

117TH CONGRESS
2D SESSION

S. 3708

To provide the President with authority to enter into certain plurilateral trade agreements with benefits only applying to signatories of those agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2022

Mr. PORTMAN (for himself and Mr. COONS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To provide the President with authority to enter into certain plurilateral trade agreements with benefits only applying to signatories of those agreements, 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 “Trading System Pres-
5 ervation Act”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) The World Trade Organization (in this sec-
2 tion referred to as the “WTO”) was established to
3 be a forum for multilateral trade negotiations be-
4 tween member countries.

5 (2) Scant negotiating progress has been made
6 at the WTO since its creation in 1995, including
7 through the failed Doha Round, which was initiated
8 20 years before the date of the enactment of this
9 Act.

10 (3) The inability to reach negotiated outcomes
11 at the WTO has pushed the multilateral trading sys-
12 tem to the brink of irrelevance and created incen-
13 tives for members of the WTO to pursue their trade
14 policy objectives through litigation rather than nego-
15 tiation.

16 (4) That lack of negotiating progress can be
17 generally attributed to a small minority of WTO
18 members that, for a variety of reasons, have exer-
19 cised an effective veto over negotiations, effectively
20 prohibiting agreement on new rules to discipline dis-
21 criminatory practices.

22 (5) Most favored nation (in this section referred
23 to as “MFN”) obligations, strictly defined, which
24 appear to generally require equal treatment of all
25 WTO members, make it difficult to achieve high-

1 quality plurilateral agreements because of concerns
2 about free ridership by WTO members who are not
3 party to those agreements.

4 (b) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that—

6 (1) the WTO system affords a variety of flexi-
7 bilities for WTO members to negotiate and conclude
8 plurilateral agreements without extending the bene-
9 fits negotiated therein to the entire membership of
10 the WTO on an MFN basis;

11 (2) to reinvigorate the multilateral trading sys-
12 tem and advance its trade interests, the United
13 States should exercise its rights to negotiate new
14 sectoral trade agreements with other interested
15 WTO members on a plurilateral basis;

16 (3) to facilitate those negotiations, enable a
17 high level of ambition, and avoid lowest common de-
18 nominator outcomes, any new benefits negotiated
19 under those new agreements should be limited to the
20 participants and not extended to the entire member-
21 ship of the WTO; and

22 (4) pursuing plurilateral agreements that are
23 not subject to unconditional MFN will enable the
24 United States to work with like-minded countries
25 within the framework of the WTO to develop new

1 rules to discipline discriminatory, trade distorting,
 2 and non-market practices, restore the relevance of
 3 the multilateral trading system, and expand trade to
 4 the benefit of the citizens of the United States.

5 **SEC. 3. BRIEFING ON PLURILATERAL AGREEMENTS WITH**
 6 **BENEFITS APPLYING ONLY TO SIGNATORIES**
 7 **OF THOSE AGREEMENTS.**

8 (a) IN GENERAL.—Not later than 120 days after the
 9 date of the enactment of this Act, the United States Trade
 10 Representative shall provide to the Committee on Finance
 11 of the Senate and the Committee on Ways and Means of
 12 the House of Representatives a classified briefing on the
 13 feasibility and advisability of pursuing and adopting cov-
 14 ered plurilateral trade agreements.

15 (b) ELEMENTS.—The briefing required under sub-
 16 section (a) shall include a discussion of the opportunities,
 17 obstacles, feasibility, and advisability of negotiating and
 18 adopting covered plurilateral trade agreements.

19 (c) DEFINITIONS.—In this section:

20 (1) COVERED PLURILATERAL TRADE AGREE-
 21 MENT.—The term “covered plurilateral trade agree-
 22 ment” means a sector-specific agreement within the
 23 framework of the World Trade Organization involv-
 24 ing foreign countries or foreign territories that form
 25 a subset of the members of the World Trade Organi-

1 zation that does not extend benefits on a most fa-
 2 vored nation basis.

3 (2) MOST FAVORED NATION.—The term “most
 4 favored nation”, with respect to requirements relat-
 5 ing to a trade agreement, means requirements under
 6 the World Trade Organization for nondiscriminatory
 7 trade treatment among all parties to the agreement.

8 **SEC. 4. NEGOTIATING AND TRADE AGREEMENTS AUTHOR-**
 9 **ITY FOR CERTAIN PLURILATERAL AGREE-**
 10 **MENTS WITH BENEFITS APPLYING ONLY TO**
 11 **SIGNATORIES OF THOSE AGREEMENTS.**

12 (a) INITIATION OF NEGOTIATIONS.—

13 (1) IN GENERAL.—In order to enhance the eco-
 14 nomic well-being of the United States, the President
 15 shall initiate negotiations for a covered plurilateral
 16 trade agreement under this section when the Presi-
 17 dent determines that it is in the national interest to
 18 do so.

19 (2) LIMITATION.—The President may not ini-
 20 tiate negotiations for a covered plurilateral trade
 21 agreement under this section until the date on which
 22 the United States Trade Representative provides the
 23 briefing required by section 3(a).

24 (b) AUTHORITY FOR AGREEMENTS.—

1 (1) IN GENERAL.—To strengthen the economic
2 competitiveness of the United States by improving
3 trade relations with countries similarly interested,
4 the President may enter into covered plurilateral
5 trade agreements in a sector of the economy speci-
6 fied in subsection (d).

7 (2) TERMINATION OF AUTHORITY.—The au-
8 thority under paragraph (1) terminates on July 1,
9 2027.

10 (c) MODIFICATIONS PERMITTED.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 the President may proclaim such modification or
13 continuance of any existing duty or continuance of
14 existing duty-free or excise treatment as the Presi-
15 dent determines to be required or appropriate to
16 carry out an agreement entered into under sub-
17 section (b).

18 (2) LIMITATION.—Substantial modifications to,
19 or substantial additional provisions of, an agreement
20 entered into after July 1, 2027, are not covered by
21 the authority under paragraph (1).

22 (d) SECTORS OF THE ECONOMY SPECIFIED.—A sec-
23 tor of the economy specified in this subsection is any of
24 the following sectors:

25 (1) E-commerce and digital services.

1 (2) Pharmaceuticals and medical counter-
2 measures.

3 (3) Environmental goods.

4 (4) Services.

5 (5) Any sector that is subject to substantial in-
6 terference by a foreign government, including
7 through excessive subsidies or state-owned enter-
8 prises.

9 (e) CONSULTATION WITH AND NOTIFICATION TO
10 CONGRESS.—The President shall consult with Congress
11 regarding, and notify Congress of, the intention of the
12 President to enter into an agreement under subsection (b)
13 or to make a proclamation under subsection (c).

14 (f) PARTICIPATING COUNTRIES.—

15 (1) IN GENERAL.—Subject to paragraph (2),
16 the President may determine which foreign countries
17 or foreign territories to negotiate with toward an
18 agreement under this section and, after the imple-
19 mentation of any such agreement, the President
20 may, as conditions warrant, identify and engage in
21 negotiations with additional countries or territories
22 that wish to accede to the agreement.

23 (2) NON-MARKET ECONOMY COUNTRY.—

24 (A) IN GENERAL.—The President may not
25 negotiate an agreement under this section with

a foreign country or foreign territory determined to be a non-market economy country pursuant to section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18)).

(B) AFTER ENTRY INTO FORCE.—A foreign country or foreign territory described in subparagraph (A) may accede to a completed agreement negotiated pursuant to this section after entry into force of the agreement if a joint resolution is first enacted approving the accession of that country to the agreement.

(g) **BILLS QUALIFYING FOR TRADE AUTHORITIES**

PROCEDURES.—

(1) **IMPLEMENTING BILLS.—**

(A) **IN GENERAL.**—The provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) apply to a bill of either House of Congress which contains provisions described in subparagraph (B) to the same extent as such section 151 applies to implementing bills under that section. A bill to which this paragraph applies shall hereafter in this section be referred to as an “implementing bill”.

(B) **PROVISIONS SPECIFIED.**—The provisions described in this subparagraph are—

1 (i) a provision approving a trade
2 agreement entered into under this section
3 and approving the statement of adminis-
4 trative action, if any, proposed to imple-
5 ment such trade agreement; and

6 (ii) if changes in existing laws or new
7 statutory authority are required to imple-
8 ment such trade agreement or agreements,
9 only such provisions as are strictly nec-
10 essary or appropriate to implement such
11 trade agreement or agreements, either re-
12 pealing or amending existing laws or pro-
13 viding new statutory authority.

14 (2) DEADLINE FOR SUBMISSION OF BILL.—The
15 procedures under paragraph (1) apply to imple-
16 menting bills submitted with respect to trade agree-
17 ments entered into under this section before July 1,
18 2027.

19 (h) RELATIONSHIP TO BIPARTISAN CONGRESSIONAL
20 TRADE PRIORITIES AND ACCOUNTABILITY ACT OF
21 2015.—An agreement under this section shall not enter
22 into force with respect to the United States and an imple-
23 menting bill shall not qualify for trade authorities proce-
24 dures under subsection (g), including an agreement that
25 does not require changes to United States law or an imple-

1 menting bill in connection therewith, unless the following
 2 requirements under the Bipartisan Congressional Trade
 3 Priorities and Accountability Act of 2015 (19 U.S.C. 4201
 4 et seq.) are carried out with respect to that agreement
 5 or implementing bill to the same extent as would be re-
 6 quired of an agreement entered into under section 103(b)
 7 of that Act (19 U.S.C. 4202(b)), notwithstanding the expi-
 8 ration of authority to enter into an agreement under such
 9 section 103(b):

10 (1) The trade negotiating objectives under sec-
 11 tion 102 of that Act (19 U.S.C. 4201).

12 (2) The congressional oversight and consulta-
 13 tion requirements under section 104 of that Act (19
 14 U.S.C. 4203).

15 (3) The notification, consultation, and reporting
 16 requirements under section 105 of that Act (19
 17 U.S.C. 4204).

18 (4) The implementation procedures under sec-
 19 tion 106 of that Act (19 U.S.C. 4205).

20 (i) DEFINITIONS.—In this section:

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 22 MENT.—The term “covered plurilateral trade agree-
 23 ment” means a sector-specific agreement within the
 24 framework of the World Trade Organization involv-
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