

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 Representatives of the United States of America in Congress assembled,*
- 2 **SECTION 1. SHORT TITLE.**
- 3 This Act may be cited as the “Trade Law Reform
- 4 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 dize 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);

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 producer 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:

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

10 "(C) with respect to cause—

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)”;
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-

1 industry producing an article like or directly com-
2 petitive with the imported article; and

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

6 In making the evaluation under clause (ii), the Com-
7 mission should consider, among other factors that it
8 considers relevant, the timing and volume of the im-
9 ports, including whether there has been a substantial
10 increase in imports over a short period of time, and
11 any other circumstances indicating that delay in tak-
12 ing action under this chapter would cause damage to
13 the industry that would be difficult to repair.”; and

14 (D) in paragraph (2)(D), by striking "30"
15 and inserting "20".

16 (c) PRESIDENTIAL DETERMINATIONS.—

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

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

15 (B) Section 152(c)(1) of the Trade Act of 1974
16 (19 U.S.C. 2192(c)(1)) is amended by striking “not
17 counting any day which is excluded under section
18 154(b),” and inserting “counting all calendar days
19 in the case of a resolution described in subsection
20 (a)(1)(A), and not counting any day which is ex-
21 cluded under section 154(b) in the case of a resolu-
22 tion described in subsection (a)(1)(B),”.

23 (d) CONFORMING AMENDMENTS.—

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—”.

TITLE III—INTERNATIONAL 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

1 would, either individually or in combination
2 with other proposals, make obtaining relief
3 under these provisions more difficult, un-
4 certain, or costly for domestic industries to
5 achieve or maintain over time; and

6 “(iv) for each specific proposal that
7 the President reports would not (whether
8 individually or in combination with other
9 proposals) make obtaining relief under title
10 VII of the Tariff Act of 1930 or chapter
11 1 of title II of the Trade Act of 1974 more
12 difficult, uncertain, or costly for domestic
13 industries to achieve or maintain over
14 time, a detailed explanation providing the
15 basis for this conclusion.”.

16 **SEC. 303. EFFECTIVE DATE.**

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

19 **TITLE IV—CONGRESSIONAL AD-**
20 **VISORY COMMISSION ON WTO**
21 **DISPUTE SETTLEMENT**

22 **SEC. 401. SHORT TITLE.**

23 This title may be cited as the “Congressional Advi-
24 sory 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).

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.—

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.—

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

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

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 original
2 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)).

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.

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-

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.—

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;

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 there of 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

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—

- (A) the filer's company name and address;
- (B) the filer's contact name, phone number, fax number, and e-mail address;
- (C) a statement as to whether the goods are being entered for consumption, or for entry into a bonded warehouse or foreign trade zone, or for entry under a temporary importation bond, or for being entered for transportation and exportation;
- (D) the importer's name;
- (E) the manufacturer's name;
- (F) the country of origin;
- (G) the country of exportation;
- (H) the expected date of export;
- (I) the expected date of import;
- (J) the expected port of entry;
- (K) a description of the goods, including the current classification of such goods under the Harmonized Tariff Schedule of the United States;
- (L) the most recent classification of such goods under the Harmonized Tariff Schedule of the United States prior to temporary modification;

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

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

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

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

(B) are withdrawn for consumption from a bonded warehouse,

5 shall require a license at the entry summary.

6 (d) FAILURE TO REPORT LICENSE NUMBER.—

18 (e) STEEL IMPORT SURGE MONITORING SYSTEM.—

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.

