

106TH CONGRESS
1ST SESSION

H. R. 3393

To amend the Trade Act of 1974 to provide for identification of, and actions relating to, foreign countries that maintain sanitary or phytosanitary measures that deny fair and equitable market access to United States food, beverage, or other plant or animal products, to amend the Trade Act of 1974 and the Sherman Act to address foreign private and joint public-private market access barriers that harm United States trade, and to amend the Trade Act of 1974 to address the failure of foreign governments to cooperate in the provision of information relating to certain investigations.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 1999

Mr. LEVIN (for himself, Mr. HOUGHTON, and Mrs. THURMAN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, 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 provide for identification of, and actions relating to, foreign countries that maintain sanitary or phytosanitary measures that deny fair and equitable market access to United States food, beverage, or other plant or animal products, to amend the Trade Act of 1974 and the Sherman Act to address foreign private and joint public-private market access barriers that harm United States trade, and to amend the Trade Act of 1974 to address the failure of foreign

governments to cooperate in the provision of information relating to certain investigations.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trade Enhancement
5 Act of 1999”.

6 **TITLE I—SANITARY AND**
7 **PHYTOSANITARY MEASURES**
8 **THAT DENY MARKET ACCESS**

9 **SEC. 101. SHORT TITLE.**

10 This title may be cited as the “Special 301 for Sani-
11 tary and Phytosanitary Measures Act”.

12 **SEC. 102. IDENTIFICATION OF COUNTRIES THAT MAINTAIN**
13 **SANITARY OR PHYTOSANITARY MEASURES**
14 **THAT CREATE UNFAIR BARRIERS TO TRADE.**

15 (a) IDENTIFICATION REQUIRED.—

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

19 **“SEC. 183. IDENTIFICATION OF COUNTRIES THAT MAIN-**
20 **TAIN SANITARY OR PHYTOSANITARY MEAS-**
21 **URES THAT CREATE UNFAIR BARRIERS TO**
22 **TRADE.**

23 “(a) IN GENERAL.—Not later than the date that is
24 30 days after the date on which the annual report is re-

1 quired to be submitted to Congressional committees under
2 section 181(b), the United States Trade Representative
3 (hereafter in this section referred to as the ‘Trade Rep-
4 resentative’) shall identify—

5 “(1) those foreign countries that maintain sani-
6 tary or phytosanitary measures that deny fair and
7 equitable market access to United States food, bev-
8 erage, or other plant or animal products; and

9 “(2) those foreign countries identified under
10 paragraph (1) that are determined by the Trade
11 Representative to be priority foreign countries.

12 “(b) SPECIAL RULES FOR IDENTIFICATIONS.—

13 “(1) CRITERIA.—In identifying priority foreign
14 countries under subsection (a)(2), the Trade Rep-
15 resentative shall identify only those foreign
16 countries—

17 “(A) that have the most onerous or egre-
18 gious acts, policies, or practices that deny fair
19 and equitable market access to United States
20 food, beverage, or other animal or plant prod-
21 ucts,

22 “(B) whose acts, policies, or practices de-
23 scribed in subparagraph (A) have the greatest
24 adverse impact (actual or potential) on the rel-
25 evant United States products, and

1 “(C) that are not—

2 “(i) entering into good faith negotia-
3 tions, or

4 “(ii) making significant progress in
5 bilateral or multilateral negotiations,
6 to provide fair and equitable market access to
7 United States food, beverage, or other plant or
8 animal products.

9 “(2) CONSULTATION AND CONSIDERATION RE-
10 QUIREMENTS.—In identifying priority foreign coun-
11 tries under subsection (a)(2), the Trade Representa-
12 tive shall—

13 “(A) consult with the Secretary of Agri-
14 culture, the Administrator of the Food and
15 Drug Administration, the Secretary of Com-
16 merce, and the heads of other appropriate Fed-
17 eral agencies; and

18 “(B) take into account information from
19 the Committee on Sanitary and Phytosanitary
20 Measures, the Codex Alimentarius Commission,
21 the International Office of Epizootics, and the
22 Secretariat of the International Plant Protec-
23 tion Convention; and

24 “(C) take into account information from
25 such other sources as may be available to the

1 Trade Representative and such information as
2 may be submitted to the Trade Representative
3 by interested persons, including information
4 contained in reports submitted under section
5 181(b) and petitions submitted under section
6 302.

7 “(3) FACTUAL BASIS REQUIREMENT.—The
8 Trade Representative may identify a foreign country
9 under subsection (a)(1) only if the Trade Represent-
10 ative finds that there is a factual basis for the denial
11 of fair and equitable market access as a result of the
12 violation of international law or agreement, or the
13 existence of barriers, referred to in subsection (d).

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

18 “(A) the history of sanitary and
19 phytosanitary measures of the foreign country,
20 including any previous identification under sub-
21 section (a)(2), and

22 “(B) the history of efforts of the United
23 States, and the response of the foreign country,
24 to remove sanitary or phytosanitary measures
25 that deny fair and equitable market access to

1 United States food, beverage, or other plant or
2 animal 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) AGREEMENT ON THE APPLICATION OF
23 SANITARY AND PHYTOSANITARY MEASURES.—The
24 term ‘Agreement on the Application of Sanitary and
25 Phytosanitary Measures’ means the agreement de-

scribed in section 101(d)(3) of the Uruguay Round
Agreements Act (19 U.S.C. 3511(d)(3))

“(2) SANITARY OR PHYTOSANITARY MEAS-
URES.—(A) The term ‘sanitary or phytosanitary
measures’ means any measure applied—

“(i) to protect animal or plant life or
health within the foreign country from risks
arising from the entry, establishment, or spread
of pests, diseases, disease-carrying organisms,
or disease-causing organisms;

“(ii) to protect human or animal life or
health within the foreign country from risks
from additives, contaminants, toxins, or disease-
causing organisms in foods, beverages, or
feedstuffs;

“(iii) to protect human life or health with-
in the foreign country from risks arising from
diseases carried by animals, plants or products
thereof, or from entry, establishment or spread
of pests; or

“(iv) to prevent or limit other damage
within the foreign country from the entry, es-
tablishment, or spread of pests.

“(B) The term ‘sanitary or phytosanitary meas-
ures’ includes all relevant laws, decrees, regulations,

1 requirements, policies, procedures, and practices,
2 including—

3 “(i) end product criteria;

4 “(ii) processes and production methods;

5 “(iii) testing, inspection, certification and
6 approval procedures;

7 “(iv) quarantine treatments, including rel-
8 evant requirements associated with the trans-
9 port of animals or plants, or with the materials
10 necessary for their survival during transport;

11 “(v) provisions on relevant statistical meth-
12 ods, sampling procedures and methods of risk
13 assessment; and

14 “(vi) packaging and labeling requirements
15 directly related to food safety.

16 “(C) For purposes of this section, a foreign
17 country denies fair and equitable market access if
18 the foreign country maintains sanitary or
19 phytosanitary measures through the use of laws,
20 procedures, practices, or regulations that—

21 “(i) violate provisions of international law
22 or international agreements to which both the
23 United States and the foreign country are par-
24 ties; or

1 “(ii) constitute discriminatory nontariff
2 trade barriers.

3 “(D) For purposes of subparagraph (C)(ii),
4 sanitary or phytosanitary measures or acts, policies,
5 or practices considered to be discriminatory non-
6 tariff trade barriers include (but are not limited
7 to)—

8 “(i) measures that—

9 “(I) are maintained without sufficient
10 scientific justification;

11 “(II) unjustifiably discriminate or
12 have the effect of discriminating between
13 imported and domestically produced prod-
14 ucts, or products imported from different
15 countries;

16 “(III) are more restrictive than nec-
17 essary to achieve the desired level of pro-
18 tection;

19 “(IV) are nontransparent, for exam-
20 ple, the measures are not published or are
21 not promulgated in accordance with either
22 the Agreement on the Application of Sani-
23 tary and Phytosanitary Measures or the
24 relevant administrative laws and proce-
25 dures of the foreign country; and

1 “(V) are onerous measures relating to
2 control, inspection, and approval of prod-
3 ucts that unjustifiably discriminate or have
4 the effect of unjustifiably discriminating
5 against United States food, beverage, or
6 other plant or animal products; and

7 “(ii) the refusal by a foreign country to ac-
8 cept United States sanitary or phytosanitary
9 measures as equivalent in the case of a foreign
10 country with respect to which the relevant
11 United States officials have objectively dem-
12 onstrated to the foreign country that the meas-
13 ures achieve the foreign country’s appropriate
14 level of sanitary or phytosanitary protection.

15 “(E) A foreign country may be determined to
16 deny fair and equitable market access to United
17 States food, beverage, or other plant or animal prod-
18 ucts notwithstanding the fact that the foreign coun-
19 try may be in compliance with the specific obliga-
20 tions of the Agreement on the Application of Sani-
21 tary and Phytosanitary Measures.

22 “(e) PUBLICATION.—The Trade Representative shall
23 publish in the Federal Register a list of foreign countries
24 identified under subsection (a) and shall make such revi-

1 sions to the list as may be required by reason of the action
2 under subsection (c).

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

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

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

18 (b) ACTIONS BY UNITED STATES TRADE REP-
19 RESENTATIVE.—Section 301(d)(3)(B) of the Trade Act of
20 1974 (19 U.S.C. 2411(d)(3)(B)) is amended—

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

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

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

1 “(iv) are sanitary or phytosanitary meas-
2 ures that deny fair and equitable market access
3 to United States food, beverage, or other plant
4 or animal products.”.

5 (c) INITIATION OF INVESTIGATIONS.—

6 (1) IN GENERAL.—Subparagraph (A) of section
7 302(b)(2) of the Trade Act of 1974 (19 U.S.C.
8 2412(b)(2)) is amended by inserting “or 183(a)(2)”
9 after “section 182(a)(2)” in the matter preceding
10 clause (i).

11 (2) CONFORMING AMENDMENT.—Subparagraph
12 (D) of section 302(b)(2) of such Act is amended by
13 inserting “concerning intellectual property rights
14 that is” after “any investigation”.

15 **SEC. 103. DESIGNATION OF BENEFICIARY DEVELOPING**
16 **COUNTRIES UNDER GENERALIZED SYSTEM**
17 **OF PREFERENCES.**

18 Section 502(c) of the Trade Act of 1974 (19 U.S.C.
19 2462(c)) is amended—

20 (1) in paragraph (6), by striking “and” at the
21 end;

22 (2) in paragraph (7), by striking the period and
23 inserting “; and”; and

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

1 “(8) the extent to which such country has en-
2 sured that all sanitary and phytosanitary measures
3 (as defined in section 183(d)(2)) in force are based
4 on a scientific justification.”.

5 **TITLE II—FOREIGN PRIVATE**
6 **AND PUBLIC-PRIVATE MAR-**
7 **KET ACCESS BARRIERS**

8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as the “Market Access and
10 Structural Reform Act of 1999”.

11 **SEC. 202. FINDINGS.**

12 The Congress makes the following findings:

13 (1) Recent financial crises affecting key trading
14 partners show that the health of the international
15 economic system depends on open, competitive mar-
16 kets.

17 (2) Resolution of these financial crises, which
18 tend to arise in relatively closed markets, depends on
19 structural reform.

20 (3) Restrictive foreign government policies, pri-
21 vate restraints, and collaborative public-private bar-
22 riers perpetuate an unacceptably large United States
23 trade deficit which is now once again growing sharp-
24 ly.

1 (4) More broadly, import barriers in major for-
2 eign markets injure United States industries by re-
3 stricting United States exports, by creating profit
4 sanctuaries which serve as platforms for injurious
5 dumping, and by causing shipments from third
6 countries to be diverted to the United States market.

7 (5) Particularly in light of the financial crises
8 gripping a number of developing, newly-industri-
9 alized, and transitional economy countries, it is es-
10 sential that Europe and Japan begin sharing more
11 equitably with the United States the burden of ac-
12 cepting manufactured imports from the crisis-af-
13 fected countries.

14 (6) The agreements adopted by the World
15 Trade Organization do not currently provide a basis
16 to address sophisticated methods of blocking market
17 access and effective competition in a foreign market,
18 particularly joint public-private market access bar-
19 riers, including non-transparent forms of regulation,
20 which impose a substantial burden on United States
21 and world commerce.

22 (7) Partially as a result of changes effected by
23 the agreements adopted by the World Trade Organi-
24 zation, section 301 of the Trade Act of 1974 does

1 not currently address private and joint public-private
2 market access barriers as effectively as it should.

3 **SEC. 203. AMENDMENTS TO SECTION 301(d) OF THE TRADE**
4 **ACT OF 1974.**

5 (a) UNJUSTIFIABLE ACTS, POLICIES, AND PRAC-
6 TICES.—Section 301(d)(4)(A) of the Trade Act of 1974
7 (19 U.S.C. 2411(d)(4)(A)) is amended to read as follows:

8 “(4)(A) An act, policy, or practice is unjustifi-
9 able if the act, policy, or practice—

10 “(i) is in violation of, or inconsistent with,
11 the international legal rights of the United
12 States; or

13 “(ii) constitutes fostering by a foreign gov-
14 ernment of systematic anticompetitive activities
15 by persons or among persons in one or more
16 foreign countries that have the effect of re-
17 stricting, on a basis that is inconsistent with
18 commercial considerations, access of United
19 States goods or services to a foreign market or
20 diverting foreign goods or services toward the
21 United States market.”.

22 (b) UNREASONABLE ACTS, POLICIES, AND PRAC-
23 TICES.—Section 301(d)(3)(B)(i)(IV) of the Trade Act of
24 1974 (19 U.S.C. 2411(d)(3)(B)(i)(IV)) is amended to read
25 as follows:

1 “(IV) market opportunities, including
 2 the toleration by a foreign government of
 3 systematic anticompetitive activities by
 4 persons or among persons in one or more
 5 foreign countries that have the effect of re-
 6 stricting, on a basis that is inconsistent
 7 with commercial considerations, access of
 8 United States goods or services to a for-
 9 eign market or diverting foreign goods or
 10 services toward the United States mar-
 11 ket.”.

12 **SEC. 204. AMENDMENTS TO SECTION 304 OF THE TRADE**
 13 **ACT OF 1974.**

14 (a) DETERMINATION REGARDING PRIVATE ANTI-
 15 COMPETITIVE CONDUCT.—Section 304(a)(1) of the Trade
 16 Act of 1974 (19 U.S.C. 2414(a)(1)) is amended by strik-
 17 ing subparagraph (B) and inserting the following:

18 “(B) if the determination made under sub-
 19 paragraph (A) is affirmative—

20 “(i) determine what action, if any, the
 21 Trade Representative should take under
 22 subsection (a) or (b) of section 301; and

23 “(ii) further determine whether there
 24 is reason to believe that the conduct of the
 25 foreign country that is the subject of the

1 determination under subparagraph (A) in-
2 volves anticompetitive conduct engaged in
3 by any natural or corporate person or per-
4 sons.”.

5 (b) REFERRAL TO ATTORNEY GENERAL.—Section
6 304 of the Trade Act of 1974 is amended by redesignating
7 subsection (c) as subsection (d) and inserting after sub-
8 section (b) the following:

9 “(c) REFERRAL TO ATTORNEY GENERAL.—If the de-
10 termination under subsection (a)(1)(B)(ii) is affirmative,
11 the Trade Representative shall refer the matter to the At-
12 torney General for investigation into whether the practices
13 at issue constitute violations of the Sherman Act (15
14 U.S.C. 1–7).”.

15 **SEC. 205. TRANSITION RULE; OUTSTANDING DETERMINA-**
16 **TIONS BY TRADE REPRESENTATIVE.**

17 (a) OUTSTANDING DETERMINATIONS.—The United
18 States Trade Representative shall have the authority to
19 determine, with respect to any affirmative determination
20 made before the enactment of this Act by the Trade Rep-
21 resentative under section 304 of the Trade Act of 1974
22 (19 U.S.C. 2414)—

23 (1) whether the determination identifies a bur-
24 den or restriction on United States commerce that
25 has not been eliminated; and

1 (2) whether the determination identifies acts,
2 policies, or practices that are still in existence and
3 that involve anticompetitive conduct engaged in by
4 any natural or corporate person or persons.

5 (b) TIMING.—The Trade Representative shall make
6 the determinations described in subsection (a) not later
7 than 120 days after—

8 (1) a request therefor is made by the original
9 petitioner or its legal successor-in-interest; or

10 (2) publication in the Federal Register of a no-
11 tice announcing the Trade Representative’s intent to
12 review a prior determination on the Trade Rep-
13 resentative’s own initiative, during which time the
14 Trade Representative shall—

15 (A) give interested parties an opportunity
16 to comment on all matters to be covered by the
17 determinations; and

18 (B) if the Trade Representative has reason
19 to believe that the original determination identi-
20 fies acts, policies, or practices that are still in
21 existence and that involve anticompetitive con-
22 duct engaged in by any natural or corporate
23 person or persons, refer the matter to the At-
24 torney General pursuant to section 304(c) of
25 the Trade Act of 1974, as amended by this Act.

1 **SEC. 206. AMENDMENTS TO THE SHERMAN ACT.**

2 The Sherman Act (15 U.S.C. 1–7) is amended by in-
3 serting after section 7 the following:

4 **“SEC. 7A. PROCEDURES FOLLOWING REFERRAL FROM**
5 **TRADE REPRESENTATIVE.**

6 “(a) INVESTIGATION BY ATTORNEY GENERAL.—
7 Upon referral of a matter from the United States Trade
8 Representative under section 304(c) of the Trade Act of
9 1974, the Attorney General shall commence an investiga-
10 tion into whether the matter involves a violation of this
11 Act.

12 “(b) ACTION FOLLOWING INVESTIGATION.—

13 “(1) DETERMINATION BY ATTORNEY GEN-
14 ERAL.—At the conclusion of the investigation re-
15 quired by subsection (a), the Attorney General shall
16 determine whether there is reason to believe that a
17 person or persons have violated or are violating any
18 of the provisions of this Act.

19 “(2) TIMING OF DETERMINATION.—(A) Subject
20 to subparagraph (B), the Attorney General shall
21 make the determination required under paragraph
22 (1) on or before the date that is 180 days after the
23 date on which the matter was referred by the Trade
24 Representative to the Attorney General.

25 “(B) If the Attorney General determines that
26 complex or complicated issues are involved in the in-

1 investigation that require additional time, the Attorney
2 General shall publish in the Federal Register notice
3 of such determination and shall make the determina-
4 tion required under paragraph (1) with respect to
5 such investigation by no later than the date that is
6 270 days after the date on which the matter was re-
7 ferred by the Trade Representative to the Attorney
8 General.

9 “(3) ACTION IF DETERMINATION AFFIRMA-
10 TIVE.—If the determination under paragraph (1) is
11 affirmative, the Attorney General shall—

12 “(A) commence an action in a district
13 court of the United States seeking injunctive
14 relief and any other relief that a court may
15 deem just against the person or persons be-
16 lieved to have violated or be violating any of the
17 provisions of this Act, by issuing a complaint
18 and causing it to be served upon such person or
19 persons; or

20 “(B) submit a report to the Committees on
21 Ways and Means and on the Judiciary of the
22 House of Representatives and the Committees
23 on Finance and on the Judiciary of the Senate,
24 setting forth reasons for declining to commence
25 an action against the person or persons who the

1 Attorney General has reason to believe have vio-
2 lated or are violating any of the provisions of
3 this Act. Reasons for declining to commence an
4 action may include—

5 “(i) such person or persons have
6 ceased the conduct believed to have vio-
7 lated any of the provisions of this Act and
8 have entered into an agreement with the
9 Attorney General whereby they commit to
10 refrain from such conduct in the future;

11 “(ii) the foreign country or countries
12 in which such person or persons reside
13 have undertaken enforcement action which,
14 in the judgment of the Attorney General,
15 is likely to lead to cessation of the conduct
16 believed to have violated any of the provi-
17 sions of this Act;

18 “(iii) it is impossible to obtain per-
19 sonal jurisdiction over such person or per-
20 sons consistent with the requirement of
21 due process under the United States Con-
22 stitution;

23 “(iv) in the interests of comity, such
24 action should not be commenced, taking
25 into account—

1 “(I) the relative significance to
2 the alleged violation of conduct within
3 the United States, as compared to
4 conduct abroad;

5 “(II) the nationality of the per-
6 sons involved in or affected by the
7 conduct;

8 “(III) the presence or absence of
9 a purpose to affect United States con-
10 sumers, markets, or exporters;

11 “(IV) the relative significance
12 and foreseeability of the effects of the
13 conduct on the United States as com-
14 pared to the effects abroad;

15 “(V) the existence of reasonable
16 expectations that would be furthered
17 or defeated by the action;

18 “(VI) the degree of conflict with
19 foreign law or articulated foreign eco-
20 nomic policies;

21 “(VII) the extent to which the
22 enforcement activities of another
23 country with respect to the same per-
24 sons, including remedies resulting

1 from those activities, may be affected;
2 and
3 “(VIII) the effectiveness of en-
4 forcement by foreign countries as
5 compared to enforcement action by
6 the United States.

7 The Attorney General shall submit the report under
8 subparagraph (B) referred to no later than the date
9 that is 30 days after the date on which the Attorney
10 General makes the determination required under
11 paragraph (1).

12 “(4) ACTION IF DETERMINATION NEGATIVE.—
13 If the determination under paragraph (1) is nega-
14 tive, the Attorney General shall submit a report to
15 the Committees on Ways and Means and on the Ju-
16 diciary of the House of Representatives and the
17 Committees on Finance and on the Judiciary of the
18 Senate explaining why the Attorney General reached
19 that determination. The report referred to in the
20 preceding sentence shall be submitted no later than
21 the date that is 30 days after the date on which the
22 Attorney General makes the determination required
23 under paragraph (1).”.

1 **TITLE III—ADVERSE INFER-**
2 **ENCES BY TRADE REP-**
3 **RESENTATIVE**

4 **SEC. 301. ADVERSE INFERENCE WARRANTED.**

5 (a) IN GENERAL.—Chapter 1 of title III of the Trade
6 Act of 1974 is amended by adding at the end the fol-
7 lowing:

8 **“SEC. 311. ADVERSE INFERENCES.**

9 “(a) DETERMINATIONS UNDER SECTION 304.—In
10 making a determination under section 304, if the Trade
11 Representative determines that the foreign government
12 has failed to cooperate by not acting to the best of its
13 ability to—

14 “(1) comply with a reasonable request for infor-
15 mation, or

16 “(2) require a party within its jurisdiction to
17 comply with a reasonable request for information,
18 then, in reaching the applicable determination, the Trade
19 Representative may use an inference that is adverse to the
20 interests of the foreign government, if there is a reason-
21 able basis for the inference. Such adverse inference may
22 include reliance on information from other United States
23 Government agencies and departments, and from inter-
24 ested persons.

1 “(b) DETERMINATIONS UNDER SECTION
2 304(a)(1)(B)(ii).—In making a determination under sec-
3 tion 304(a)(1)(B)(ii), if the Trade Representative deter-
4 mines that a foreign person has failed to cooperate by not
5 acting to the best of its ability to comply with a reasonable
6 request for information, then, in reaching the applicable
7 determination, the Trade Representative may use an infer-
8 ence that is adverse to the interests of the foreign person,
9 if there is a reasonable basis for the inference. Such ad-
10 verse inference may include reliance on information from
11 other United States Government agencies and depart-
12 ments, and from interested persons.”.

13 (b) CONFORMING AMENDMENT.—The table of con-
14 tents for the Trade Act of 1974 is amended by adding
15 after the item relating to section 310 the following new
16 item:

“Sec. 311. Adverse inferences.”.

