

112TH CONGRESS
2D SESSION

S. 3347

To require reports on countries with which the United States negotiates trade agreements, to establish terms for future trade agreements, and to enhance the promotion of exports of United States goods and services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 27, 2012

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

A BILL

To require reports on countries with which the United States negotiates trade agreements, to establish terms for future trade agreements, and to enhance the promotion of exports of United States goods and services, 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 “21st Century Trade Agreements and Market Access
6 Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Report by the President on foreign countries with which the United States conducts trade negotiations.
- Sec. 4. Market access assessment by the United States International Trade Commission of foreign countries with which the United States conducts trade negotiations.
- Sec. 5. Report by United States Trade Representative on market access commitments under trade agreements.
- Sec. 6. Sense of Congress on improving process for United States trade negotiations.
- Sec. 7. Inclusion of certain provisions in trade agreements.
- Sec. 8. Improved coordination of export promotion activities of Federal agencies by the Trade Promotion Coordinating Committee.
- Sec. 9. Effective deployment of resources of the United States and Foreign Commercial Service.
- Sec. 10. Strengthened commercial diplomacy to increase United States exports.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

- 5 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 6 TEES.—The term “appropriate congressional com-
 7 mittees” means the Committee on Finance of the
 8 Senate and the Committee on Ways and Means of
 9 the House of Representatives.
- 10 (2) CORE LABOR RIGHTS.—The term “core
 11 labor rights” means the core labor rights as stated
 12 in the International Labour Organization conven-
 13 tions dealing with—
 14 (A) freedom of association and the effec-
 15 tive recognition of the right to collective bar-
 16 gaining;

1 (B) the elimination of all forms of forced
2 or compulsory labor;

3 (C) the effective abolition of child labor;
4 and

5 (D) the elimination of discrimination with
6 respect to employment and occupation.

7 (3) MULTILATERAL ENVIRONMENTAL AGREE-
8 MENT.—The term “multilateral environmental
9 agreement” means any international agreement or
10 provision thereof to which the United States is a
11 party and that is intended to protect, or has the ef-
12 fect of protecting, the environment or human health.

13 (4) STATE.—The term “State” means each of
14 the several States, the District of Columbia, and any
15 commonwealth, territory, or possession of the United
16 States.

17 (5) TRIPS AGREEMENT.—The term “TRIPS
18 Agreement” means the Agreement on Trade-Related
19 Aspects of Intellectual Property Rights described in
20 section 101(d)(15) of the Uruguay Round Agree-
21 ments Act (19 U.S.C. 3511(d)(5)).

1 **SEC. 3. REPORT BY THE PRESIDENT ON FOREIGN COUN-**
2 **TRIES WITH WHICH THE UNITED STATES**
3 **CONDUCTS TRADE NEGOTIATIONS.**

4 (a) IN GENERAL.—Not later than 45 days before the
5 President initiates negotiations for a trade agreement with
6 a foreign country, the President shall submit to the appro-
7 priate congressional committees and make available to the
8 public a report on the foreign country that includes—

9 (1) an assessment of whether the foreign coun-
10 try—

11 (A) has a democratic form of government;

12 (B) has adopted into domestic law and reg-
13 ulations the core labor rights and effectively en-
14 forces those rights as reflected in reports of the
15 Committee of Experts on the Application of
16 Conventions and Recommendations, the Con-
17 ference Committee on the Application of Stand-
18 ards, and the Committee on Freedom of Asso-
19 ciation of the International Labour Organiza-
20 tion;

21 (C) respects fundamental human rights, as
22 reflected in the annual Country Reports on
23 Human Rights Practices of the Department of
24 State;

25 (D) is designated as a country of par-
26 ticular concern with respect to religious freedom

1 under section 402(b)(1) of the International
2 Religious Freedom Act of 1998 (22 U.S.C.
3 6442(b)(1));

4 (E) is on a list described in subparagraph
5 (B) or (C) of section 110(b)(1) of the Traf-
6 ficking Victims Protection Act of 2000 (22
7 U.S.C. 7107(b)(1)) (commonly known as tier 2
8 or tier 3 of the Trafficking in Persons List of
9 the Department of State);

10 (F) complies with the multilateral environ-
11 mental agreements to which the foreign country
12 is a party;

13 (G) has in force adequate environmental
14 laws and regulations, has devoted sufficient re-
15 sources to implementing such laws and regula-
16 tions, and has an adequate record of enforce-
17 ment of such law and regulations;

18 (H) enforces the rights and flexibilities
19 provided under the TRIPS Agreement; and

20 (I) provides for government transparency,
21 due process of law, and respect for international
22 agreements;

23 (2) an assessment of whether the government of
24 the foreign country or persons in the foreign country
25 transfer sensitive technology or products or provide

1 services to other countries or persons in a manner
2 that poses a threat to the national security of the
3 United States; and

4 (3) a certification by the President that, in the
5 10-year period preceding the submission of the re-
6 port, the government of the foreign country has not
7 intervened in or engaged in the manipulation of the
8 rate of exchange between the currency of the foreign
9 country and the United States dollar in a manner
10 that helps the foreign country gain an unfair com-
11 petitive advantage.

12 (b) REPORT ON ONGOING NEGOTIATIONS.—Not later
13 than 30 days after the date of the enactment of this Act,
14 the President shall submit to the appropriate congres-
15 sional committees and make available to the public a re-
16 port on each foreign country with which negotiations for
17 a trade agreement are ongoing on such date of enactment
18 that includes the matters required to be included in the
19 report under subsection (a) with respect to that foreign
20 country.

21 (c) FORM OF REPORT.—Each report required under
22 subsection (a) or (b) shall be submitted in unclassified
23 form, but may contain a classified annex if necessary.

1 **SEC. 4. MARKET ACCESS ASSESSMENT BY THE UNITED**
2 **STATES INTERNATIONAL TRADE COMMIS-**
3 **SION OF FOREIGN COUNTRIES WITH WHICH**
4 **THE UNITED STATES CONDUCTS TRADE NE-**
5 **GOTIATIONS.**

6 (a) IN GENERAL.—Not later than 45 days before the
7 President initiates negotiations for a trade agreement with
8 a foreign country under which the duty on any product
9 imported into the United States from the foreign country
10 will be modified, the United States International Trade
11 Commission (in this section referred to as the “Commis-
12 sion”) shall submit to the United States Trade Represent-
13 ative, the Secretary of Commerce, the appropriate con-
14 gressional committees, and make available to the public,
15 a report on opportunities and challenges relating to mar-
16 ket access arising from the trade agreement that in-
17 cludes—

18 (1) an identification and assessment of the tar-
19 iff and nontariff barriers, policies, and practices of
20 the government of the foreign country with respect
21 to United States exports to the foreign country of
22 any product identified by producers in the United
23 States as having the same physical characteristics
24 and uses as the product for which the duty will be
25 modified;

1 (2) an assessment of the expected opportunities
2 for exports of that product from the United States
3 to the foreign country if the tariff and nontariff bar-
4 riers, policies, and practices identified under para-
5 graph (1) are eliminated; and

6 (3) an estimate of the per capita and median
7 income of the foreign country and the population of
8 the foreign country.

9 (b) REPORT ON ONGOING NEGOTIATIONS.—Not later
10 than 30 days after the date of the enactment of this Act,
11 the Commission shall submit to the United States Trade
12 Representative, the Secretary of Commerce, the appro-
13 priate congressional committees, and make available to the
14 public, a report on each foreign country with which nego-
15 tiations for a trade agreement are ongoing on such date
16 of enactment that includes the matters required to be in-
17 cluded in the report under subsection (a) with respect to
18 that foreign country.

19 (c) CONSULTATIONS.—In developing each report re-
20 quired by subsection (a) or (b) with respect to a product
21 for which a duty will be modified pursuant to a trade
22 agreement, the Commission shall, as appropriate, consult
23 with and seek to obtain relevant documentation from pro-
24 ducers in the United States of—

1 (1) products with the same physical characteris-
2 ties and uses as the product for which the duty will
3 be modified; and

4 (2) components for products described in para-
5 graph (1).

6 **SEC. 5. REPORT BY UNITED STATES TRADE REPRESENTA-**
7 **TIVE ON MARKET ACCESS COMMITMENTS**
8 **UNDER TRADE AGREEMENTS.**

9 Not later than 75 days after the date on a trade
10 agreement enters into force with respect to the United
11 States, and March 15 of each year thereafter, the United
12 States Trade Representative shall submit to the appro-
13 priate congressional committees and make available to the
14 public a report that, with respect to each foreign country
15 that is a party to the trade agreement—

16 (1) describes the market access commitments
17 made by the foreign country under the trade agree-
18 ment;

19 (2) identifies from among those commitments—

20 (A) any commitments that are undermined
21 by discriminatory measures imposed by the gov-
22 ernment of the foreign country;

23 (B) the commitments likely to have the
24 most significant potential to increase United
25 States economic growth;

1 (C) any commitments that have the poten-
 2 tial to have a negative impact on the mainte-
 3 nance and creation of jobs, decent wages, and
 4 productive capacity in the United States; and

5 (D) the commitments that have the poten-
 6 tial to most increase the enforcement of core
 7 labor rights in the foreign country;

8 (3) describes the actions taken by the govern-
 9 ment of the foreign country to comply with the com-
 10 mitments described in paragraph (1);

11 (4) identifies any commitments described in
 12 paragraph (1) that the government of the foreign
 13 country is not implementing or making progress to-
 14 ward implementing in a timely or effective manner;
 15 and

16 (5) describes any actions taken by the Trade
 17 Representative to obtain the full compliance of the
 18 government of the foreign country with each com-
 19 mitment described in paragraph (4).

20 **SEC. 6. SENSE OF CONGRESS ON IMPROVING PROCESS FOR**
 21 **UNITED STATES TRADE NEGOTIATIONS.**

22 It is the sense of Congress that if Congress considers
 23 legislation to provide for expedited procedures for the con-
 24 sideration of bills to implement trade agreements, that leg-
 25 islation should include—

1 (1) criteria for the President to use—

2 (A) in determining whether a foreign coun-
3 try with which the United States is negotiating
4 a trade agreement—

5 (i) will be able to meet its obligations
6 under the trade agreement; and

7 (ii) provides, or will provide, opportu-
8 nities for exports from the United States
9 that country of products that have the
10 same physical characteristics and uses as
11 products imported into the United States
12 from the country for which the duty will be
13 modified under the trade agreement;

14 (B) in making the assessments and certifi-
15 cations required by sections 3 and 4;

16 (2) a process by which the appropriate congres-
17 sional committees review and verify the determina-
18 tions of the President described in paragraph (1);

19 (3) requirements for consultation with Congress
20 during trade negotiations that require more frequent
21 consultations than required by the Bipartisan Trade
22 Promotion Authority Act of 2002 (19 U.S.C. 3801
23 et seq.), including a process for consultation with
24 any committee of Congress with jurisdiction over
25 any area covered by the negotiations;

1 (4) binding negotiating objectives and require-
2 ments outlining what must and must not be included
3 in a trade agreement, including the provisions de-
4 scribed in section 7;

5 (5) a requirement that the President submit to
6 the appropriate congressional committees, at the
7 time the President seeks the approval of Congress to
8 enter into a trade agreement, an assessment of each
9 negotiating objective and requirement described in
10 paragraph (4) and whether or not the President has
11 met that objective or requirement;

12 (6) a process—

13 (A) by which a State may give informed
14 consent to be bound by nontariff provisions in
15 a trade agreement that relate to investment, the
16 service sector, and procurement; and

17 (B) that prevents a State from being
18 bound by the provisions described in subpara-
19 graph (A) if the State has not consented; and

20 (7) a requirement that a trade agreement be
21 approved by a majority vote in both Houses of Con-
22 gress before the President may sign the agreement.

1 **SEC. 7. INCLUSION OF CERTAIN PROVISIONS IN TRADE**
2 **AGREEMENTS.**

3 (a) IN GENERAL.—Notwithstanding section 151 of
4 the Trade Act of 1974 (19 U.S.C. 2191) or any other pro-
5 vision of law, any bill implementing a trade agreement be-
6 tween the United States and a foreign country that is in-
7 troduced in Congress after the date of the enactment of
8 this Act shall be subject to a point of order pursuant to
9 subsection (c) unless the trade agreement meets the re-
10 quirements described in subsection (b).

11 (b) REQUIREMENTS.—Each trade agreement between
12 the United States and a foreign country with respect to
13 which an implementing bill is introduced on or after the
14 date of the enactment of this Act shall meet the following
15 requirements:

16 (1) LABOR STANDARDS.—The labor provisions
17 of the agreement shall—

18 (A) be included in the core text of the
19 agreement;

20 (B) require each country that is a party to
21 the agreement—

22 (i) to adopt and maintain laws and
23 regulations (including laws applicable to
24 any designated zone in the country) that
25 establish core labor rights; and

1 (ii) to effectively enforce laws relating
2 to core labor rights and laws relating to
3 acceptable conditions of work (including
4 laws relating to minimum wages, hours of
5 work, and occupational safety and health);

6 (C) prohibit a country that is a party to
7 the agreement from waiving or otherwise dero-
8 gating from, or offering to waive or otherwise
9 derogate from, the country's laws and regula-
10 tions relating to the core labor rights and ac-
11 ceptable conditions of work described in sub-
12 paragraph (B);

13 (D) provide that failures to meet the labor
14 requirements of the agreement, regardless of
15 the effect of such failures on trade, shall be
16 subject to the dispute resolution and enforce-
17 ment mechanisms and penalties of the agree-
18 ment;

19 (E) provide that enforcement mechanisms
20 and penalties for failures described in subpara-
21 graph (D) are included in the core text of the
22 agreement and are at least as effective as the
23 mechanisms and penalties that apply to the
24 commercial provisions of the agreement;

1 (F) strengthen the capacity of each coun-
2 try that is a party to the agreement to promote,
3 protect, and enforce core labor rights;

4 (G) require each country that is a party to
5 the agreement—

6 (i) to have a national contact point for
7 every labor complaint; and

8 (ii) to produce a report that addresses
9 all the issues raised in each such complaint
10 and includes recommendations on all con-
11 firmed allegations, including specific rec-
12 ommendations for employers directly or in-
13 directly implicated in the complaint; and

14 (H) require that—

15 (i) there is a full and expeditious re-
16 mediation of all labor complaints; and

17 (ii) the remediation plan is satisfac-
18 tory to all parties and conforms to the
19 findings and recommendations of the na-
20 tional contact point described in subpara-
21 graph (G).

22 (2) ENVIRONMENTAL AND PUBLIC SAFETY
23 STANDARDS.—The environmental provisions of the
24 agreement shall—

1 (A) be included in the text of the agree-
2 ment;

3 (B) prohibit each country that is a party
4 to the agreement from weakening, eliminating,
5 or failing to enforce domestic environmental or
6 other public safety standards to promote trade
7 or attract investment;

8 (C) require each such country to imple-
9 ment and enforce fully and effectively the coun-
10 try's obligations under multilateral environ-
11 mental agreements and provide for the enforce-
12 ment of such obligations under the agreement;

13 (D) prohibit the trade of products that are
14 illegally harvested or extracted and the trade of
15 goods derived from illegally harvested or ex-
16 tracted natural resources, including timber and
17 timber products, fish, wildlife, and associated
18 products, mineral resources, or other environ-
19 mentally sensitive goods;

20 (E) provide that the failure to meet the en-
21 vironmental standards required by the agree-
22 ment be subject to dispute resolution and en-
23 forcement mechanisms and penalties that are at
24 least as effective as the mechanisms and pen-

alties that apply to the commercial provisions of the agreement; and

(F) allow each country that is a party to the agreement to adopt and implement environmental, health, and safety standards, recognizing the legitimate right of governments to protect the environment and public health and safety.

(3) FOOD AND PRODUCT HEALTH AND SAFETY STANDARDS.—If the agreement contains provisions relating to health and safety standards or labeling requirements for food and other products, the agreement shall—

(A) establish that food, feed, food ingredients, and other products relating to food may be imported into the United States from a country that is a party to the agreement only if such food and related products meet or exceed United States laws and regulations with respect to food safety, pesticides, inspections, packaging, and labeling;

(B) establish that nonfood products may be imported into the United States from a country that is a party to the agreement only if such products meet or exceed United States

1 laws and regulations with respect to health and
2 safety, inspection, packaging, and labeling;

3 (C) authorize the Commissioner of Food
4 and Drugs (in this section referred to as the
5 “Commissioner”) and the Consumer Product
6 Safety Commission (in this section referred to
7 as the “Commission”) to assess the regulatory
8 system of each country that is a party to the
9 agreement to determine whether the regulatory
10 system of that country provides the same or
11 better protection of health and safety for food
12 and other products as provided under the regu-
13 latory system of the United States;

14 (D) if the Commissioner or the Commis-
15 sion determines that the regulatory system of a
16 country does not provide the same or better
17 protection of health and safety for food and
18 other products as provided under the regulatory
19 system of the United States, provide that the
20 President may temporarily suspend the impor-
21 tation into the United States of food and other
22 products from that country;

23 (E) provide a process for inspecting and
24 approving facilities in countries to ensure that
25 those facilities meet the requirements under

1 United States laws and regulations with respect
2 to health and safety in order to allow products
3 from approved facilities to be imported into the
4 United States; and

5 (F) if harmonization of food or product
6 health or safety laws and regulations is nec-
7 essary to facilitate trade, provide that such har-
8 monization shall be based on standards that are
9 no less stringent than United States laws and
10 regulations.

11 (4) SERVICES PROVISIONS.—If the agreement
12 contains provisions relating to services, such provi-
13 sions shall—

14 (A) preserve the right of Federal, State,
15 and local governments to maintain essential
16 public services and to regulate, for the benefit
17 of the public, services provided to consumers;

18 (B)(i) provide that a service is not subject
19 to the agreement unless a country that is a
20 party to the agreement establishes a positive
21 list of each service sector that will be subject to
22 the obligations of the country under the agree-
23 ment; and

1 (ii) apply the agreement only to the service
2 sectors that are on the list described in clause
3 (i);

4 (C) establish a general exception to the
5 market access obligations contained in the
6 agreement by allowing a country that is a party
7 to the agreement to maintain or establish a ban
8 on services that the country considers harmful
9 to public health or safety, the environment, or
10 public morals if the ban is applied to both do-
11 mestic and foreign services and service pro-
12 viders;

13 (D) require service providers in a country
14 that is a party to the agreement that provide
15 services through a commercial presence in the
16 United States to consumers in the United
17 States to comply with applicable United States
18 environmental, land use, safety, privacy, trans-
19 parency, professional qualification, and con-
20 sumer access laws and regulations;

21 (E) require that services provided to con-
22 sumers in the United States that would be sub-
23 ject to privacy laws and regulations in the
24 United States may be provided only by service
25 providers in other countries if those countries

1 have privacy protections and protections regard-
2 ing confidential information that are equal to or
3 exceed the protections provided by United
4 States privacy laws and regulations;

5 (F) provide that privatization of public
6 services in any country that is a party to the
7 agreement or the deregulation of a service is
8 not required, including services relating to na-
9 tional security, social security, health, public
10 safety, education, water, sanitation, other utili-
11 ties, ports, or transportation; and

12 (G) provide that local governments are not
13 subject to the service sector obligations under
14 the agreement.

15 (5) INVESTMENT PROVISIONS.—If the agree-
16 ment contains provisions relating to investment,
17 such provisions shall—

18 (A) preserve the ability of each country
19 that is a party to the agreement to regulate for-
20 eign investment in a manner consistent with the
21 needs and priorities of the country;

22 (B) preserve the ability of each country to
23 place prudential restrictions on speculative cap-
24 ital, including through the use of capital con-
25 trols, to promote financial stability;

1 (C) ensure that foreign investors operating
2 in the United States are not afforded greater
3 procedural or substantive rights under the trade
4 agreement than those afforded to domestic in-
5 vestors under the Constitution and laws of the
6 United States;

7 (D) ensure that the adoption or application
8 by any government of a nondiscriminatory
9 measure intended to serve a public purpose is
10 not prohibited by the agreement and is not a
11 violation of the agreement;

12 (E) provide that the term “investment”
13 means only a commitment of capital or the ac-
14 quisition of real property as understood under
15 the laws of the country that is a party to the
16 agreement and excludes the assumption of risk
17 or expectation of gain or profit;

18 (F) provide that the term “investor”
19 means only a person who makes a commitment
20 or an acquisition described in subparagraph
21 (E);

22 (G) limit protections against expropriations
23 to direct expropriation of real property and pro-
24 vide that “direct expropriation” means govern-
25 ment action that does not merely diminish the

1 value of real property but destroys all value of
2 the real property permanently; and

3 (H) define the standard of minimum treat-
4 ment to provide that foreign investors do not
5 have greater legal rights than United States
6 citizens possess under the due process clause of
7 section 1 of the 14th Amendment to the Con-
8 stitution of the United States.

9 (6) PROCUREMENT STANDARDS.—If the agree-
10 ment contains government procurement provisions,
11 such provisions shall—

12 (A) provide that an industry sector, goods,
13 and services are not subject to the agreement
14 unless a country that is a party to the agree-
15 ment establishes a positive list of industry sec-
16 tors, goods, and services that will be subject to
17 the obligations of the country under the agree-
18 ment;

19 (B) with respect to the United States—

20 (i) apply only to a State that specifi-
21 cally agrees to the agreement and only to
22 the industry sectors, goods, and services
23 specifically identified by the State govern-
24 ment; and

1 (ii) not apply to local governments;

2 and

3 (C) include only technical specifications for
4 goods or services, or supplier qualifications or
5 other conditions for receiving government con-
6 tracts, that do not undermine—

7 (i) prevailing wage policies;

8 (ii) recycled content policies;

9 (iii) sustainable harvest policies;

10 (iv) renewable energy policies;

11 (v) human rights; or

12 (vi) project labor agreements.

13 (7) INTELLECTUAL PROPERTY REQUIRE-
14 MENTS.—If the agreement contains provisions re-
15 lated to the protection of intellectual property rights,
16 such provisions shall—

17 (A) promote adequate and effective protec-
18 tion of intellectual property rights;

19 (B) include only terms relating to patents
20 that do not, overtly or in application, limit the
21 flexibilities and rights established in the Dec-
22 laration on the TRIPS Agreement and Public
23 Health, adopted by the World Trade Organiza-
24 tion at the Fourth Ministerial Conference at
25 Doha, Qatar, on November 14, 2001, particu-

1 larly the flexibilities and rights relating to the
2 promotion of access to medicines and the
3 issuance of compulsory licenses on grounds de-
4 termined by member states; and

5 (C) not provide a general obligation for
6 providers of Internet information services to
7 monitor the electronic information transmitted
8 or stored by those providers.

9 (8) AGRICULTURAL STANDARDS.—If the agree-
10 ment contains provisions relating to agriculture,
11 such provisions shall—

12 (A) protect the right of each country that
13 is a party to the agreement to establish policies
14 with respect to food and agriculture that allow
15 for inventory management and strategic food
16 and renewable energy reserves, if such policies
17 do not contribute to or allow the dumping of
18 agricultural commodities in world markets at
19 prices lower than the cost of production;

20 (B) protect the right of each country that
21 is a party to the agreement to prevent dumping
22 of agricultural commodities at below world mar-
23 ket prices through border regulations or other
24 mechanisms and policies;

1 (C) ensure adequate and affordable sup-
2 plies of safe food for consumers;

3 (D) protect the right of each country that
4 is a party to the agreement to encourage land
5 and water conservation through the use of best
6 practices with respect to the management and
7 production of agricultural commodities; and

8 (E) ensure fair treatment of farm laborers
9 in each such country.

10 (9) TRADE REMEDIES AND SAFEGUARDS.—If
11 the agreement contains trade remedy provisions,
12 such provisions shall—

13 (A) preserve fully the ability of the United
14 States to enforce the trade laws of the United
15 States, including antidumping and counter-
16 vailing duty laws and safeguard laws;

17 (B) ensure the continued effectiveness of
18 domestic and international prohibitions on un-
19 fair trade, especially prohibitions on dumping
20 and subsidies, and domestic and international
21 safeguard provisions;

22 (C) establish mechanisms to address and
23 remedy market distortions that lead to dumping
24 and subsidization, including overcapacity, car-
25 telization, and market-access barriers, by im-

1 posing strong sanctions against subsidies, in-
2 cluding applying countervailing duty laws in
3 cases in which exporters receive tax rebates for
4 indirect taxes upon exportation;

5 (D) allow the United States to maintain
6 adequate safeguards to ensure that surges of
7 imported goods do not result in economic bur-
8 dens on workers, firms, or farmers in the
9 United States, including providing that such
10 safeguards go into effect automatically based on
11 certain criteria;

12 (E) establish mechanisms by which coun-
13 tries that are parties to the agreement may as-
14 sess the trade consequences of significant cur-
15 rency movements and determine whether the
16 currency of a country that is a party to the
17 agreement is deliberately misaligned to gain a
18 competitive advantage in international trade;
19 and

20 (F) establish safeguard remedies that
21 apply automatically to offset substantial and
22 sustained currency movements in cases in which
23 the currency of such a country is deliberately
24 misaligned.

1 (10) STATE-OWNED ENTERPRISES.—If the
2 agreement contains provisions relating to state-
3 owned enterprises, such provisions shall—

4 (A) require each state-owned enterprise to
5 act solely in a manner consistent with commer-
6 cial considerations in all of its investments, op-
7 erations, and other activities in the territory of
8 another country that is a party to the agree-
9 ment;

10 (B) require each country that is a party to
11 the agreement to refrain from providing to any
12 of its state-owned enterprises subsidies, or other
13 benefits not generally available on commercial
14 terms, that provide an advantage to the enter-
15 prise or its operations with respect to any in-
16 vestment, operation, or other activity in the ter-
17 ritory of another country that is a party to the
18 agreement;

19 (C) not restrict temporary measures taken
20 by a country that is a party to the agreement
21 that the country determines are necessary to
22 safeguard an essential economic or security in-
23 terest of that country; and

24 (D) require each country that is a party to
25 the agreement to make public an annual report

1 with respect to each state-owned enterprise that
2 invests in or conducts operations or other ac-
3 tivities in the territory of another country that
4 is a party to the agreement that—

5 (i) describes in detail the governing
6 structure of the enterprise;

7 (ii) identifies the share of the interests
8 in the capital structure of the enterprise
9 held by the government of the country;

10 (iii) identifies the members of the
11 board of directors of the enterprise; and

12 (iv) identifies the annual revenue and
13 total assets of the enterprise.

14 (11) DISPUTE RESOLUTION AND ENFORCEMENT
15 PROVISIONS.—If the agreement contains provisions
16 relating to dispute resolution, such provisions
17 shall—

18 (A) incorporate the due process protections
19 of the Constitution of the United States, as well
20 as provisions relating to access to documents,
21 open hearings, transparency, and fair and im-
22 partial tribunals;

23 (B) require that any dispute settlement
24 panel, including an appellate panel, dealing with
25 intellectual property rights or environmental,

1 health, labor, and other public law issues in-
2 clude panelists with expertise in the issues that
3 are the subject of the dispute; and

4 (C) provide that dispute resolution pro-
5 ceedings are open to the public and provide
6 timely public access to information regarding
7 enforcement, disputes, and ongoing negotiations
8 relating to disputes.

9 (12) TECHNICAL ASSISTANCE.—If the agree-
10 ment contains technical assistance provisions, such
11 provisions shall—

12 (A) be designed to raise standards in de-
13 veloping countries by providing assistance in a
14 manner that ensures diversity of development;

15 (B) be designed to empower civil society
16 and democratic governments to create sustain-
17 able, vibrant economies and respect basic
18 rights; and

19 (C) not supplant economic assistance or
20 promote the exportation of goods produced with
21 the exploitation of labor or methods that involve
22 the unsustainable use of natural resources.

23 (13) EXCEPTIONS FOR NATIONAL SECURITY
24 AND OTHER REASONS.—Each agreement shall—

1 (A) include an essential security exception
2 to the provisions of the agreement that permits
3 a country that is a party to the agreement to
4 apply measures that the country considers nec-
5 essary for the maintenance or restoration of
6 international peace or security or the protection
7 of its essential security interests; and

8 (B) include a provision that gives priority
9 to the implementation of bilateral or multilat-
10 eral agreements relating to public health,
11 human and labor rights, the environment, or
12 other public interest goals in the event of any
13 inconsistency between the trade agreement and
14 such bilateral or multilateral agreement.

15 (14) FEDERALISM.—The trade agreement may
16 require a State government in the United States to
17 comply with procurement, investment, or services
18 provisions contained in the trade agreement only if
19 the State government has been consulted in full and
20 has given explicit consent to be bound by such provi-
21 sions.

22 (c) POINT OF ORDER IN SENATE.—The Senate shall
23 cease consideration of a bill to implement a trade agree-
24 ment introduced on or after the date of the enactment of
25 this Act if—

1 (1) a point of order is made by any Senator
2 against the bill based on the noncompliance of the
3 trade agreement with the requirements of subsection
4 (b); and

5 (2) the point of order is sustained by the Pre-
6 siding Officer.

7 (d) WAIVERS AND APPEALS.—

8 (1) WAIVERS.—Before the Presiding Officer
9 rules on a point of order described in subsection (c),
10 any Senator may move to waive the point of order
11 and the motion to waive shall not be subject to
12 amendment. A point of order described in subsection
13 (c) is waived only by the affirmative vote of 60
14 Members of the Senate, duly chosen and sworn.

15 (2) APPEALS.—After the Presiding Officer
16 rules on a point of order described in subsection (c),
17 any Senator may appeal the ruling of the Presiding
18 Officer on the point of order as it applies to some
19 or all of the provisions on which the Presiding Offi-
20 cer ruled. A ruling of the Presiding Officer on a
21 point of order described in subsection (c) is sus-
22 tained unless 60 Members of the Senate, duly cho-
23 sen and sworn, vote not to sustain the ruling.

24 (3) DEBATE.—Debate on the motion to waive
25 under paragraph (1) or on an appeal of the ruling

1 of the Presiding Officer under paragraph (2) shall
 2 be limited to 1 hour. The time shall be equally di-
 3 vided between, and controlled by, the majority leader
 4 and the minority leader of the Senate, or their des-
 5 ignees.

6 **SEC. 8. IMPROVED COORDINATION OF EXPORT PRO-**
 7 **MOTION ACTIVITIES OF FEDERAL AGENCIES**
 8 **BY THE TRADE PROMOTION COORDINATING**
 9 **COMMITTEE.**

10 (a) DUTIES OF TPCC.—Section 2312(b) of the Ex-
 11 port Enhancement Act of 1988 (15 U.S.C. 4727(b)) is
 12 amended—

13 (1) in paragraph (5), by striking “; and” and
 14 inserting “, including a recommendation for the uni-
 15 fied Federal trade promotion budget required by
 16 subsection (c)(4);”;

17 (2) by redesignating paragraph (6) as para-
 18 graph (7); and

19 (3) by inserting after paragraph (5) the fol-
 20 lowing:

21 “(6) in conducting assessments under para-
 22 graph (5), review the proposed budget for a fiscal
 23 year of each agency with responsibility for export
 24 promotion or export financing activities before the
 25 agency submits that budget to the Office of Manage-

1 ment and Budget and the President for inclusion in
 2 the budget of the President for that fiscal year to
 3 be submitted to Congress under section 1105(a) of
 4 title 31, United States Code; and”.

5 (b) STRATEGIC PLAN.—Section 2312(c) of the Ex-
 6 port Enhancement Act of 1988 (15 U.S.C. 4727(c)) is
 7 amended—

8 (1) by redesignating paragraphs (3), (4), (5),
 9 and (6) as paragraphs (4), (6), (7), and (8), respec-
 10 tively;

11 (2) in paragraph (2), by inserting after “coordi-
 12 nation of such activities” the following: “, based on
 13 consultations with, and recommendations from, a
 14 representative number of United States exporters
 15 and other types of export-related businesses”;

16 (3) by inserting after paragraph (2) the fol-
 17 lowing:

18 “(3) identify countries with which the United
 19 States could negotiate trade agreements to increase
 20 United States exports;”;

21 (4) by inserting after paragraph (4), as redesign-
 22 ated, the following:

23 “(5) identify areas in which the TPCC can
 24 maximize existing partnerships with agencies by
 25 granting the TPCC the ability to partner with a

1 partner of an agency that is a member of the TPCC
 2 without requiring an additional memorandum of un-
 3 derstanding between the TPCC and that partner;”;

4 (5) in paragraph (7), as redesignated, by strik-
 5 ing “; and” and inserting a semicolon;

6 (6) in paragraph (8), as redesignated, by strik-
 7 ing the period and inserting a semicolon; and

8 (7) by adding at the end the following:

9 “(9) review and propose means to improve edu-
 10 cational outreach to small- and medium-sized busi-
 11 nesses with respect to the resources available
 12 through the TPCC and agencies that are members
 13 of the TPCC, including by consulting with, and con-
 14 sidering recommendations from, United States ex-
 15 porters and the Small Business Administration with
 16 respect to improving outreach by the TPCC; and

17 “(10) clearly describe the role of each agency
 18 that is a member of the TPCC and the responsibility
 19 of each such agency for export promotion and export
 20 financing.”.

21 (c) EXPORT.GOV; REGULATIONS.—Section 2312 of
 22 the Export Enhancement Act of 1988 (15 U.S.C. 4727)
 23 is amended by adding at the end the following:

24 “(g) INFORMATION AVAILABLE ON EXPORT.GOV.—
 25 The TPCC shall coordinate with the agencies that are

1 members of the TPCC to publish information relevant to
 2 export promotion and export financing on Export.gov (or
 3 a successor website), including—

4 “(1) the information described in subsection
 5 (c)(10); and

6 “(2) detailed information on ongoing and an-
 7 ticipated trade missions, trade fairs, and related
 8 Federal and State export promotion and export fi-
 9 nancing activities.

10 “(h) EXECUTIVE ORDER AND REGULATIONS.—Not
 11 later than 18 months after the date of the enactment of
 12 the 21st Century Trade Agreements and Market Access
 13 Act, the President shall issue an executive order and such
 14 regulations as are necessary to provide the chairperson of
 15 the TPCC with the authority to ensure that the TPCC
 16 carries out each of its duties under subsection (b) and de-
 17 velops and implements the strategic plan under subsection
 18 (c).”.

19 **SEC. 9. EFFECTIVE DEPLOYMENT OF RESOURCES OF THE**
 20 **UNITED STATES AND FOREIGN COMMERCIAL**
 21 **SERVICE.**

22 Section 2301(c)(4) of the Export Enhancement Act
 23 of 1988 (15 U.S.C. 4721(c)(4)) is amended—

1 (1) by redesignating subparagraphs (B)
2 through (F) as subparagraphs (C) through (G), re-
3 spectively;

4 (2) by striking “(4) FOREIGN OFFICES.—(A)
5 The Secretary may” and inserting the following:

6 “(4) FOREIGN OFFICES.—(A)(i) The Secretary
7 shall conduct a global assessment of overseas mar-
8 kets to identify the markets with the greatest poten-
9 tial for increasing United States exports and rede-
10 ploy Commercial Service personnel and other re-
11 sources on the basis of the global assessment.

12 “(ii) The assessment conducted under clause (i)
13 shall take into consideration recommendations from
14 a representative number of United States exporters.

15 “(iii) Not later than 180 days after the date of
16 the enactment of the 21st Century Trade Agree-
17 ments and Market Access Act, the Secretary shall
18 submit to Congress a report on the results of the
19 first global assessment conducted under clause (i)
20 and a plan for the redeployment of Commercial
21 Service personnel and other resources on the basis
22 of the global assessment.

23 “(iv) The Secretary shall conduct a global as-
24 sessment and redeployment described in clause (i)
25 not less frequently than once in every 5-year period.

1 “(B) The Secretary may”; and

2 (3) in subparagraph (F), as redesignated, by
3 striking “is authorized, upon the request of the Sec-
4 retary, to provide” and inserting “shall, upon the re-
5 quest of the Secretary, provide”.

6 **SEC. 10. STRENGTHENED COMMERCIAL DIPLOMACY TO IN-**
7 **CREASE UNITED STATES EXPORTS.**

8 (a) DEVELOPMENT OF PLAN.—Section 207(c) of the
9 Foreign Service Act of 1980 (22 U.S.C. 3927(c)) is
10 amended—

11 (1) by inserting “(1)” after “(c)”; and

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

13 “(2)(A) Each chief of mission to a foreign country
14 shall develop a plan for effective diplomacy to remove or
15 reduce obstacles to exports of United States goods and
16 services, in consultation with—

17 “(i) the ambassador of the United States to the
18 country;

19 “(ii) the Assistant Secretary of Commerce and
20 Director General of the Commercial Service (estab-
21 lished by section 2301(a)(2) of the Export Enhance-
22 ment Act of 1988 (15 U.S.C. 4721(a)(2)));

23 “(iii) the heads of other Federal agencies with
24 export promotion programs, acting through the
25 Trade Promotion Coordinating Committee (estab-

1 lished by section 2312 of the Export Enhancement
2 Act of 1988 (15 U.S.C. 4727)); and

3 “(iv) the trade advisory committees authorized
4 by paragraphs (1) and (2) of section 135(c) of the
5 Trade Act of 1974 (19 U.S.C. 2155(c)), if those
6 committees request consultation.

7 “(B) The chief of mission shall submit the plan re-
8 quired by subparagraph (A) to the Secretary for review
9 by the Secretary before implementing the plan.”.

10 (b) ASSESSMENTS AND PROMOTIONS.—Section
11 603(a) of the Foreign Service Act of 1980 (22 U.S.C.
12 4003(a)) is amended in the second sentence by inserting
13 after “disciplinary actions,” the following: “assessments
14 (with respect to members of the Service with responsibil-
15 ities relating to economic affairs) of the effectiveness of
16 efforts to promote the exportation of United States goods
17 and services in accordance with plans developed pursuant
18 to section 207(c)(2),”.

19 (c) INSPECTOR GENERAL.—Section 209(b) of the
20 Foreign Service Act of 1980 (22 U.S.C. 3929(b)) is
21 amended—

22 (1) in paragraph (4), by striking “; and” and
23 inserting a semicolon;

24 (2) by redesignating paragraph (5) as para-
25 graph (6); and

1 (3) by inserting after paragraph (4) the fol-
2 lowing new paragraph:
3 “(5) the effectiveness of diplomacy relating to the
4 promotion of exports of United States goods and services;
5 and”.

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