

109TH CONGRESS
1ST SESSION

H. R. 3283

IN THE SENATE OF THE UNITED STATES

JULY 28, 2005

Received; read twice and referred to the Committee on Finance

AN ACT

To enhance resources to enforce United States trade rights.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “United States Trade
3 Rights Enforcement Act”.

4 **SEC. 2. SENSE OF CONGRESS.**

5 It is the sense of Congress that—

6 (1) United States producers that believe they
7 are injured by subsidized imports from nonmarket
8 economy countries have not been able to obtain relief
9 through countervailing duty actions because the De-
10 partment of Commerce has declined to make coun-
11 tervailing duty determinations for nonmarket econ-
12 omy countries in part because it lacks explicit legal
13 authority to do so;

14 (2) explicitly making the countervailing duty
15 law under subtitle A of title VII of the Tariff Act
16 of 1930 (19 U.S.C. 1671 et seq.) applicable to ac-
17 tions by nonmarket economy countries would give
18 United States producers access to import relief
19 measures that directly target government subsidies;

20 (3) the Bureau of Customs and Border Protec-
21 tion of the Department of Homeland Security has
22 encountered particular problems in collecting coun-
23 tervailing and antidumping duties from new shippers
24 who default on their bonding obligations;

25 (4) this behavior may detract from the ability
26 of United States companies to recover from competi-

1 tion found to be unfair under international trade
2 laws;

3 (5) accordingly, it is appropriate, for a test pe-
4 riod, to suspend the availability of bonds for new
5 shippers and instead require cash deposits;

6 (6) more analysis and assessment is needed to
7 determine the appropriate policy to respond to this
8 and other problems experienced in the collection of
9 duties and the impact that policy changes could have
10 on legitimate United States trade and United States
11 trade obligations;

12 (7) given the developments in the ongoing
13 World Trade Organization (WTO) negotiations re-
14 lating to trade remedies, Congress reiterates its re-
15 solve as expressed in House Concurrent Resolution
16 262 (107th Congress), which was overwhelmingly
17 approved by the House of Representatives on No-
18 vember 7, 2001, by a vote of 410 to 4;

19 (8) the United States Trade Representative
20 should monitor compliance by United States trading
21 partners with their trade obligations and systemati-
22 cally identify areas of noncompliance;

23 (9) the United States Trade Representative
24 should then aggressively resolve noncompliance

1 through consultations with United States trading
2 partners;

3 (10) however, should efforts to resolve disputes
4 through consultation fail, the United States Trade
5 Representative should vigorously pursue United
6 States rights through dispute settlement in every
7 available forum;

8 (11) given the huge growth in trade with the
9 People's Republic of China, its impact on the United
10 States economy, and the complaints voiced by many
11 United States interests that China is not complying
12 with its international trade obligations, the United
13 States Trade Representative should place particular
14 emphasis on identifying and resolving disputes with
15 China that limit United States exports, particularly
16 concerning compliance with obligations relating to
17 intellectual property rights and enforcement, tariff
18 and nontariff barriers, subsidies, technical barriers
19 to trade, sanitary and phytosanitary issues, non-
20 market-based industrial policies, distribution rights,
21 and regulatory transparency;

22 (12) in addition, the United States Trade Rep-
23 resentative should place particular emphasis on
24 trade barriers imposed by Japan, specifically the
25 Japanese trade ban on United States beef without

1 scientific justification, the Japanese sanitary and
2 phytosanitary restrictions on United States agricul-
3 tural products, Japanese policies on pharmaceutical
4 and medical device reference pricing, insurance
5 cross-subsidization, and privatization in a variety of
6 sectors that discriminate against United States com-
7 panies;

8 (13) the fixed exchange rate that the People's
9 Republic of China has maintained until recently has
10 been a substantial distortion to world markets,
11 blocking the price mechanism, impeding adjustment
12 of international imbalances, and serving as a source
13 of large and increasing risk to the Chinese economy;

14 (14) such behavior has effectively prevented
15 market forces from operating efficiently in the Peo-
16 ple's Republic of China, distorting world trade;

17 (15) in a welcome move, the People's Republic
18 of China has now begun to move to a more flexible
19 exchange rate, and it should continue to so move to
20 a market-based exchange rate as soon as possible;

21 (16) in light of this recent positive development,
22 the Secretary of Treasury should provide to Con-
23 gress a periodic assessment of the mechanism adopt-
24 ed by the Chinese Government to relate its currency
25 to a basket of foreign currencies and the degree to

1 which the application of this mechanism moves the
2 currency closer to a market-based representation of
3 its value;

4 (17) in addition, Japan's policy of intervening
5 to influence the value of its currency and its prolific
6 barriers to trade create distortions that disadvantage
7 United States exporters;

8 (18) this adverse impact is magnified by Ja-
9 pan's role in the global marketplace, combined with
10 its chronic surplus, weak economy, deflationary
11 economy, low growth rate, and lack of consumer
12 spending; and

13 (19) accordingly, the United States Trade Rep-
14 resentative should have additional resources in the
15 Office of the General Counsel, the Office of Moni-
16 toring and Enforcement, the Office of China Affairs,
17 and the Office of Japan, Korea, and APEC Affairs
18 to address a variety of needs that will best enable
19 United States companies, farmers, and workers to
20 benefits from the trade agreements to which the
21 United States has around the world.

22 **SEC. 3. APPLICATION OF COUNTERVAILING DUTIES TO**
23 **NONMARKET ECONOMY COUNTRIES.**

24 (a) AMENDMENTS.—

1 (1) COUNTERVAILING DUTIES IMPOSED.—Sec-
2 tion 701(a)(1) of the Tariff Act of 1930 (19 U.S.C.
3 1671(a)(1)) is amended by inserting “(including a
4 nonmarket economy country)” after “country” each
5 place it appears.

6 (2) DEFINITION OF COUNTERVAILABLE SUB-
7 SIDY.—Section 771(5)(E) of such Act (19 U.S.C.
8 1677(5)(E)) is amended by adding at the end the
9 following new sentences: “With respect to the Peo-
10 ple’s Republic of China, if the administering author-
11 ity encounters special difficulties in calculating the
12 amount of a benefit under clause (i), (ii), (iii), or
13 (iv) of this subparagraph, the administering author-
14 ity may use methodologies for identifying and meas-
15 uring the subsidy benefit which take into account
16 the possibility that prevailing terms and conditions
17 in China may not always be available as appropriate
18 benchmarks. When applying such methodologies,
19 where practicable, the administering authority
20 should adjust such prevailing terms and conditions
21 before considering the use of terms and conditions
22 prevailing outside China.”.

23 (b) PROHIBITION ON DOUBLE COUNTING.—In apply-
24 ing section 701(a)(1) of the Tariff Act of 1930, as amend-
25 ed by subsection (a), to a class or kind of merchandise

1 of a nonmarket economy country, the administering au-
2 thority shall ensure that—

3 (1) any countervailable subsidy is not double
4 counted in an antidumping order under section 731
5 of such Act (19 U.S.C. 1673) on the same class or
6 kind of merchandise of the country; and

7 (2) the application of section 701(a)(1) of such
8 Act is consistent with the international obligations of
9 the United States.

10 (c) EFFECTIVE DATE.—The amendments made by
11 subsection (a) apply to any petition filed under section 702
12 of the Tariff Act of 1930 (19 U.S.C. 1671a) on or after
13 30 days after the date of the enactment of this Act, and
14 the provisions contained in subsection (b) apply to any
15 subsequent determination made under section 733, 735,
16 or 751 of such Act (19 U.S.C. 1673b, 1673d, or 1675).

17 **SEC. 4. NEW SHIPPER REVIEW AMENDMENT.**

18 (a) SUSPENSION OF THE AVAILABILITY OF BONDS
19 TO NEW SHIPPERS.—Clause (iii) of section 751(a)(2)(B)
20 of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)(iii))
21 shall not be effective during the 3-year period beginning
22 on the date of the enactment of this Act.

23 (b) REPORT ON THE IMPACT OF THE SUSPENSION.—
24 Not later than 2 years after the date of the enactment
25 of this Act, the Secretary of the Treasury, in consultation

1 with the Secretary of Commerce, the United States Trade
2 Representative, and the Secretary of Homeland Security,
3 shall submit to the Committee on Finance of the Senate
4 and the Committee on Ways and Means of the House of
5 Representatives a report containing—

6 (1) recommendations on whether the suspension
7 of the effectiveness of section 751(a)(2)(B)(iii) of
8 the Tariff Act of 1930 should be extended beyond
9 the date provided in subsection (a) of this section;
10 and

11 (2) assessments of the effectiveness of any ad-
12 ministrative measures that have been implemented
13 to address the difficulties giving rise to the suspen-
14 sion under subsection (a) of this section, including—

15 (A) problems in assuring the collection of
16 antidumping duties on imports from new ship-
17 pers; and

18 (B) burdens imposed on legitimate trade
19 and commerce by the suspension of availability
20 of bonds to new shippers by reason of the sus-
21 pension under subsection (a).

22 (c) REPORT ON COLLECTION PROBLEMS AND ANAL-
23 YSIS OF PROPOSED SOLUTIONS.—

24 (1) REPORT.—Not later than 90 days after the
25 date of the enactment of this Act, the Secretary of

1 the Treasury, in consultation with the Commissioner
2 of the Bureau of Customs and Border Protection
3 and the Secretary of Commerce, shall submit to the
4 Committee on Ways and Means of the House of
5 Representatives and the Committee on Finance of
6 the Senate a report describing the major problems
7 experienced in the collection of duties, including
8 fraudulent activities intended to avoid payment of
9 duties, with an estimate of the total amount of un-
10 collected duties for the previous fiscal year and a
11 breakdown across product lines describing the rea-
12 sons duties were uncollected.

13 (2) RECOMMENDATIONS.—The report shall
14 make recommendations on additional actions to ad-
15 dress remaining problems related to duty collections
16 and, for each recommendation, provide an analysis
17 of how the recommendation would address the spe-
18 cific problem or problems cited and the impact that
19 implementing the recommendation would have on
20 international trade and commerce (including any ad-
21 ditional costs imposed on United States businesses
22 and whether the implementation of the revision is
23 likely to violate any international trade obligations).

1 **SEC. 5. COMPREHENSIVE MONITORING OF COMPLIANCE BY**
2 **THE PEOPLE'S REPUBLIC OF CHINA WITH ITS**
3 **INTERNATIONAL TRADE OBLIGATIONS.**

4 (a) INTELLECTUAL PROPERTY RIGHTS COMPLI-
5 ANCE.—

6 (1) IN GENERAL.—In accordance with the
7 terms of the Agreement of WTO Accession for the
8 People's Republic of China, subsequent agreements
9 by Chinese authorities through the U.S.-China Joint
10 Commission on Commerce and Trade (JCCT), and
11 other obligations by Chinese officials related to its
12 trade obligations, the United States Trade Rep-
13 resentative and the Secretary of Commerce shall un-
14 dertake to ensure that the Government of the Peo-
15 ple's Republic China has taken the following steps:

16 (A) The Chinese Government has increased
17 the number of civil and criminal prosecutions of
18 intellectual property rights violators by the end
19 of 2005 to a level that significantly decreases
20 the current amount of infringing products for
21 sale within China.

22 (B) China's Supreme People's Court, Su-
23 preme People's Procuratorate, and Ministry of
24 Public Security have issued draft guidelines for
25 public comment to ensure the timely referral of

1 intellectual property rights violations from ad-
2 ministrative bodies to criminal prosecution.

3 (C) The Chinese Ministry of Public Secu-
4 rity and the General Administration of Customs
5 have issued regulations to ensure the timely
6 transfer of intellectual property rights cases for
7 criminal investigation.

8 (D) The Chinese Ministry of Public Secu-
9 rity has established a leading group responsible
10 for overall research, planning, and coordination
11 of all intellectual property rights criminal en-
12 forcement to ensure a focused and coordinated
13 nationwide enforcement effort.

14 (E) The Chinese Government has estab-
15 lished a bilateral intellectual property rights law
16 enforcement working group in cooperation with
17 the United States whose members will cooper-
18 ate on enforcement activities to reduce cross-
19 border infringing activities.

20 (F) The Chinese Government has aggres-
21 sively countered movie piracy by dedicating en-
22 forcement teams to pursue enforcement actions
23 against pirates and has regularly instructed en-
24 forcement authorities nationwide that copies of
25 films and audio-visual products still in censor-

1 ship or import review or otherwise not yet au-
2 thorized for distribution are deemed pirated and
3 subject to enhanced enforcement.

4 (G) By the end of 2005, the Chinese Gov-
5 ernment has completed its legalization program
6 to ensure that all central, provincial, and local
7 government offices are using only licensed soft-
8 ware and by the end of 2006 has extended the
9 program to enterprises (including state-owned
10 enterprises).

11 (H) The Chinese Government, having de-
12 clared that software end-user piracy is consid-
13 ered to constitute “harm to the public interest”
14 and as such will be subject to administrative
15 penalties nationwide, has initiated civil and
16 criminal prosecutions of software end-user vio-
17 lators.

18 (I) The Chinese Government has appointed
19 an Intellectual Property Rights Ombudsman at
20 the Chinese Embassy in Washington, D.C., to
21 serve as the point of contact for United States
22 companies, particularly small- and medium-
23 sized businesses, seeking to secure and enforce
24 their intellectual property rights in China or ex-

1 periencing intellectual property rights problems
2 in China.

3 (J) The relevant Chinese agencies, includ-
4 ing the Ministry of Commerce, the China
5 Trademark Office, the State Intellectual Prop-
6 erty Office, and the National Copyright Admin-
7 istration of China have significantly improved
8 intellectual property rights enforcement at trade
9 shows and issued new regulations to achieve
10 this goal.

11 (K) Not later than June 30, 2006, the
12 Chinese State Council has submitted to the Na-
13 tional People's Congress the legislative package
14 needed for China to accede to the World Intel-
15 lectual Property Organization (WIPO) Internet
16 treaties.

17 (L) The Chinese Government has taken
18 steps to enforce intellectual property right laws
19 against Internet piracy, including through en-
20 forcement at Internet cafes.

21 (M) The Chinese Government, having con-
22 firmed that the criminal penalty thresholds in
23 the 2004 Judicial Interpretation are applicable
24 to sound recordings, has instituted civil and
25 criminal prosecutions against such violators.

1 (N) The Chinese Government has initiated
2 civil and criminal prosecutions against exporters
3 of infringing recordings.

4 (2) DISPUTE SETTLEMENT PROCEEDINGS IN
5 WTO.—If the President determines that the People’s
6 Republic of China has not met each of the obliga-
7 tions described in subparagraphs (A) through (N) of
8 paragraph (1) or taken steps that result in signifi-
9 cant improvements in protection of intellectual prop-
10 erty rights in accordance with its trade obligations,
11 then the President shall assign such resources as are
12 necessary to collect evidence of such trade agreement
13 violations for use in dispute settlement proceedings
14 against China in the World Trade Organization.

15 (b) ACCESS FOR EXPORTS OF UNITED STATES
16 GOODS.—In accordance with the terms of the Agreement
17 of WTO Accession for the People’s Republic of China, sub-
18 sequent agreements by Chinese authorities through the
19 U.S.-China Joint Commission on Commerce and Trade
20 (JCCT), and other obligations by Chinese officials related
21 to its trade obligations, the United States Trade Rep-
22 resentative and the Secretary of Commerce shall under-
23 take to ensure that the Government of the People’s Re-
24 public of China has taken the following steps:

1 (1) China has taken steps to ensure that United
2 States products can be freely distributed in China,
3 including by approving a significant backlog of dis-
4 tribution license applications and by preparing a reg-
5 ulatory guide for businesses seeking to acquire dis-
6 tribution rights that expands on the guidelines an-
7 nounced in April 2005.

8 (2) Chinese officials have permitted all enter-
9 prises in China, including those located in bonded
10 zones, to acquire licenses to distribute goods
11 throughout China.

12 (3) The Chinese Government has submitted
13 regulations on management of direct selling to the
14 Chinese State Council for review and taken any ad-
15 ditional steps necessary to provide a legal basis for
16 United States direct sales firms to sell United States
17 goods directly to households in China.

18 (4) The Chinese Government has issued final
19 regulations on direct selling, including with respect
20 to distribution of imported goods and fixed location
21 requirements.

22 (c) ACCESS FOR EXPORTS OF UNITED STATES SERV-
23 ICES.—In accordance with the terms of the Agreement of
24 WTO Accession for the People’s Republic of China, subse-
25 quent agreements by Chinese authorities through the

1 U.S.-China Joint Commission on Commerce and Trade
2 (JCCT), and other obligations by Chinese officials related
3 to its trade obligations, the United States Trade Rep-
4 resentative and the Secretary of Commerce shall under-
5 take to ensure that the Government of the People's Re-
6 public of China has taken the following steps:

7 (1) The Chinese Government has convened a
8 meeting of the U.S.-China Insurance Dialogue be-
9 fore the end of 2005 to discuss regulatory concerns
10 and barriers to further liberalization of the sector.

11 (2) The Chinese Government has made senior
12 level officials available to meet under the JCCT In-
13 formation Technology Working Group to discuss
14 capitalization requirements, resale services, and
15 other issues as agreed to by the two sides.

16 (d) ACCESS FOR UNITED STATES AGRICULTURE.—
17 In accordance with the terms of the Agreement of WTO
18 Accession for the People's Republic of China, subsequent
19 agreements by Chinese authorities through the U.S.-China
20 Joint Commission on Commerce and Trade (JCCT), and
21 other obligations by Chinese officials related to its trade
22 obligations, the United States Trade Representative and
23 the Secretary of Agriculture shall undertake to ensure that
24 the Government of the People's Republic of China has
25 taken the following steps:

1 (1) China has completed the regulatory ap-
2 proval process for a United States-produced corn
3 biotech variety.

4 (2) China's Administration of Quality Super-
5 vision, Inspection and Quarantine has implemented
6 the 2005 Memorandum of Understanding between
7 the United States and China designed to facilitate
8 cooperation on animal and plant health safety issues
9 and improve efforts to expand United States access
10 to China's markets for agricultural commodities.

11 (e) ACCOUNTING OF CHINESE SUBSIDIES.—In ac-
12 cordance with the terms of the Agreement of WTO Acces-
13 sion for the People's Republic of China, subsequent agree-
14 ments by Chinese authorities through the U.S.-China
15 Joint Commission on Commerce and Trade (JCCT), and
16 other obligations by Chinese officials related to its trade
17 obligations, the United States Trade Representative and
18 the Secretary of Commerce shall undertake to ensure that
19 the Government of the People's Republic of China has pro-
20 vided a detailed accounting of its subsidies to the World
21 Trade Organization by the end of 2005.

22 (f) REPORTS.—

23 (1) BIENNIAL REPORT.—Not later than six
24 months after the date of the enactment of this Act,
25 and every six months thereafter, the President

1 should transmit to the Committee on Ways and
2 Means of the House of Representatives and the
3 Committee on Finance of the Senate a report that
4 contains—

5 (A) a description of the specific steps
6 taken by the Government of the People's Re-
7 public of China to meet its obligations described
8 in subsections (a) through (e) of this section
9 (other than obligations described in subsections
10 (a)(1)(A) and (G), (b)(1), (c)(1), and (e));

11 (B) an analysis of the extent to which Chi-
12 nese officials are attempting in good faith to
13 meet such obligations; and

14 (C) a description of the actions, if any, the
15 President will take to obtain compliance by
16 China if the President determines that the Chi-
17 nese Government is failing to meet such obliga-
18 tions, including pursuing United States rights
19 under the dispute settlement provisions of the
20 World Trade Organization, as appropriate.

21 (2) MONTHLY REPORT.—Not later than 30
22 days after the date of the enactment of this Act, and
23 every 30 days thereafter, the President should trans-
24 mit to the Committee on Ways and Means of the

1 House of Representatives and the Committee on Fi-
2 nance of the Senate a report that contains—

3 (A) a description of the specific steps
4 taken by the Government of the People’s Re-
5 public of China to meet its obligations described
6 in subsections (a)(1)(A) and (G), (b)(1), (c)(1),
7 and (e);

8 (B) an analysis of the extent to which Chi-
9 nese officials are attempting in good faith to
10 meet such obligations; and

11 (C) a description of the actions, if any, the
12 President will take to obtain compliance by
13 China if the President determines that the Chi-
14 nese Government is failing to meet such obliga-
15 tions, including pursuing United States rights
16 under the dispute settlement provisions of the
17 World Trade Organization, as appropriate.

18 **SEC. 6. REPORTS ON CURRENCY MANIPULATION BY FOR-**
19 **EIGN COUNTRIES.**

20 (a) **REPORT ON CURRENCY MANIPULATION.**—Not
21 later than 60 days after the date of the enactment of this
22 Act, the Secretary of the Treasury shall submit to the ap-
23 propriate congressional committees a report that—

24 (1) defines currency manipulation;

1 (2) describes actions of foreign countries that
2 will be considered to be currency manipulation; and

3 (3) describes how statutory provisions address-
4 ing currency manipulation by trading partners of the
5 United States contained in, and relating to, section
6 40 of the Bretton Woods Agreements Act (22
7 U.S.C. 286y) and sections 3004 and 3005 of the Ex-
8 change Rates and International Economic Policy Co-
9 ordination Act of 1988 (22 U.S.C. 5304 and 5305)
10 can be better clarified administratively to provide for
11 improved and more predictable evaluation.

12 (b) REPORT ON ACTIONS BY CHINA.—

13 (1) IN GENERAL.—In light of the recent posi-
14 tive announcement by the Government of the Peo-
15 ple’s Republic of China with respect to increased ex-
16 change rate flexibility, the Secretary of the Treasury
17 shall submit to the appropriate congressional com-
18 mittees a report that examines the mechanism
19 adopted by the Chinese Government to relate its cur-
20 rency to a basket of foreign currencies and the de-
21 gree to which the application of this mechanism
22 moves the currency closer to a market-based rep-
23 resentation of its value.

24 (2) DEADLINE.— The initial report required by
25 this subsection shall be submitted to the appropriate

1 congressional committees not later than 180 days
2 after the date of the enactment of this Act and sub-
3 sequent reports shall be included in the report re-
4 quired under section 3005 of the Exchange Rates
5 and International Economic Policy Coordination Act
6 of 1988 (22 U.S.C. 5305).

7 (c) DEFINITION.—In this section, the term “appro-
8 priate congressional committees” means—

9 (1) the Committee on Ways and Means and the
10 Committee on Financial Services of the House of
11 Representatives; and

12 (2) the Committee on Finance and the Com-
13 mittee on Banking, Housing, and Urban Affairs of
14 the Senate.

15 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS FOR THE OF-**
16 **FICE OF THE UNITED STATES TRADE REP-**
17 **RESENTATIVE.**

18 (a) AUTHORIZATION OF APPROPRIATIONS.—

19 (1) IN GENERAL.—Section 141(g)(1)(A) of the
20 Trade Act of 1974 (19 U.S.C. 2171(g)(1)(A)) is
21 amended by striking clauses (i) and (ii) and insert-
22 ing the following:

23 “(i) \$44,779,000 for fiscal year 2006.

24 “(ii) \$47,018,000 for fiscal year 2007.”.

1 (2) RULE OF CONSTRUCTION.—The amendment
2 made by paragraph (1) shall not be construed to af-
3 fect the availability of funds appropriated pursuant
4 to section 141(g)(1)(A) of the Trade Act of 1974 be-
5 fore the date of the enactment of this Act.

6 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
7 OFFICE OF THE GENERAL COUNSEL AND CERTAIN
8 OTHER OFFICES.—There are authorized to be appro-
9 priated to the Office of the United States Trade Rep-
10 resentative for the appointment of additional staff in or
11 enhanced activities by the Office of the General Counsel,
12 the Office of Monitoring and Enforcement, the Office of
13 China Affairs, and the Office of Japan, Korea, and APEC
14 Affairs—

15 (1) \$4,000,000 for fiscal year 2006; and

16 (2) \$4,000,000 for fiscal year 2007.

17 (c) SENSE OF CONGRESS.—It is the sense of the Con-
18 gress that the enforcement of United States rights and
19 of obligations of United States trading partners under
20 trade agreements has gained such significance that the
21 United States Trade Representative should determine
22 which of its current positions is most responsible for car-
23 rying out these important enforcement duties and should
24 assign that position, in addition to any other title, the title
25 of Chief Enforcement Officer.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS FOR THE**
2 **UNITED STATES INTERNATIONAL TRADE**
3 **COMMISSION.**

4 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
5 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C.
6 1330(e)(2)(A)) is amended by striking clauses (i) and (ii)
7 and inserting the following:

8 “(i) \$62,752,000 for fiscal year 2006.

9 “(ii) \$65,890,000 for fiscal year 2007.”.

10 (b) RULE OF CONSTRUCTION.—The amendment
11 made by subsection (a) shall not be construed to affect
12 the availability of funds appropriated pursuant to section
13 330(e)(2)(A) of the Tariff Act of 1930 before the date
14 of the enactment of this Act.

15 (c) STUDY AND REPORT ON TRADE AND ECONOMIC
16 RELATIONS WITH CHINA.—

17 (1) STUDY.—

18 (A) IN GENERAL.—The United States
19 International Trade Commission shall carry out
20 a comprehensive study on trade and economic
21 relations between the United States and the
22 People’s Republic of China which addresses
23 China’s economic policies, including its ex-
24 change rate policy, the competitiveness of its in-
25 dustries, the composition and nature of its
26 trade patterns, and other elements impacting

1 the United States trade account, industry, com-
2 petitiveness, and employment.

3 (B) REQUIREMENTS.—In carrying out the
4 study under subparagraph (A), the United
5 States International Trade Commission shall
6 undertake the following:

7 (i) An analysis of the United States
8 trade and investment relationship with
9 China, with a focus on the United States-
10 China trade balance and trends affecting
11 particular industries, products, and sectors
12 in agriculture, manufacturing, and serv-
13 ices. The analysis shall provide context for
14 understanding the U.S.-China trade and
15 investment relationship, by including infor-
16 mation regarding China’s economic rela-
17 tionships with third countries and China’s
18 changing policy regime and business envi-
19 ronment. The analysis shall include a focus
20 on United States-China trade in goods and
21 services, United States direct investment in
22 China, China’s foreign direct investment in
23 the United States, and the relationship be-
24 tween trade and investment. The analysis

1 shall make adjustments, where possible, for
2 merchandise passed through Hong Kong.

3 (ii) An analysis of the competitive
4 conditions in China affecting United States
5 exports and United States direct invest-
6 ment. The analysis shall take into account,
7 to the extent feasible, significant factors
8 including tariffs and non-tariff measures,
9 competition from Chinese domestic firms
10 and foreign-based companies operating in
11 China, the Chinese regulatory environ-
12 ment, including specific regulations and
13 overall regulatory transparency, and other
14 Chinese industrial and financial policies. In
15 addition, the analysis shall examine the
16 specific competitive conditions facing
17 United States producers in key industries,
18 products, services, and sectors, potentially
19 including computer and telecommuni-
20 cations hardware, textiles, grains, cotton,
21 and financial services based on trade and
22 investment flows.

23 (iii) An examination of the role and
24 importance of intellectual property rights
25 issues, such as patents, copyrights, and li-

1 censing, in specific industries in China, in-
2 cluding the pharmaceutical industry, the
3 software industry, and the entertainment
4 industry.

5 (iv) An analysis of the effects on glob-
6 al commodity markets of China's growing
7 demand for energy and raw materials.

8 (v) An examination of whether or not
9 increased United States imports from
10 China reflect displacement of United
11 States imports from third countries or
12 United States domestic production, and
13 the role of intermediate and value-added
14 goods processing in China's pattern of
15 trade.

16 (2) REPORT.—Not later than one year after the
17 date of the enactment of this Act, the United States
18 International Trade Commission shall submit to the
19 Committee on Ways and Means of the House of
20 Representatives and the Committee on Finance of
21 the Senate a report that contains the results of the
22 study carried out under paragraph (1).

1 **SEC. 9. SENSE OF CONGRESS REGARDING EXPANSION OF**
2 **MEMBERSHIP IN THE AGREEMENT ON GOV-**
3 **ERNMENT PROCUREMENT OF THE WTO.**

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

5 (1) Nondiscriminatory, procompetitive, merit-
6 based, and technology-neutral procurement of goods
7 and services is essential so that governments can ac-
8 quire the best goods to meet their needs for the best
9 value.

10 (2) The Agreement on Government Procure-
11 ment (GPA) of the World Trade Organization
12 (WTO) provides a multilateral framework of rights
13 and obligations founded on such principles.

14 (3) The United States is a member of the GPA,
15 along with Canada, the European Union (including
16 its 25 member States: Austria, Belgium, Cyprus, the
17 Czech Republic, Denmark, Estonia, Finland,
18 France, Germany, Greece, Hungary, Ireland, Italy,
19 Latvia, Lithuania, Luxembourg, Malta, the Nether-
20 lands, Poland, Portugal, Slovak Republic, Slovenia,
21 Spain, Sweden, and the United Kingdom), Hong
22 Kong, Iceland, Israel, Japan, Korea, Liechtenstein,
23 the Netherlands with respect to Aruba, Norway,
24 Singapore, and Switzerland.

1 (4) Albania, Bulgaria, Georgia, Jordan, the
2 Kyrgyz Republic, Moldova, Oman, Panama, and Tai-
3 wan are currently negotiating to accede to the GPA.

4 (5) The People’s Republic of China joined the
5 WTO in December 2001, signaling to the inter-
6 national community its commitment to greater open-
7 ness.

8 (6) When China joined the WTO, it committed,
9 in its protocol of accession, to negotiate entry into
10 the GPA “as soon as possible”.

11 (7) More than 3 years after its entry into the
12 WTO, China has not commenced negotiations to join
13 the GPA.

14 (8) Recent legal developments in China illus-
15 trate the importance and urgency of expanding
16 membership in the GPA.

17 (9) In 2002, China enacted a law on govern-
18 ment procurement that incorporates preferences for
19 domestic goods and services.

20 (10) The first sector for which the Chinese
21 Government has sought to implement the new gov-
22 ernment procurement law is computer software.

23 (11) In March 2005 the Chinese Government
24 released draft regulations governing the procurement
25 of computer software.

1 (12) The draft regulations require that non-
2 Chinese software companies meet conditions relating
3 to outsourcing of software development work to
4 China, technology transfer, and similar require-
5 ments, in order to be eligible to participate in the
6 Chinese Government market.

7 (13) As a result of the proposed regulations, it
8 appears likely that a very substantial amount of
9 American software will be excluded from the govern-
10 ment procurement process in China. The draft soft-
11 ware regulations threatened to close off a market
12 with a potential value of more than \$8 billion to
13 United States firms.

14 (14) United States software companies have
15 made a substantial commitment to the Chinese mar-
16 ket and have made a substantial contribution to the
17 development of China's software industry.

18 (15) The outright exclusion of substantial
19 amounts of software not of Chinese origin that is
20 apparently contemplated in the regulations is out of
21 step with domestic preferences that exist in the pro-
22 curement laws and practices of other WTO member
23 countries, including the United States.

24 (16) The draft regulations do not adhere to the
25 principles of nondiscriminatory, procompetitive,

1 merit-based, and technology-neutral procurement
2 embodied in the GPA.

3 (17) The software piracy rate in China has
4 never fallen below 90 percent over the past 10 years.

5 (18) Chinese Government entities represent a
6 very significant portion of the software market in
7 China that is not dominated by piracy.

8 (19) The combined effect of rampant software
9 piracy and the proposed discriminatory government
10 procurement regulations will be a nearly impen-
11 etrable barrier to market access for the United
12 States software industry in China.

13 (20) The United States trade deficit with China
14 in 2004 was \$162,000,000,000, the highest with any
15 economy in the world, and a 12.4 percent increase
16 over 2003.

17 (21) China's Premier, Wen Jiabao, has com-
18 mitted to rectify this serious imbalance by increasing
19 China's imports of goods and services from the
20 United States.

21 (22) The proposed software procurement regu-
22 lations that were described by the Chinese Govern-
23 ment in November 2004 incorporate policies that are
24 fully at odds with Premier Wen's commitment to in-
25 crease China's imports from the United States, and

1 will add significantly to the trade imbalance between
2 the United States and China.

3 (23) Once it is fully implemented, the discrimi-
4 natory aspects of China's government procurement
5 law will apply to all goods and services that the gov-
6 ernment procures.

7 (24) Other developing countries may follow the
8 lead of China.

9 (25) In July 2005, senior officials of the Chi-
10 nese Government announced at the U.S.-China Joint
11 Committee on Commerce and Trade that China
12 would accelerate its efforts to join the GPA and to-
13 ward this end will initiate technical consultations
14 with other WTO member countries and accordingly
15 delay issuing draft regulations on software procure-
16 ment, as it further considers public comments and
17 makes revisions in light of WTO rules.

18 (b) SENSE OF CONGRESS.—It is the sense of Con-
19 gress that—

20 (1) the Government of the United States should
21 strive to expand membership in the Agreement on
22 Government Procurement of the World Trade Orga-
23 nization (WTO);

24 (2) the Government of the United States should
25 ensure that the Government of the People's Republic

1 of China meets its WTO obligations as recently af-
2 firmed through its commitment in July 2005
3 through the U.S.-China Joint Committee on Com-
4 merce and Trade, to join the WTO Agreement on
5 Government Procurement;

6 (3) the Government of the United States should
7 seek a commitment from the Government of the
8 People's Republic of China to maintain its suspen-
9 sion of the implementation of its law on government
10 procurement, pending the conclusion of negotiations
11 to accede to the Agreement on Government Procure-
12 ment of the WTO;

13 (4) the Government of the United States should
14 seek commitments from the Government of the Peo-
15 ple's Republic of China and other countries that are
16 not yet members of the Agreement on Government
17 Procurement of the WTO to implement the prin-
18 ciples of openness, transparency, fair competition
19 based on merit, nondiscrimination, and account-
20 ability in their government procurement as embodied
21 in that agreement; and

22 (5) the President should direct all appropriate
23 officials of the United States to raise these concerns

- 1 with appropriate officials of the People's Republic of
- 2 China and other trading partners.

Passed the House of Representatives July 27, 2005.

Attest: JEFF TRANDAHL,
Clerk.