

109TH CONGRESS  
2D SESSION

# H. R. 5043

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2006

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

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## A BILL

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

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

### 3   **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Restoring America’s Competitiveness Act of 2006”.

6       (b) **TABLE OF CONTENTS.**—The table of contents for  
7       this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I—IMPLEMENTING A 21ST CENTURY STRATEGIC TRADE POLICY FOR THE UNITED STATES

Sec. 101. National Commission on International Economic Policy.

Sec. 102. ITC reports on trade agreements.

- Sec. 103. Negotiating objectives regarding trade remedy laws.
- Sec. 104. Consultations and assessments regarding trade Agreements.
- Sec. 105. Effective date.

## TITLE II—AMERICAN MANUFACTURING COMPETITIVENESS

- Sec. 201. Affirmation of negotiating objective on border taxes.
- Sec. 202. Presidential certification; application of U.S. countervailing duty law.

## TITLE III—DISPUTE SETTLEMENT

### Subtitle A—Congressional Advisory Commission on WTO Dispute Settlement

- Sec. 301. Congressional findings and purpose.
- Sec. 302. Establishment of Commission.
- Sec. 303. Duties of the Commission.
- Sec. 304. Powers of the Commission.
- Sec. 305. Definitions.
- Sec. 306. Effective date.

### Subtitle B—Participation in WTO Panel Proceedings

- Sec. 311. Participation in WTO panel proceedings.
- Sec. 312. Definitions.

### Subtitle C—Trade Dispute Functions

- Sec. 321. Responsibility of USTR.

## TITLE IV—SUBSIDIES

- Sec. 401. Application of countervailing duties to nonmarket economy countries.
- Sec. 402. Clarification to include exchange-rate manipulation as countervailable subsidy under title VII of the Tariff Act of 1930.
- Sec. 403. ITC study of subsidies by People's Republic of China.

## TITLE V—STRENGTHENING U.S. UNFAIR TRADE LAWS

### Subtitle A—Determination of Dumping

- Sec. 501. Polling of industry support in antidumping cases.
- Sec. 502. New shipper bonding privilege.
- Sec. 503. Prevention of circumvention.
- Sec. 504. Absorption of antidumping duties.
- Sec. 505. Absorption of antidumping duties in sunset review.
- Sec. 506. Export price and constructed export price.
- Sec. 507. Nonmarket economy methodology.
- Sec. 508. Adjustment of constructed values for imputed credit costs.
- Sec. 509. Determinations on the basis of facts available.

### Subtitle B—Determination of Subsidization

- Sec. 521. Countervailable subsidy.

### Subtitle C—Determination of Material Injury

- Sec. 531. Period to determine material injury.
- Sec. 532. Captive production.
- Sec. 533. Price.

- Sec. 534. Vulnerability of industry; cumulation.
- Sec. 535. Causal relationship between imports and injury.
- Sec. 536. Perishable agricultural products.
- Sec. 537. Antidumping cases against the European Union.
- Sec. 538. Verification by the commission.

#### Subtitle D—General Provisions

- Sec. 541. Determination of cash deposit rates.
- Sec. 542. Exchange of information between and among agencies.
- Sec. 543. Liquidation of certain entries.
- Sec. 544. Assistant Attorney General for Trade Law Enforcement.

#### Subtitle E—Effective Date

- Sec. 551. Effective date.

### TITLE VI—SAFEGUARD AMENDMENTS

#### Subtitle A—Safeguards in General

- Sec. 601. Amendments to chapter 1 of title II of the Trade Act of 1974.

#### Subtitle B—Fair Trade With China

- Sec. 611. Clarification of standard for Presidential action on ITC finding of market disruption.

#### Subtitle C—Report on Doha Round

- Sec. 621. Report.

### TITLE VII—MISCELLANEOUS PROVISIONS

- Sec. 701. Construction.
- Sec. 702. Application to goods from Canada and Mexico.

# **TITLE I—IMPLEMENTING A 21st CENTURY STRATEGIC TRADE POLICY FOR THE UNITED STATES**

## **SEC. 101. NATIONAL COMMISSION ON INTERNATIONAL ECONOMIC POLICY.**

(a) ESTABLISHMENT.—There is established a commission to be known as the “National Commission on International Economic Policy” (in this section referred to as the “Commission”).

1       (b) RESPONSIBILITIES.—The Commission shall pre-  
2   pare and submit to the Congress, not later than 12  
3   months after the members of the Commission are first ap-  
4   pointed, a report containing the Commission’s rec-  
5   ommendations for a comprehensive trade negotiating  
6   strategy for the United States. In the report, the Commis-  
7   sion shall address the following:

8           (1) Burgeoning United States trade deficits and  
9       their consequences for the United States and global  
10      economies.

11          (2) Historically unprecedented levels of foreign  
12      holdings of United States debt arising out of the  
13      deficits, and the consequences of those levels for the  
14      United States and global economies.

15          (3) New evidence and reports that increased  
16      trade alone does not increase standards of living in  
17      the United States or around the world.

18          (4) The causes and impact of badly stalled mul-  
19      tilateral trade negotiations and options for moving  
20      the negotiations to closure speedily.

21          (5) Disturbing data that most of the world’s  
22      poorest countries account for a smaller share of  
23      world trade in 2006 than they did a generation ago.

24          (6) Challenges and new responsibilities facing  
25      more advanced developing countries.

1           (7) The impact of the People's Republic of  
2       China on global trade flows.

3           (8) The impact of unfair trade practices by the  
4       People's Republic of China, including currency ma-  
5       nipulation and subsidies.

6           (9) The adequacy of existing international trade  
7       rules to address resurgent government industrial  
8       policies abroad, such as in the People's Republic of  
9       China, the Russian Federation, and the European  
10      Union, and in sectors such as large commercial air-  
11      craft and commercial aircraft engines.

12          (10) The decline of the United States manufac-  
13      turing sector in general and employment in the  
14      United States manufacturing sector in particular.

15          (11) Outsourcing and temporary entry issues in  
16      the services sector.

17      (c) MEMBERSHIP.—

18          (1) APPOINTMENT.—The Commission shall be  
19      composed of 9 members, who shall be appointed as  
20      follows:

21              (A) 2 members shall be appointed by the  
22      Speaker of the House of Representatives.

23              (B) 2 members shall be appointed by the  
24      minority leader of the House of Representa-  
25      tives.

1 (C) 2 members shall be appointed by the  
2 majority leader of the Senate.

3 (D) 2 members shall be appointed by the  
4 minority leader of the Senate.

5 (E) 1 member, who shall be the chair-  
6 person of the Commission, shall be appointed  
7 by the other 8 members of the Commission.

8 (2) QUALIFICATIONS.—Members of the Com-  
9 mission shall be appointed from among persons who,  
10 because of their knowledge and experience, are lead-  
11 ers in the field of international trade and finance,  
12 including leaders in the fields of labor, business,  
13 nongovernmental organizations, and academia. Mem-  
14 bers shall be appointed without regard to political  
15 affiliation and solely on the basis of their fitness to  
16 perform the duties of the Commission.

17 (3) DATE.—The appointments of the initial  
18 members of the Commission shall be made not later  
19 than 30 days after the date of the enactment of this  
20 Act.

21 (4) PERIOD OF APPOINTMENT; VACANCIES.—

22 (A) IN GENERAL.—Members of the Com-  
23 mission shall each be appointed for the life of  
24 the Commission.

1           (B) VACANCIES.—Any vacancy on the  
2           Commission shall not affect its powers, but  
3           shall be filled in the same manner as the origi-  
4           nal appointment was made and shall be subject  
5           to the same conditions as the original appoint-  
6           ment.

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

11          (e) MEETINGS.—The Commission shall meet at the  
12          call of the Chairperson.

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

16          (g) 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          (h) INFORMATION FROM FEDERAL AGENCIES AND  
24          DEPARTMENTS.—

1           (1) IN GENERAL.—The Commission may secure  
2       directly from any Federal department or agency  
3       such information as the Commission considers nec-  
4       essary to carry out the provisions of this section.  
5       Upon the request of the chairperson of the Commis-  
6       sion, the head of such department or agency shall  
7       furnish the information requested to the Commission  
8       in a timely manner.

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

16      (i) HEARINGS.—The Commission may hold such  
17      hearings as the Commission considers necessary to carry  
18      out its functions.

19      (j) TERMINATION OF COMMISSION.—The Commis-  
20      sion shall terminate 30 days after the date on which it  
21      submits its report to the Congress under subsection (b).

22      (k) AUTHORIZATION OF APPROPRIATIONS.—There  
23      are authorized to be appropriated such sums as may be  
24      necessary to carry out this section.



1 **SEC. 102. ITC REPORTS ON TRADE AGREEMENTS.**

2 Section 2104 of the Bipartisan Trade Promotion Au-  
3 thority Act of 2002 (19 U.S.C. 3804) is amended—

4 (1) by redesignating subsection (f) as sub-  
5 section (g); and

6 (2) by inserting after subsection (e) the fol-  
7 lowing new subsection:

8 “(f) REPORTS BY ITC.—

9 “(1) PRIOR TO NEGOTIATIONS.—At least 120  
10 days before initiating negotiations with respect to  
11 any agreement that is subject to the provisions of  
12 section 2103(b), the President shall notify the Inter-  
13 national Trade Commission of the proposed negotia-  
14 tions. The Commission shall, by not later than the  
15 end of that 120-day period, prepare and submit to  
16 the Congress a comprehensive report on the effects  
17 the proposed agreement may have on industries in  
18 the United States, both in terms of effects of in-  
19 creased imports into the United States and benefits  
20 of potential increases in exports of products and  
21 services of the United States to foreign countries  
22 that would be parties to the agreement.

23 “(2) SUBSEQUENT REPORTS.—The Inter-  
24 national Trade Commission shall prepare and sub-  
25 mit to the Congress reports on the effects of any  
26 agreement subject to the provisions of section

1        2103(b) that is entered into pursuant to the negotia-  
2        tions on which a report is submitted under para-  
3        graph (1), both in terms of effects of increased im-  
4        ports into the United States and benefits of in-  
5        creased exports of products and services of the  
6        United States to foreign countries that are parties  
7        to the agreement. Reports under this paragraph  
8        shall be submitted to the Congress not later than 1  
9        year, 3 years, 5 years, and 10 years after the agree-  
10       ment is entered into.”.

11    **SEC. 103. NEGOTIATING OBJECTIVES REGARDING TRADE**  
12                            **REMEDY LAWS.**

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

16    “In order to carry out subparagraph (A), the United  
17    States Trade Representative should not agree to any pro-  
18    posal, whether in the context of a trade agreement entered  
19    into under the auspices of the World Trade Organization,  
20    or a free trade agreement with another country or group  
21    of countries, that would, either individually or in combina-  
22    tion with other proposals, weaken existing United States  
23    trade remedy laws contained in title VII of the Tariff Act  
24    of 1930 or chapter 1 of title II of the Trade Act of 1974,  
25    including any proposal that would make obtaining relief

1 under those provisions more difficult, uncertain, or costly  
2 for domestic industries to achieve or maintain over time.”.

3 **SEC. 104. CONSULTATIONS AND ASSESSMENTS REGARDING**  
4 **TRADE AGREEMENTS.**

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

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

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

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

12 “(iii) with respect to each specific pro-  
13 posal that could require amendments to  
14 title VII of the Tariff Act of 1930 or chap-  
15 ter 1 of title II of the Trade Act of 1974,  
16 whether and to what extent the proposal  
17 would, either individually or in combination  
18 with other proposals, make obtaining relief  
19 under these provisions more difficult, un-  
20 certain, or costly for domestic industries to  
21 achieve or maintain over time; and

22 “(iv) for each specific proposal that  
23 the President reports would not (whether  
24 individually or in combination with other  
25 proposals) make obtaining relief under title

1 VII of the Tariff Act of 1930 or chapter  
 2 1 of title II of the Trade Act of 1974 more  
 3 difficult, uncertain, or costly for domestic  
 4 industries to achieve or maintain over  
 5 time, a detailed explanation providing the  
 6 basis for this conclusion.”.

7 **SEC. 105. EFFECTIVE DATE.**

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

10 **TITLE II—AMERICAN MANUFAC-**  
 11 **TURING COMPETITIVENESS**

12 **SEC. 201. AFFIRMATION OF NEGOTIATING OBJECTIVE ON**  
 13 **BORDER TAXES.**

14 The Congress reaffirms the negotiating objective re-  
 15 lating to border taxes set forth in section 2102(b)(15) of  
 16 the Trade Act of 2002 (19 U.S.C. 3802(b)(15)).

17 **SEC. 202. PRESIDENTIAL CERTIFICATION; APPLICATION OF**  
 18 **U.S. COUNTERVAILING DUTY LAW.**

19 (a) CERTIFICATION BY THE PRESIDENT.—If by Jan-  
 20 uary 1, 2008, the President does not certify to the Con-  
 21 gress that, under the Agreement on Subsidies and Coun-  
 22 tervailing Measures or subsequent agreement of the World  
 23 Trade Organization, the full or partial exemption, remis-  
 24 sion, or deferral specifically related to exports of direct  
 25 taxes is treated in the same manner as the full or partial

1 exemption, remission, or deferral specifically related to ex-  
2 ports of indirect taxes, then as of January 1, 2008, the  
3 Secretary of Commerce, in any investigation conducted  
4 under subchapter A of title VII of the Tariff Act of 1930  
5 to determine whether a countervailable subsidy is being  
6 provided with respect to a product of a country that pro-  
7 vides the full or partial exemption, remission, or deferral  
8 specifically related to exports of indirect taxes on products  
9 exported from that country, shall treat as a  
10 countervailable subsidy the full or partial exemption, re-  
11 mission, or deferral specifically related to exports of indi-  
12 rect taxes paid on that product.

13 (b) DEFINITIONS.—In this section:

14 (1) AGREEMENT ON SUBSIDIES AND COUNTER-  
15 VAILING MEASURES.—The term “Agreement on Sub-  
16 sidies and Countervailing Measures” means the  
17 agreement referred to in section 101(d)(12) of the  
18 Uruguay Round Agreements Act (19 U.S.C.  
19 3511(d)(12)).

20 (2) DIRECT TAXES.—The term “direct taxes”  
21 means taxes on wages, profits, interest, rents, royal-  
22 ties, and all other forms of income, and taxes on the  
23 ownership of real property.

1           (3) IMPORT CHARGES.—The term “import  
2 charges” means tariffs, duties, and other fiscal  
3 charges that are levied on imports.

4           (4) INDIRECT TAXES.—The term “indirect  
5 taxes” means sales, excise, turnover, value added,  
6 franchise, stamp, transfer, inventory, and equipment  
7 taxes, border taxes, and all taxes other than direct  
8 taxes and import charges.

9           (5) FULL OR PARTIAL EXEMPTION, REMISSION,  
10 OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS  
11 OF DIRECT TAXES.—The term “full or partial ex-  
12 emption, remission, or deferral specifically related to  
13 exports of direct taxes” means direct taxes that are  
14 paid to the United States Government by a business  
15 concern and are fully or partially exempted, remit-  
16 ted, or deferred by the Government by reason of the  
17 export by that business concern of its products from  
18 the United States.

19           (6) FULL OR PARTIAL EXEMPTION, REMISSION,  
20 OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS  
21 OF INDIRECT TAXES.—The term “full or partial ex-  
22 emption, remission, or deferral specifically related to  
23 exports of indirect taxes” means indirect taxes that  
24 are paid to the government of a country by a busi-  
25 ness concern and are fully or partially exempted, re-

mitted, or deferred by that government by reason of the export by that business concern of its products from that country.

(c) EFFECTIVE PERIOD.—

(1) IN GENERAL.—Subsection (a) shall cease to be effective on the date on which the President makes a certification described in subsection (a).

(2) TERMINATION OF CVD ORDERS.—Any countervailing duty order that is issued pursuant to an investigation conducted under subsection (a) and is still in effect on the date described in paragraph (1) shall terminate on that date.

## TITLE III—DISPUTE SETTLEMENT

### Subtitle A—Congressional Advisory Commission on WTO Dispute Settlement

#### SEC. 301. CONGRESSIONAL FINDINGS AND PURPOSE.

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

(1) The United States joined the World Trade Organization as an original member with the goal of creating an improved global trading system and providing expanded economic opportunities for United States workers, farmers, and businesses.

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

4           (3) These dispute settlement rules help ensure  
5       that the United States can reap the full benefits of  
6       its participation in the WTO.

7           (4) Successful operation of the WTO dispute  
8       settlement system was critical to congressional ap-  
9       proval of the Uruguay Round Agreements and is  
10      critical to continued support by the United States  
11      for the WTO. In particular, it is imperative that dis-  
12      pute settlement panels and the Appellate Body—

13                (A) operate with fairness and in an impar-  
14      tial manner;

15                (B) strictly observe the terms of reference  
16      and any applicable standard of review set forth  
17      in the Uruguay Round Agreements; and

18                (C) not add to the obligations, or diminish  
19      the rights, of WTO members under the Uru-  
20      guay Round Agreements in violation of Articles  
21      3.2 and 19.2 of the Dispute Settlement Under-  
22      standing.

23           (5) An increasing number of reports by dispute  
24      settlement panels and the Appellate Body have  
25      raised serious concerns within the Congress about



1 the ability of the WTO dispute settlement system to  
2 operate in accordance with paragraph (4).

3 (6) In particular, several reports of dispute set-  
4 tlement panels and the Appellate Body have added  
5 to the obligations and diminished the rights of WTO  
6 members, particularly under the Agreement on Im-  
7 plementation of Article VI of the General Agreement  
8 on Tariffs and Trade 1994, the Agreement on Sub-  
9 sidies and Countervailing Measures, and the Agree-  
10 ment on Safeguards.

11 (7) In order to come into compliance with re-  
12 ports of dispute settlement panels and the Appellate  
13 Body that have been adopted by the Dispute Settle-  
14 ment Body, the Congress may need to amend or re-  
15 peal statutes of the United States. In such cases, the  
16 Congress must have a high degree of confidence that  
17 the reports are in accordance with paragraph (4).

18 (8) The Congress needs impartial, objective,  
19 and juridical advice to determine the appropriate re-  
20 sponse to reports of dispute settlement panels and  
21 the Appellate Body.

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

24 (b) PURPOSE.—It is the purpose of this subtitle to  
25 provide for the establishment of the Congressional Advi-

1 sory Commission on WTO Dispute Settlement to provide  
2 objective and impartial advice to the Congress on the oper-  
3 ation of the dispute settlement system of the World Trade  
4 Organization.

5 **SEC. 302. ESTABLISHMENT OF COMMISSION.**

6 (a) ESTABLISHMENT.—There is established a com-  
7 mission to be known as the Congressional Advisory Com-  
8 mission on WTO Dispute Settlement (in this subtitle re-  
9 ferred to as the “Commission”).

10 (b) MEMBERSHIP.—

11 (1) COMPOSITION.—The Commission shall be  
12 composed of 5 members, all of whom shall be judges  
13 or former judges of the Federal judicial circuits and  
14 shall be appointed by the Speaker of the House of  
15 Representatives and the President pro tempore of  
16 the Senate after considering the recommendations of  
17 the Chairman and ranking member of the Com-  
18 mittee on Finance of the Senate and the Chairman  
19 and ranking member of the Committee on Ways and  
20 Means of the House of Representatives. Commis-  
21 sioners shall be chosen without regard to political af-  
22 filiation and solely on the basis of each Commis-  
23 sioner’s fitness to perform the duties of a Commis-  
24 sioner.

1           (2) DATE.—The appointments of the initial  
2       members of the Commission shall be made not later  
3       than 90 days after the date of the enactment of this  
4       Act.

5       (c) PERIOD OF APPOINTMENT; VACANCIES.—

6           (1) IN GENERAL.—Members of the Commission  
7       shall each be appointed for a term of 5 years, except  
8       that of the members first appointed, 3 members  
9       shall be appointed for terms of 3 years.

10       (2) VACANCIES.—

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

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) INITIAL MEETING.—Not later than 30 days after  
21       the date on which all members of the Commission have  
22       been appointed, the Commission shall hold its first meet-  
23       ing.

24       (e) MEETINGS.—The Commission shall meet at the  
25       call of the Chairperson.

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

4 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The  
 5 Commission shall select a Chairperson and Vice Chair-  
 6 person from among its members.

7 (h) FUNDING.—Members of the Commission shall be  
 8 allowed travel expenses, including per diem in lieu of sub-  
 9 sistence at rates authorized for employees of agencies  
 10 under subchapter I of chapter 57 of title 5, United States  
 11 Code, while away from their homes or regular places of  
 12 business in the performance of services for the Commis-  
 13 sion.

14 **SEC. 303. DUTIES OF THE COMMISSION.**

15 (a) ADVISING CONGRESS ON THE OPERATION OF  
 16 THE WTO DISPUTE SETTLEMENT SYSTEM.—

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

19 (A) all adverse reports of dispute settle-  
 20 ment panels and the Appellate Body which  
 21 are—

22 (i) adopted by the Dispute Settlement  
 23 Body; and

1 (ii) the result of a proceeding initiated  
2 against the United States by a WTO mem-  
3 ber; and

4 (B) upon the request of the Committee on  
5 Ways and Means of the House of Representa-  
6 tives or the Committee on Finance of the Sen-  
7 ate—

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

10 (I) which is adopted by the Dis-  
11 pute Settlement Body; and

12 (II) in which the United States is  
13 a complaining party; or

14 (ii) any other finding which is con-  
15 tained in a report of a dispute settlement  
16 panel or the Appellate Body that is adopt-  
17 ed by the Dispute Settlement Body.

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

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

24 (i) exceeded its authority or its terms  
25 of reference;

1 (ii) added to the obligations, or dimin-  
2 ished the rights, of the United States  
3 under the Uruguay Round Agreement  
4 which is the subject of the finding;

5 (iii) acted arbitrarily or capriciously,  
6 engaged in misconduct, or demonstrably  
7 departed from the procedures specified for  
8 panels and the Appellate Body in the ap-  
9 plicable Uruguay Round Agreement; and

10 (iv) deviated from the applicable  
11 standard of review, including in anti-  
12 dumping, countervailing duty, and other  
13 unfair trade remedy cases, the standard of  
14 review set forth in Article 17.6 of the  
15 Agreement on Implementation of Article  
16 VI of the General Agreement on Tariffs  
17 and Trade 1994; and

18 (B) the finding is consistent with the origi-  
19 nal understanding by the United States of the  
20 Uruguay Round Agreement that is the subject  
21 of the finding as explained in the statement of  
22 administrative action approved under section  
23 101(a) of the Uruguay Round Agreements Act  
24 (19 U.S.C. 3511(a)).

1           (3) NO DEFERENCE.—Applying the standards  
2       set forth in paragraph (2) requires that the Commis-  
3       sion not accord deference to findings of law made by  
4       the dispute settlement panel or the Appellate Body,  
5       as the case may be.

6       (b) DETERMINATION; REPORT.—

7           (1) DETERMINATION.—

8           (A) IN GENERAL.—Not later than 150  
9       days after the date on which the Commission  
10      receives notice of a report or request under sec-  
11      tion 304(b), the Commission shall make a writ-  
12      ten determination with respect to the matters  
13      described in paragraph (2) of subsection (a), in-  
14      cluding a full analysis of the basis for its deter-  
15      mination. A vote by a majority of the members  
16      of the Commission shall constitute a determina-  
17      tion of the Commission, although the members  
18      need not agree on the basis for their vote.

19          (B) DISSENTING OR CONCURRING OPIN-  
20      IONS.—Any member of the Commission who  
21      disagrees with a determination of the Commis-  
22      sion or who concurs in such a determination on  
23      a basis different from that of the Commission  
24      or other members of the Commission, may write

1           an opinion expressing such disagreement or  
2           concurrence, as the case may be.

3           (2) REPORT.—The Commission shall promptly  
4           report the determinations described in paragraph  
5           (1)(A) to the Committee on Ways and Means of the  
6           House of Representatives and the Committee on Fi-  
7           nance of the Senate. The Commission shall include  
8           with the report any opinions written under para-  
9           graph (1)(B) with respect to the determination.

10          (c) AVAILABILITY TO THE PUBLIC.—Each report of  
11       the Commission under subsection (b)(2), together with the  
12       opinions included with the report, shall be made available  
13       to the public.

14       **SEC. 304. POWERS OF THE COMMISSION.**

15          (a) HEARINGS.—The Commission may hold a public  
16       hearing to solicit views concerning a report of a dispute  
17       settlement panel or the Appellate Body described in sec-  
18       tion 303(a)(1), if the Commission considers such hearing  
19       to be necessary to carry out the purpose of this subtitle.  
20       The Commission shall provide reasonable notice of a hear-  
21       ing held pursuant to this subsection.

22          (b) INFORMATION FROM INTERESTED PARTIES AND  
23       FEDERAL AGENCIES.—

24               (1) NOTICE TO COMMISSION.—



1           (A) UNDER SECTION 303(a)(1)(A).—The  
2           Trade Representative shall advise the Commis-  
3           sion not later than 5 business days after the  
4           date the Dispute Settlement Body adopts a re-  
5           port of a panel or the Appellate Body that is  
6           to be reviewed by the Commission under section  
7           303(a)(1)(A).

8           (B) UNDER SECTION 303(a)(1)(B).—The  
9           Committee on Ways and Means or the Com-  
10          mittee on Finance, as the case may be, may  
11          make and notify the Commission of a request  
12          under section 303(a)(1)(B) not later than 1  
13          year after the Dispute Settlement Body adopts  
14          the report that is the subject of the request.

15          (C) REPORTS ADOPTED PRIOR TO AP-  
16          POINTMENT OF COMMISSION.—With respect to  
17          any report to which section 303(a)(1)(B) ap-  
18          plies and that is adopted before the date on  
19          which the first members of the Commission are  
20          appointed under section 302(b)(2), the Com-  
21          mittee on Ways and Means or the Committee  
22          on Finance, as the case may be, may make and  
23          notify the Commission of a request under sec-  
24          tion 303(a)(1)(B) with respect to that report  
25          not later than 1 year after the date on which

1 the first members of the Commission are ap-  
2 pointed under section 302(b)(2).

3 (2) SUBMISSIONS AND REQUESTS FOR INFOR-  
4 MATION.—

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

16 (B) INFORMATION FROM FEDERAL AGEN-  
17 CIES AND DEPARTMENTS.—The Commission  
18 may also secure directly from any Federal de-  
19 partment or agency such information as the  
20 Commission considers necessary to carry out  
21 the provisions of this subtitle. Upon the request  
22 of the chairperson of the Commission, the head  
23 of such department or agency shall furnish the  
24 information requested to the Commission in a  
25 timely manner.

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

3           (A) IN GENERAL.—The Trade Representa-  
4       tive shall make available to the Commission all  
5       submissions and relevant documents relating to  
6       a report of a panel or the Appellate Body de-  
7       scribed in section 303(a)(1), including any in-  
8       formation contained in such submissions identi-  
9       fied by the provider of the information as pro-  
10      prietary information or information designated  
11      as confidential by a foreign government.

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

18      (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-  
19      FIDENTIALITY.—

20          (1) ADMINISTRATIVE ASSISTANCE.—Any agency  
21      or department of the United States that is des-  
22      ignated by the President shall provide administrative  
23      services, funds, facilities, staff, or other support  
24      services to the Commission to assist the Commission  
25      with the performance of the Commission's functions.

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

8   **SEC. 305. DEFINITIONS.**

9       In this subtitle:

10           (1) ADVERSE FINDING.—The term “adverse  
 11       finding” means—

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

22                   (B) in a proceeding of a panel or the Ap-  
 23           pellate Body in which the United States is a  
 24           complaining party, any finding by the panel or  
 25           the Appellate Body that a measure of the party

1           complained against is not inconsistent with that  
2           party's obligations under a Uruguay Round  
3           Agreement (or does not nullify or impair bene-  
4           fits accruing to the United States under such  
5           an Agreement).

6           (2) APPELLATE BODY.—The term “Appellate  
7           Body” means the Appellate Body established by the  
8           Dispute Settlement Body pursuant to Article 17.1 of  
9           the Dispute Settlement Understanding.

10          (3) DISPUTE SETTLEMENT BODY.—The term  
11          “Dispute Settlement Body” means the Dispute Set-  
12          tlement Body established pursuant to the Dispute  
13          Settlement Understanding.

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

18          (5) DISPUTE SETTLEMENT UNDERSTANDING.—  
19          The term “Dispute Settlement Understanding”  
20          means the Understanding on Rules and Procedures  
21          Governing the Settlement of Disputes referred to in  
22          section 101(d)(16) of the Uruguay Round Agree-  
23          ments Act (19 U.S.C. 3511(d)(16)).

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

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

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

11          (9) WORLD TRADE ORGANIZATION; WTO.—The  
12      terms “World Trade Organization” and “WTO”  
13      mean the organization established pursuant to the  
14      WTO Agreement.

15          (10) WTO AGREEMENT.—The term “WTO  
16      Agreement” means the Agreement Establishing the  
17      World Trade Organization entered into on April 15,  
18      1994.

19          (11) WTO MEMBER.—The term “WTO mem-  
20      ber” has the meaning given that term in section  
21      2(10) of the Uruguay Round Agreements Act (19  
22      U.S.C. 3501(10)).

23 **SEC. 306. EFFECTIVE DATE.**

24       This subtitle shall take effect on the date of the en-  
25      actment of this Act.

1     **Subtitle B—Participation in WTO**  
2                     **Panel Proceedings**

3     **SEC. 311. PARTICIPATION IN WTO PANEL PROCEEDINGS.**

4             (a) IN GENERAL.—If the United States Trade Rep-  
5     resentative, in proceedings before a dispute settlement  
6     panel or the Appellate Body of the WTO, seeks—

7                 (1) to enforce United States rights under a  
8             multilateral trade agreement, or

9                 (2) to defend a challenged action or determina-  
10     tion of the United States Government,

11     a private United States person that is supportive of the  
12     United States Government’s position before the panel or  
13     Appellate Body and that has a direct economic interest  
14     in the panel’s or Appellate Body’s resolution of the mat-  
15     ters in dispute shall be permitted to participate in con-  
16     sultations and panel proceedings. The Trade Representa-  
17     tive shall issue regulations, consistent with subsections (b)  
18     and (c), ensuring full and effective participation by any  
19     such private person.

20             (b) ACCESS TO INFORMATION.—The United States  
21     Trade Representative shall make available to persons de-  
22     scribed in subsection (a) all information presented to or  
23     otherwise obtained by the Trade Representative in connec-  
24     tion with a WTO dispute settlement proceeding. The  
25     United States Trade Representative shall promulgate reg-

1 ulations implementing a protective order system to protect  
2 information designated by the submitting member as con-  
3 fidential.

4 (c) PARTICIPATION IN PANEL PROCESS.—Upon re-  
5 quest from a person described in subsection (a), the  
6 United States Trade Representative shall—

7 (1) consult in advance with such person regard-  
8 ing the content of written submissions from the  
9 United States to the WTO panel concerned or to the  
10 other member countries involved;

11 (2) include, if appropriate, such person or its  
12 appropriate representative as an advisory member of  
13 the delegation in sessions of the dispute settlement  
14 panel;

15 (3) allow such special delegation member, if  
16 such member would bring special knowledge to the  
17 proceeding, to appear before the panel, directly or  
18 through counsel, under the supervision of responsible  
19 United States Government officials; and

20 (4) in proceedings involving confidential infor-  
21 mation, allow the appearance of such person only  
22 through counsel as a member of the special delega-  
23 tion.

24 **SEC. 312. DEFINITIONS.**

25 In this subtitle:



1           (1) APPELLATE BODY.—The term “Appellate  
2       Body” means the Appellate Body established under  
3       Article 17.1 of the Dispute Settlement Under-  
4       standing.

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

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

15          (4) UNITED STATES PERSON.—The term  
16      “United States person” means—

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

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

1           (5) WTO.—The term “WTO” means the orga-  
 2           nization established pursuant to the WTO Agree-  
 3           ment.

4           (6) WTO AGREEMENT.—The term “WTO  
 5           Agreement” means the Agreement Establishing the  
 6           World Trade Organization entered into on April 15,  
 7           1994.

## 8                   **Subtitle C—Trade Dispute** 9                   **Functions**

### 10   **SEC. 321. RESPONSIBILITY OF USTR.**

11           Section 141(c)(1)(C) of the Trade Act of 1974 (19  
 12   U.S.C. 2171(c)(1)(C)) is amended—

13           (1) by striking “(C)” and inserting “(C)(i)”;  
 14           and

15           (2) by adding at the end the following:

16           “(ii) have lead responsibility for investigating,  
 17           and representing the United States in, disputes be-  
 18           fore the World Trade Organization and disputes  
 19           arising under other trade agreements to which the  
 20           United States is a party;”.

## 21                   **TITLE IV—SUBSIDIES**

### 22   **SEC. 401. APPLICATION OF COUNTERVAILING DUTIES TO** 23                   **NONMARKET ECONOMY COUNTRIES.**

24           (a) IN GENERAL.—Section 701(a)(1) of the Tariff  
 25   Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by insert-

1 ing “(including a nonmarket economy country)” after  
2 “country” each place it appears.

3 (b) USE OF ALTERNATE METHODOLOGIES.—Section  
4 771(5)(E) of the Tariff Act of 1930 (19 U.S.C.  
5 1677(5)(E)) is amended by adding at the end the fol-  
6 lowing: “If the administering authority, with respect to a  
7 nonmarket economy country, encounters special difficul-  
8 ties in calculating the amount of a benefit under clause  
9 (i), (ii), (iii), or (iv), the administering authority may use  
10 methodologies for identifying and measuring the subsidy  
11 benefit which take into account the possibility that pre-  
12 vailing terms and conditions in that country may not al-  
13 ways be available as appropriate benchmarks.”.

14 (c) EFFECTIVE DATE.—The amendments made by  
15 subsections (a) and (b) apply to petitions filed under sec-  
16 tion 702 of the Tariff Act of 1930 on or after the date  
17 of the enactment of this Act.

18 (d) ANTIDUMPING PROVISIONS NOT AFFECTED.—  
19 The amendments made by subsections (a) and (b) shall  
20 not affect the status of a country as a nonmarket economy  
21 country for the purposes of any matter relating to anti-  
22 dumping duties under the Tariff Act of 1930.

1 **SEC. 402. CLARIFICATION TO INCLUDE EXCHANGE-RATE**  
 2 **MANIPULATION AS COUNTERAVAILABLE SUB-**  
 3 **SIDY UNDER TITLE VII OF THE TARIFF ACT**  
 4 **OF 1930.**

5 (a) AMENDMENTS TO DEFINITION OF  
 6 COUNTERAVAILABLE SUBSIDY.—Section 771(5)(D) of the  
 7 Tariff Act of 1930 (19 U.S.C. 1677(5)(D)) is amended—

8 (1) by striking “The term” and inserting “(i)  
 9 The term”;

10 (2) by redesignating clauses (i) through (iv) as  
 11 subclauses (I) through (IV), respectively; and

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

13 “(ii) In addition to clause (i), the term  
 14 ‘provides a financial contribution’ means to en-  
 15 gage in exchange-rate manipulation (as defined  
 16 in paragraph (5C)).”.

17 (b) DEFINITION OF EXCHANGE-RATE MANIPULA-  
 18 TION.—Section 771 of the Tariff Act of 1930 (19 U.S.C.  
 19 1677) is amended by inserting after paragraph (5B) the  
 20 following new paragraph:

21 “(5C) DEFINITION OF EXCHANGE-RATE MANIP-  
 22 ULATION.—

23 “(A) IN GENERAL.—For purposes of para-  
 24 graphs (5) and (5A), the term ‘exchange-rate  
 25 manipulation’ means protracted large-scale  
 26 intervention by an authority to undervalue its

1 currency in the exchange market that prevents  
2 effective balance-of-payments adjustment or  
3 that gains an unfair competitive advantage over  
4 any other country.

5 “(B) FACTORS.—In determining whether  
6 exchange-rate manipulation is occurring and a  
7 benefit thereby conferred, the administering au-  
8 thority in each case—

9 “(i) shall consider the exporting coun-  
10 try’s—

11 “(I) bilateral balance-of-trade  
12 surplus or deficit with the United  
13 States;

14 “(II) balance-of-trade surplus or  
15 deficit with its other trading partners  
16 individually and in the aggregate;

17 “(III) foreign direct investment  
18 in its territory;

19 “(IV) currency-specific and ag-  
20 gregate amounts of foreign currency  
21 reserves; and

22 “(V) mechanisms employed to  
23 maintain its currency at a fixed ex-  
24 change rate relative to another cur-  
25 rency and, particularly, the nature,

1 duration, monetary expenditures, and  
 2 potential monetary expenditures of  
 3 those mechanisms;

4 “(ii) may consider such other eco-  
 5 nomic factors as are relevant; and

6 “(iii) shall measure the trade sur-  
 7 pluses or deficits described in subclauses  
 8 (I) and (II) of clause (i) with reference to  
 9 the trade data reported by the United  
 10 States and the other trading partners of  
 11 the exporting country, unless such trade  
 12 data are not available or are demonstrably  
 13 inaccurate, in which case the exporting  
 14 country’s trade data may be relied upon if  
 15 shown to be sufficiently accurate and  
 16 trustworthy.

17 “(C) TYPE OF ECONOMY.—An authority  
 18 found to be engaged in exchange-rate manipula-  
 19 tion may have either a market economy or a  
 20 nonmarket economy or a combination thereof.”.

21 **SEC. 403. ITC STUDY OF SUBSIDIES BY PEOPLE’S REPUBLIC**  
 22 **OF CHINA.**

23 (a) INVESTIGATION.—The United States Inter-  
 24 national Trade Commission shall conduct a study, under  
 25 section 332 of the Tariff Act of 1930 (19 U.S.C. 1332),

1 regarding how the People’s Republic of China uses govern-  
 2 ment intervention to promote investment, employment,  
 3 and exports. The study shall comprehensively catalog, and  
 4 when possible quantify, the practices and policies that cen-  
 5 tral, provincial, and local government bodies in the Peo-  
 6 ple’s Republic of China use to support and to attempt to  
 7 influence decisionmaking in China’s manufacturing enter-  
 8 prises and industries. Chapters of this study shall include,  
 9 but not be limited to, the following:

- 10 (1) Privatization and private ownership.
- 11 (2) Nonperforming loans.
- 12 (3) Price coordination.
- 13 (4) Selection of industries for targeted assist-
- 14 ance.
- 15 (5) Banking and finance.
- 16 (6) Utility rates.
- 17 (7) Infrastructure development.
- 18 (8) Taxation.
- 19 (9) Restraints on imports and exports.
- 20 (10) Research and development.
- 21 (11) Worker training and retraining.
- 22 (12) Rationalization and closure of uneconomic
- 23 enterprises.

24 (b) TIMING OF REPORTS ON STUDY.—The Congress  
 25 requests that—

(1) not later than 9 months after the date of the enactment of this Act, the International Trade Commission complete its study under subsection (a) and submit a report on the study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(2) not later than 1 year after the report under paragraph (1) is submitted, and annually thereafter through 2016, the International Trade Commission prepare and submit to the committees referred to in paragraph (1) an update of the report.

## **TITLE V—STRENGTHENING U.S. UNFAIR TRADE LAWS**

### **Subtitle A—Determination of Dumping**

#### **SEC. 501. POLLING OF INDUSTRY SUPPORT IN ANTI-DUMPING CASES.**

Section 732(c)(4)(D) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)(5)(D)) is amended by adding at the end the following flush sentences:

“If a petitioner requests that polling be done because of the large number of producers, the administering authority shall obtain from relevant Federal agencies lists of producers that are compiled for other purposes, including re-



1 ports of the Census Bureau and the United  
2 States Department of Agriculture, to permit  
3 such polling. If the agencies are unable or un-  
4 willing to supply such information because of  
5 privacy or other restrictions, the administering  
6 authority shall not poll the industry, but shall  
7 exercise its authority to initiate an investigation  
8 under subsection (a)(1) if the information in  
9 the petition otherwise warrants the initiation of  
10 such an investigation.”.

11 **SEC. 502. NEW SHIPPER BONDING PRIVILEGE.**

12 Section 751(a)(2)(B) of the Tariff Act of 1930 (19  
13 U.S.C. 1675(a)(2)(B)) is amended—

14 (1) by striking clause (iii); and

15 (2) by redesignating clause (iv) as clause (iii).

16 **SEC. 503. PREVENTION OF CIRCUMVENTION.**

17 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.  
18 1677j(c)) is amended by adding at the end the following  
19 new paragraph:

20 “(3) SPECIAL RULE.—The administering au-  
21 thority shall apply paragraph (1) with respect to al-  
22 tered merchandise excluded from the merchandise  
23 description used in an outstanding order or finding,  
24 if such application is not inconsistent with the af-

1       firmative determination of the Commission on which  
2       the order or finding is based.”.

3   **SEC. 504. ABSORPTION OF ANTIDUMPING DUTIES.**

4       Section 772(d)(1) of the Tariff Act of 1930 (19  
5   U.S.C. 1677a(d)(1)) is amended—

6           (1) in subparagraph (C), by striking “and”;

7           (2) in subparagraph (D), by adding “and” after  
8       the semicolon; and

9           (3) by adding at the end the following new sub-  
10      paragraph:

11           “(E) the amount of any antidumping duty  
12           determined to be due, unless evidence of record  
13           demonstrates that such duty will be paid by a  
14           purchaser not affiliated with the producer or  
15           exporter.”.

16   **SEC. 505. ABSORPTION OF ANTIDUMPING DUTIES IN SUN-**  
17           **SET REVIEW.**

18       Section 751(a)(4) of the Tariff Act of 1930 (19  
19   U.S.C. 1675(a)(4)) is amended to read as follows:

20           “(4) ABSORPTION OF ANTIDUMPING DUTIES.—

21       During any review under this subsection initiated—

22           “(A) 2 years or 4 years after the publica-  
23           tion of an antidumping duty order under sec-  
24           tion 736(a), or

1           “(B) after publication of a determination  
2           under this section to continue an order or sus-  
3           pension agreement,  
4           the administering authority, if requested, shall deter-  
5           mine whether antidumping duties have been ab-  
6           sorbed by a foreign producer or exporter subject to  
7           the order if the subject merchandise is sold in the  
8           United States through an importer who is affiliated  
9           with that foreign producer or exporter. The admin-  
10          istering authority may make such a determination at  
11          its discretion, if requested, during a review initiated  
12          in any other year under this section. The admin-  
13          istering authority shall notify the Commission of its  
14          findings regarding such duty absorption for the  
15          Commission to consider in conducting a review  
16          under subsection (c).”.

17 **SEC. 506. EXPORT PRICE AND CONSTRUCTED EXPORT**  
18 **PRICE.**

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

23 **SEC. 507. NONMARKET ECONOMY METHODOLOGY.**

24          Section 773(c)(4) of the Tariff Act of 1930 (19  
25 U.S.C. 1677b(c)(4)) is amended to read as follows:

1           “(4) VALUATION OF FACTORS OF PRODUC-  
2           TION.—

3           “(A) IN GENERAL.—The administering au-  
4           thority, in valuing factors of production under  
5           paragraph (1), shall utilize, to the extent pos-  
6           sible, the prices or costs of factors of production  
7           in one or more market economy countries that  
8           are—

9                   “(i) at a level of economic develop-  
10                  ment comparable to that of the nonmarket  
11                  economy country; and

12                  “(ii) significant producers of com-  
13                  parable merchandise.

14           In this paragraph, the term ‘surrogate’ refers to  
15           the values, calculations, and market economy  
16           countries used under this subparagraph.

17           “(B) VALUING MATERIALS USED IN PRO-  
18           DUCTION.—In determining the value of mate-  
19           rials used in production under subparagraph  
20           (A), the following applies:

21                   “(i) The administering authority may  
22                  use the value of inputs that are purchased  
23                  from market economy suppliers and are  
24                  not suspected of being dumped or sub-

1           sidized, only for the quantity of such pur-  
2           chases.

3           “(ii) All materials purchased or other-  
4           wise obtained from nonmarket economy  
5           countries shall be valued using surrogate  
6           values under subparagraph (A).

7           “(iii) A purchased material shall be  
8           viewed as suspected of being subsidized if  
9           there are any affirmative findings by the  
10          United States or another WTO member of  
11          export subsidy programs in the supplying  
12          country.

13          “(iv) A purchased material shall be  
14          viewed as suspected of being dumped if  
15          there are any affirmative findings by the  
16          United States or other WTO member of  
17          dumping in the general category of mer-  
18          chandise, or if information supplied by the  
19          petitioner or otherwise of record suggests  
20          significant underpricing to the purchaser  
21          in the nonmarket economy country.

22          “(v) Surrogate values for materials  
23          from a market economy country shall be  
24          disregarded as not reflective of prices in  
25          that surrogate market only if prices in that

1 market are viewed as aberrational, such as  
2 a case in which prices undersell or exceed  
3 any reported price in that surrogate mar-  
4 ket by a large amount.

5 “(vi) There shall be a presumption  
6 that the administering authority will in-  
7 clude all market prices from a surrogate  
8 market. Prices that are high or low shall  
9 be excluded only when it is demonstrated  
10 that the prices are not reflective of prices  
11 in the surrogate country for the relevant  
12 category of merchandise.

13 “(vii) If amounts pertaining to the  
14 cost of production of imports into a surro-  
15 gate country from market economy sup-  
16 pliers are used for valuing the materials  
17 used, such amounts shall be valued on the  
18 basis of CIF (cost, insurance, and freight),  
19 plus duties paid, to provide a proxy for  
20 prices in the surrogate country competing  
21 with locally produced goods. Such values  
22 shall not be reduced by the import duties.

23 “(C) VALUING LABOR.—

24 “(i) The administering authority may  
25 use an average of wage rates for market

1 economies, but shall ensure that labor  
2 rates used fully reflect all labor costs, in-  
3 cluding benefits, health care, and pension  
4 costs.

5 “(ii) Labor shall be the total labor  
6 employed by a nonmarket economy country  
7 producer or used by a nonmarket economy  
8 country producer in the overall business,  
9 with allocations to other merchandise pro-  
10 duced or sold by that producer that is not  
11 subject merchandise.

12 “(iii) Labor shall reflect the average  
13 labor for all other producers in the non-  
14 market economy country that are pro-  
15 ducing the particular merchandise subject  
16 to investigation or review, and shall not be  
17 limited to operations used for export.

18 “(D) VALUING FACTORY OVERHEAD, GEN-  
19 ERAL SELLING AND ADMINISTRATIVE EX-  
20 PENSES, AND PROFIT.—

21 “(i) IN GENERAL.—The administering  
22 authority shall use the best information  
23 available with respect to likely values of  
24 factory overhead, general selling and ad-  
25 ministrative expenses, and profit from a

1 surrogate country. If the values determined  
2 under subparagraphs (B) and (C) for ma-  
3 terials used and labor consumed result in  
4 amounts that are demonstrably larger or  
5 smaller than the amounts used in deter-  
6 mining surrogate ratios from financial or  
7 other reports from a surrogate country, ad-  
8 justments shall be made to the ratios to re-  
9 flect fully the level of such costs and prof-  
10 its in the surrogate country on a per item  
11 produced basis.

12 “(ii) RATIO DEFINED.—For purposes  
13 of this subparagraph, the term ‘ratios’  
14 means—

15 “(I) the ratio of factory overhead  
16 to labor, materials, and energy;

17 “(II) the ratio of general selling  
18 and administrative costs to factory  
19 overhead, labor, materials, and en-  
20 ergy; and

21 “(III) the ratio of profit to gen-  
22 eral selling and administrative costs,  
23 factory overhead, labor, materials, and  
24 energy.



1           “(E) USE OF CONFIDENTIAL INFORMA-  
 2           TION FROM A DOMESTIC PRODUCER IN A SUR-  
 3           ROGATE COUNTRY.—The administering author-  
 4           ity shall generally use publicly available infor-  
 5           mation to value factors of production, except  
 6           that, in a case in which any foreign producer in  
 7           the surrogate country used by the administering  
 8           authority is willing to provide information on  
 9           factors of production to produce the same class  
 10          of merchandise and such information is subject  
 11          to verification, the administering authority shall  
 12          accept and use such information. The relation-  
 13          ship of the foreign producer providing the infor-  
 14          mation to a party to the proceeding shall not be  
 15          a basis for disqualification.”.

16 **SEC. 508. ADJUSTMENT OF CONSTRUCTED VALUES FOR IM-**  
 17 **PUTED CREDIT COSTS.**

18          Section 773(a)(8) of the Tariff Act of 1930 (19  
 19 U.S.C. 1677b(a)(8)) is amended by inserting the following  
 20 before the period: “, except that constructed value may  
 21 not be adjusted by deducting imputed credit expenses”.

22 **SEC. 509. DETERMINATIONS ON THE BASIS OF FACTS**  
 23 **AVAILABLE.**

24          Section 776(a)(2)(B) of the Tariff Act of 1930 (19  
 25 U.S.C. 1677e(a)(2)(B) is amended to read as follows:

“(B) fails to provide such information by the deadline for submission of the information or in the form and manner required, and in conformity with prior administering authority determinations in the proceeding and final judicial decisions in the proceeding, subject to subsections (c)(1) and (e) of section 782,”.

## **Subtitle B—Determination of Subsidization**

### **SEC. 521. COUNTERVAILABLE SUBSIDY.**

(a) DEFINITION OF COUNTERVAILABLE SUBSIDY.—Section 771(5)(E) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)), as amended by section 401(b) of this Act, is further amended by adding at the end the following: “If there is a reasonable indication that a financial contribution by the provision of goods or services has distorted prices for those goods or services in the country that is subject to the investigation or review, or if data regarding such prices are otherwise unavailable, then the administering authority shall measure adequacy of remuneration by reference to data regarding prices for the same or a similar good or service from outside the country that is subject to the investigation or review. The administering authority shall adjust such data to the extent practicable to reflect prevailing market conditions in that

1 country. If there is a reasonable indication that prices  
2 within a political subdivision, dependent territory, or pos-  
3 session of a foreign country are distorted, or data are not  
4 available, then the administering authority shall measure  
5 adequacy of remuneration in that political subdivision, de-  
6 pendent territory, or possession by reference to data from  
7 the most comparable area or region in which prices are  
8 not distorted, regardless of whether it is in the same coun-  
9 try.”.

10 (b) EFFECTIVE DATE.—The amendment made by  
11 subsection (a) shall apply to any determination under sec-  
12 tion 705 or 751 of the Tariff Act of 1930 (19 U.S.C.  
13 1671d, 1675) that is made on or after January 1, 2002,  
14 including published determinations for which judicial or  
15 binational panel review has been initiated or completed  
16 pursuant to section 516A of that Act (19 U.S.C. 1516a).  
17 To the extent that the amendment made by subsection (a)  
18 may be relevant to any such determination that has al-  
19 ready been made, the administering authority shall amend  
20 the determination and associated countervailing duty  
21 order to bring them into compliance with the amendment  
22 made by subsection (a), and shall undertake new adminis-  
23 trative proceedings, if necessary, to do so.

1           **Subtitle C—Determination of**  
2                           **Material Injury**

3   **SEC. 531. PERIOD TO DETERMINE MATERIAL INJURY.**

4           Section 771(7)(A) of the Tariff Act of 1930 (19  
5 U.S.C. 1677(7)(A)) is amended by adding at the end  
6 thereof the following: “In cases other than critical cir-  
7 cumstances, the Commission shall, in making its prelimi-  
8 nary and final determinations of material injury under  
9 this title, select an appropriate period for evaluating the  
10 applicable statutory criteria up to the date on which the  
11 petition is filed or on which the administering authority  
12 initiates the investigation, as the case may be.”.

13   **SEC. 532. CAPTIVE PRODUCTION.**

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

16                           “(iv) CAPTIVE PRODUCTION.—If do-  
17                           mestic producers transfer internally, in-  
18                           cluding to affiliated persons as defined in  
19                           paragraph (33), significant production of  
20                           the domestic like product for the produc-  
21                           tion of a downstream article and sell sig-  
22                           nificant production of the domestic like  
23                           product in the merchant market, then the  
24                           Commission, in determining market share  
25                           and the factors affecting financial perform-

1           ance set forth in clause (iii), shall focus  
2           primarily on the merchant market for the  
3           domestic like product.”.

4 **SEC. 533. PRICE.**

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

8           “The Commission shall not conclude that  
9           imports of the subject merchandise do not  
10          have a significant effect on prices merely  
11          because of the volume of imports of the  
12          subject merchandise.”.

13 **SEC. 534. VULNERABILITY OF INDUSTRY; CUMULATION.**

14       (a) Section 771(7)(C)(iii) of the Tariff Act of 1930  
15 (19 U.S.C. 1677(7)(C)(iii)) is amended in the last sen-  
16 tence by striking the period at the end and inserting “,  
17 including whether the industry is vulnerable to the effects  
18 of imports of the subject merchandise.”.

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

22           “(i) IN GENERAL.—For purposes of  
23          clauses (i) and (ii) of subparagraph (C),  
24          and subject to clause (ii), the Commission  
25          shall cumulatively assess the volume and

1 effect of imports of the subject merchan-  
 2 dise from all countries subject to petitions  
 3 filed under section 702(b) or 732(b), or  
 4 subject to investigations initiated under  
 5 702(a) or 732(a), if such petitions were  
 6 filed, or such investigations were initiated,  
 7 within 90 days before the date on which  
 8 the Commission is required to make its  
 9 final injury determination, and if such im-  
 10 ports compete with each other and with  
 11 the domestic like product in the United  
 12 States market.”.

13 **SEC. 535. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND**  
 14 **INJURY.**

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

20 **SEC. 536. PERISHABLE AGRICULTURAL PRODUCTS.**

21 (a) DEFINITION OF INDUSTRIES.—Section 771(4)(A)  
 22 of the Tariff Act of 1930 (19 U.S.C. 1677(4)(A)) is  
 23 amended by adding at the end the following: “If the Com-  
 24 mission determines that an agricultural product has a  
 25 short shelf life and is a perishable product, the Commis-

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

9 (b) DETERMINATION OF INJURY.—Section  
 10 771(7)(D) of the Tariff Act of 1930 (19 U.S.C.  
 11 1677(7)(D)) is amended by adding at the end the fol-  
 12 lowing new clauses:

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

21 “(iv) In the case of agricultural prod-  
 22 ucts, partially picked or unpicked crops  
 23 and abandoned acreage may be considered  
 24 in lieu of other measures of capacity and  
 25 capacity utilization.

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

7   **SEC. 537. ANTIDUMPING CASES AGAINST THE EUROPEAN**  
 8                   **UNION.**

9           Section 771(3) of the Tariff Act of 1930 (19 U.S.C.  
 10 1677(3)) is amended by adding “other than those involv-  
 11 ing the European Union” after “except for the purpose  
 12 of antidumping proceedings”.

13   **SEC. 538. VERIFICATION BY THE COMMISSION.**

14           (a) IN GENERAL.—Section 782 of the Tariff Act of  
 15 1930 (19 U.S.C. 1677m) is amended by adding at the end  
 16 the following:

17           “(j) VERIFICATION BY THE COMMISSION.—The Com-  
 18 mission shall verify information submitted by any foreign  
 19 producer relied upon in making—

20                   “(1) a final determination in an investigation,  
 21                   and

22                   “(2) a final determination in a review under  
 23                   section 751(c).”.

24           (b) EFFECTIVE DATE.—The amendment made by  
 25 subsection (a) shall apply with respect to any investigation



1 or review that is pending on, or is commenced on or after,  
2 the date of the enactment of this Act.

## 3 **Subtitle D—General Provisions**

### 4 **SEC. 541. DETERMINATION OF CASH DEPOSIT RATES.**

5 Section 751(a)(2)(C) of the Tariff Act of 1930 (19  
6 U.S.C. 1675(a)(2)(C)) is amended by adding at the end  
7 the following: “The ad valorem rate calculated for the as-  
8 sessment of duties shall be used as the ad valorem rate  
9 for deposits of estimated duties.”.

### 10 **SEC. 542. EXCHANGE OF INFORMATION BETWEEN AND** 11 **AMONG AGENCIES.**

12 (a) PROPRIETARY INFORMATION.—Section 777(b) of  
13 the Tariff Act of 1930 (19 U.S.C. 1677f(b)) is amended  
14 by adding at the end the following:

15 “(4) EXCHANGE OF INFORMATION BETWEEN  
16 AND AMONG AGENCIES.—Notwithstanding any other  
17 provision of law, proprietary information submitted  
18 to the administering authority, the Commission, or  
19 the Bureau of Customs and Border Protection may  
20 be exchanged between and among those agencies  
21 upon their request or upon the request of an inter-  
22 ested party, under the following circumstances:

23 “(A) Proprietary information submitted to  
24 the administering authority or to the Commis-

1           sion may be exchanged between such agencies  
2           if—

3                   “(i) an interested party identifies pro-  
4                   prietary information submitted for the  
5                   record at one agency that is inconsistent  
6                   with information of record at the other  
7                   agency;

8                   “(ii) an interested party identifies  
9                   proprietary information submitted at one  
10                  agency that is directly relevant to an issue  
11                  presented in proceedings before the other  
12                  agency; or

13                  “(iii) the administering authority or  
14                  the Commission believes that the incorpo-  
15                  ration of proprietary information sub-  
16                  mitted at the other agency would be help-  
17                  ful in reaching its determination in the  
18                  proceeding.

19                  “(B) Proprietary information submitted to  
20                  the administering authority, the Commission, or  
21                  the Bureau of Customs and Border Protection  
22                  may be exchanged between and among such  
23                  agencies at the request of the agency or the re-  
24                  quest of an interested party if such exchange

1 would facilitate the administration and enforce-  
2 ment of the law.

3 “(5) USE DURING PROCEEDINGS.—Proprietary  
4 as well as nonproprietary information of record sub-  
5 mitted to or generated by the administering author-  
6 ity or the Commission during any segment of a pro-  
7 ceeding (including information from the Bureau of  
8 Customs and Border Protection) may be incor-  
9 porated into the record of any other segment of the  
10 same proceeding and released by the administering  
11 authority under a protective order to qualified appli-  
12 cants if—

13 “(A) an interested party identifies propri-  
14 etary information submitted during one seg-  
15 ment of the proceeding that is inconsistent with  
16 information submitted in another segment of  
17 the proceeding;

18 “(B) an interested party identifies propri-  
19 etary information submitted during one seg-  
20 ment of the proceeding that is directly relevant  
21 to an issue presented in another segment of the  
22 proceeding; or

23 “(C) the administering authority or the  
24 Commission believes that the incorporation of a  
25 selected portion of the record from one segment

1 of the proceeding would be helpful in reaching  
2 its determination in another segment of the  
3 proceeding.”.

4 (b) LIMITED DISCLOSURE UNDER PROTECTIVE  
5 ORDER.—Section 777(c)(1)(A) of the Tariff Act of 1930  
6 (19 U.S.C. 1677f(c)(1)(A)) is amended by adding at the  
7 end the following: “The proprietary information released  
8 pursuant to this subparagraph under a protective order  
9 shall include the records of the Bureau of Customs and  
10 Border Protection and the administering authority that  
11 are used by those agencies to liquidate entries and assess  
12 and collect antidumping and countervailing duties, includ-  
13 ing the underlying entry documents.”.

14 (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply with respect to any proceeding  
16 under title VII of the Tariff Act of 1930 that is pending  
17 on, or is commenced on or after, the date of the enactment  
18 of this Act.

19 **SEC. 543. LIQUIDATION OF CERTAIN ENTRIES.**

20 Section 504(d) of the Tariff Act of 1930 (19 U.S.C.  
21 1504(d)) is amended by adding at the end the following:  
22 “In the case of any entry that is subject to a antidumping  
23 or countervailing duty order, the preceding sentence shall  
24 not apply, and such entry shall be liquidated at the rate

1 finally determined by the administering authority or re-  
2 viewing court.”.

3 **SEC. 544. ASSISTANT ATTORNEY GENERAL FOR TRADE LAW**  
4 **ENFORCEMENT.**

5 (a) APPOINTMENT.—Subtitle D of title VII of the  
6 Tariff Act of 1930 (19 U.S.C. 1677 et seq.) is amended  
7 by adding at the end the following new section:

8 **“SEC. 784. ASSISTANT ATTORNEY GENERAL FOR TRADE**  
9 **LAW ENFORCEMENT.**

10 “The President shall appoint, by and with the advice  
11 and consent of the Senate, an Assistant Attorney General  
12 for Trade Law Enforcement. The Assistant Attorney Gen-  
13 eral for Trade Law Enforcement shall be responsible for  
14 investigating and prosecuting fraud in any proceeding  
15 under this title.”.

16 (b) CONFORMING AMENDMENT.—The table of con-  
17 tents for title VII of the Tariff Act of 1930 is amended  
18 by inserting after the item relating to section 783 the fol-  
19 lowing new item:

“Sec. 784. Assistant Attorney General for Trade law Enforcement.”.

20 (c) COMPENSATION.—Section 5315 of title 5, United  
21 States Code, is amended by inserting after “Assistant At-  
22 torneys General (10)” the following:

23 “Assistant Attorney General for Trade Law  
24 Enforcement.”.

## 1           **Subtitle E—Effective Date**

### 2   **SEC. 551. EFFECTIVE DATE.**

3           Except as provided in sections 521(b), 538(b), and  
 4   542(c), the amendments made by this title shall apply with  
 5   respect to determinations made under title VII of the Tar-  
 6   iff Act of 1930 that—

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

10          (2) have not become final as of such date of en-  
 11         actment.

## 12           **TITLE VI—SAFEGUARD** 13           **AMENDMENTS**

### 14   **Subtitle A—Safeguards in General**

#### 15   **SEC. 601. AMENDMENTS TO CHAPTER 1 OF TITLE II OF THE** 16           **TRADE ACT OF 1974.**

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

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

24           (1) in subsection (b)(1)(A), by striking “be a  
 25           substantial cause of serious injury, or the threat

1       thereof,” and inserting “cause or threaten to cause  
2       serious injury”;

3               (2) by amending subsection (b)(1)(B) to read  
4       as follows:

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

10              (3) in subsection (c)—

11                      (A) by amending paragraph (1)(A) to read  
12       as follows:

13                      “(A) with respect to serious injury—

14                              “(i) change in the level of sales, pro-  
15                              duction, productivity, capacity utilization,  
16                              profits and losses, and employment;

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

19                              “(iii) the inability of a significant  
20                              number of firms to carry out domestic pro-  
21                              duction operations at a reasonable level of  
22                              profit; and

23                              “(iv) significant unemployment or  
24                              underemployment within the domestic in-  
25                              dustry.”;

1 (B) in paragraph (1)(B)—

2 (i) in clause (iii) by striking “; and”

3 and inserting “, and”; and

4 (ii) by inserting after clause (iii) the  
5 following:

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

11 (C) by amending paragraph (1)(C) to read  
12 as follows:

13 “(C) with respect to cause—

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

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

22 (D) by redesignating paragraphs (3)  
23 through (6) as paragraphs (5) through (8), re-  
24 spectively;



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

3 “(2) In making determinations under subpara-  
4 graphs (A) and (B) of paragraph (1), if domestic  
5 producers internally transfer, including to affiliated  
6 persons as defined in section 771(33) of the Tariff  
7 Act of 1930, significant production of the article like  
8 or directly competitive with the imported article for  
9 the production of a downstream article and sell sig-  
10 nificant production of the article like or directly  
11 competitive with the imported article in the mer-  
12 chant market, then the Commission, in determining  
13 market share and the factors affecting financial per-  
14 formance set forth in subparagraphs (A) and (B) of  
15 paragraph (1), shall focus primarily on the merchant  
16 market for the article like or directly competitive  
17 with the imported article.

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

20 “(A) consider the condition of the domestic  
21 industry over the course of the relevant busi-  
22 ness cycle, but may not aggregate the causes of  
23 declining demand associated with a recession or  
24 economic downturn in the United States econ-

1           omy into a single cause or threat of serious in-  
2           jury; and

3                 “(B) examine factors other than imports  
4           which may cause or threaten to cause serious  
5           injury to the domestic industry.

6           The Commission shall include the results of its ex-  
7           amination under subparagraph (B) in the report  
8           submitted by the Commission to the President under  
9           subsection (e).

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

21                 (F)     in     paragraph     (5),     as     so  
22           predesignated—

23                         (i) by striking “and (B)” and insert-  
24           ing “, (B), and (C)”; and

1 (ii) by striking “be a substantial cause  
2 of serious injury, or the threat thereof,”  
3 and inserting “cause or threaten to cause  
4 serious injury”;

5 (4) in subsection (d)—

6 (A) in paragraph (1)(A)(ii), by striking  
7 “be, or likely to be a substantial cause of seri-  
8 ous injury, or the threat thereof,” and inserting  
9 “cause, or be likely to cause, or threaten to  
10 cause, or be likely to threaten to cause, serious  
11 injury”;

12 (B) in paragraph (1)(C), in the matter fol-  
13 lowing clause (ii), by striking “a substantial  
14 cause of serious injury, or the threat thereof,”  
15 and inserting “causing or threatening to cause  
16 serious injury”;

17 (C) by amending paragraph (2)(A) to read  
18 as follows:

19 “(2)(A) When a petition filed under subsection  
20 (a) or a request filed under subsection (b) alleges  
21 that critical circumstances exist and requests that  
22 provisional relief be provided under this subsection  
23 with respect to imports of the article identified in  
24 the petition or request, the Commission shall, not  
25 later than 45 days after the petition or request is

1 filed, determine, on the basis of available informa-  
2 tion, whether—

3 “(i) there is clear evidence that increased  
4 imports (either actual or relative to domestic  
5 production) of the article are causing or threat-  
6 ening to cause serious injury to the domestic in-  
7 dustry producing an article like or directly com-  
8 petitive with the imported article; and

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

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

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

22 (c) PRESIDENTIAL DETERMINATIONS.—

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

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

6 (B) in paragraph (2)(F)(ii), by striking  
 7 “compensation;” and inserting the following:  
 8 “compensation, except that the President shall  
 9 give substantially greater weight to the factors  
 10 set out in clause (i) than to those set out in  
 11 clause (ii) and this clause;”; and

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

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

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

20 (B) Section 152(c)(1) of the Trade Act of 1974  
 21 (19 U.S.C. 2192(c)(1)) is amended by striking “not  
 22 counting any day which is excluded under section  
 23 154(b),” and inserting “counting all calendar days  
 24 in the case of a resolution described in subsection  
 25 (a)(1)(A), and not counting any day which is ex-

1       cluded under section 154(b) in the case of a resolu-  
2       tion described in subsection (a)(1)(B),”.

3       (d) CONFORMING AMENDMENTS.—

4           (1) Section 203(e)(6)(B) of the Trade Act of  
5       1974 (19 U.S.C. 2253(e)(6)(B)) is amended by  
6       striking “substantially”.

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

12          (3) Section 154(b) of the Trade Act of 1974  
13      (19 U.S.C. 2194(b)) is amended by striking the  
14      matter that precedes paragraph (1) and inserting  
15      the following:

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

## 19   **Subtitle B—Fair Trade With China**

### 20   **SEC. 611. CLARIFICATION OF STANDARD FOR PRESI-** 21                   **DENTIAL ACTION ON ITC FINDING OF MAR-** 22                   **KET DISRUPTION.**

23          (a) AMENDMENTS TO STANDARD FOR TRADE REP-  
24      RESENTATIVE’S RECOMMENDATION TO THE PRESI-

1 DENT.—Section 421(h)(2) of the Trade Act of 1974 (19  
2 U.S.C. 2451(h)(2)) is amended—

3 (1) by striking “(2) Within” and inserting  
4 “(2)(A) Within”; and

5 (2) by adding at the end the following:

6 “(B) In making a recommendation to the President  
7 under subparagraph (A), the Trade Representative shall  
8 consider the facts found, or conclusions drawn, by the  
9 Commission as they are reported to the Trade Representa-  
10 tive, and the Trade Representative may not conduct an  
11 additional review or reconsideration of the facts found or  
12 conclusions reached by the Commission.

13 “(C) If the Commission in its report makes an af-  
14 firmative finding of market disruption, the Trade Rep-  
15 resentative shall apply a presumption in favor of relief to  
16 prevent or remedy the market disruption.

17 “(D) The following factors may not be used as the  
18 basis of a recommendation by the Trade Representative  
19 to recommend denying relief under this section:

20 “(i) The presence or absence (whether actual or  
21 potential) of third-country imports of the product  
22 under investigation.

23 “(ii) Any results of the econometric model  
24 known as the Commercial Policy Analysis System  
25 (COMPAS) or equivalent model.”.

1 (b) AMENDMENTS TO STANDARD FOR PRESIDENTIAL  
2 ACTION.—Section 421(k) of the Trade Act of 1974 (19  
3 U.S.C. 2451(k)) is amended by adding at the end the fol-  
4 lowing:

5 “(3) The President’s determination shall be based on  
6 the facts found, or conclusions drawn, by the Commission  
7 as they are reported to the Trade Representative under  
8 subsection (g).

9 “(4) If the Commission in its report makes an affirm-  
10 ative finding of market disruption, the President shall  
11 apply a presumption in favor of relief to prevent or remedy  
12 the market disruption.

13 “(5) Any determination by the President under para-  
14 graph (1) that providing import relief is not in the na-  
15 tional economic interest of the United States may not be  
16 based on the following factors:

17 “(A) The presence or absence (whether actual  
18 or potential) of third-country imports of the product  
19 under investigation.

20 “(B) Any results of the econometric model  
21 known as the Commercial Policy Analysis System  
22 (COMPAS) or equivalent model.”.



## 1   **Subtitle C—Report on Doha Round**

### 2   **SEC. 621. REPORT.**

3           (a) IN GENERAL.—Not later than 6 months after the  
4   date of the enactment of this Act, the United States Trade  
5   Representative shall submit to the Congress a report ex-  
6   plaining in detail how agreements resulting from negotia-  
7   tions on the Doha Development Agenda of the World  
8   Trade Organization will implement the provisions of the  
9   Agreement on Antidumping, the Agreement of Subsidies  
10   and Countervailing Measures, and the Agreement on Safe-  
11   guards, as such agreements were approved by the Con-  
12   gress under section 101 of the Uruguay Round Agree-  
13   ments Act (19 U.S.C. 3511), as those provisions relate  
14   to the following issues:

15           (1) The standard of review in the application of  
16   the Agreement on Antidumping, the Agreement on  
17   Subsidies and Countervailing Measures (SCM), and  
18   the Agreement on Safeguards.

19           (2) Analysis of injury causation nonattribution  
20   under the WTO in the agreements referred to in  
21   paragraph (1).

22           (3) The use of threat of injury analysis under  
23   the agreements referred to in paragraph (1).

24           (4) The use of advisory opinions under the  
25   agreements referred to in paragraph (1).

1           (5) Consideration of sunset review waivers  
2           under the Agreement on Antidumping and the  
3           Agreement on SCM.

4           (6) The application of a facts available stand-  
5           ard under the Agreement on Antidumping and the  
6           Agreement on SCM.

7           (7) Analysis of subsidies in the context of a pri-  
8           vatization under the Agreement on SCM.

9           (8) The treatment of export restraints under  
10          the Agreement on SCM.

11          (9) The use of benchmark prices under the  
12          Agreement on SCM.

13          (10) The application of pass-through analysis  
14          under the Agreement on SCM.

15          (11) The treatment of equity infusions under  
16          the Agreement on SCM.

17          (12) The treatment of nonperforming loans  
18          under the Agreement on SCM

19          (13) The absence of a requirement to inves-  
20          tigate unforeseen developments in analyses under  
21          the Agreement on Safeguards.

22          (14) The absence of a requirement to show sud-  
23          den and sharp increases in imports in analyses  
24          under the Agreement on Safeguards.

1           (15) The use of multiple averaging periods  
2 under the Agreement on Antidumping.

3           (16) The calculation of the all others rate under  
4 the Agreement on Antidumping.

5           (17) Analysis of zeroing under the Agreement  
6 on Antidumping.

7           (18) Analysis of selling, general and adminis-  
8 trative expenses, and profit under article 2.2.2(ii) of  
9 the Agreement on Antidumping.

10       (b) DEFINITIONS.—In this section:

11           (1) AGREEMENT ON ANTIDUMPING.—The term  
12 “Agreement on Antidumping” means the Agreement  
13 on Implementation of Article VI of the General  
14 Agreement on Tariffs and Trade 1994 referred to in  
15 section 101(d)(7) of the Uruguay Round Agree-  
16 ments Act (19 U.S.C. 3511(d)(7)).

17           (2) AGREEMENT ON SUBSIDIES AND COUNTER-  
18 VAILING MEASURES; AGREEMENT ON SCM.—The  
19 terms “Agreement on Subsidies and Countervailing  
20 Measures” and “Agreement on SCM” means the  
21 Agreement on Subsidies and Countervailing Meas-  
22 ures referred to in section 101(d)(12) of the Uru-  
23 guay Round Agreements Act (19 U.S.C.  
24 3511(d)(12)).

1           (3) AGREEMENT ON SAFEGUARDS.—The term  
2           “Agreement on Safeguards” means the Agreement  
3           on Safeguards referred to in section 101(d)(13) of  
4           the Uruguay Round Agreements Act (19 U.S.C.  
5           3511(d)(13)).

6           **TITLE VII—MISCELLANEOUS**  
7           **PROVISIONS**

8           **SEC. 701. CONSTRUCTION.**

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

14          **SEC. 702. APPLICATION TO GOODS FROM CANADA AND**  
15          **MEXICO.**

16          Pursuant to section 1902 of the North American  
17          Free Trade Agreement and section 408 of the North  
18          American Free Trade Agreement Implementation Act, the  
19          amendments made by this Act shall apply to goods from  
20          Canada and Mexico.

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