

108TH CONGRESS
1ST SESSION

H. R. 2365

To amend United States trade laws to address more effectively import crises,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2003

Mr. ENGLISH (for himself, Mr. LEVIN, and Mr. HOUGHTON) introduced the
following bill; which was referred to the Committee on Ways and Means

A BILL

To amend United States trade laws to address more
effectively import crises, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trade Law Reform
5 Act of 2003”.

1 **TITLE I—AMENDMENTS TO**
2 **TITLE VII OF THE TARIFF ACT**
3 **OF 1930**

4 **SEC. 101. CAPTIVE PRODUCTION.**

5 Section 771(7)(C)(iv) of the Tariff Act of 1930 (19
6 U.S.C. 1677(7)(C)(iv)) is amended to read as follows:

7 “(iv) CAPTIVE PRODUCTION.—If do-
8 mestic producers transfer internally, in-
9 cluding to affiliated persons as defined in
10 paragraph (33), significant production of
11 the domestic like product for the produc-
12 tion of a downstream article and sell sig-
13 nificant production of the domestic like
14 product in the merchant market, then the
15 Commission, in determining market share
16 and the factors affecting financial perform-
17 ance set forth in clause (iii), shall focus
18 primarily on the merchant market for the
19 domestic like product.”.

20 **SEC. 102. PRICE.**

21 Section 771(7)(C)(ii) of the Tariff Act of 1930 (19
22 U.S.C. 1677(7)(C)(ii)) is amended by adding at the end
23 the following flush sentence:

24 “The Commission shall not conclude that
25 imports of the subject merchandise do not

1 have a significant effect on prices merely
2 because of the volume of imports of the
3 subject merchandise.”.

4 **SEC. 103. VULNERABILITY OF INDUSTRY; CUMULATION.**

5 Section 771(7)(C)(iii) of the Tariff Act of 1930 (19
6 U.S.C. 1677(7)(C)(iii)) is amended in the last sentence
7 by striking the period at the end and inserting “, including
8 whether the industry is vulnerable to the effects of imports
9 of the subject merchandise.”.

10 (b) CUMULATION.—Section 771(7)(G)(i) of the Tar-
11 iff Act of 1930 (19 U.S.C. 1677(7)(G)(i)) is amended to
12 read as follows:

13 “(i) IN GENERAL.—For purposes of
14 clauses (i) and (ii) of subparagraph (C),
15 and subject to clause (ii), the Commission
16 shall cumulatively assess the volume and
17 effect of imports of the subject merchan-
18 dise from all countries subject to petitions
19 filed under section 702(b) or 732(b), or
20 subject to investigations initiated under
21 702(a) or 732(a), if such petitions were
22 filed, or such investigations were initiated,
23 within 90 days before the date on which
24 the Commission is required to make its
25 final injury determination, and if such im-

1 ports compete with each other and with
2 the domestic like product in the United
3 States market.”.

4 **SEC. 104. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND**
5 **INJURY.**

6 Section 771(7)(E)(ii) of the Tariff Act of 1930 (19
7 U.S.C. 1677(7)(E)(ii)) is amended by adding at the end
8 the following: “The Commission need not determine the
9 significance of imports of the subject merchandise relative
10 to other economic factors.”.

11 **SEC. 105. PREVENTION OF CIRCUMVENTION.**

12 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.
13 1677j(c)) is amended by adding at the end the following
14 new paragraph:

15 “(3) SPECIAL RULE.—The administering au-
16 thority shall apply paragraph (1) with respect to al-
17 tered merchandise excluded from the merchandise
18 description used in an outstanding order or finding,
19 if such application is not inconsistent with the af-
20 firmative determination of the Commission on which
21 the order or finding is based.”.

22 **SEC. 106. PERISHABLE AGRICULTURAL PRODUCTS.**

23 (a) DEFINITION OF INDUSTRIES.—Section 771(4)(A)
24 of the Tariff Act of 1930 (19 U.S.C. 1677(4)(A)) is
25 amended by adding at the end the following: “If the Com-

1 mission determines that an agricultural product has a
2 short shelf life and is a perishable product, the Commis-
3 sion shall treat the producers of the product in a defined
4 period or season as the domestic industry. If the sub-
5 heading under the Harmonized Tariff Schedules of the
6 United States for an agricultural product has a 6- or 8-
7 digit classification based on the period of time during the
8 calendar year in which the product is harvested or im-
9 ported, such periods of time constitute a defined period
10 or season for purposes of this paragraph.”.

11 (b) DETERMINATION OF INJURY.—Section
12 771(7)(D) of the Tariff Act of 1930 (19 U.S.C.
13 1677(7)(D)) is amended by adding at the end the fol-
14 lowing new clauses:

15 “(iii) In the case of an agricultural in-
16 dustry involving a perishable product with
17 a short shelf life, if a request for seasonal
18 evaluation has been made by the peti-
19 tioners, the Commission shall consider the
20 factors in subparagraph (C) on a seasonal
21 basis during the period identified as rel-
22 evant.

23 “(iv) In the case of agricultural prod-
24 ucts, partially picked or unpicked crops
25 and abandoned acreage may be considered

1 in lieu of other measures of capacity and
 2 capacity utilization.

3 “(v) The impact of other factors, such
 4 as weather, on agricultural production and
 5 producers shall not be weighed against the
 6 contribution of the imported subject mer-
 7 chandise to the condition of the domestic
 8 industry.”.

9 **SEC. 107. FULL RECOGNITION OF SUBSIDY CONFERRED**
 10 **THROUGH PROVISION OF GOODS AND SERV-**
 11 **ICES AND PURCHASE OF GOODS.**

12 Section 771(5)(E) of the Tariff Act of 1930 (19
 13 U.S.C. 1677(5)(E)) is amended by adding at the end the
 14 following: “If transactions in the country which is the sub-
 15 ject of the investigation or review do not reflect market
 16 conditions due to government action associated with provi-
 17 sion of the good or service or purchase of the good, deter-
 18 mination of the adequacy of remuneration shall be through
 19 comparison with a market price for a comparable item
 20 elsewhere in the world.”.

21 **SEC. 108. REIMBURSEMENT OF DUTIES.**

22 Section 772(d) of the Tariff Act of 1930 (19 U.S.C.
 23 1677a(d)) is amended—

24 (1) by striking “and” at the end of paragraph
 25 (2);

1 (2) by striking the period at the end of para-
2 graph (3) and inserting a semicolon; and

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

5 “(4) if the importer is the producer or exporter,
6 or the importer and the producer or exporter are af-
7 filiated persons, an amount equal to the dumping
8 margin calculated under section 771(35)(A), unless
9 the producer or exporter is able to demonstrate that
10 the importer was in no way reimbursed for any anti-
11 dumping duties paid; and

12 “(5) if the importer is the producer or exporter,
13 or the importer and the producer or exporter are af-
14 filiated persons, an amount equal to the net
15 countervailable subsidy calculated under section
16 771(6), unless the producers or exporter is able to
17 demonstrate that the importer was in no way reim-
18 bursed for any countervailing duties paid.”.

19 **SEC. 109. EXPORT PRICE AND CONSTRUCTED EXPORT**
20 **PRICE.**

21 Section 772(c)(2)(A) of the Tariff Act of 1930 (19
22 U.S.C. 1677a(c)(2)(A)) is amended by inserting “(includ-
23 ing countervailing duties imposed under this title)” after
24 “duties”.

1 **SEC. 110. EFFECTIVE DATE.**

2 The amendments made by this title shall apply with
3 respect to determinations made under title VII of the Tar-
4 iff Act of 1930 that—

5 (1) are made with respect to investigations ini-
6 tiated or petitions filed on or after the date of the
7 enactment of this Act; or

8 (2) have not become final as of such date of en-
9 actment.

10 **TITLE II—SAFEGUARD**
11 **AMENDMENTS**

12 **SEC. 201. AMENDMENTS TO CHAPTER 1 OF TITLE II OF THE**
13 **TRADE ACT OF 1974.**

14 (a) TEST FOR POSITIVE ADJUSTMENTS TO IMPORT
15 COMPETITION.—Section 201(a) of the Trade Act of 1974
16 (19 U.S.C. 2251(a)) is amended by striking “be a sub-
17 stantial cause of serious injury, or the threat thereof,” and
18 inserting “cause or threaten to cause serious injury”.

19 (b) INVESTIGATIONS AND DETERMINATIONS.—Sec-
20 tion 202 of such Act (19 U.S.C. 2252) is amended—

21 (1) in subsection (b)(1)(A), by striking “be a
22 substantial cause of serious injury, or the threat
23 thereof,” and inserting “cause or threaten to cause
24 serious injury”;

25 (2) by amending subsection (b)(1)(B) to read
26 as follows:

1 “(B) For purposes of this section, the term
2 ‘cause’ refers to a cause that contributes signifi-
3 cantly to serious injury, or the threat thereof, to the
4 domestic industry but need not be equal to or great-
5 er than any other cause.”;

6 (3) in subsection (c)—

7 (A) by amending paragraph (1)(A) to read
8 as follows:

9 “(A) with respect to serious injury—

10 “(i) change in the level of sales, pro-
11 duction, productivity, capacity utilization,
12 profits and losses, and employment;

13 “(ii) the significant idling of produc-
14 tive facilities in the domestic industry;

15 “(iii) the inability of a significant
16 number of firms to carry out domestic pro-
17 duction operations at a reasonable level of
18 profit; and

19 “(iv) significant unemployment or
20 underemployment within the domestic in-
21 dustry;”;

22 (B) in paragraph (1)(B)—

23 (i) in clause (iii) by striking “; and”
24 and inserting “, and”; and

1 (ii) by inserting after clause (iii) the
2 following:

3 “(iv) foreign production capacity, for-
4 eign inventories, the level of demand in
5 third country markets, and the availability
6 of other export markets to absorb any ad-
7 ditional exports; and”;

8 (C) by amending paragraph (1)(C) to read
9 as follows:

10 “(C) with respect to cause—

11 “(i) the rate, amount, and timing of
12 the increase in imports of the product con-
13 cerned in absolute and relative terms, in-
14 cluding whether there has been a substan-
15 tial increase in imports over a short period
16 of time; and

17 “(ii) the share of the domestic market
18 taken by increased imports.”;

19 (D) by redesignating paragraphs (3)
20 through (6) as paragraphs (5) through (8), re-
21 spectively;

22 (E) by striking paragraph (2) and insert-
23 ing the following:

24 “(2) In making determinations under para-
25 graph (1)(A) and (B), if domestic producers inter-

1 nally transfer, including to affiliated persons as de-
2 fined in section 771(33) of the Tariff Act of 1930,
3 significant production of the article like or directly
4 competitive with the imported article for the produc-
5 tion of a downstream article and sell significant pro-
6 duction of the article like or directly competitive
7 with the imported article in the merchant market,
8 then the Commission, in determining market share
9 and the factors affecting financial performance set
10 forth in paragraph (1)(A) and (B), shall focus pri-
11 marily on the merchant market for the article like
12 or directly competitive with the imported article.

13 “(3) In making determinations under sub-
14 section (b), the Commission shall—

15 “(A) consider the condition of the domestic
16 industry over the course of the relevant busi-
17 ness cycle, but may not aggregate the causes of
18 declining demand associated with a recession or
19 economic downturn in the United States econ-
20 omy into a single cause of serious injury or
21 threat of injury; and

22 “(B) examine factors other than imports
23 which may cause or threaten to cause serious
24 injury to the domestic industry.

1 The Commission shall include the results of its ex-
2 amination under subparagraph (B) in the report
3 submitted by the Commission to the President under
4 subsection (e).

5 “(4) In making determinations under sub-
6 section (b), the Commission shall consider whether
7 any change in the volume of imports that has oc-
8 curred since a petition under subsection (a) was filed
9 or a request under subsection (b) was made is re-
10 lated to the pendency of the investigation, and if so,
11 the Commission may reduce the weight accorded to
12 the data for the period after the petition under sub-
13 section (a) was filed or the request under subsection
14 (b) was made in making its determination of serious
15 injury, or the threat thereof.”; and

16 (F) in paragraph (5), as so redesignated—

17 (i) by striking “and (B)” and insert-
18 ing “, (B), and (C)”; and

19 (ii) by striking “be a substantial cause
20 of serious injury, or the threat thereof,”
21 and inserting “cause or threaten to cause
22 serious injury”;

23 (4) in subsection (d)—

24 (A) in paragraph (1)(A)(ii), by striking
25 “be, or likely to be a substantial cause of seri-

1 ous injury, or the threat thereof,” and inserting
2 “cause, or be likely to cause, or threaten to
3 cause, or be likely to threaten to cause, serious
4 injury”;

5 (B) in paragraph (1)(C), in the matter fol-
6 lowing clause (ii), by striking “a substantial
7 cause of serious injury, or the threat thereof,”
8 and inserting “causing or threatening to cause
9 serious injury”;

10 (C) by amending paragraph (2)(A) to read
11 as follows:

12 “(2)(A) When a petition filed under subsection
13 (a) or a request filed under subsection (b) alleges
14 that critical circumstances exist and requests that
15 provisional relief be provided under this subsection
16 with respect to imports of the article identified in
17 the petition or request, the Commission shall, not
18 later than 45 days after the petition or request is
19 filed, determine, on the basis of available informa-
20 tion, whether—

21 “(i) there is clear evidence that increased
22 imports (either actual or relative to domestic
23 production) of the article are causing or threat-
24 ening to cause serious injury to the domestic in-

dustry producing an article like or directly competitive with the imported article; and

“(ii) delay in taking action under this chapter would cause damage to that industry that would be difficult to repair.

In making the evaluation under clause (ii), the Commission should consider, among other factors that it considers relevant, the timing and volume of the imports, including whether there has been a substantial increase in imports over a short period of time, and any other circumstances indicating that delay in taking action under this chapter would cause damage to the industry that would be difficult to repair.”; and

(D) in paragraph (2)(D), by striking “30” and inserting “20”.

(c) PRESIDENTIAL DETERMINATIONS.—

(1) ACTION BY PRESIDENT.—Section 203(a) of the Trade Act of 1974 (19 U.S.C. 2253(a)) is amended—

(A) in paragraph (1)(A), by striking “and provide greater economic and social benefits than costs” and inserting “and will not have an adverse impact on the United States clearly greater than the benefits of such action”;

(B) in paragraph (2)(F), by striking “compensation;” at the end of clause (iii) and inserting the following: “compensation, except that the President shall give substantially greater weight to the factors set out in clause (i) than to those set out in clauses (ii) and (iii);”; and

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

“(I) the potential for harm to the national security of the United States; and”.

(2) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—(A) Section 203(c) of the Trade Act of 1974 (19 U.S.C. 2253(c)) is amended by striking “90” and inserting “60”.

(B) Section 152(c)(1) of the Trade Act of 1974 (19 U.S.C. 2192(c)(1)) is amended by striking “not counting any day which is excluded under section 154(b),” and inserting “counting all calendar days in the case of a resolution described in subsection (a)(1)(A), and not counting any day which is excluded under section 154(b) in the case of a resolution described in subsection (a)(1)(B),”.

(d) CONFORMING AMENDMENTS.—

1 (1) Section 203(e)(6)(B) of the Trade Act of
2 1974 (19 U.S.C. 2253(e)(6)(B)) is amended by
3 striking “substantially”.

4 (2) Section 264(c) of the Trade Act of 1974
5 (19 U.S.C. 2354(c)) is amended by striking “a sub-
6 stantial cause of serious injury or threat thereof”
7 and inserting “causing or threatening to cause seri-
8 ous injury”.

9 (3) Section 154(b) of the Trade Act of 1974
10 (19 U.S.C. 2194(b)) is amended by striking the
11 matter that precedes paragraph (1) and inserting
12 the following:

13 “(b) The 60-day period referred to in section 203(c)
14 and the 90-day period referred to in section 407(c)(2)
15 shall be computed by excluding—”.

16 **TITLE III—INTERNATIONAL** 17 **TRADE NEGOTIATIONS**

18 **SEC. 301. NEGOTIATING OBJECTIVES REGARDING TRADE** 19 **REMEDY LAWS.**

20 Section 2102(b)(14) of the Trade Act of 2002 (19
21 U.S.C. 3801(b)) is amended by adding at the end the fol-
22 lowing flush sentence:

23 “In order to carry out subparagraph (A), the United
24 States Trade Representative should refuse to agree
25 to any proposal, whether in the context of a trade

1 agreement entered into under the auspices of the
2 World Trade Organization, or a free trade agree-
3 ment with another country or group of countries,
4 that would, either individually or in combination
5 with other proposals, weaken existing United States
6 trade remedy laws contained in title VII of the Tar-
7 iff Act of 1930 or chapter 1 of title II of the Trade
8 Act of 1974, including any proposal that would
9 make obtaining relief under these provisions more
10 difficult, uncertain, or costly for domestic industries
11 to achieve or maintain over time.”.

12 **SEC. 302. CONSULTATIONS AND ASSESSMENTS REGARDING**
13 **TRADE AGREEMENTS.**

14 Section 2104(d)(3)(A) of the Trade Act of 2002 (19
15 U.S.C. 3804(d)(3)(A)) is amended—

16 (1) in clause (i), by striking “and” after the
17 semicolon;

18 (2) in clause (ii), by striking the period and in-
19 serting a semicolon; and

20 (3) by adding after clause (ii) the following:

21 “(iii) with respect to each specific pro-
22 posal that could require amendments to
23 title VII of the Tariff Act of 1930 or chap-
24 ter 1 of title II of the Trade Act of 1974,
25 whether and to what extent the proposal

would, either individually or in combination with other proposals, make obtaining relief under these provisions more difficult, uncertain, or costly for domestic industries to achieve or maintain over time; and

“(iv) for each specific proposal that the President reports would not (whether individually or in combination with other proposals) make obtaining relief under title VII of the Tariff Act of 1930 or chapter 1 of title II of the Trade Act of 1974 more difficult, uncertain, or costly for domestic industries to achieve or maintain over time, a detailed explanation providing the basis for this conclusion.”.

SEC. 303. EFFECTIVE DATE.

The amendments made by this title take effect on the date of the enactment of this Act.

TITLE IV—CONGRESSIONAL ADVISORY COMMISSION ON WTO DISPUTE SETTLEMENT

SEC. 401. SHORT TITLE.

This title may be cited as the “Congressional Advisory Commission on WTO Dispute Settlement Act”.

1 **SEC. 402. CONGRESSIONAL FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) The United States joined the World Trade
4 Organization as an original member with the goal of
5 creating an improved global trading system and pro-
6 viding expanded economic opportunities for United
7 States firms and workers.

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

11 (3) These dispute settlement rules help ensure
12 that the United States can reap the full benefits of
13 its participation in the WTO and have acted, on bal-
14 ance, to the benefit of the United States.

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

21 (A) operate with fairness and in an impar-
22 tial manner;

23 (B) strictly observe the terms of reference
24 and any applicable standard of review set forth
25 in the Uruguay Round Agreements; and

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

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

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

19 (7) In order to come into compliance with re-
20 ports of dispute settlement panels and the Appellate
21 Body that have been adopted by the Dispute Settle-
22 ment Body, the Congress may need to amend or re-
23 peal statutes of the United States. In such cases, the
24 Congress must have a high degree of confidence that
25 the reports are in accordance with paragraph (4).

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

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

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

13 **SEC. 403. ESTABLISHMENT OF COMMISSION.**

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

18 (b) MEMBERSHIP.—

19 (1) COMPOSITION.—The Commission shall be
20 composed of 5 members, all of whom shall be judges
21 or former judges of the Federal judicial circuits and
22 shall be appointed by the Speaker of the House of
23 Representatives and the President pro tempore of
24 the Senate after considering the recommendations of
25 the Chairman and ranking member of the Com-

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

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

12 (c) PERIOD OF APPOINTMENT; VACANCIES.—

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

17 (2) VACANCIES.—

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

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

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

8 (e) MEETINGS.—The Commission shall meet at the
9 call of the Chairperson.

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

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

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

23 **SEC. 404. DUTIES OF THE COMMISSION.**

24 (a) ADVISING CONGRESS ON THE OPERATION OF
25 THE WTO DISPUTE SETTLEMENT SYSTEM.—

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

3 (A) all adverse reports of dispute settle-
4 ment panels and the Appellate Body which
5 are—

6 (i) adopted by the Dispute Settlement
7 Body; and

8 (ii) the result of a proceeding initiated
9 against the United States by a WTO mem-
10 ber; and

11 (B) upon the request of the Committee on
12 Ways and Means of the House of Representa-
13 tives or the Committee on Finance of the Sen-
14 ate—

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

17 (I) which is adopted by the Dis-
18 pute Settlement Body; and

19 (II) in which the United States is
20 a complaining party; or

21 (ii) any other finding which is con-
22 tained in a report of a dispute settlement
23 panel or the Appellate Body that is adopt-
24 ed by the Dispute Settlement Body.

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

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

7 (i) exceeded its authority or its terms
8 of reference;

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

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

18 (iv) deviated from the applicable
19 standard of review, including in anti-
20 dumping, countervailing duty, and other
21 unfair trade remedy cases, the standard of
22 review set forth in Article 17.6 of the
23 Agreement on Implementation of Article
24 VI of the General Agreement on Tariffs
25 and Trade 1994; and

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

8 (3) NO DEFERENCE.—Applying the standards
9 set forth in paragraph (2) does not require deference
10 to findings of law made by the dispute settlement
11 panel or the Appellate Body, as the case may be.

12 (b) DETERMINATION; REPORT.—

13 (1) DETERMINATION.—

14 (A) IN GENERAL.—Not later than 150
15 days after the date on which the Commission
16 receives notice of a report or request under sec-
17 tion 405(b), the Commission shall make a writ-
18 ten determination with respect to the matters
19 described in paragraph (2) of subsection (a), in-
20 cluding a full analysis of the basis for its deter-
21 mination. A vote by a majority of the members
22 of the Commission shall constitute a determina-
23 tion of the Commission, although the members
24 need not agree on the basis for their vote.

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

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

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

20 **SEC. 405. POWERS OF THE COMMISSION.**

21 (a) HEARINGS.—The Commission may hold a public
22 hearing to solicit views concerning a report of a dispute
23 settlement panel or the Appellate Body described in sec-
24 tion 404(a)(1), if the Commission considers such hearing
25 to be necessary to carry out the purpose of this title. The

1 Commission shall provide reasonable notice of a hearing
2 held pursuant to this subsection.

3 (b) INFORMATION FROM INTERESTED PARTIES AND
4 FEDERAL AGENCIES.—

5 (1) NOTICE TO COMMISSION.—

6 (A) UNDER SECTION 404(a)(1)(A).—The
7 Trade Representative shall advise the Commis-
8 sion not later than 5 business days after the
9 date the Dispute Settlement Body adopts a re-
10 port of a panel or the Appellate Body that is
11 to be reviewed by the Commission under section
12 404(a)(1)(A).

13 (B) UNDER SECTION 404(a)(1)(B).—The
14 Committee on Ways and Means or the Com-
15 mittee on Finance, as the case may be, may
16 make and notify the Commission of a request
17 under section 404(a)(1)(B) not later than 1
18 year after the Dispute Settlement Body adopts
19 the report that is the subject of the request.

20 (C) REPORTS ADOPTED PRIOR TO AP-
21 POINTMENT OF COMMISSION.—With respect to
22 any report to which section 404(a)(1)(B) ap-
23 plies and that is adopted before the date on
24 which the first members of the Commission are
25 appointed under section 403(b)(2), the Com-

1 mittee on Ways and Means or the Committee
2 on Finance, as the case may be, may make and
3 notify the Commission of a request under sec-
4 tion 404(a)(1)(B) with respect to that report
5 not later than 1 year after the date on which
6 the first members of the Commission are ap-
7 pointed under section 403(b)(2).

8 (2) SUBMISSIONS AND REQUESTS FOR INFOR-
9 MATION.—

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

21 (B) INFORMATION FROM FEDERAL AGEN-
22 CIES AND DEPARTMENTS.—The Commission
23 may also secure directly from any Federal de-
24 partment or agency such information as the
25 Commission considers necessary to carry out

1 the provisions of this title. Upon the request of
2 the chairperson of the Commission, the head of
3 such department or agency shall furnish the in-
4 formation requested to the Commission in a
5 timely manner.

6 (3) ACCESS TO PANEL AND APPELLATE BODY
7 DOCUMENTS.—

8 (A) IN GENERAL.—The Trade Representa-
9 tive shall make available to the Commission all
10 submissions and relevant documents relating to
11 a report of a panel or the Appellate Body de-
12 scribed in section 404(a)(1), including any in-
13 formation contained in such submissions identi-
14 fied by the provider of the information as pro-
15 prietary information or information designated
16 as confidential by a foreign government.

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

23 (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-
24 FIDENTIALITY.—

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

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

14 **SEC. 406. SENSE OF CONGRESS REGARDING PARTICIPA-**
 15 **TION IN WORLD TRADE ORGANIZATION**
 16 **PANEL PROCEEDINGS.**

17 It is the sense of the Congress that, to the maximum
 18 extent permissible under the rules and practices of the
 19 WTO—

20 (1) if the Trade Representative, in proceedings
 21 before a dispute settlement panel or the Appellate
 22 Body of the WTO, seeks—

23 (A) to enforce United States rights under
 24 a multilateral trade agreement; or

1 (B) to defend a challenged action or deter-
2 mination of the United States Government,
3 a private United States person that is supportive of
4 the United States Government's position before the
5 panel or the Appellate Body and that has a direct
6 and tangible interest in the panel's or the Appellate
7 Body's resolution of the matters in dispute should be
8 permitted to observe and have access to the pro-
9 ceedings;

10 (2) the Trade Representative should make
11 available to United States persons described in para-
12 graph (1) all information presented to or otherwise
13 obtained by the Trade Representative in connection
14 with the applicable WTO dispute settlement pro-
15 ceeding; and

16 (3) upon the request of a United States person
17 described in paragraph (1), the Trade Representa-
18 tive should—

19 (A) consult in advance with such United
20 States person regarding the content of written
21 submissions from the United States to the
22 panel concerned or to the other member coun-
23 tries involved;

24 (B) include, where appropriate, such
25 United States person, or the appropriate rep-

1 representative of that person, as an advisory mem-
2 ber of the United States delegation in sessions
3 of the dispute settlement panel; and

4 (C) allow such United States person, if
5 such person would bring special knowledge to
6 the proceeding and would be useful to the
7 United States case, to appear before the panel,
8 directly or through counsel, under the super-
9 vision of responsible United States Government
10 officials.

11 **SEC. 407. DEFINITIONS.**

12 In this title:

13 (1) ADVERSE FINDING.—The term “adverse
14 finding” means—

15 (A) in a proceeding of a panel or the Ap-
16 pellate Body that is initiated against the United
17 States, a finding by the panel or the Appellate
18 Body that any law or regulation of, or applica-
19 tion thereof by, the United States, or any State,
20 is inconsistent with the obligations of the
21 United States under a Uruguay Round Agree-
22 ment (or nullifies or impairs benefits accruing
23 to a WTO member under such an Agreement);
24 or

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

10 (2) APPELLATE BODY.—The term “Appellate
11 Body” means the Appellate Body established by the
12 Dispute Settlement Body pursuant to Article 17.1 of
13 the Dispute Settlement Understanding.

14 (3) DISPUTE SETTLEMENT BODY.—The term
15 “Dispute Settlement Body” means the Dispute Set-
16 tlement Body established pursuant to the Dispute
17 Settlement Understanding.

18 (4) DISPUTE SETTLEMENT PANEL; PANEL.—
19 The terms “dispute settlement panel” and “panel”
20 mean a panel established pursuant to Article 6 of
21 the Dispute Settlement Understanding.

22 (5) DISPUTE SETTLEMENT UNDERSTANDING.—
23 The term “Dispute Settlement Understanding”
24 means the Understanding on Rules and Procedures
25 Governing the Settlement of Disputes referred to in

1 section 101(d)(16) of the Uruguay Round Agree-
2 ments Act (19 U.S.C. 3511(d)(16)).

3 (6) TERMS OF REFERENCE.—The term “terms
4 of reference” has the meaning given such term in
5 the Dispute Settlement Understanding.

6 (7) TRADE REPRESENTATIVE.—The term
7 “Trade Representative” means the United States
8 Trade Representative.

9 (8) URUGUAY ROUND AGREEMENT.—The term
10 “Uruguay Round Agreement” means any of the
11 Agreements described in section 101(d) of the Uru-
12 guay Round Agreements Act.

13 (9) UNITED STATES PERSON.—The term
14 “United States person” means—

15 (A) a United States citizen or an alien ad-
16 mitted for permanent residence into the United
17 States; and

18 (B) a corporation, partnership, or other
19 legal entity organized under the laws of the
20 United States or of any State, the District of
21 Columbia, or any commonwealth, territory, or
22 possession of the United States.

23 (10) WORLD TRADE ORGANIZATION; WTO.—The
24 terms “World Trade Organization” and “WTO”

1 mean the organization established pursuant to the
2 WTO Agreement.

3 (11) WTO AGREEMENT.—The term “WTO
4 Agreement” means the Agreement Establishing the
5 World Trade Organization entered into on April 15,
6 1994.

7 (12) WTO MEMBER.—The term “WTO mem-
8 ber” has the meaning given that term in section
9 2(10) of the Uruguay Round Agreements Act (19
10 U.S.C. 3501(10)).

11 **SEC. 408. EFFECTIVE DATE.**

12 This title shall take effect on the date of the enact-
13 ment of this Act.

14 **TITLE V—STEEL IMPORT**
15 **NOTIFICATION**

16 **SEC. 501. STEEL IMPORT LICENSING AND SURGE MONI-**
17 **TORING PROGRAM.**

18 (a) IN GENERAL.—Not later than 30 days after the
19 date of the enactment of this Act, the Secretary of Com-
20 merce, in consultation with the Secretary of the Treasury,
21 shall establish and implement a steel import licensing and
22 surge monitoring program. The program shall include a
23 requirement that any person importing a product classi-
24 fied under chapter 72 or 73 of the Harmonized Tariff
25 Schedule of the United States, and any person importing

1 a product which was classified under either such chapter
2 but has been the subject of temporary modifications, es-
3 tablished pursuant to trade remedy laws, under chapter
4 99 of the Harmonized Tariff Schedule of the United
5 States, obtain a steel import license before such products
6 are entered into the United States. The program estab-
7 lished under this subsection shall remain in effect regard-
8 less of the termination of any measures imposed under
9 section 201 of the Trade Act of 1974 with respect to any
10 product classified under chapter 72 or 73 of the Har-
11 monized Tariff Schedule of the United States.

12 (b) MODIFICATION OF EXISTING REGULATIONS.—
13 Not later than 30 days after the date of the enactment
14 of this Act, the Secretary of Commerce shall modify regu-
15 lations in effect under sections 360.101 through 360.108
16 of title 19, Code of Federal Regulations, on the date of
17 the enactment of this Act to conform to the provisions of
18 this title.

19 (c) STEEL IMPORT LICENSES.—

20 (1) IN GENERAL.—The Secretary of Commerce
21 shall issue a steel import license to any person who
22 files an application that meets the requirements of
23 this section.

24 (2) APPLICATION.—In order to obtain a steel
25 import license, an importer, customs broker, or

1 agent shall submit an application to the Secretary of
2 Commerce containing—

3 (A) the filer's company name and address;

4 (B) the filer's contact name, phone num-
5 ber, fax number, and e-mail address;

6 (C) a statement as to whether the goods
7 are being entered for consumption, or for entry
8 into a bonded warehouse or foreign trade zone,
9 or for entry under a temporary importation
10 bond, or for being entered for transportation
11 and exportation;

12 (D) the importer's name;

13 (E) the manufacturer's name;

14 (F) the country of origin;

15 (G) the country of exportation;

16 (H) the expected date of export;

17 (I) the expected date of import;

18 (J) the expected port of entry;

19 (K) a description of the goods, including
20 the current classification of such goods under
21 the Harmonized Tariff Schedule of the United
22 States;

23 (L) the most recent classification of such
24 goods under the Harmonized Tariff Schedule of
25 the United States prior to temporary modifica-

1 tions established pursuant to trade remedy
2 laws, if the current classification of such goods
3 is under chapter 99 of the Harmonized Tariff
4 Schedule of the United States;

5 (M) the quantity of such goods (in kilo-
6 grams);

7 (N) the customs value of such goods in
8 United States dollars; and

9 (O) any other information that the Sec-
10 retary of Commerce determines to be necessary
11 and appropriate.

12 (3) CERTIFICATION.—The importer, customs
13 broker, or agent submitting the application under
14 paragraph (2) must certify the accuracy and com-
15 pleteness of the information submitted.

16 (4) TIME PERIOD FOR APPLICATION.—An appli-
17 cation for a steel import license may be submitted
18 on the date of importation or on any date up to 60
19 days before the expected date of importation or, in
20 the case of products withdrawn for consumption
21 from a bonded warehouse, until the date of entry
22 summary.

23 (5) DURATION OF STEEL IMPORT LICENSE.—A
24 steel import license shall be valid for a period of 75
25 days beginning on the date on which it is issued.

1 (6) ENTRIES FOR CONSUMPTION.—All entries
2 for consumption of products classified under chapter
3 72 or 73 of the Harmonized Tariff Schedule of the
4 United States, or which were classified under such
5 chapters 72 and 73 but have been the subject of
6 temporary modifications, established pursuant to
7 trade remedy laws, under chapter 99 of the Har-
8 monized Tariff Schedule of the United States, other
9 than informal entries described in paragraph (8), re-
10 quire an import license prior to the filing of Customs
11 entry summary documents. The license numbers
12 shall be reported on the entry summary at the time
13 of filing.

14 (7) FOREIGN TRADE ZONE ENTRIES.—All ship-
15 ments of products classified under chapter 72 or 73
16 of the Harmonized Tariff Schedule of the United
17 States, or which were classified under either such
18 chapter but have been the subject of temporary
19 modifications, established pursuant to trade remedy
20 laws under chapter 99 of the Harmonized Tariff
21 Schedule of the United States, into foreign trade
22 zones shall require an import license prior to the fil-
23 ing of foreign trade zone admission documents. The
24 license numbers shall be reported on the application
25 for foreign trade zone admission or status designa-

1 tion at the time of filing. An additional steel license
2 shall not be required for shipments from the foreign
3 trade zone into the commerce of the United States.

4 (8) INFORMAL ENTRIES.—No import license
5 shall be required for informal entries of products
6 classified under chapter 72 or 73 of the Harmonized
7 Tariff Schedule of the United States, or which were
8 classified under either such chapter but have been
9 the subject of temporary modifications, established
10 pursuant to trade remedy laws under chapter 99 of
11 the Harmonized Tariff Schedule of the United
12 States, if such merchandise is valued at less than
13 \$2,000.

14 (9) OTHER NON-CONSUMPTION ENTRIES.—Im-
15 port licenses shall not be required on temporary im-
16 portation bond (“TIB”) entries, transportation and
17 exportation (T&E) entries, or entries into a bonded
18 warehouse. Products that—

19 (A) are classified under chapter 72 or 73
20 of the Harmonized Tariff Schedule of the
21 United States, or were classified under either
22 such chapter but have been the subject of tem-
23 porary modifications, established pursuant to
24 trade remedy laws under chapter 99 of the

1 Harmonized Tariff Schedule of the United
2 States, and

3 (B) are withdrawn for consumption from a
4 bonded warehouse,
5 shall require a license at the entry summary.

6 (d) FAILURE TO REPORT LICENSE NUMBER.—

7 (1) ENTRIES FOR CONSUMPTION.—Entry sum-
8 maries submitted without the required license num-
9 bers shall be considered incomplete and shall be sub-
10 ject to liquidated damages for violation of the bond
11 condition requiring timely completion of entry.

12 (2) FOREIGN TRADE ZONE ENTRIES.—Foreign
13 trade zone admission documents submitted without
14 the required license numbers shall not be considered
15 complete and shall be subject to liquidated damages
16 for violation of the bond condition requiring timely
17 completion of admission.

18 (e) STEEL IMPORT SURGE MONITORING SYSTEM.—

19 (1) IN GENERAL.—The Secretary of Commerce
20 shall compile and publish on a weekly basis informa-
21 tion described in paragraph (2).

22 (2) INFORMATION.—Information described in
23 this paragraph means information obtained from
24 steel import license applications concerning steel im-
25 ported into the United States and includes with re-

1 spect to such imports the Harmonized Tariff Sched-
2 ule of the United States classification (to the tenth
3 digit for entries of products under chapter 72 or 73
4 of such Schedule, or to the eighth digit for all en-
5 tries of covered products under chapter 99 of such
6 Schedule), the country of origin, the port of entry,
7 quantity, value of steel imported, the average unit
8 value of steel imported, and whether the imports
9 were entered for consumption or entered into a for-
10 eign trade zone. Such information shall be compiled
11 in aggregate form and made publicly available by the
12 Secretary of Commerce on a weekly basis by public
13 posting through an Internet website. The informa-
14 tion provided under this section shall be in addition
15 to any information otherwise required by law.

16 (f) FEES.—The Secretary of Commerce may pre-
17 scribe reasonable fees and charges to defray the costs of
18 carrying out the provisions of this section, including a fee
19 for issuing a license under this section. No fees shall be
20 charged for accessing the information compiled and pub-
21 lished by the Secretary of Commerce for the steel import
22 surge monitoring system.

23 (g) SINGLE PRODUCER AND EXPORTER COUN-
24 TRIES.—Notwithstanding any other provision of law, the
25 Secretary of Commerce shall make publicly available all

1 information required to be released pursuant to subsection
 2 (c), including information obtained regarding imports
 3 from a foreign producer or exporter that is the only pro-
 4 ducer or exporter of goods subject to this section from a
 5 foreign country.

6 (h) REGULATIONS.—The Secretary of Commerce
 7 may prescribe such regulations relating to the steel import
 8 license and surge monitoring program as may be necessary
 9 to carry out the provisions of this section.

10 **TITLE VI—MISCELLANEOUS** 11 **PROVISIONS**

12 **SEC. 601. CONSTRUCTION.**

13 The amendments made by this Act shall not be con-
 14 strued to create any inference with respect to the interpre-
 15 tation of the provisions of law amended by this Act as
 16 such provisions were in effect before the enactment of this
 17 Act.

18 **SEC. 602. APPLICATION TO GOODS FROM CANADA AND** 19 **MEXICO.**

20 Pursuant to section 1902 of the North American
 21 Free Trade Agreement and section 408 of the North
 22 American Free Trade Agreement Implementation Act, the
 23 amendments made by this Act shall apply to goods from
 24 Canada and Mexico.

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