODE POSSESSIONS.—The
2 Secretary of the Treasury shall make periodic
3 payments to each possession of the United
4 States with a mirror code tax system in an
5 amount equal to the loss to that possession by
6 reason of section 45S of the Internal Revenue
7 Code of 1986. Such amount shall be determined
8 by the Secretary of the Treasury based on in-
9 formation provided by the government of the re-
10 spective possession.

11 (B) OTHER POSSESSIONS.—The Secretary
12 of the Treasury shall make annual payments to
13 each possession of the United States which does
14 not have a mirror code tax system in an
15 amount estimated by the Secretary of the
16 Treasury as being equal to the aggregate bene-
17 fits that would have been provided to residents
18 of such possession by reason of section 45S of
19 such Code if a mirror code tax system had been
20 in effect in such possession. The preceding sen-
21 tence shall not apply with respect to any posses-
22 sion of the United States unless such possession
23 has a plan, which has been approved by the
24 Secretary of the Treasury, under which such

1 possession will promptly distribute such pay-
2 ment to the residents of such possession.

3 (2) COORDINATION WITH CREDIT ALLOWED
4 AGAINST UNITED STATES INCOME TAXES.—No cred-
5 it shall be allowed against United States income
6 taxes under section 45S of such Code to any per-
7 son—

8 (A) to whom a credit is allowed against
9 taxes imposed by the possession by reason of
10 such section, or

11 (B) who is eligible for a payment under a
12 plan described in paragraph (1)(B).

13 (3) DEFINITIONS AND SPECIAL RULES.—

14 (A) POSSESSIONS OF THE UNITED
15 STATES.—For purposes of this section, the
16 term “possession of the United States” includes
17 the Commonwealth of Puerto Rico and the
18 Commonwealth of the Northern Mariana Is-
19 lands.

20 (B) MIRROR CODE TAX SYSTEM.—For pur-
21 poses of this section, the term “mirror code tax
22 system” means, with respect to any possession
23 of the United States, the income tax system of
24 such possession if the income tax liability of the
25 residents of such possession under such system

1 is determined by reference to the income tax
 2 laws of the United States as if such possession
 3 were the United States.

4 (C) TREATMENT OF PAYMENTS.—For pur-
 5 poses of section 1324(b)(2) of title 31, United
 6 States Code, the payments under this section
 7 shall be treated in the same manner as a refund
 8 due from sections referred to in such section
 9 1324(b)(2).

10 **SEC. 602. DENIAL OF DEDUCTION FOR OUTSOURCING EX-**
 11 **PENSES.**

12 (a) IN GENERAL.—Part IX of subchapter B of chap-
 13 ter 1 of the Internal Revenue Code of 1986 is amended
 14 by adding at the end the following new section:

15 **“SEC. 280I. OUTSOURCING EXPENSES.**

16 “(a) IN GENERAL.—No deduction otherwise allow-
 17 able under this chapter shall be allowed for any specified
 18 outsourcing expense.

19 “(b) SPECIFIED OUTSOURCING EXPENSE.—For pur-
 20 poses of this section—

21 “(1) IN GENERAL.—The term ‘specified out-
 22 sourcing expense’ means—

23 “(A) any eligible expense paid or incurred
 24 by the taxpayer in connection with the elimi-
 25 nation of any business unit of the taxpayer (or

1 of any member of any expanded affiliated group
2 in which the taxpayer is also a member) located
3 within the United States, and

4 “(B) any eligible expense paid or incurred
5 by the taxpayer in connection with the estab-
6 lishment of any business unit of the taxpayer
7 (or of any member of any expanded affiliated
8 group in which the taxpayer is also a member)
9 located outside the United States,

10 if such establishment constitutes the relocation of
11 the business unit so eliminated. For purposes of the
12 preceding sentence, a relocation shall not be treated
13 as failing to occur merely because such elimination
14 occurs in a different taxable year than such estab-
15 lishment.

16 “(2) APPLICATION OF CERTAIN DEFINITIONS
17 AND RULES.—

18 “(A) DEFINITIONS.—For purposes of this
19 section, the terms ‘eligible expenses’, ‘business
20 unit’, and ‘expanded affiliated group’ shall have
21 the respective meanings given such terms by
22 section 45S(b).

23 “(B) OPERATING EXPENSES NOT TAKEN
24 INTO ACCOUNT.—A rule similar to the rule of

1 section 45S(b)(6) shall apply for purposes of
2 this section.

3 “(c) SPECIAL RULES.—

4 “(1) APPLICATION TO DEDUCTIONS FOR DE-
5 PRECIATION AND AMORTIZATION.—In the case of
6 any portion of a specified outsourcing expense which
7 is not deductible in the taxable year in which paid
8 or incurred, such portion shall neither be chargeable
9 to capital account nor amortizable.

10 “(2) POSSESSIONS TREATED AS PART OF THE
11 UNITED STATES.—For purposes of this section, the
12 term ‘United States’ shall be treated as including
13 each possession of the United States (including the
14 Commonwealth of Puerto Rico and the Common-
15 wealth of the Northern Mariana Islands).

16 “(d) REGULATIONS.—The Secretary shall prescribe
17 such regulations or other guidance as may be necessary
18 or appropriate to carry out the purposes of this section,
19 including regulations which provide (or create a rebuttable
20 presumption) that certain establishments of business units
21 outside the United States will be treated as relocations
22 (based on timing or such other factors as the Secretary
23 may provide) of business units eliminated within the
24 United States.”.

1 (b) LIMITATION ON SUBPART F INCOME OF CON-
 2 TROLLED FOREIGN CORPORATIONS DETERMINED WITH-
 3 OUT REGARD TO SPECIFIED OUTSOURCING EXPENSES.—
 4 Section 952(c) of such Code is amended by adding at the
 5 end the following new paragraph:

6 “(4) EARNINGS AND PROFITS DETERMINED
 7 WITHOUT REGARD TO SPECIFIED OUTSOURCING EX-
 8 PENSES.—For purposes of this subsection, earnings
 9 and profits of any controlled foreign corporation
 10 shall be determined without regard to any specified
 11 outsourcing expense (as defined in section
 12 280I(b)).”.

13 (c) CLERICAL AMENDMENT.—The table of sections
 14 for part IX of subchapter B of chapter 1 of such Code
 15 is amended by adding at the end the following new item:

“Sec. 280I. Outsourcing expenses.”.

16 (d) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to amounts paid or incurred after
 18 the date of the enactment of this Act.

19 **TITLE VII—MATTERS RELATING**
 20 **TO ENVIRONMENTAL PRO-**
 21 **TECTIONS**

22 **SEC. 701. ENVIRONMENTAL PROTECTION IN TRADE RELA-**
 23 **TIONS.**

24 Section 301(d)(3)(B) of the Trade Act of 1974 (19
 25 U.S.C. 2411(d)(3)(B)) is amended—

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

3 (2) in clause (iv), by striking the period at the
4 end and inserting “, or”;

5 (3) by moving clause (iv), as so amended, two
6 ems to the left; and

7 (4) by adding at the end the following:

8 “(v) constitutes a persistent pattern
9 of conduct that—

10 “(I) fails to effectively enforce
11 the environmental laws of a foreign
12 country,

13 “(II) waives or otherwise dero-
14 gates from the environmental laws of
15 a foreign country or weakens the pro-
16 tections afforded by such laws,

17 “(III) fails to provide for judicial
18 or administrative proceedings giving
19 access to remedies for violations of the
20 environmental laws of a foreign coun-
21 try,

22 “(IV) fails to provide appropriate
23 and effective sanctions or remedies for
24 violations of the environmental laws of
25 a foreign country, or

1 “(V) fails to implement environ-
2 mental commitments in agreements to
3 which a foreign country and the
4 United States are a party.”.

5 **SEC. 702. IDENTIFICATION OF FOREIGN COUNTRY TRADE**
6 **PRACTICES THAT NEGATIVELY AFFECT THE**
7 **ENVIRONMENT.**

8 (a) IN GENERAL.—Chapter 1 of title III of the Trade
9 Act of 1974 (19 U.S.C. 2411 et seq.) is amended by add-
10 ing at the end the following:

11 **“SEC. 311. IDENTIFICATION OF FOREIGN COUNTRY TRADE**
12 **PRACTICES THAT NEGATIVELY AFFECT THE**
13 **ENVIRONMENT.**

14 “(a) IDENTIFICATION.—

15 “(1) IN GENERAL.—The Trade Representative
16 shall identify those foreign country trade practices
17 that cause negative environmental impacts on the
18 protection of human, animal, or plant life or health,
19 or the conservation of exhaustible natural resources
20 in the United States, the foreign country, a third
21 country, or internationally.

22 “(2) FACTORS.—In identifying foreign country
23 trade practices under paragraph (1), the Trade Rep-
24 resentative shall take into account all relevant fac-
25 tors, including—

1 “(A) the strength of the connection be-
2 tween trade and the negative environmental im-
3 pact;

4 “(B) the significance of the negative envi-
5 ronmental impact on the protection of human,
6 animal or plant life or health, or the conserva-
7 tion of exhaustible natural resources; and

8 “(C) the costs and benefits of addressing
9 the negative environmental impact through the
10 authorities under section 301.

11 “(3) CONSULTATION.—In identifying foreign
12 country trade practices under paragraph (1), the
13 Trade Representative shall provide the opportunity
14 for input by and consultation with interested per-
15 sons, including private or nongovernmental organiza-
16 tions working towards environmental protection or
17 conservation, domestic industrial users of any goods
18 that may be affected by this section, and appropriate
19 Federal departments and agencies.

20 “(b) REPORT.—

21 “(1) IN GENERAL.—Not later than 270 days
22 after the date of submission of a report under sec-
23 tion 181(b) of this Act, and every 2 years thereafter,
24 the Trade Representative shall submit to the Com-
25 mittee on Ways and Means of the House of Rep-

1 representatives and the Committee on Finance of the
2 Senate and publish in the Federal Register a report
3 on the foreign country trade practices identified
4 under subsection (a).

5 “(2) MATTERS TO BE INCLUDED.—The Trade
6 Representative may include in the report, if appro-
7 priate—

8 “(A) a description of other foreign country
9 trade practices that may in the future warrant
10 inclusion in the report as foreign country trade
11 practices that negatively affect the environment;
12 and

13 “(B) a statement regarding other foreign
14 country trade practices that negatively affect
15 the environment that have not been identified
16 because they are subject to other provisions of
17 United States trade law, existing bilateral trade
18 agreements, or trade negotiations, and progress
19 is being made toward the mitigation, reduction,
20 or elimination of the negative environmental im-
21 pacts of such foreign country trade practices.”.

22 (b) CLERICAL AMENDMENT.—The table of contents
23 for the Trade Act of 1974 is amended by inserting after
24 the item relating to section 310 the following new item:

“Sec. 311. Identification of foreign country trade practices that negatively af-
fect the environment.”.

1 **TITLE VIII—OTHER MATTERS**

2 **SEC. 801. MODIFICATION OF AVAILABILITY OF AMOUNTS**
3 **FROM TRADE ENFORCEMENT TRUST FUND.**

4 Section 611(d)(1) of the Trade Facilitation and
5 Trade Enforcement Act of 2015 (Public Law 114–125;
6 19 U.S.C. 4405(d)(1)) is amended by striking “, only as
7 provided by appropriations Acts,”.

8 **SEC. 802. GOVERNMENT ACCOUNTABILITY OFFICE REPORT**
9 **ON COMMITMENTS UNDER CERTAIN INTER-**
10 **NATIONAL FORA.**

11 (a) **IN GENERAL.**—Not later than December 31 of
12 each year after 2018, the Comptroller General of the
13 United States shall submit to the Committee on Ways and
14 Means of the House of Representatives and the Committee
15 on Finance of the Senate a report that assesses the
16 progress in achieving compliance by other countries with
17 commitments made under the international fora described
18 in subsection (b).

19 (b) **INTERNATIONAL FORA DESCRIBED.**—The inter-
20 national fora described in this subsection are the following:

21 (1) The Group of Seven (G–7).

22 (2) The Group of Twenty (G–20).

23 (3) The International Monetary Fund.

24 (4) The U.S.-China Strategic and Economic
25 Dialogue.

1 (5) The U.S.-China Joint Commission on Com-
2 merce and Trade.

3 (6) The Global Forum on Excess Steel Capac-
4 ity.

5 (7) The Steel Committee of the Organization
6 for Economic Cooperation and Development.

7 (8) The High Level Economic Dialogue with
8 Mexico.

9 (9) The U.S.-India Strategic and Commercial
10 Dialogue.

11 **SEC. 803. GOVERNMENT ACCOUNTABILITY OFFICE REPORT**
12 **ON ENFORCEMENT OF CHILD LABOR PROHI-**
13 **BITION.**

14 Not later than May 31 of each year after 2018, the
15 Comptroller General of the United States shall submit to
16 the Committee on Ways and Means of the House of Rep-
17 resentatives and the Committee on Finance of the Senate
18 a report that assesses the progress in ensuring that goods
19 made with child labor do not enter the customs territory
20 of the United States.

21 **SEC. 804. CONGRESSIONAL ADVISORY GROUPS ON EN-**
22 **FORCEMENT.**

23 (a) IN GENERAL.—Section 104(e) of the Bipartisan
24 Congressional Trade Priorities and Accountability Act of
25 2015 (19 U.S.C. 4203(c)) is amended—

1 (1) by redesignating subsections (d) through (f)
2 as subsections (e) through (g), respectively; and

3 (2) by inserting after subsection (c) the fol-
4 lowing:

5 “(d) CONGRESSIONAL ADVISORY GROUPS ON EN-
6 FORCEMENT.—

7 “(1) IN GENERAL.—By not later than 60 days
8 after the date of the enactment of the Trade En-
9 forcement Act of 2017, and not later than 30 days
10 after the convening of each Congress, the chairman
11 of the Committee on Ways and Means of the House
12 of Representatives shall convene the House Advisory
13 Group on Enforcement and the chairman of the
14 Committee on Finance of the Senate shall convene
15 the Senate Advisory Group on Enforcement (in this
16 subsection referred to collectively as the ‘congres-
17 sional advisory groups on enforcement’).

18 “(2) MEMBERS AND FUNCTIONS.—

19 “(A) MEMBERSHIP OF THE HOUSE ADVI-
20 SORY GROUP ON ENFORCEMENT.—In each Con-
21 gress, the House Advisory Group on Enforce-
22 ment shall be comprised of the following Mem-
23 bers of the House of Representatives:

24 “(i) The chairman and ranking minor-
25 ity member of the Committee on Ways and

1 Means and every member of the Sub-
2 committee of Trade of such committee.

3 “(ii) The chairman and ranking mi-
4 nority member, or their designees, of the
5 committees of the House of Representa-
6 tives that would have, under the Rules of
7 the House of Representatives, jurisdiction
8 over provisions of law affected by trade en-
9 forcement at any time during that Con-
10 gress and to which this Act would apply.

11 “(B) MEMBERSHIP OF THE SENATE ADVI-
12 SORY GROUP ON ENFORCEMENT.—In each Con-
13 gress, the Senate Advisory Group on Enforce-
14 ment shall be comprised of the following Mem-
15 bers of the Senate:

16 “(i) The chairman and ranking minor-
17 ity member of the Committee on Finance
18 and every member of the Subcommittee on
19 International Trade, Customs, and Global
20 Competitiveness of such committee.

21 “(ii) The chairman and ranking mi-
22 nority member, or their designees, of the
23 committees of the Senate that would have,
24 under the Rules of the Senate, jurisdiction
25 over provisions of law affected by trade en-

1 enforcement at any time during that Con-
2 gress and to which this Act would apply.

3 “(C) CONSULTATION AND ADVICE.—The
4 congressional advisory groups on enforcement
5 shall consult with and provide advice to the
6 Trade Representative regarding the formulation
7 and implementation of specific objectives, strat-
8 egies, and positions with respect to enforcing
9 the provisions of existing trade agreements to
10 which the United States is a party.

11 “(D) CHAIR.—The House Advisory Group
12 on Enforcement shall be chaired by the chair-
13 man of the Committee on Ways and Means of
14 the House of Representatives, and the Senate
15 Advisory Group on Enforcement shall be
16 chaired by the chairman of the Committee on
17 Finance of the Senate.

18 “(3) MEETINGS.—

19 “(A) QUARTERLY MEETINGS.—The Presi-
20 dent shall meet with the congressional advisory
21 groups on enforcement at least four times in
22 each calendar year.

23 “(B) REQUEST FOR MEETING.—Upon the
24 request of a majority of the members of either
25 of the congressional advisory groups on enforce-

