

110TH CONGRESS
1ST SESSION

S. 364

To strengthen United States trade laws and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2007

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To strengthen United States trade laws 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 “Strengthening America’s Trade Laws Act”.

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—DISPUTE SETTLEMENT

Subtitle A—Findings, Purpose, and Definitions

Sec. 101. Congressional findings and purpose.

Sec. 102. Definitions.

Subtitle B—Participation in WTO Panel Proceedings

Sec. 111. Participation in WTO panel proceedings.

Subtitle C—Congressional Advisory Commission on WTO Dispute Settlement

Sec. 121. Establishment of Commission.

Sec. 122. Duties of the Commission.

Sec. 123. Powers of the Commission.

Subtitle D—Congressional Approval of Regulatory Action Relating to Adverse
WTO Decisions

Sec. 131. Congressional approval of regulatory actions relating to adverse WTO decisions.

Subtitle E—Clarification of Rights and Obligations Through Negotiations

Sec. 141. Clarification of rights and obligations in the WTO through negotiations.

TITLE II—STRENGTHENING ANTIDUMPING AND
COUNTERVAILING DUTY LAWS

Sec. 201. Prevention of circumvention.

Sec. 202. Export price and constructed export price.

Sec. 203. Nonmarket economy methodology.

Sec. 204. Determinations on the basis of facts available.

Sec. 205. Clarification of determination of material injury.

Sec. 206. Revocation of nonmarket economy country status.

TITLE III—EXPANSION OF APPLICABILITY OF COUNTERVAILING
DUTIES

Sec. 301. Application of countervailing duties to nonmarket economies and strengthening application of the law.

Sec. 302. Treatment of exchange-rate manipulation as countervailable subsidy under title VII of the Tariff Act of 1930.

Sec. 303. Affirmation of negotiating objective on border taxes.

Sec. 304. Presidential certification; application of countervailing duty law.

TITLE IV—LIMITATION ON PRESIDENTIAL DISCRETION IN
ADDRESSING MARKET DISRUPTION

Sec. 401. Action to address market disruption.

TITLE V—MISCELLANEOUS

Sec. 501. Application to Canada and Mexico.

1 **TITLE I—DISPUTE SETTLEMENT**
2 **Subtitle A—Findings, Purpose, and**
3 **Definitions**

4 **SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.**

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

6 (1) The United States joined the World Trade
7 Organization as an original member with the goal of
8 creating an improved global trading system and pro-
9 viding expanded economic opportunities for United
10 States workers, farmers, and businesses.

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

14 (3) Successful operation of the WTO dispute
15 settlement system was critical to congressional ap-
16 proval of the Uruguay Round Agreements and is
17 critical to continued support by the United States
18 for the WTO. In particular, it is imperative that dis-
19 pute settlement panels and the Appellate Body—

20 (A) operate with fairness and in an impar-
21 tial manner;

22 (B) strictly observe the terms of reference
23 and any applicable standard of review set forth
24 in the Uruguay Round Agreements; and

1 (C) not add to the obligations, or diminish
2 the rights, of WTO members under the Uru-
3 guay Round Agreements in violation of Articles
4 3.2 and 19.2 of the Dispute Settlement Under-
5 standing.

6 (4) An increasing number of reports by dispute
7 settlement panels and the Appellate Body have
8 raised serious concerns within the Congress about
9 the ability of the WTO dispute settlement system to
10 operate in accordance with paragraph (3).

11 (5) In particular, several reports of dispute set-
12 tlement panels and the Appellate Body have added
13 to the obligations and diminished the rights of WTO
14 members, particularly under the Agreement on Im-
15 plementation of Article VI of the General Agreement
16 on Tariffs and Trade 1994, the Agreement on Sub-
17 sidies and Countervailing Measures, and the Agree-
18 ment on Safeguards.

19 (6) In order to come into compliance with re-
20 ports of dispute settlement panels and the Appellate
21 Body that have been adopted by the Dispute Settle-
22 ment Body, the Congress may need to amend or re-
23 peal statutes of the United States. In such cases, the
24 Congress must have a high degree of confidence that
25 the reports are in accordance with paragraph (3).

1 (7) The Congress needs impartial, objective,
2 and juridical advice to determine the appropriate re-
3 sponse to reports of dispute settlement panels and
4 the Appellate Body.

5 (8) The United States remains committed to
6 the multilateral, rules-based trading system.

7 (b) PURPOSE.—It is the purpose of this subtitle to
8 provide for the establishment of the Congressional Advi-
9 sory Commission on WTO Dispute Settlement to provide
10 objective and impartial advice to the Congress on the oper-
11 ation of the dispute settlement system of the World Trade
12 Organization.

13 **SEC. 102. DEFINITIONS.**

14 In this title:

15 (1) ADVERSE FINDING.—The term “adverse
16 finding” means—

17 (A) in a proceeding of a dispute settlement
18 panel or the Appellate Body that is initiated
19 against the United States, a finding by the
20 panel or the Appellate Body that any law, regu-
21 lation, practice, or interpretation of the United
22 States, or any State, is inconsistent with the
23 obligations of the United States under a Uru-
24 guay Round Agreement (or nullifies or impairs

1 benefits accruing to a WTO member under such
2 an Agreement); or

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

12 (2) APPELLATE BODY.—The term “Appellate
13 Body” means the Appellate Body established by the
14 Dispute Settlement Body pursuant to Article 17.1 of
15 the Dispute Settlement Understanding.

16 (3) APPROPRIATE CONGRESSIONAL COMMIT-
17 TEES.—The term “appropriate congressional com-
18 mittees” means the Committee on Finance of the
19 Senate and the Committee on Ways and Means of
20 the House of Representatives.

21 (4) DISPUTE SETTLEMENT BODY.—The term
22 “Dispute Settlement Body” means the Dispute Set-
23 tlement Body established pursuant to the Dispute
24 Settlement Understanding.

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

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

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

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

17 (9) UNITED STATES PERSON.—The term
18 “United States person” means—

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

22 (B) a corporation, partnership, labor orga-
23 nization, or other legal entity organized under
24 the laws of the United States or of any State,

1 the District of Columbia, or any commonwealth,
2 territory, or possession of the United States.

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

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

11 (12) WTO AGREEMENT.—The term “WTO
12 Agreement” means the Agreement Establishing the
13 World Trade Organization entered into on April 15,
14 1994.

15 (13) WTO MEMBER.—The term “WTO mem-
16 ber” has the meaning given that term in section
17 2(10) of the Uruguay Round Agreements Act (19
18 U.S.C. 3501(10)).

19 **Subtitle B—Participation in WTO** 20 **Panel Proceedings**

21 **SEC. 111. PARTICIPATION IN WTO PANEL PROCEEDINGS.**

22 (a) IN GENERAL.—If the Trade Representative, in
23 proceedings before a dispute settlement panel or the Ap-
24 pellate Body of the WTO, seeks—

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

3 (2) to defend an action or determination of the
4 United States Government that is challenged,
5 a United States person that is supportive of the United
6 States Government's position before the panel or Appellate
7 Body and that has a direct economic interest in the panel's
8 or Appellate Body's resolution of the matters in dispute
9 shall be permitted to participate in consultations and
10 panel or Appellate Body proceedings. The Trade Rep-
11 resentative shall issue regulations, consistent with sub-
12 sections (b) and (c), ensuring full and effective participa-
13 tion by any such person.

14 (b) ACCESS TO INFORMATION.—The Trade Rep-
15 resentative shall make available to persons described in
16 subsection (a) all information presented to or otherwise
17 obtained by the Trade Representative in connection with
18 the WTO dispute settlement proceeding in which such per-
19 sons are participating. The Trade Representative shall
20 promulgate regulations to protect information designated
21 as confidential in the proceeding.

22 (c) PARTICIPATION IN PANEL PROCESS.—Upon re-
23 quest from a person described in subsection (a), the Trade
24 Representative shall—

1 (1) consult in advance with such person regard-
2 ing the content of written submissions from the
3 United States to the panel or Appellate Body con-
4 cerned or to the other member countries involved;

5 (2) include, if appropriate, such person or the
6 person’s appropriate representative as an advisory
7 member of the delegation in sessions of the dispute
8 settlement panel or Appellate Body;

9 (3) allow such person, if such person would
10 bring special knowledge to the proceeding, to appear
11 before the panel or Appellate Body, directly or
12 through counsel, under the supervision of responsible
13 United States Government officials; and

14 (4) in proceedings involving confidential infor-
15 mation, allow the appearance of such person only
16 through counsel as a member of the special delega-
17 tion.

18 **Subtitle C—Congressional Advisory**
19 **Commission on WTO Dispute**
20 **Settlement**

21 **SEC. 121. ESTABLISHMENT OF COMMISSION.**

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

1 (b) MEMBERSHIP.—

2 (1) COMPOSITION.—The Commission shall be
3 composed of 5 members, all of whom shall be judges
4 or former judges of the Federal judicial circuits and
5 shall be appointed by the Speaker of the House of
6 Representatives and the President pro tempore of
7 the Senate after considering the recommendations of
8 the Chairman and ranking member of each of the
9 appropriate congressional committees. Commis-
10 sioners shall be chosen without regard to political af-
11 filiation and solely on the basis of each Commis-
12 sioner's fitness to perform the duties of a Commis-
13 sioner.

14 (2) DATE.—The appointments of the initial
15 members of the Commission shall be made not later
16 than 90 days after the date of the enactment of this
17 Act.

18 (c) PERIOD OF APPOINTMENT; VACANCIES.—

19 (1) IN GENERAL.—Members of the Commission
20 shall each be appointed for a term of 5 years, except
21 that of the members first appointed, 3 members
22 shall each be appointed for a term of 3 years.

23 (2) VACANCIES.—

24 (A) IN GENERAL.—Any vacancy on the
25 Commission shall not affect its powers, but

1 shall be filled in the same manner in which the
2 original appointment was made and shall be
3 subject to the same conditions as the original
4 appointment.

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

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

12 (e) MEETINGS.—Except for the initial meeting, the
13 Commission shall meet at the call of the Chairperson.

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

17 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The
18 Commission shall select a Chairperson and Vice Chair-
19 person from among its members.

20 (h) FUNDING.—Members of the Commission shall be
21 allowed travel expenses, including per diem in lieu of sub-
22 sistence at rates authorized for employees of agencies
23 under subchapter I of chapter 57 of title 5, United States
24 Code, while away from their homes or regular places of

1 business in the performance of services for the Commis-
2 sion.

3 **SEC. 122. DUTIES OF THE COMMISSION.**

4 (a) ADVISING THE CONGRESS ON THE OPERATION
5 OF THE WTO DISPUTE SETTLEMENT SYSTEM.—

6 (1) IN GENERAL.—The Commission shall re-
7 view—

8 (A) all adverse findings that are—

9 (i) adopted by the Dispute Settlement
10 Body; and

11 (ii) the result of a proceeding initiated
12 against the United States by a WTO mem-
13 ber; and

14 (B) upon the request of either of the ap-
15 propriate congressional committees—

16 (i) any adverse finding of a dispute
17 settlement panel or the Appellate Body—

18 (I) that is adopted by the Dis-
19 pute Settlement Body; and

20 (II) in which the United States is
21 a complaining party; or

22 (ii) any other finding that is contained
23 in a report of a dispute settlement panel or
24 the Appellate Body that is adopted by the
25 Dispute Settlement Body.

1 (2) SCOPE OF REVIEW.—The Commission shall
2 advise the Congress in connection with each adverse
3 finding under paragraph (1)(A) or (1)(B)(i) or other
4 finding under paragraph (1)(B)(ii) on—

5 (A) whether the dispute settlement panel
6 or the Appellate Body, as the case may be—

7 (i) exceeded its authority or its terms
8 of reference;

9 (ii) added to the obligations, or dimin-
10 ished the rights, of the United States
11 under the Uruguay Round Agreement that
12 is the subject of the finding;

13 (iii) acted arbitrarily or capriciously,
14 engaged in misconduct, or demonstrably
15 departed from the procedures specified for
16 panels and the Appellate Body in the ap-
17 plicable Uruguay Round Agreement; or

18 (iv) deviated from the applicable
19 standard of review, including in anti-
20 dumping, countervailing duty, and other
21 trade remedy cases, the standard of review
22 set forth in Article 17.6 of the Agreement
23 on Implementation of Article VI of the
24 General Agreement on Tariffs and Trade
25 1994;

1 (B) whether the finding is consistent with
2 the original understanding by the United States
3 of the Uruguay Round Agreement that is the
4 subject of the finding as explained in the state-
5 ment of administrative action approved under
6 section 101(a) of the Uruguay Round Agree-
7 ments Act (19 U.S.C. 3511(a)); and

8 (C) what actions, if any, the United States
9 should take in response to the finding, includ-
10 ing any proposals to amend, rescind, or other-
11 wise modify a law, regulation, practice, or inter-
12 pretation of the United States.

13 (3) NO DEFERENCE.—In advising the Congress
14 under paragraph (2), the Commission shall not ac-
15 cord deference to findings of law made by the dis-
16 pute settlement panel or the Appellate Body, as the
17 case may be.

18 (b) DETERMINATION; REPORT.—

19 (1) DETERMINATION.—

20 (A) IN GENERAL.—Not later than 150
21 days after the date on which the Commission
22 receives notice of a report or request under sec-
23 tion 123(b), the Commission shall make a writ-
24 ten determination with respect to the matters
25 described in paragraph (2) of subsection (a), in-

1 including a full analysis of the basis for its deter-
2 mination. A vote by a majority of the members
3 of the Commission shall constitute a determina-
4 tion of the Commission, although the members
5 need not agree on the basis for their vote.

6 (B) DISSENTING OR CONCURRING OPIN-
7 IONS.—Any member of the Commission who
8 disagrees with a determination of the Commis-
9 sion or who concurs in such a determination on
10 a basis different from that of the Commission
11 or other members of the Commission, may write
12 an opinion expressing such disagreement or
13 concurrence, as the case may be.

14 (2) REPORT.—The Commission shall promptly
15 report the determinations described in paragraph
16 (1)(A) to the appropriate congressional committees.
17 The Commission shall include with the report any
18 opinions written under paragraph (1)(B) with re-
19 spect to the determination.

20 (c) AVAILABILITY TO THE PUBLIC.—Each report of
21 the Commission under subsection (b)(2), together with the
22 opinions included with the report, shall be made available
23 to the public.

1 **SEC. 123. POWERS OF THE COMMISSION.**

2 (a) HEARINGS.—The Commission may hold a public
3 hearing to solicit views concerning an adverse finding or
4 other finding described in section 122(a)(1), if the Com-
5 mission considers such hearing to be necessary to carry
6 out the purpose of this subtitle. The Commission shall pro-
7 vide reasonable notice of a hearing held pursuant to this
8 subsection.

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

11 (1) NOTICE TO COMMISSION.—

12 (A) UNDER SECTION 122(a)(1)(A).—The
13 Trade Representative shall advise the Commis-
14 sion not later than 5 business days after the
15 date the Dispute Settlement Body adopts an
16 adverse finding that is to be reviewed by the
17 Commission under section 122(a)(1)(A).

18 (B) UNDER SECTION 122(a)(1)(B).—Ei-
19 ther of the appropriate congressional commit-
20 tees may make and notify the Commission of a
21 request under section 122(a)(1)(B) not later
22 than 1 year after the Dispute Settlement Body
23 adopts the adverse finding or other finding that
24 is the subject of the request.

25 (C) FINDINGS ADOPTED PRIOR TO AP-
26 POINTMENT OF COMMISSION.—With respect to

1 any adverse finding or other finding to which
2 section 122(a)(1)(B) applies and that is adopt-
3 ed before the date on which the first members
4 of the Commission are appointed under section
5 121(b)(2), either of the appropriate congress-
6 sional committees may make and notify the
7 Commission of a request under section
8 122(a)(1)(B) with respect to the adverse find-
9 ing or other finding not later than 1 year after
10 the date on which the first members of the
11 Commission are appointed under section
12 121(b)(2).

13 (2) SUBMISSIONS AND REQUESTS FOR INFOR-
14 MATION.—

15 (A) IN GENERAL.—The Commission shall
16 promptly publish in the Federal Register notice
17 of—

18 (i) the notice received under para-
19 graph (1) from the Trade Representative
20 or either of the appropriate congressional
21 committees; and

22 (ii) an opportunity for interested par-
23 ties to submit written comments to the
24 Commission.

1 (B) COMMENTS AVAILABLE TO PUBLIC.—

2 The Commission shall make comments sub-
3 mitted pursuant to subparagraph (A)(ii) avail-
4 able to the public.

5 (C) INFORMATION FROM FEDERAL AGEN-

6 CIES AND DEPARTMENTS.—The Commission
7 may secure directly from any Federal depart-
8 ment or agency such information as the Com-
9 mission considers necessary to carry out the
10 provisions of this subtitle. Upon the request of
11 the chairperson of the Commission, the head of
12 such department or agency shall furnish the in-
13 formation requested to the Commission in a
14 timely manner.

15 (3) ACCESS TO PANEL AND APPELLATE BODY

16 DOCUMENTS.—

17 (A) IN GENERAL.—The Trade Representa-

18 tive shall make available to the Commission all
19 submissions and relevant documents relating to
20 an adverse finding described in section
21 122(a)(1), including any information contained
22 in such submissions and relevant documents
23 identified by the provider of the information as
24 proprietary information or information des-
25 ignated as confidential by a foreign government.

1 (B) PUBLIC ACCESS.—Any document that
2 the Trade Representative submits to the Com-
3 mission shall be available to the public, except
4 information that is identified as proprietary or
5 confidential or the disclosure of which would
6 otherwise violate the rules of the WTO.

7 (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-
8 FIDENTIALITY.—

9 (1) ADMINISTRATIVE ASSISTANCE.—Any agency
10 or department of the United States that is des-
11 ignated by the President shall provide administrative
12 services, funds, facilities, staff, or other support
13 services to the Commission to assist the Commission
14 with the performance of the Commission's functions.

15 (2) CONFIDENTIALITY.—

16 (A) DOCUMENTS AND INFORMATION FROM
17 AGENCIES.—The Commission shall protect from
18 disclosure any document or information sub-
19 mitted to it by a department or agency of the
20 United States that the agency or department
21 requests be kept confidential.

22 (B) DISCLOSURE OF DOCUMENTS AND IN-
23 FORMATION OF COMMISSION.—The Commission
24 shall not be considered to be an agency for pur-

1 poses of section 552 of title 5, United States
2 Code.

3 **Subtitle D—Congressional Ap-**
4 **proval of Regulatory Action Re-**
5 **lating to Adverse WTO Deci-**
6 **sions**

7 **SEC. 131. CONGRESSIONAL APPROVAL OF REGULATORY**
8 **ACTIONS RELATING TO ADVERSE WTO DECI-**
9 **SIONS.**

10 (a) IN GENERAL.—Section 123(g) of the Uruguay
11 Round Agreements Act (19 U.S.C. 3533(g)) is amended—

12 (1) in paragraph (1)—

13 (A) in subparagraph (E), by striking
14 “and”;

15 (B) by redesignating subparagraph (F) as
16 subparagraph (H); and

17 (C) by inserting after subparagraph (E)
18 the following new subparagraphs:

19 “(F) the appropriate congressional com-
20 mittees have received the report on the deter-
21 minations of the Congressional Advisory Com-
22 mission on WTO Dispute Settlement under sec-
23 tion 122(b)(2) of the Strengthening America’s
24 Trade Laws Act with respect to the relevant

1 dispute settlement panel or Appellate Body de-
 2 cision;

3 “(G) a joint resolution, described in para-
 4 graph (2), approving the proposed modification
 5 or final rule is enacted into law after the appro-
 6 priate congressional committees receive the re-
 7 port on the determinations of the Congressional
 8 Advisory Commission on WTO Dispute Settle-
 9 ment under section 122(b)(2) of the Strength-
 10 ening America’s Trade Laws Act; and”;

11 (2) by amending paragraph (2) to read as fol-
 12 lows:

13 “(2) JOINT RESOLUTION TO APPROVE MODI-
 14 FICATION IN AGENCY REGULATION OR PRACTICE.—

15 “(A) IN GENERAL.—For the purposes of
 16 paragraph (1)(G), a joint resolution is a joint
 17 resolution of the 2 Houses of the Congress, the
 18 matter after the resolving clause of which is as
 19 follows: ‘That the Congress approves the modi-
 20 fications to the regulation or practice of the
 21 United States proposed in a report submitted to
 22 the Congress under subparagraph (D) or (F) of
 23 section 123(g)(1) of the Uruguay Round Agree-
 24 ments Act (19 U.S.C. 3533(g)(1) (D) and (F))
 25 on _____, relating to

1 _____.’, with the first blank space
2 being filled with the date on which the report
3 is submitted to the Congress and the second
4 blank space being filled with the specific modi-
5 fication proposed to the regulation or practice
6 of the United States.

7 “(B) PROCEDURAL PROVISIONS.—The pro-
8 cedural provisions of subsections (d) through (i)
9 of section 206 of the Strengthening America’s
10 Trade Laws Act shall apply to a joint resolution
11 described in subparagraph (A).”.

12 (b) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendments made by
14 this section shall take effect on the date of the en-
15 actment of this Act.

16 (2) MODIFICATIONS MADE BETWEEN JANUARY
17 1, 2007 AND THE DATE OF THE ENACTMENT OF THIS
18 ACT.—

19 (A) IN GENERAL.—Modifications to any
20 regulation or practice of a department or agen-
21 cy of the United States made pursuant to the
22 provisions of section 123(g) of the Uruguay
23 Round Agreements Act (19 U.S.C. 3533(g))
24 that became effective on or after January 1,
25 2007, and before the date of the enactment of

1 this Act, shall be suspended upon the enact-
 2 ment of this Act and have no effect.

3 (B) APPROVAL OF MODIFICATIONS.—On or
 4 after the date of the enactment of this Act, the
 5 Trade Representative and the head of the de-
 6 partment or agency within whose jurisdiction
 7 the modification described in subparagraph (A)
 8 falls may seek approval of such modification
 9 pursuant to the procedures set out in section
 10 123(g)(1) of the Uruguay Round Agreements
 11 Act (19 U.S.C. 3533(g)(1)), as amended by
 12 subsection (a).

13 **Subtitle E—Clarification of Rights**
 14 **and Obligations Through Nego-**
 15 **tiations**

16 **SEC. 141. CLARIFICATION OF RIGHTS AND OBLIGATIONS IN**
 17 **THE WTO THROUGH NEGOTIATIONS.**

18 (a) IN GENERAL.—After an adverse finding, the
 19 United States shall work within the World Trade Organi-
 20 zation to obtain clarification of the Uruguay Round Agree-
 21 ment to which the adverse finding applies to conform the
 22 Agreement to the understanding of the United States re-
 23 garding the rights and obligations of the United States
 24 and shall not modify the law, regulation, practice, or inter-

1 pretation of the United States in response to the adverse
2 finding if—

3 (1) the United States has stated at the Dispute
4 Settlement Body that the adverse finding has cre-
5 ated obligations never agreed to by the United
6 States;

7 (2) either of the appropriate congressional com-
8 mittees by resolution finds that the adverse finding
9 has created obligations never agreed to by the
10 United States; or

11 (3) the Congressional Advisory Commission on
12 WTO Dispute Resolution makes a determination
13 under section 122(a)(2)(A)(ii) that the adverse find-
14 ing has created obligations never agreed to by the
15 United States.

16 (b) APPLICABILITY.—

17 (1) IN GENERAL.—This section shall apply to
18 any adverse finding on or after January 1, 2002.

19 (2) EFFECT ON MODIFICATION OF REGULA-
20 TION, PRACTICE, OR INTERPRETATION ADOPTED BE-
21 FORE ENACTMENT OF THIS ACT.—

22 (A) IN GENERAL.—Any agency that modi-
23 fied a regulation, practice, or interpretation in
24 response to an adverse finding between January
25 1, 2002 and the date of the enactment of this

1 Act shall provide notice that the modification
2 shall cease to have force and effect on the date
3 that is 30 days after the date of the enactment
4 of this Act and such modification shall cease to
5 have force and effect on such date.

6 (B) APPLICABILITY IN TRADE REMEDY
7 CASES.—The cessation of the force and effect of
8 the modification described in subparagraph (A)
9 shall apply with respect to—

10 (i) investigations initiated—

11 (I) on the basis of petitions filed
12 under section 702(b), 732(b), or
13 783(a) of the Tariff Act of 1930 (19
14 U.S.C. 1671a(b), 1673a(b), and
15 1677n(a)) or section 202(a), 221,
16 251(a), or 292(a) of the Trade Act of
17 1974 (19 U.S.C. 2252(a), 2271,
18 2341(a), and 2401a(a)) after the date
19 on which the modification ceases to
20 have force and effect under subpara-
21 graph (A);

22 (II) by the administering author-
23 ity under section 702(a) or 732(a) of
24 the Tariff Act of 1930 (19 U.S.C.

1 1671a(a) and 1673a(a)) after such
2 date; or

3 (III) under section 753 of the
4 Tariff Act of 1930 (19 U.S.C. 1675b)
5 after such date;

6 (ii) reviews initiated under section 751
7 of the Tariff Act of 1930 (19 U.S.C.
8 1675)—

9 (I) by the administering author-
10 ity or the International Trade Com-
11 mission on their own initiative after
12 such date; or

13 (II) pursuant to a request filed
14 after such date; and

15 (iii) all proceedings conducted under
16 section 129 of the Uruguay Round Agree-
17 ments Act (19 U.S.C. 3538) commenced
18 after such date.

19 (3) EFFECT ON PRIOR STATUTORY CHANGES.—

20 (A) IN GENERAL.—Paragraph (2)(A) shall
21 not apply to modifications to statutes of the
22 United States made in response to adverse find-
23 ings.

24 (B) CLARIFICATION OF UNITED STATES
25 RIGHTS.—If a statute of the United States has

1 been modified in response to an adverse finding,
2 the United States shall obtain clarification of
3 the rights and obligations of the United States
4 affected by the adverse finding pursuant to sub-
5 section (a).

6 **TITLE II—STRENGTHENING**
7 **ANTIDUMPING AND COUN-**
8 **TERVAILING DUTY LAWS**

9 **SEC. 201. PREVENTION OF CIRCUMVENTION.**

10 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.
11 1677j(e)) is amended by adding at the end the following
12 new paragraph:

13 “(3) SPECIAL RULE.—The administering au-
14 thority may exclude altered merchandise from the
15 class or kind of merchandise subject to an investiga-
16 tion and order or finding described in paragraph (1),
17 if such exclusion is not inconsistent with the affirm-
18 ative determination of the Commission on which the
19 order or finding is based.”.

20 **SEC. 202. EXPORT PRICE AND CONSTRUCTED EXPORT**
21 **PRICE.**

22 Section 772(c)(2)(A) of the Tariff Act of 1930 (19
23 U.S.C. 1677a(c)(2)(A)) is amended by inserting “(includ-
24 ing antidumping and countervailing duties imposed under
25 this title)” after “duties”.

1 **SEC. 203. NONMARKET ECONOMY METHODOLOGY.**

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

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

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

12 “(i) at a level of economic develop-
13 ment comparable to that of the nonmarket
14 economy country; and

15 “(ii) significant producers of com-
16 parable merchandise.

17 In this paragraph, the term ‘surrogate’ refers to
18 the values, calculations, and market economy
19 countries used under this subparagraph.

20 “(B) VALUING MATERIALS USED IN PRO-
21 Duction.—In determining the value of mate-
22 rials used in production under subparagraph
23 (A), the following applies:

24 “(i) The administering authority may
25 use the value of inputs that are purchased
26 from market economy suppliers and are

1 not suspected of being dumped or sub-
2 sidized, only for the quantity of such pur-
3 chases.

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

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

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

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

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

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

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

24 “(C) VALUING LABOR.—

1 “(i) The administering authority may
2 use an average of wage rates for market
3 economies, but shall ensure that labor
4 rates used fully reflect all labor costs, in-
5 cluding benefits, health care, and pension
6 costs.

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

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

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

23 “(i) IN GENERAL.—The administering
24 authority shall use the best information
25 available with respect to likely values of

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

14 “(ii) RATIOS DEFINED.—For purposes
15 of this subparagraph, the term ‘ratios’
16 means—

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

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

23 “(III) the ratio of profit to gen-
24 eral selling and administrative costs,

1 factory overhead, labor, materials, and
2 energy.

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

18 **SEC. 204. DETERMINATIONS ON THE BASIS OF FACTS**
19 **AVAILABLE.**

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

22 “(B) fails to provide such information by
23 the deadline for submission of the information
24 or in the form and manner required, and in
25 conformity with prior administering authority

1 determinations in the proceeding and final judi-
 2 cial decisions in the proceeding, subject to sub-
 3 sections (c)(1) and (e) of section 782,”.

4 **SEC. 205. CLARIFICATION OF DETERMINATION OF MATE-**
 5 **RIAL INJURY.**

6 Section 771(7) of the Tariff Act of 1930 (19 U.S.C.
 7 1677(7)) is amended by adding at the end the following
 8 new subparagraph:

9 “(J) CLARIFICATION OF DETERMINATION
 10 OF MATERIAL INJURY.—In determining if there
 11 is material injury, or threat of material injury,
 12 by reason of imports of the subject merchan-
 13 dise, the Commission shall make the Commis-
 14 sion’s determination without regard to—

15 “(i) whether other imports are likely
 16 to replace subject merchandise, or

17 “(ii) the effect of a potential order on
 18 the domestic industry.”.

19 **SEC. 206. REVOCATION OF NONMARKET ECONOMY COUN-**
 20 **TRY STATUS.**

21 (a) AMENDMENT OF DEFINITION OF “NONMARKET
 22 ECONOMY COUNTRY”.—Section 771(18)(C)(i) of the Tar-
 23 iff Act of 1930 (19 U.S.C. 1677(18)(C)(i)) is amended
 24 to read as follows:

1 “(i) Any determination that a foreign
2 country is a nonmarket economy country
3 shall remain in effect until—

4 “(I) the administering authority
5 makes a final determination to revoke
6 the determination under subparagraph
7 (A); and

8 “(II) a joint resolution is enacted
9 into law pursuant to section 206 of
10 the Strengthening America’s Trade
11 Laws Act.”.

12 (b) NOTIFICATION BY PRESIDENT; JOINT RESOLU-
13 TION.—Whenever the administering authority makes a
14 final determination under section 771(18)(C)(i)(I) of the
15 Tariff Act of 1930 (19 U.S.C. 1677(18)(C)(i)(I)) to re-
16 voke the determination that a foreign country is a non-
17 market economy country—

18 (1) the President shall notify the Committee on
19 Finance of the Senate and the Committee on Ways
20 and Means of the House of Representatives of that
21 determination not later than 10 days after the publi-
22 cation of the administering authority’s final deter-
23 mination in the Federal Register;

1 (2) the President shall transmit to the Congress
2 a request that a joint resolution be introduced pur-
3 suant to this section; and

4 (3) a joint resolution shall be introduced in the
5 Congress pursuant to this section.

6 (c) DEFINITION.—For purposes of this section, the
7 term “joint resolution” means only a joint resolution of
8 the 2 Houses of the Congress, the matter after the resolv-
9 ing clause of which is as follows: “That the Congress ap-
10 proves the change of nonmarket economy status with re-
11 spect to the products of _____ transmitted by the
12 President to the Congress on _____.”, the first
13 blank space being filled in with the name of the country
14 with respect to which a determination has been made
15 under section 771(18)(C)(i) of the Tariff Act of 1930 (19
16 U.S.C. 1677(18)(C)(i)), and the second blank space being
17 filled with the date on which the President notified the
18 Committee on Finance of the Senate and the Committee
19 on Ways and Means of the House of Representatives
20 under subsection (b)(1).

21 (d) INTRODUCTION.—A joint resolution shall be in-
22 troduced (by request) in the House by the majority leader
23 of the House, for himself, or by Members of the House
24 designated by the majority leader of the House, and shall
25 be introduced (by request) in the Senate by the majority

1 leader of the Senate, for himself, or by Members of the
2 Senate designated by the majority leader of the Senate.

3 (e) AMENDMENTS PROHIBITED.—No amendment to
4 a joint resolution shall be in order in either the House
5 of Representatives or the Senate, and no motion to sus-
6 pend the application of this subsection shall be in order
7 in either House, nor shall it be in order in either House
8 for the presiding officer to entertain a request to suspend
9 the application of this subsection by unanimous consent.

10 (f) PERIOD FOR COMMITTEE AND FLOOR CONSIDER-
11 ATION.—

12 (1) IN GENERAL.—If the committee or commit-
13 tees of either House to which a joint resolution has
14 been referred have not reported the joint resolution
15 at the close of the 45th day after its introduction,
16 such committee or committees shall be automatically
17 discharged from further consideration of the joint
18 resolution and it shall be placed on the appropriate
19 calendar. A vote on final passage of the joint resolu-
20 tion shall be taken in each House on or before the
21 close of the 15th day after the joint resolution is re-
22 ported by the committee or committees of that
23 House to which it was referred, or after such com-
24 mittee or committees have been discharged from fur-
25 ther consideration of the joint resolution. If, prior to

1 the passage by one House of a joint resolution of
2 that House, that House receives the same joint reso-
3 lution from the other House, then—

4 (A) the procedure in that House shall be
5 the same as if no joint resolution had been re-
6 ceived from the other House, but

7 (B) the vote on final passage shall be on
8 the joint resolution of the other House.

9 (2) COMPUTATION OF DAYS.—For purposes of
10 paragraph (1), in computing a number of days in ei-
11 ther House, there shall be excluded any day on
12 which that House is not in session.

13 (g) FLOOR CONSIDERATION IN THE HOUSE.—

14 (1) MOTION PRIVILEGED.—A motion in the
15 House of Representatives to proceed to the consider-
16 ation of a joint resolution shall be highly privileged
17 and not debatable. An amendment to the motion
18 shall not be in order, nor shall it be in order to move
19 to reconsider the vote by which the motion is agreed
20 to or disagreed to.

21 (2) DEBATE LIMITED.—Debate in the House of
22 Representatives on a joint resolution shall be limited
23 to not more than 20 hours, which shall be divided
24 equally between those favoring and those opposing
25 the joint resolution. A motion further to limit debate

1 shall not be debatable. It shall not be in order to
2 move to recommit a joint resolution or to move to
3 reconsider the vote by which a joint resolution is
4 agreed to or disagreed to.

5 (3) MOTIONS TO POSTPONE.—Motions to post-
6 pone, made in the House of Representatives with re-
7 spect to the consideration of a joint resolution, and
8 motions to proceed to the consideration of other
9 business, shall be decided without debate.

10 (4) APPEALS.—All appeals from the decisions
11 of the Chair relating to the application of the Rules
12 of the House of Representatives to the procedure re-
13 lating to a joint resolution shall be decided without
14 debate.

15 (5) OTHER RULES.—Except to the extent spe-
16 cifically provided in the preceding provisions of this
17 subsection, consideration of a joint resolution shall
18 be governed by the Rules of the House of Represent-
19 atives applicable to other bills and resolutions in
20 similar circumstances.

21 (h) FLOOR CONSIDERATION IN THE SENATE.—

22 (1) MOTION PRIVILEGED.—A motion in the
23 Senate to proceed to the consideration of a joint res-
24 olution shall be privileged and not debatable. An
25 amendment to the motion shall not be in order, nor

1 shall it be in order to move to reconsider the vote
2 by which the motion is agreed to or disagreed to.

3 (2) DEBATE LIMITED.—Debate in the Senate
4 on a joint resolution, and all debatable motions and
5 appeals in connection therewith, shall be limited to
6 not more than 20 hours. The time shall be equally
7 divided between, and controlled by, the majority
8 leader and the minority leader or their designees.

9 (3) CONTROL OF DEBATE.—Debate in the Sen-
10 ate on any debatable motion or appeal in connection
11 with a joint resolution shall be limited to not more
12 than 1 hour, to be equally divided between, and con-
13 trolled by, the mover and the manager of the joint
14 resolution, except that in the event the manager of
15 the joint resolution is in favor of any such motion
16 or appeal, the time in opposition thereto shall be
17 controlled by the minority leader or his designee.
18 Such leaders, or either of them, may, from time
19 under their control on the passage of a joint resolu-
20 tion, allot additional time to any Senator during the
21 consideration of any debatable motion or appeal.

22 (4) OTHER MOTIONS.—A motion in the Senate
23 to further limit debate is not debatable. A motion to
24 recommit a joint resolution is not in order.

1 (i) RULES OF HOUSE OF REPRESENTATIVES AND
2 SENATE.—Subsections (c) through (h) are enacted by the
3 Congress—

4 (1) as an exercise of the rulemaking power of
5 the House of Representatives and the Senate, re-
6 spectively, and as such subsections (c) through (h)
7 are deemed a part of the rules of each House, re-
8 spectively, but applicable only with respect to the
9 procedure to be followed in that House in the case
10 of joint resolutions described in subsection (c), and
11 subsections (c) through (h) supersede other rules
12 only to the extent that they are inconsistent there-
13 with; and

14 (2) with full recognition of the constitutional
15 right of either House to change the rules (so far as
16 relating to the procedure of that House) at any time,
17 in the same manner and to the same extent as in
18 the case of any other rule of that House.

1 **TITLE III—EXPANSION OF APPLI-**
2 **CABILITY OF COUNTER-**
3 **VAILING DUTIES**

4 **SEC. 301. APPLICATION OF COUNTERVAILING DUTIES TO**
5 **NONMARKET ECONOMIES AND STRENGTH-**
6 **ENING APPLICATION OF THE LAW.**

7 (a) IN GENERAL.—Section 701(a)(1) of the Tariff
8 Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by insert-
9 ing “(including a nonmarket economy country)” after
10 “country” each place it appears.

11 (b) DEFINITION OF COUNTERAVAILABLE SUBSIDY.—
12 Section 771(5)(E) of the Tariff Act of 1930 (19 U.S.C.
13 1677(5)(E)) is amended by adding at the end the fol-
14 lowing: “For purposes of clauses (i) through (iv), if there
15 is a reasonable indication that government intervention
16 has distorted prices or other economic indicators in the
17 country that is subject to the investigation or review, or
18 if data regarding such prices or economic indicators are
19 otherwise unavailable, then the administering authority
20 shall measure the benefit conferred to the recipient by ref-
21 erence to data regarding relevant prices or other economic
22 indicators from a country other than the country that is
23 subject to the investigation or review. If there is a reason-
24 able indication that prices or other economic indicators
25 within a political subdivision, dependent territory, or pos-

1 session of a foreign country are distorted, or data are not
 2 available, then the administering authority shall measure
 3 the benefit conferred to the recipient in that political sub-
 4 division, dependent territory, or possession by reference to
 5 data from the most comparable area or region in which
 6 relevant prices or other economic indicators are not dis-
 7 torted, regardless of whether such area or region is in the
 8 same country.”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 subsections (a) and (b) apply to petitions filed under sec-
 11 tion 702 of the Tariff Act of 1930 (19 U.S.C. 1671a) on
 12 or after the date of the enactment of this Act.

13 (d) ANTIDUMPING PROVISIONS NOT AFFECTED.—
 14 The amendments made by subsections (a) and (b) shall
 15 not affect the status of a country as a nonmarket economy
 16 country for the purposes of any matter relating to anti-
 17 dumping duties under subtitle B of title VII of the Tariff
 18 Act of 1930 (19 U.S.C. 1673 et seq.).

19 **SEC. 302. TREATMENT OF EXCHANGE-RATE MANIPULATION**
 20 **AS COUNTERAVAILABLE SUBSIDY UNDER**
 21 **TITLE VII OF THE TARIFF ACT OF 1930.**

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

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

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

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

6 “(ii) The term ‘provides a financial con-
7 tribution’ includes engaging in exchange-rate
8 manipulation (as defined in paragraph (5C)).”.

9 (b) DEFINITION OF EXCHANGE-RATE MANIPULA-
10 TION.—Section 771 of the Tariff Act of 1930 (19 U.S.C.
11 1677) is amended by inserting after paragraph (5B) the
12 following new paragraph:

13 “(5C) DEFINITION OF EXCHANGE-RATE MANIP-
14 ULATION.—

15 “(A) IN GENERAL.—For purposes of para-
16 graphs (5) and (5A), the term ‘exchange-rate
17 manipulation’ means protracted large-scale
18 intervention by a country to undervalue the
19 country’s currency in the exchange market that
20 prevents effective balance-of-payments adjust-
21 ment or that gains an unfair competitive advan-
22 tage over any other country.

23 “(B) FACTORS.—In determining whether
24 exchange-rate manipulation is occurring and a

1 benefit thereby conferred, the administering au-
2 thority in each case—

3 “(i) shall consider the exporting coun-
4 try’s—

5 “(I) bilateral balance-of-trade
6 surplus or deficit with the United
7 States;

8 “(II) balance-of-trade surplus or
9 deficit with its other trading partners
10 individually and in the aggregate;

11 “(III) foreign direct investment
12 in its territory;

13 “(IV) currency-specific and ag-
14 gregate amounts of foreign currency
15 reserves; and

16 “(V) mechanisms employed to
17 maintain its currency at a fixed ex-
18 change rate relative to another cur-
19 rency and, particularly, the nature,
20 duration, monetary expenditures, and
21 potential monetary expenditures of
22 those mechanisms;

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

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

12 “(C) TYPE OF ECONOMY.—A country
13 found to be engaged in exchange-rate manipula-
14 tion may have—

15 “(i) a market economy;

16 “(ii) a nonmarket economy; or

17 “(iii) a combination thereof.”.

18 **SEC. 303. AFFIRMATION OF NEGOTIATING OBJECTIVE ON**

19 **BORDER TAXES.**

20 The Congress reaffirms the negotiating objective re-
21 lating to border taxes set forth in section 2102(b)(15) of
22 the Bipartisan Trade Promotion Authority Act of 2002
23 (19 U.S.C. 3802(b)(15)).

1 **SEC. 304. PRESIDENTIAL CERTIFICATION; APPLICATION OF**
2 **COUNTERVAILING DUTY LAW.**

3 (a) CERTIFICATION BY THE PRESIDENT.—

4 (1) IN GENERAL.—The President shall certify
5 to the Congress by January 1, 2009 that, under the
6 Agreement on Subsidies and Countervailing Meas-
7 ures or subsequent agreement of the World Trade
8 Organization, the full or partial exemption, remis-
9 sion, or deferral specifically related to exports of di-
10 rect taxes is treated in the same manner as the full
11 or partial exemption, remission, or deferral specifi-
12 cally related to exports of indirect taxes.

13 (2) EFFECT OF FAILURE TO CERTIFY.—If the
14 President does not make the certification to Con-
15 gress required by paragraph (1) by January 1,
16 2009, the Secretary of Commerce, in any investiga-
17 tion conducted under subtitle A of title VII of the
18 Tariff Act of 1930 (19 U.S.C. 1671 et seq.) to de-
19 termine whether a countervailable subsidy is being
20 provided with respect to a product of a country that
21 provides the full or partial exemption, remission, or
22 deferral specifically related to exports of indirect
23 taxes on products exported from that country, shall
24 treat as a countervailable subsidy the full or partial
25 exemption, remission, or deferral specifically related
26 to exports of indirect taxes paid on that product.

1 (b) DEFINITIONS.—In this section:

2 (1) AGREEMENT ON SUBSIDIES AND COUNTER-
3 VAILING MEASURES.—The term “Agreement on Sub-
4 sidies and Countervailing Measures” means the
5 agreement referred to in section 101(d)(12) of the
6 Uruguay Round Agreements Act (19 U.S.C.
7 3511(d)(12)).

8 (2) DIRECT TAXES.—The term “direct taxes”
9 means taxes on wages, profits, interest, rents, royalti-
10 ties, and all other forms of income, and taxes on the
11 ownership of real property.

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

15 (4) INDIRECT TAXES.—The term “indirect
16 taxes” means sales, excise, turnover, value added,
17 franchise, stamp, transfer, inventory, and equipment
18 taxes, border taxes, and all taxes other than direct
19 taxes and import charges.

20 (5) FULL OR PARTIAL EXEMPTION, REMISSION,
21 OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS
22 OF DIRECT TAXES.—The term “full or partial ex-
23 emption, remission, or deferral specifically related to
24 exports of direct taxes” means direct taxes that are
25 paid to the United States Government by a business

1 concern and are fully or partially exempted, remit-
2 ted, or deferred by the Government by reason of the
3 export by that business concern of its products from
4 the United States.

5 (6) FULL OR PARTIAL EXEMPTION, REMISSION,
6 OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS
7 OF INDIRECT TAXES.—The term “full or partial ex-
8 emption, remission, or deferral specifically related to
9 exports of indirect taxes” means indirect taxes that
10 are paid to the government of a country by a busi-
11 ness concern and are fully or partially exempted, re-
12 mitted, or deferred by that government by reason of
13 the export by that business concern of its products
14 from that country.

15 (c) EFFECTIVE PERIOD.—

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

19 (2) TERMINATION OF COUNTERVAILING DUTY
20 ORDERS.—Any countervailing duty order that is
21 issued pursuant to an investigation conducted under
22 subsection (a) and is still in effect on the date de-
23 scribed in paragraph (1) shall terminate on such
24 date.

1 **TITLE IV—LIMITATION ON PRES-**
2 **IDENTIAL DISCRETION IN AD-**
3 **DRESSING MARKET DISRUP-**
4 **TION**

5 **SEC. 401. ACTION TO ADDRESS MARKET DISRUPTION.**

6 Section 421 of the Trade Act of 1974 (19 U.S.C.
7 2451) is amended—

8 (1) in subsection (a), by striking “to the extent
9 and for such period” and all that follows to the end
10 period and inserting “as recommended by the Inter-
11 national Trade Commission”;

12 (2) in subsection (e), by striking “agreed upon
13 by either group” and all that follows to the end pe-
14 riod and inserting “shall be considered an affirma-
15 tive determination”;

16 (3) in subsection (f)—

17 (A) by striking “ON PROPOSED REM-
18 EDIES” in the heading and inserting “FOR RE-
19 LIEF”;

20 (B) by striking “the Commission shall pro-
21 pose” and inserting “the Commission shall rec-
22 ommend”; and

23 (C) by striking “proposed action” and in-
24 serting “recommended action”;

25 (4) by striking subsection (h);

1 (5) in subsection (i)—

2 (A) in the flush sentence at the end of
3 paragraph (1), by striking “agreed upon by ei-
4 ther group” and all that follows to the end pe-
5 riod and inserting “shall be deemed an affirma-
6 tive determination”; and

7 (B) by striking paragraphs (3) and (4);

8 (6) by striking subsections (j) and (k);

9 (7) by amending paragraph (1) of subsection (l)
10 to read as follows: “(1) The President’s implementa-
11 tion of the International Trade Commission remedy
12 shall be published in the Federal Register.”;

13 (8) by amending subsection (m) to read as fol-
14 lows:

15 “(m) EFFECTIVE DATE OF RELIEF.—Import relief
16 under this section shall take effect on the date the Inter-
17 national Trade Commission’s recommendation is pub-
18 lished in the Federal Register, but not later than 15 days
19 after the date of the Commission’s vote recommending the
20 relief.”;

21 (9) by amending subsection (n) to read as fol-
22 lows:

23 “(n) MODIFICATION OF RELIEF.—Any import relief
24 that includes an increase in duty or the imposition of im-

1 port restrictions shall be for a period not to exceed 3
2 years.”; and

3 (10) by striking subsection (o).

4 **TITLE V—MISCELLANEOUS**

5 **SEC. 501. APPLICATION TO CANADA AND MEXICO.**

6 Pursuant to article 1902 of the North American Free
7 Trade Agreement and section 408 of the North American
8 Free Trade Agreement Implementation Act (19 U.S.C.
9 3438), this Act and the amendments made by this Act
10 shall apply with respect to goods from Canada and Mexico.

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