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H. R. 2707

To establish trade negotiating objectives of the United States with respect to the application of sanitary and phytosanitary measures to agricultural products to facilitate trade in agriculture, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2011

Mr. NUNES introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To establish trade negotiating objectives of the United States with respect to the application of sanitary and phytosanitary measures to agricultural products to facilitate trade in agriculture, 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 “Agricultural Trade Fa-
5 cilitation Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 Congress finds the following:

1 (1) Pursuant to article I, section 8, clause 3 of
2 the Constitution of the United States, Congress has
3 the authority to establish negotiating objectives for
4 the United States for agreements related to agricul-
5 tural trade.

6 (2) From 2008 to 2010, the value of United
7 States agricultural exports averaged nearly \$107 bil-
8 lion annually. Compared to 1998 to 2000, when the
9 total value of agricultural exports averaged
10 \$51,000,000,000 annually, United States agricul-
11 tural exports have more than doubled in past ten
12 years.

13 (3) The Department of Agriculture's Economic
14 Research Service reports that each \$1,000,000,000
15 in United States agricultural exports supports ap-
16 proximately 8,400 jobs. The Economic Research
17 Service further reports that United States agricul-
18 tural exports supported nearly 830,000 full-time
19 American jobs both on and off-farm in 2009.

20 (4) Even as the importance of agricultural ex-
21 ports to the United States economy grows, there are
22 continued reports that non science-based sanitary
23 and phytosanitary measures are restricting trade,
24 acting as non-tariff barriers to trade. The elimi-
25 nation and reduction of unwarranted sanitary and

1 phytosanitary barriers to trade will increase United
2 States agricultural exports and jobs.

3 (5) Sanitary and phytosanitary measures are
4 those designed “to protect human, animal or plant
5 life or health from risks” arising from additives,
6 contaminants, pests, toxins, diseases, or disease-car-
7 rying and causing organisms in foods, beverages,
8 feedstuffs, animals, or plants. Sanitary and
9 phytosanitary measures can take such forms as spe-
10 cific product or processing standards, requirements
11 for products to be produced in disease-free areas,
12 quarantine regulations, certification or inspection
13 procedures, sampling and testing requirements,
14 health-related labeling measures, maximum permis-
15 sible pesticide residue levels, and prohibitions on cer-
16 tain food additives.

17 (6) There are currently 37 active disputes in-
18 volving sanitary and phytosanitary measures being
19 argued within the World Trade Organization (WTO)
20 between Member countries. These cases have been
21 invoked under the WTO Agreement on the Applica-
22 tion of Sanitary and Phytosanitary Measures.

23 (7) While the Agreement on the Application of
24 Sanitary and Phytosanitary Measures, to which all
25 WTO Member countries are parties, explicitly recog-

1 nizes the rights of each country to take their own
2 measures, they must be science-based and applied
3 only to the extent necessary to protect human, ani-
4 mal or plant health, and cannot be arbitrary or used
5 to unjustifiably discriminate domestically or between
6 trading partners. Member countries are also encour-
7 aged to observe established and recognized inter-
8 national standards. Improper use of measures can
9 create substantial, if not complete, barriers to
10 United States exports when they are disguised bar-
11 riers to trade, are not supported by science, or are
12 otherwise unwarranted.

13 (8) In 2010, a United States interagency group
14 led by the Department of Agriculture's Foreign Ag-
15 ricultural Service, reviewed more than 1,000 notifi-
16 cations from 50 countries as required under the
17 Agreement on the Application of Sanitary and
18 Phytosanitary Measures. The United States Govern-
19 ment commented on 173 proposed or in-force sani-
20 tary and phytosanitary measures. Nearly one-half of
21 the comments were measures regarding processed
22 products, one-third addressed requirements for live
23 animals and fish (and their products, including dairy
24 products); and almost one-quarter were for measures
25 that introduced new standards or entry requirements

1 for plants, bulk commodities (including those made
2 with biotechnology), and horticultural products.

3 (9) Each year, the United States Trade Rep-
4 resentative reports that non science-based sanitary
5 and phytosanitary trade barriers continue to threat-
6 en, constrain, or block United States agricultural ex-
7 ports.

8 (10) A Department of Agriculture study of the
9 impact of foreign technical trade barriers on United
10 States agricultural exports reported the presence of
11 “questionable technical barriers” in more than 60
12 countries affecting trade in more than 300 agricul-
13 tural products, valued at an estimated \$5 billion of
14 United States agricultural, forestry, and fishery ex-
15 ports using 1996 data, accounting for about 7 per-
16 cent of total agricultural exports during that year.
17 Although more recent formal estimates of United
18 States agricultural trade effects are not available,
19 the United States Trade Representative continues to
20 assert: “[Sanitary and phytosanitary] trade barriers
21 prevent U.S. producers from shipping hundreds of
22 millions of dollars worth of goods, hurting farms and
23 small businesses”.

24 (11) The improper use of sanitary and
25 phytosanitary trade barriers to trade can be reduced

1 through achieving and implementing agreements
2 that provide for enhanced harmonization, trans-
3 parency, equivalency, improved regulatory practices,
4 and more efficient and effective dispute settlement.
5 The elimination and reduction in use of such bar-
6 riers to trade will strengthen the international trad-
7 ing system by providing certainty, predictability, and
8 fair treatment.

9 (12) The Agreement on the Application of Sani-
10 tary and Phytosanitary Measures has proven valu-
11 able to United States exporters, but experience has
12 exposed certain inadequacies in its rules.

13 (13) Accordingly, as the United States prepares
14 for future trade agreements, the Administration
15 must prioritize further strengthening of rules on
16 sanitary and phytosanitary measures.

17 **SEC. 3. TRADE NEGOTIATING OBJECTIVES OF THE UNITED**
18 **STATES WITH RESPECT TO THE APPLICATION**
19 **OF SANITARY AND PHYTOSANITARY MEAS-**
20 **URES TO AGRICULTURAL PRODUCTS.**

21 (a) OVERALL TRADE NEGOTIATING OBJECTIVES.—
22 The overall trade negotiating objective of the United
23 States with respect to the application of sanitary and
24 phytosanitary measures to agricultural products for trade
25 agreements between the United States and foreign coun-

1 tries is to secure more open, equitable, and reciprocal mar-
2 ket access by strengthening the rules governing the appli-
3 cation of sanitary and phytosanitary measures to agricul-
4 tural products.

5 (b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—

6 The principal trade negotiating objectives of the United
7 States with respect to the application of sanitary and
8 phytosanitary measures to agricultural products are the
9 following:

10 (1) To strengthen the requirement that the ap-
11 plication of measures is based on scientific evidence
12 by requiring parties to the agreement to make avail-
13 able their risk assessments and provide a science-
14 based justification for regulations, in particular in
15 cases in which measures are more restrictive than
16 international standards.

17 (2) To encourage parties to the agreement to
18 participate actively in the development of inter-
19 national standards relating to the application of
20 measures and to apply those standards whenever it
21 is appropriate to do so and to require parties to pro-
22 vide a scientific justification whenever they apply a
23 standard that deviates from an established inter-
24 national standard.

1 (3) To improve regulatory coherence and in-
2 crease the use of systems-based approaches, to re-
3 quire parties to the agreement to evaluate on a time-
4 ly basis the health and safety protection systems of
5 other parties and to allow imports of products if the
6 system of the exporting party meets or exceeds the
7 end-product standards of the importing party.

8 (4) To require greater transparency in the de-
9 velopment and implementation of the measures, to
10 require parties to the agreement to publish proposed
11 measures, including a scientific justification, to pro-
12 vide an opportunity for interested parties to com-
13 ment on the proposal, and to take into account rea-
14 sonable concerns, and to require parties to provide
15 significant advance notice before implementing new,
16 non-emergency measures in order to provide ample
17 time for any necessary adjustments by industry in
18 order to come into compliance.

19 (5) To require parties to the agreement to carry
20 out risk analysis in a timely manner consistent with
21 the guidelines developed by relevant international or-
22 ganizations, to ensure that risk assessments are
23 based on the most relevant scientific data, to require
24 parties to consider the full range of risk manage-
25 ment options and to ensure that the measures are

1 no more trade-restrictive than necessary to meet the
2 intended purpose, and to require effective risk com-
3 munication.

4 (6) To improve rules governing the testing of
5 imported products, to require importing parties to
6 use validated test methods and to provide importers
7 with the right to a confirmatory test, and to provide
8 the right of appeal.

9 (7) To promote the harmonization of export
10 certification requirements and to require that parties
11 to the agreement limit information requirements on
12 export documents to that which is necessary to de-
13 termine whether a product meets sanitary and
14 phytosanitary standards.

15 (8) To ensure that new sanitary and
16 phytosanitary trade obligations are fully enforceable
17 through an a more efficient and effective dispute
18 settlement process.

19 **SEC. 4. EFFECTIVE DATE.**

20 (a) IN GENERAL.—Except as provided in subsection
21 (b), this Act takes effect on the date of the enactment
22 of this Act and applies with respect to negotiations entered
23 into before, on, or after such date of enactment for any
24 trade agreement relating to the application of sanitary and
25 phytosanitary measures to agricultural products.

1 (b) EXCEPTION.—This Act does not apply with re-
2 spect to negotiations for any of the following:

3 (1) The United States–Colombia Trade Pro-
4 motion Agreement.

5 (2) The United States–Korea Free Trade
6 Agreement.

7 (3) The United States–Panama Trade Pro-
8 motion Agreement.

9 (4) The Doha Development Round of the World
10 Trade Organization.

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