

108TH CONGRESS  
1ST SESSION

# S. 676

To establish a WTO Dispute Settlement Review Commission, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 20, 2003

Mr. BAUCUS (for himself, Mr. CRAIG, Mr. BAYH, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To establish a WTO Dispute Settlement Review Commission,  
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; FINDINGS; PURPOSE.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “World Trade Organization Dispute Settlement Review  
6       Commission Act”.

7       (b) **FINDINGS.**—Congress finds the following:

8               (1) The United States joined the World Trade  
9       Organization (in this Act referred to as the “WTO”)  
10       as an original member with the goal of creating an

1 improved global trading system and providing ex-  
2 panded economic opportunities for United States  
3 firms and workers, while preserving United States  
4 sovereignty.

5 (2) The American people must receive assur-  
6 ances that United States sovereignty will be pro-  
7 tected, and United States interests will be advanced,  
8 within the global trading system which the WTO will  
9 oversee.

10 (3) The WTO's dispute settlement rules are  
11 meant to enhance the likelihood that governments  
12 will observe their WTO obligations. These dispute  
13 settlement rules will help ensure that the United  
14 States will reap the full benefits of its participation  
15 in the WTO.

16 (4) United States support for the WTO de-  
17 pends on obtaining mutual trade benefits through  
18 the openness of foreign markets and the mainte-  
19 nance of effective United States and WTO remedies  
20 against unfair and otherwise harmful trade prac-  
21 tices.

22 (5) Congress passed the Uruguay Round Agree-  
23 ments Act based on its understanding that effective  
24 trade remedies would not be eroded. These remedies  
25 are essential to continue the process of opening for-

1       eign markets to imports of goods and services and  
2       to prevent harm to American industry and agri-  
3       culture.

4               (6) In particular, WTO dispute panels and the  
5       Appellate Body should—

6                       (A) operate with fairness and in an impar-  
7       tial manner;

8                       (B) not add to the obligations, or diminish  
9       the rights, of WTO members under the Uru-  
10      guay Round Agreements; and

11                      (C) observe the terms of reference and any  
12      applicable WTO standard of review.

13       (c) PURPOSE.—It is the purpose of this Act to pro-  
14      vide for the establishment of the WTO Dispute Settlement  
15      Review Commission to achieve the objectives described in  
16      subsection (b)(6).

17      **SEC. 2. DEFINITIONS.**

18       In this Act:

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

21                      (A) in a panel or Appellate Body pro-  
22      ceeding initiated against the United States, a  
23      finding by the panel or the Appellate Body that,  
24      any law or regulation of, or application thereof  
25      by, the United States, or any State, is incon-

1           sistent with the obligations of the United States  
2           under a Uruguay Round Agreement (or nullifies  
3           or impairs benefits accruing to a WTO member  
4           under such an Agreement); or

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

14          (2) AFFIRMATIVE REPORT.—The term “affirm-  
15          ative report” means a report described in section  
16          234(b)(2) which contains affirmative determinations  
17          made by the Commission under paragraph (3) of  
18          section 4(a).

19          (3) APPELLATE BODY.—The term “Appellate  
20          Body” means the Appellate Body established by the  
21          Dispute Settlement Body pursuant to Article 17.1 of  
22          the Dispute Settlement Understanding.

23          (4) DISPUTE SETTLEMENT BODY.—The term  
24          “Dispute Settlement Body” means the Dispute Set-

1 tlement Body established pursuant to the Dispute  
2 Settlement Understanding.

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

7 (6) DISPUTE SETTLEMENT UNDERSTANDING.—  
8 The term “Dispute Settlement Understanding”  
9 means the Understanding on Rules and Procedures  
10 governing the Settlement of Disputes referred to in  
11 section 101(d)(16) of the Uruguay Round Agree-  
12 ments Act.

13 (7) TERMS OF REFERENCE.—The term “terms  
14 of reference” has the meaning given such term in  
15 the Dispute Settlement Understanding.

16 (8) TRADE REPRESENTATIVE.—The term  
17 “Trade Representative” means the United States  
18 Trade Representative.

19 (9) URUGUAY ROUND AGREEMENT.—The term  
20 “Uruguay Round Agreement” means any of the  
21 Agreements described in section 101(d) of the Uru-  
22 guay Round Agreements Act.

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 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

8 (a) ESTABLISHMENT.—There is established a com-  
9 mission to be known as the World Trade Organization  
10 Dispute Settlement Review Commission (in this Act re-  
11 ferred to as the “Commission”).

12 (b) MEMBERSHIP.—

13 (1) COMPOSITION.—The Commission shall be  
14 composed of 5 members, all of whom shall be retired  
15 judges of the Federal judicial circuits, and who shall  
16 be appointed by the President, after consultation  
17 with the Majority Leader and Minority Leader of  
18 the House of Representatives, the Majority Leader  
19 and Minority Leader of the Senate, the chairman  
20 and ranking member of the Committee on Ways and  
21 Means of the House of Representatives, and the  
22 chairman and ranking member of the Committee on  
23 Finance of the Senate.

24 (2) DATE OF APPOINTMENT.—The appoint-  
25 ments of the members of the Commission shall be

1       made not later than 90 days after the date of enact-  
2       ment of this Act.

3       (c) PERIOD OF APPOINTMENT; VACANCIES.—

4           (1) IN GENERAL.—Members of the Commission  
5       first appointed shall each be appointed for a term of  
6       5 years.

7           (2) SUBSEQUENT TERMS.—After the initial 5-  
8       year term, 3 members of the Commission shall be  
9       appointed for terms of 3 years and the remaining 2  
10      members shall be appointed for terms of 2 years.

11          (3) VACANCIES.—

12           (A) IN GENERAL.—Any vacancy on the  
13      Commission shall not affect its powers, but  
14      shall be filled in the same manner as the origi-  
15      nal appointment and shall be subject to the  
16      same conditions as the original appointment.

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

20      (d) MEETINGS.—

21           (1) INITIAL MEETING.—Not later than 30 days  
22      after the date on which all members of the Commis-  
23      sion have been appointed, the Commission shall hold  
24      its first meeting.

1           (2) SUBSEQUENT MEETINGS.—The Commission  
2           shall meet subsequently at the call of the chair-  
3           person.

4           (e) QUORUM.—A majority of the members of the  
5           Commission shall constitute a quorum, but a lesser num-  
6           ber of members may hold hearings.

7           (f) CHAIRPERSON AND VICE CHAIRPERSON.—The  
8           Commission shall select a chairperson and vice chair-  
9           person from among its members.

10          (g) AFFIRMATIVE DETERMINATIONS.—An affirma-  
11          tive vote by a majority of the members of the Commission  
12          shall be required for any affirmative determination by the  
13          Commission under section 4.

14          **SEC. 4. DUTIES OF THE COMMISSION.**

15          (a) REVIEW OF WORLD TRADE ORGANIZATION DIS-  
16          PUTE SETTLEMENT REPORTS.—

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

19                          (A) all reports of dispute settlement panels  
20                          or the Appellate Body of the WTO in pro-  
21                          ceedings initiated by other parties to the WTO  
22                          that are adverse to the United States and that  
23                          are adopted by the Dispute Settlement Body;  
24                          and

1 (B) upon request of the Trade Representa-  
2 tive, the chairman or ranking member of the  
3 Committee on Ways and Means of the House of  
4 Representatives, or the chairman or ranking  
5 member of the Committee on Finance of the  
6 Senate, any other report of a dispute settlement  
7 panel, or the Appellate Body that is adopted by  
8 the Dispute Settlement Body.

9 (2) SCOPE OF REVIEW.—In the case of a report  
10 described in paragraph (1), the Commission shall  
11 conduct a complete review and determine whether  
12 the panel or Appellate Body, as the case may be—

13 (A) exceeded its authority or its terms of  
14 reference;

15 (B) added to the obligations, or diminished  
16 the rights of the United States under the Uru-  
17 guay Round Agreement that is the subject of  
18 the report;

19 (C) acted arbitrarily or capriciously, en-  
20 gaged in misconduct, or demonstrably departed  
21 from the procedures specified for panels and  
22 Appellate Bodies in the applicable Uruguay  
23 Round Agreement; and

24 (D) deviated from the applicable standard  
25 of review, including in antidumping, counter-

1 vailing duty, and other unfair trade remedy  
2 cases, the standard of review set forth in Article  
3 17.6 of the Agreement on Implementation of  
4 Article VI of the General Agreement on Tariffs  
5 and Trade, 1994.

6 (3) AFFIRMATIVE DETERMINATION.—If the  
7 Commission makes an affirmative determination  
8 with respect to the action of a panel or an Appellate  
9 Body under subparagraph (A), (B), (C), or (D) of  
10 paragraph (2), the Commission shall determine  
11 whether the action of the panel or Appellate Body  
12 materially affected the outcome of the report of the  
13 panel or Appellate Body.

14 (b) DETERMINATION; REPORT.—

15 (1) DETERMINATION.—Not later than 120 days  
16 after the date that a report of a panel or Appellate  
17 Body described in subsection (a) is adopted by the  
18 Dispute Settlement Body, the Commission shall  
19 make a written determination with respect to mat-  
20 ters described in subsection (a) (2) and (3).

21 (2) REPORTS.—The Commission shall report  
22 the determination described in paragraph (1) to the  
23 Committee on Ways and Means of the House of  
24 Representatives and the Committee on Finance of  
25 the Senate.

1 **SEC. 5. POWERS OF THE COMMISSION.**

2 (a) HEARINGS.—The Commission may hold any  
3 hearings, sit and act at any time and place, take any testi-  
4 mony, and receive any evidence as the Commission con-  
5 siders advisable to carry out the purposes of this Act. The  
6 Commission shall provide reasonable notice of a hearing  
7 held pursuant to this subsection.

8 (b) INFORMATION FROM INTERESTED PARTIES AND  
9 FEDERAL AGENCIES.—

10 (1) NOTICE OF PANEL OR APPELLATE BODY  
11 REPORT.—The Trade Representative shall advise the  
12 Commission not later than 5 days after the date the  
13 Dispute Settlement Body adopts the report of a  
14 panel or Appellate Body that is adverse to the  
15 United States and shall immediately publish notice  
16 of that advice in the Federal Register, along with  
17 notice of an opportunity for interested parties to  
18 submit comments to the Commission.

19 (2) SUBMISSIONS AND REQUESTS FOR INFOR-  
20 MATION.—Any interested party may submit com-  
21 ments to the Commission regarding the panel or Ap-  
22 pellate Body report. The Commission may also se-  
23 cure directly from any Federal department or agency  
24 any information the Commission considers necessary  
25 to carry out the provisions of this Act. Upon request  
26 of the chairperson of the Commission, the head of

1 that department or agency shall furnish the re-  
2 quested information to the Commission.

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

5 (A) IN GENERAL.—The Trade Representa-  
6 tive shall make available to the Commission all  
7 submissions and relevant documents relating to  
8 the panel or Appellate Body report, including  
9 any information contained in submissions iden-  
10 tified by the provider of the information as pro-  
11 prietary information or information treated as  
12 confidential by a foreign government.

13 (B) PUBLIC ACCESS.—Any document  
14 which the Trade Representative submits to the  
15 Commission shall be available to the public, ex-  
16 cept information which is identified as propri-  
17 etary or confidential.

18 (4) ASSISTANCE FROM FEDERAL AGENCIES;  
19 CONFIDENTIALITY.—

20 (A) ADMINISTRATIVE ASSISTANCE.—Any  
21 agency or department of the United States that  
22 is designated by the President shall provide ad-  
23 ministrative services, funds, facilities, staff, or  
24 other support services to the Commission to as-

1           sist the Commission with the performance of  
2           the Commission's functions.

3           (B) CONFIDENTIALITY.—The Commission  
4           shall protect from disclosure any document or  
5           information submitted to it by a department or  
6           agency of the United States which the agency  
7           or department requests be kept confidential.  
8           The Commission shall not be considered to be  
9           an agency for purposes of section 552 of title  
10          5, United States Code.

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