

110TH CONGRESS  
1ST SESSION

# S. 445

To establish the position of Trade Enforcement Officer and a Trade Enforcement Division in the Office of the United States Trade Representative, to require identification of trade enforcement priorities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2007

Ms. STABENOW (for herself, Mr. GRAHAM, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To establish the position of Trade Enforcement Officer and a Trade Enforcement Division in the Office of the United States Trade Representative, to require identification of trade enforcement priorities, 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 Prosecutor  
5       Act”.

1 **SEC. 2. ESTABLISHMENT OF TRADE ENFORCEMENT DIVI-**  
 2 **SION AND POSITION OF TRADE ENFORCE-**  
 3 **MENT OFFICER.**

4 (a) ESTABLISHMENT.—Chapter 4 of title I of the  
 5 Trade Act of 1974 (19 U.S.C. 2171) is amended by add-  
 6 ing at the end the following new section:

7 **“SEC. 142. TRADE ENFORCEMENT DIVISION AND TRADE EN-**  
 8 **FORCEMENT OFFICER.**

9 “(a) ESTABLISHMENT OF TRADE ENFORCEMENT DI-  
 10 VISION.—There is established within the Office of the  
 11 United States Trade Representative a Trade Enforcement  
 12 Division (in this section referred to as the ‘Division’).

13 “(b) ESTABLISHMENT OF POSITION OF TRADE EN-  
 14 FORCEMENT OFFICER.—

15 “(1) IN GENERAL.—The Division shall be head-  
 16 ed by a Trade Enforcement Officer.

17 “(2) APPOINTMENT AND NOMINATION.—The  
 18 Trade Enforcement Officer shall be appointed by the  
 19 President, by and with the advice and consent of the  
 20 Senate. As an exercise of the rulemaking power of  
 21 the Senate, any nomination of the Trade Enforce-  
 22 ment Officer submitted to the Senate for its advice  
 23 and consent, and referred to a committee, shall be  
 24 referred to the Committee on Finance.

1           “(3) RANK.—The Trade Enforcement Officer  
2           shall hold office at the pleasure of the President and  
3           shall have the rank of Ambassador.

4           “(c) FUNCTIONS OF TRADE ENFORCEMENT OFFI-  
5 CER.—

6           “(1) PRINCIPAL FUNCTION.—The principal  
7           function of the Trade Enforcement Officer shall be  
8           to ensure that United States trading partners com-  
9           ply with trade agreements to which the United  
10          States is a party.

11          “(2) ADDITIONAL FUNCTIONS.—The Trade En-  
12          forcement Officer shall—

13                 “(A) assist the United States Trade Rep-  
14                 resentative in investigating and prosecuting dis-  
15                 putes before the World Trade Organization and  
16                 pursuant to other trade agreements to which  
17                 the United States is a party;

18                 “(B) assist the United States Trade Rep-  
19                 resentative in carrying out the United States  
20                 Trade Representative’s functions under section  
21                 141(d);

22                 “(C) make recommendations with respect  
23                 to the administration of United States trade  
24                 laws relating to foreign government barriers to

1 United States goods, services, and intellectual  
 2 property, and other trade matters; and

3 “(D) perform such other functions as the  
 4 United States Trade Representative may direct.

5 “(d) OFFICE OF TRADE ASSISTANCE FOR SMALL  
 6 BUSINESSES.—

7 “(1) ESTABLISHMENT.—There is established  
 8 within the Division the Office of Trade Assistance  
 9 for Small Businesses.

10 “(2) FUNCTIONS.—The Office of Trade Assist-  
 11 ance for Small Businesses shall provide technical  
 12 and legal assistance and advice to eligible small busi-  
 13 nesses to enable such small businesses to prepare  
 14 and file petitions (other than those that, in the opin-  
 15 ion of the Office of Trade Assistance for Small Busi-  
 16 nesses, are frivolous) under section 302.

17 “(3) ELIGIBLE SMALL BUSINESS DEFINED.—  
 18 The term ‘eligible small business’ means any busi-  
 19 ness concern that, in the judgment of the Office of  
 20 Trade Assistance for Small Businesses, due to its  
 21 small size, has neither adequate internal resources  
 22 nor financial ability to obtain qualified outside as-  
 23 sistance in preparing and filing petitions and com-  
 24 plaints under section 302. In determining whether a  
 25 business concern is an ‘eligible small business’, the

1 Office of Trade Assistance for Small Businesses may  
 2 consult with the Administrator of the Small Busi-  
 3 ness Administration and the heads of other appro-  
 4 priate Federal departments and agencies.

5 “(e) STUDY AND REPORT ON NONTARIFF BARRIERS  
 6 TO MARKET ACCESS.—Not later than 180 days after the  
 7 date of the enactment of this section and annually there-  
 8 after, the Trade Enforcement Officer shall report to the  
 9 Committee on Finance of the Senate, the Committee on  
 10 Energy and Commerce of the House of Representatives,  
 11 and the Committee on Ways and Means of the House of  
 12 Representatives on nontariff barriers affecting market ac-  
 13 cess for United States companies in any other country  
 14 with respect to which the United States has entered into  
 15 a trade agreement or is negotiating a trade agreement.”.

16 (b) CONFORMING AMENDMENT.—The table of con-  
 17 tents for the Trade Act of 1974 is amended by inserting  
 18 after the item relating to section 141 the following:

“Sec. 142. Trade Enforcement Division and Trade Enforcement Officer.”.

19 (c) COMPENSATION FOR TRADE ENFORCEMENT OF-  
 20 FICER.—Section 5314 of title 5, United States Code, is  
 21 amended by inserting “Trade Enforcement Officer.” as a  
 22 new item after “Chief Agricultural Negotiator.”.

1 **SEC. 3. 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.—Not later than 75 days  
 10 after the submission of the report required by sec-  
 11 tion 181(b), the 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 such enforce-  
 18 ment actions have had on foreign trade bar-  
 19 riers;

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

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 a report

1 on the priorities, actions, and practices identi-  
 2 fied in subparagraphs (A), (B), and (C); and

3 “(E) publish the report required by sub-  
 4 paragraph (D) in the Federal Register.

5 “(2) FACTORS TO CONSIDER.—In identifying  
 6 priority foreign country trade practices under para-  
 7 graph (1)(C), the Trade Representative shall focus  
 8 on the practices the elimination of which the Trade  
 9 Representative determines will have the most poten-  
 10 tial to increase United States economic growth, ei-  
 11 ther directly or through the establishment of a bene-  
 12 ficial precedent. The Trade Representative shall take  
 13 into account all relevant factors, including—

14 “(A) the major barriers and trade dis-  
 15 torting practices described in the most recent  
 16 available report submitted under section 181(b);

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

20 “(i) section 182;

21 “(ii) section 1377 of the Omnibus  
 22 Trade and Competitiveness Act of 1988  
 23 (19 U.S.C. 3106);

1 “(iii) section 3005 of the Omnibus  
2 Trade and Competitiveness Act of 1988  
3 (22 U.S.C. 5305);

4 “(iv) section 421 of the U.S.-China  
5 Relations Act of 2000 (22 U.S.C. 6951);  
6 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 the compliance of  
13 the foreign country with such 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 required by  
22 paragraph (1)(D) a description of foreign country  
23 trade practices that may in the future warrant iden-  
24 tification as priority foreign country trade practices.



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           by paragraph (1)(D), the Trade Representative shall  
5           set out in detail in such report the reasons for fail-  
6           ing 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 re-  
15          quired by subsection (a)(1)(D).

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, the  
22          Trade Representative shall include such identifica-  
23          tion in the report required by subsection (a)(1)(D).

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

1 Trade Representative may determine not to include  
2 the identification of a priority foreign country trade  
3 practice requested under paragraph (2) in the report  
4 required by subsection (a)(1)(D) only if—

5 “(A) the Trade Representative finds  
6 that—

7 “(i) such practice is already being ad-  
8 dressed—

9 “(I) under provisions of United  
10 States trade law;

11 “(II) under the Uruguay Round  
12 Agreements (as defined in section  
13 2(7) of the Uruguay Round Agree-  
14 ments Act (19 U.S.C. 3501(7)));

15 “(III) under any bilateral or re-  
16 gional trade agreement; or

17 “(IV) as part of trade negotia-  
18 tions with the foreign country or other  
19 countries engaging in such practice;  
20 and

21 “(ii) progress is being made toward  
22 the elimination of such practice; or

23 “(B) the Trade Representative finds that  
24 identification of such practice as a priority for-

1           eign country trade practice would be contrary  
2           to the interests of the United States.

3           “(4) REASONS FOR DETERMINATION.—In the  
4           case of a determination made pursuant to paragraph  
5           (3), the Trade Representative shall set forth in de-  
6           tail the reasons for that determination in the report  
7           required by subsection (a)(1)(D).

8           “(c) INVESTIGATION AND RESOLUTION.—

9           “(1) IN GENERAL.—Upon submission of the re-  
10          port required by subsection (a)(1)(D), the Trade  
11          Representative shall, with respect to any priority for-  
12          eign country trade practice identified, seek satisfac-  
13          tory resolution with the country or countries engag-  
14          ing in such practice under the auspices of the World  
15          Trade Organization, pursuant to a bilateral or re-  
16          gional trade agreement to which the United States  
17          is a party, or by any other means. A satisfactory  
18          resolution may include elimination of the practice or,  
19          if not feasible, providing for compensatory trade  
20          benefits.

21          “(2) CONSULTATIONS; INVESTIGATIONS.—Not  
22          later than 120 days after the transmission of the re-  
23          port required by subsection (a)(1)(D), the Trade  
24          Representative shall, with respect to any priority for-  
25          eign country trade practice identified—

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

3           “(B) initiate dispute settlement consulta-  
4 tions under the applicable provisions of any bi-  
5 lateral or regional trade agreement to which the  
6 United States is a party;

7           “(C) initiate an investigation under section  
8 302(b);

9           “(D) seek to negotiate an agreement that  
10 provides for the elimination of the priority for-  
11 eign country trade practice or, if elimination of  
12 the practice is not feasible, an agreement that  
13 provides for compensatory trade benefits; or

14           “(E) take any other action necessary to  
15 eliminate the priority foreign country trade  
16 practice.

17           “(3) REPORT.—On the day on which the Trade  
18 Representative takes action under subparagraph (E)  
19 of paragraph (2), the Trade Representative shall  
20 submit to Congress a report—

21           “(A) describing the action taken under  
22 subparagraph (E) of paragraph (2) and the  
23 reasons for taking the action; and

24           “(B) stating in detail the reasons the  
25 Trade Representative did not take action under

1           subparagraphs (A) through (D) of paragraph  
2           (2).

3           “(d) **ADDITIONAL REPORTING.**—The Trade Rep-  
4   resentative shall report to the Committee on Finance of  
5   the Senate and the Committee on Ways and Means of the  
6   House of Representatives not later than 6 months after  
7   the date of the enactment of this Act and every 6 months  
8   thereafter on—

9           “(1) the progress being made to realize the  
10   trade enforcement priorities identified in subsection  
11   (a)(1)(A); and

12           “(2) the steps being taken to address the pri-  
13   ority foreign country trade practices identified in  
14   subsection (a)(1)(C).”.

15           (b) **CONFORMING AMENDMENT.**—The table of con-  
16   tents of the Trade Act of 1974 is amended by inserting  
17   after the item relating to section 310 the following:

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

18 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

19           There are authorized to be appropriated such sums  
20   as may be necessary to carry out this Act for each fiscal  
21   year.

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