

109TH CONGRESS  
2D SESSION

# S. 2317

To amend the Trade Act of 1974 to require the United States Trade Representative to identify trade enforcement priorities and to take action with respect to priority foreign country trade practices, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2006

Mr. BAUCUS (for himself, Mr. HATCH, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Trade Act of 1974 to require the United States Trade Representative to identify trade enforcement priorities and to take action with respect to priority foreign country trade practices, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trade Competitiveness  
5 Act of 2006”.

1 **SEC. 2. IDENTIFICATION OF TRADE ENFORCEMENT PRIOR-**  
2 **ITIES.**

3 (a) IN GENERAL.—Title III of the Trade Act of 1974  
4 (19 U.S.C. 2411 et seq.) is amended by adding at the end  
5 the following:

6 **“SEC. 311. IDENTIFICATION OF TRADE ENFORCEMENT PRI-**  
7 **ORITIES.**

8 “(a) IDENTIFICATION AND ANNUAL REPORT.—

9 “(1) IN GENERAL.—Within 75 days after the  
10 submission of the report required by section 181(b),  
11 the United States Trade Representative shall annu-  
12 ally—

13 “(A) identify United States trade enforce-  
14 ment priorities;

15 “(B) identify enforcement actions that the  
16 Trade Representative has taken during the pre-  
17 vious year and review the impact these enforce-  
18 ment actions have had in addressing foreign  
19 trade barriers;

20 “(C) identify priority foreign country trade  
21 practices on which the Trade Representative  
22 will focus its enforcement efforts; and

23 “(D) submit to the Committee on Finance  
24 of the Senate and the Committee on Ways and  
25 Means of the House of Representatives and  
26 publish in the Federal Register a report on the

1 priorities, actions, and practices identified in  
2 subparagraphs (A), (B), and (C).

3 “(2) FACTORS TO CONSIDER.—In identifying  
4 priority foreign country trade practices under para-  
5 graph (1), the Trade Representative shall focus on  
6 those practices, the elimination of which is likely to  
7 have the most significant potential to increase  
8 United States economic growth, either directly or  
9 through the establishment of a beneficial precedent.  
10 The Trade Representative shall take into account all  
11 relevant factors, including—

12 “(A) the major barriers and trade dis-  
13 torting practices described in the most recent  
14 available National Trade Estimate Report re-  
15 quired under section 181(b);

16 “(B) the findings and practices described  
17 in the most recent available report required  
18 under—

19 “(i) section 182;

20 “(ii) section 1377 of the Omnibus  
21 Trade and Competitiveness Act of 1988;

22 “(iii) section 3005 of the Omnibus  
23 Trade and Competitiveness Act of 1988;

24 “(iv) section 421 of the Act entitled  
25 ‘An Act to authorize extension of non-

1 discriminatory treatment (normal trade re-  
2 lations treatment) to the People's Republic  
3 of China, and to establish a framework for  
4 relations between the United States and  
5 the People's Republic of China' (22 U.S.C.  
6 6951); and

7 “(v) any other report prepared by the  
8 Trade Representative or any other agency  
9 relating to international trade and invest-  
10 ment;

11 “(C) the trade agreements to which a for-  
12 eign country is a party and its compliance with  
13 those agreements;

14 “(D) the medium- and long-term implica-  
15 tions of foreign government procurement plans;  
16 and

17 “(E) the international competitive position  
18 and export potential of United States products  
19 and services.

20 “(3) OTHER ITEMS IN REPORT.—The Trade  
21 Representative may include in the report a descrip-  
22 tion of foreign country trade practices that may in  
23 the future warrant identification as a priority for-  
24 eign country trade practice.

1           “(4) PRIORITIES NOT IDENTIFIED.—If the  
2       Trade Representative does not identify a priority  
3       foreign country trade practice in the report required  
4       under paragraph (1), the Trade Representative shall  
5       set out in detail in that report the reasons for failing  
6       to do so.

7       “(b) CONSULTATION.—

8           “(1) IN GENERAL.—Not later than 45 days  
9       after the submission of the report required by sec-  
10      tion 181(b), the Trade Representative shall consult  
11      with the Committee on Finance of the Senate and  
12      the Committee on Ways and Means of the House of  
13      Representatives with respect to the priorities, ac-  
14      tions, and practices to be identified in the report  
15      under subsection (a).

16          “(2) VOTE OF COMMITTEE.—If, as a result of  
17      the consultations described in paragraph (1), either  
18      the Committee on Finance of the Senate or the  
19      Committee on Ways and Means of the House of  
20      Representatives requests identification of a priority  
21      foreign country trade practice by majority vote of ei-  
22      ther Committee, the Trade Representative shall in-  
23      clude such identification in its annual report.

24          “(3) DETERMINATION NOT TO INCLUDE PRI-  
25      ORITY FOREIGN COUNTRY TRADE PRACTICES.—The

1 Trade Representative may determine not to include  
2 the priority foreign country trade practice requested  
3 under paragraph (2) in its annual report only if the  
4 Trade Representative finds that—

5 “(A) such practice is already being ad-  
6 dressed under provisions of United States trade  
7 law, under the Uruguay Round Agreements (as  
8 defined in section 2(7) of the Uruguay Round  
9 Agreements Act (19 U.S.C. 3501(7))), under  
10 any bilateral or regional trade agreement, or as  
11 part of trade negotiations with that foreign  
12 country or other countries, and progress is  
13 being made toward the elimination of such  
14 practice; or

15 “(B) identification of such practice as a  
16 priority foreign country trade practice would be  
17 contrary to the interests of United States trade  
18 policy.

19 “(4) REASONS FOR DETERMINATION.—In the  
20 case of a determination made pursuant to paragraph  
21 (3), the Trade Representative shall set forth in de-  
22 tail the reasons for that determination in the report  
23 required under subsection (a)(1).

24 “(c) INVESTIGATION AND RESOLUTION.—

1           “(1) IN GENERAL.—Upon submission of the re-  
2       port required by subsection (a), the Trade Rep-  
3       resentative shall, with respect to any priority foreign  
4       country trade practice identified, seek satisfactory  
5       resolution with the country concerned under the aus-  
6       pices of the World Trade Organization, pursuant to  
7       a bilateral or regional trade agreement to which the  
8       United States is a party, or by any other means. A  
9       satisfactory resolution may include elimination of the  
10      practice or, if not feasible, providing for compen-  
11      satory trade benefits.

12           “(2) CONSULTATIONS; INVESTIGATIONS.—Not  
13      later than 120 days after the transmission of the re-  
14      port required under subsection (a), the Trade Rep-  
15      resentative shall, with respect to any priority foreign  
16      country trade practice identified—

17           “(A) initiate dispute settlement consulta-  
18      tions in the World Trade Organization;

19           “(B) initiate dispute settlement consulta-  
20      tions under the applicable provisions of any bi-  
21      lateral or regional trade agreement to which the  
22      United States is a party;

23           “(C) initiate an investigation under section  
24      302(b)(1) of this Act;

1           “(D) seek to negotiate an agreement that  
2           provides for the elimination of the priority for-  
3           eign country trade practice or, if elimination of  
4           the practice is not feasible, an agreement that  
5           provides for compensatory trade benefits; or

6           “(E) take any additional action necessary  
7           to eliminate the priority foreign country trade  
8           practice.

9           “(3) REPORT.—On the day the Trade Rep-  
10          representative takes action under subparagraph (E) of  
11          paragraph (2), the Trade Representative shall trans-  
12          mit to Congress a report describing the action and  
13          the reasons for taking the actions. If the Trade Rep-  
14          resentative takes action under subparagraph (E) of  
15          paragraph (2), the Trade Representative shall state  
16          in detail the reasons the Trade Representative did  
17          not take action under subparagraphs (A) through  
18          (D) of such paragraph.

19          “(d) ADDITIONAL REPORTING.—The Trade Rep-  
20          resentative shall report to the Committee on Finance of  
21          the Senate and the Committee on Ways and Means of the  
22          House of Representatives every 6 months on the progress  
23          being made to realize the trade enforcement priorities  
24          identified in subsection (a)(1)(A) and the steps being

1 taken to address the priority foreign country trade prac-  
 2 tices identified in subsection (a)(1)(C).”.

3 (b) CONFORMING AMENDMENT.—The table of con-  
 4 tents for the Trade Act of 1974 is amended by inserting  
 5 after the item relating to section 310, the following new  
 6 item:

“Sec. 311. Identification of trade enforcement priorities.”.

7 **SEC. 3. ESTABLISHMENT OF POSITION OF CHIEF TRADE**  
 8 **ENFORCEMENT OFFICER.**

9 (a) ESTABLISHMENT OF POSITION.—Section  
 10 141(b)(2) of the Trade Act of 1974 (19 U.S.C.  
 11 2171(b)(2)) is amended to read as follows:

12 “(2) There shall be in the Office 3 Deputy  
 13 United States Trade Representatives, 1 Chief Agri-  
 14 cultural Negotiator, and 1 Chief Trade Enforcement  
 15 Officer. The 3 Deputy United States Trade Rep-  
 16 resentatives, the Chief Agricultural Negotiator, and  
 17 the Chief Trade Enforcement Officer shall be ap-  
 18 pointed by the President, by and with the advice and  
 19 consent of the Senate. As an exercise of the rule-  
 20 making of the Senate, any nomination of a Deputy  
 21 United States Trade Representative, the Chief Agri-  
 22 cultural Negotiator, or the Chief Trade Enforcement  
 23 Officer submitted to the Senate for its advice and  
 24 consent, and referred to a committee, shall be re-  
 25 ferred to the Committee on Finance. Each Deputy

1 United States Trade Representative, the Chief Agri-  
2 cultural Negotiator, and the Chief Trade Enforce-  
3 ment Officer shall hold office at the pleasure of the  
4 President and shall have the rank of Ambassador.”.

5 (b) FUNCTIONS OF POSITION.—Section 141(c) of the  
6 Trade Act of 1974 (19 U.S.C. 2171(c)) is amended by  
7 adding at the end the following new paragraph:

8 “(6) The principal function of the Chief Trade  
9 Enforcement Officer shall be to ensure that United  
10 States trading partners comply with trade agree-  
11 ments to which the United States is a party. The  
12 Chief Trade Enforcement Officer shall assist the  
13 United States Trade Representative in investigating  
14 and prosecuting disputes before the World Trade  
15 Organization, and pursuant to other trade agree-  
16 ments to which the United States is a party, and  
17 shall assist the United States Trade Representative  
18 in carrying out the Trade Representative’s functions  
19 under subsection (d). The Chief Trade Enforcement  
20 Officer shall make recommendations with respect to  
21 the administration of United States trade laws relat-  
22 ing to foreign government barriers to United States  
23 goods, services, intellectual property, government  
24 procurement, and other trade matters. The Chief  
25 Trade Enforcement Officer shall perform such other

1 functions as the United States Trade Representative  
2 may direct.”.

3 (c) COMPENSATION.—Section 5314 of title 5, United  
4 States Code, is amended by inserting “Chief Trade En-  
5 forcement Officer” as a new item after “Negotiator”.

6 **SEC. 4. TRADE ENFORCEMENT WORKING GROUP.**

7 (a) ESTABLISHMENT.—Not later than 90 days after  
8 the date of the enactment of this Act, the United States  
9 Trade Representative shall establish an interagency Trade  
10 Enforcement Working Group (in this section referred to  
11 as the “Working Group”) which shall be chaired by the  
12 Chief Trade Enforcement Officer of the Office of the  
13 United States Trade Representative.

14 (b) MEMBERSHIP.—The Working Group shall include  
15 representatives from the Departments of Commerce, State  
16 Treasury, Agriculture, and such other departments and  
17 agencies as the United States Trade Representative con-  
18 siderers appropriate.

19 (c) RESPONSIBILITY.—It shall be the responsibility  
20 of the Working Group to assist the Chief Trade Enforce-  
21 ment Officer in carrying out the principle functions de-  
22 scribed in section 141(c)(6) of the Trade Act of 1974.

1 **SEC. 5. SENSE OF CONGRESS REGARDING EXCHANGE**  
2 **RATES AND IMF REFORM.**

3 (a) FINDINGS.—The Congress makes the following  
4 findings:

5 (1) The global economy today is characterized  
6 by massive imbalances that risk substantial disruption  
7 to global economic growth.

8 (2) The United States current account deficit is  
9 at the heart of these global economic imbalances,  
10 predicted to reach \$800,000,000,000 in 2005.

11 (3) A current account deficit of this size is  
12 unsustainable and threatens the global economy with  
13 disruption and recession.

14 (4) Policies to manipulate exchange rates help  
15 drive global economic imbalances and the United  
16 States current account deficit.

17 (5) Asian central banks appear to manipulate  
18 their currency through protracted, large-scale intervention  
19 in currency markets, largely concentrated in  
20 United States dollar assets.

21 (6) The policies of Asian central banks keep  
22 Asian currencies from appreciating meaningfully  
23 against the dollar.

24 (7) Protracted, large-scale intervention in international  
25 currency markets runs counter to Article  
26 IV, section 1, paragraph (iii) of the International

1 Monetary Fund Articles of Agreement and the Gen-  
 2 eral Principles governing the Article as adopted by  
 3 the International Monetary Fund Executive Board.

4 (8) A principal function of the International  
 5 Monetary Fund is to monitor exchange rate regimes  
 6 and to act to prevent sustained currency market ma-  
 7 nipulation like that seen today in Asia.

8 (9) The United States is the largest shareholder  
 9 in the International Monetary Fund and is therefore  
 10 best positioned to urge the International Monetary  
 11 Fund to enforce its provisions on exchange rate poli-  
 12 cies.

13 (10) The Department of the Treasury has to  
 14 date not been successful in urging the International  
 15 Monetary Fund to enforce Article IV, section 1,  
 16 paragraph (iii) of the International Monetary Fund  
 17 Articles of Agreement.

18 (b) SENSE OF THE CONGRESS.—

19 (1) EXCHANGE RATE INTERVENTION.—It is the  
 20 sense of the Congress that—

21 (A) the President should instruct the  
 22 United States Executive Director to the Inter-  
 23 national Monetary Fund to request the Man-  
 24 aging Director of the Fund to use more aggres-  
 25 sively the Fund's power to request consultations

1 with any member country regarding that coun-  
 2 try's exchange rate policies. The purpose of the  
 3 consultations is to determine, and recommend  
 4 remedial action (if necessary), in a transparent  
 5 manner—

6 (i) the extent of a country's direct or  
 7 indirect intervention in currency markets  
 8 for purposes contrary to the Articles of  
 9 Agreement of the International Monetary  
 10 Fund;

11 (ii) the effects of the intervention on  
 12 the value of the currencies on member  
 13 countries; and

14 (iii) the effects of the interventions on  
 15 international economic imbalances; and

16 (B) the President should instruct the  
 17 United States Executive Director to the Inter-  
 18 national Monetary Fund to propose that the  
 19 International Monetary Fund issue a semi-an-  
 20 nual report on exchange rate policies that ad-  
 21 dresses all cases of large-scale intervention in  
 22 international currency markets, determines the  
 23 effect of these interventions on exchange rates,  
 24 and proposes remedial action to curtail such  
 25 practices.

1           (2) REFORM OF THE INTERNATIONAL MONE-  
2       TARY FUND.—It is the sense of the Congress that  
3       the President should support efforts to reform the  
4       International Monetary Fund to facilitate greater  
5       vigilance over global exchange rates, and to ensure  
6       the governance structure of the International Mone-  
7       tary Fund represents the global economy, by in-  
8       structing the United States Executive Director to  
9       the International Monetary Fund to—

10                (A) lead a sustained and cooperative effort  
11                to reform the International Monetary Fund Ex-  
12                ecutive Board to better represent large emerg-  
13                ing economies, including those in Asia;

14                (B) lead a sustained and cooperative effort  
15                to reform the weighted votes of Member States  
16                to better represent the significance of large  
17                emerging economies, including those in Asia;  
18                and

19                (C) lead a comprehensive effort to review  
20                and improve the transparency of the Inter-  
21                national Monetary Fund, including publication  
22                of member country data and information re-  
23                lated to exchange rate policies.

1 **SEC. 6. INFORMATION AND ADVICE FROM PRIVATE AND**  
2 **PUBLIC SECTORS.**

3 Section 135 of the Trade Act of 1974 (19 U.S.C.  
4 2155) is amended—

5 (1) in subsection (a)(1)—

6 (A) by striking “and” at the end of sub-  
7 paragraph (B);

8 (B) by striking the period at the end of  
9 subparagraph (C) and inserting “; and”; and

10 (C) by adding at the end the following:

11 “(D) preventing the loss of Federal and  
12 State sovereignty in the negotiation, implemen-  
13 tation, and enforcement of a trade agreement.”;

14 (2) in subsection (a)(2), by adding at the end  
15 the following:

16 “(E) The prevention of the loss of Federal  
17 and State sovereignty during the negotiation,  
18 implementation, and enforcement of trade  
19 agreements.”;

20 (3) in subsection (e)(1), in the first sentence, by  
21 inserting before the end period the following: “, in-  
22 cluding an assessment of the effect of the trade  
23 agreement on Federal and State sovereignty and the  
24 extent to which State and local governments were  
25 consulted in the negotiation of the free trade agree-  
26 ment”; and

1 (4) in subsection (e)(2), after “United States”,  
2 by inserting the following: “, maintains Federal and  
3 State sovereignty,”.

4 **SEC. 7. SENSE OF CONGRESS REGARDING SOVEREIGNTY.**

5 (a) FINDINGS.—The Congress makes the following  
6 findings:

7 (1) America’s economic growth and prosperity  
8 is best served by embracing strategies to open fair  
9 global markets, investing in innovative research and  
10 technologies that create the industries and jobs, and  
11 engaging in, rather than being isolated from, the  
12 challenges of international competition in an increas-  
13 ingly interconnected world.

14 (2) The overall negotiating objectives of our  
15 Nation in negotiating trade agreements and treaties  
16 includes economic growth, employment creation, sus-  
17 tainable development, and improvements to living  
18 standards and market opportunities.

19 (3) Another primary responsibility of the  
20 United States Government is to ensure that Federal  
21 and State laws are not usurped by foreign govern-  
22 ments or organizations.

23 (4) A World Trade Organization (WTO) panel  
24 recently concluded that United States prohibitions  
25 on Internet gambling violate the United States com-

1        mitments under the WTO. Specifically, the panel  
2        found that Federal and State gambling laws of the  
3        United States that prohibit companies located in An-  
4        tigua and Barbuda from providing Internet gam-  
5        bling services to United States consumers conflict  
6        with international trade obligations under the Gen-  
7        eral agreement on Trade in Services (GATS).

8        (b) SENSE OF CONGRESS.—It is the sense of the  
9 Congress that—

10            (1) in addition to the overall trade negotiating  
11            objectives of the United States relating to economic  
12            growth, employment creation, sustainable develop-  
13            ment, and improvement to living standards and mar-  
14            ket opportunities, the United States policy should be  
15            to prevent the loss of Federal and State sovereignty  
16            in the negotiation, implementation, and enforcement  
17            of any trade agreement; and

18            (2) laws that State and local governments have  
19            validly adopted, that are constitutional, and that re-  
20            flect locally appropriate responses to the needs of  
21            State and local governments and residents, should  
22            not be overridden by provisions in trade agreements.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2       There is authorized to be appropriate \$5,000,000 to  
3 the United States Trade Representative to carry out the  
4 provisions of this Act.

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