

112TH CONGRESS
1ST SESSION

S. 1267

To strengthen United States trade laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2011

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. Export price and constructed export price.

Sec. 202. Nonmarket economy methodology.

Sec. 203. Determinations on the basis of facts available.

Sec. 204. Clarification of determination of material injury.

Sec. 205. Revocation of nonmarket economy country status.

TITLE III—EXPANSION OF APPLICABILITY OF COUNTERVAILING
DUTIES

Sec. 301. Application of countervailing duties to nonmarket economy countries 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. Standard for presidential action on ITC finding of market disruption.

TITLE V—STRENGTHENING ENFORCEMENT OF INTELLECTUAL
PROPERTY RIGHTS AT U.S. BORDERS

Subtitle A—Coordination of Enforcement of Intellectual Property Rights

Sec. 501. Definitions.

Sec. 502. Director of Intellectual Property Rights Enforcement.

Sec. 503. Strategic plan for the enforcement of intellectual property rights.

Sec. 504. CBP and ICE coordinators.

Subtitle B—Regulatory and Policy Improvements Against Counterfeiting and
Piracy

Sec. 511. In general.

- Sec. 512. Identification of certain unlawful goods.
 Sec. 513. Training in new technologies.
 Sec. 514. Disclosure of information and samples of shipments to intellectual property owners.
 Sec. 515. Improvements to recordation process.
 Sec. 516. Identification of low-risk shippers.
 Sec. 517. “Watch List” database.
 Sec. 518. Civil fines for importation of pirated or counterfeit goods.

Subtitle C—Training Enhancements

- Sec. 521. International training and technical assistance enhancements.

Subtitle D—New Legal Tools for Border Enforcement

- Sec. 531. Expanded prohibitions on importation or exportation of counterfeit or pirated goods.
 Sec. 532. Declarations regarding counterfeit and infringing merchandise.

Subtitle E—Regulatory Authority

- Sec. 541. Regulatory authority.

TITLE VI—MISCELLANEOUS

- Sec. 601. 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.

1 (3) Successful operation of the WTO dispute
2 settlement system was critical to congressional ap-
3 proval of the Uruguay Round Agreements and is
4 critical to continued support by the United States
5 for the WTO. In particular, it is imperative that dis-
6 pute settlement panels and the Appellate Body—

7 (A) operate with fairness and in an impar-
8 tial manner;

9 (B) strictly observe the terms of reference
10 and any applicable standard of review set forth
11 in the Uruguay Round Agreements; and

12 (C) not add to the obligations, or diminish
13 the rights, of WTO members under the Uru-
14 guay Round Agreements in violation of Articles
15 3.2 and 19.2 of the Dispute Settlement Under-
16 standing.

17 (4) An increasing number of reports by dispute
18 settlement panels and the Appellate Body have
19 raised serious concerns within the Congress about
20 the ability of the WTO dispute settlement system to
21 operate in accordance with paragraph (3).

22 (5) In particular, several reports of dispute set-
23 tlement panels and the Appellate Body have added
24 to the obligations and diminished the rights of WTO
25 members, particularly under the Agreement on Im-

1 plementation of Article VI of the General Agreement
2 on Tariffs and Trade 1994, the Agreement on Sub-
3 sidies and Countervailing Measures, and the Agree-
4 ment on Safeguards.

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

12 (7) The Congress needs impartial, objective,
13 and juridical advice to determine the appropriate re-
14 sponse to reports of dispute settlement panels and
15 the Appellate Body.

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

18 (b) PURPOSE.—It is the purpose of this subtitle to
19 provide for the establishment of the Congressional Advi-
20 sory Commission on WTO Dispute Settlement to provide
21 objective and impartial advice to the Congress on the oper-
22 ation of the dispute settlement system of the World Trade
23 Organization.

24 **SEC. 102. DEFINITIONS.**

25 In this title:

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

3 (A) in a proceeding of a dispute settlement
4 panel or the Appellate Body that is initiated
5 against the United States, a finding by the
6 panel or the Appellate Body that any law, regu-
7 lation, practice, or interpretation of the United
8 States, or any State, is inconsistent with the
9 obligations of the United States under a Uru-
10 guay Round Agreement (or nullifies or impairs
11 benefits accruing to a WTO member under such
12 an Agreement); or

13 (B) in a proceeding of a panel or the Ap-
14 pellate Body in which the United States is a
15 complaining party, any finding by the panel or
16 the Appellate Body that a measure of the party
17 complained against is not inconsistent with that
18 party’s obligations under a Uruguay Round
19 Agreement (or does not nullify or impair bene-
20 fits accruing to the United States under such
21 an Agreement).

22 (2) APPELLATE BODY.—The term “Appellate
23 Body” means the Appellate Body established by the
24 Dispute Settlement Body pursuant to Article 17.1 of
25 the Dispute Settlement Understanding.

1 (3) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means the Committee on Finance of the
4 Senate and the Committee on Ways and Means of
5 the House of Representatives.

6 (4) DISPUTE SETTLEMENT BODY.—The term
7 “Dispute Settlement Body” means the Dispute Set-
8 tlement Body established pursuant to the Dispute
9 Settlement Understanding.

10 (5) DISPUTE SETTLEMENT PANEL; PANEL.—
11 The terms “dispute settlement panel” and “panel”
12 mean a panel established pursuant to Article 6 of
13 the Dispute Settlement Understanding.

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

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

23 (8) TRADE REPRESENTATIVE.—The term
24 “Trade Representative” means the United States
25 Trade Representative.

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

3 (A) a United States citizen or an alien ad-
4 mitted for permanent residence into the United
5 States; and

6 (B) a corporation, partnership, labor orga-
7 nization, or other legal entity organized under
8 the laws of the United States or of any State,
9 the District of Columbia, or any commonwealth,
10 territory, or possession of the United States.

11 (10) URUGUAY ROUND AGREEMENT.—The term
12 “Uruguay Round Agreement” means any of the
13 Agreements described in section 101(d) of the Uru-
14 guay Round Agreements Act.

15 (11) WORLD TRADE ORGANIZATION; WTO.—The
16 terms “World Trade Organization” and “WTO”
17 mean the organization established pursuant to the
18 WTO Agreement.

19 (12) WTO AGREEMENT.—The term “WTO
20 Agreement” means the Agreement Establishing the
21 World Trade Organization entered into on April 15,
22 1994.

23 (13) WTO MEMBER.—The term “WTO mem-
24 ber” has the meaning given that term in section

1 2(10) of the Uruguay Round Agreements Act (19
2 U.S.C. 3501(10)).

3 **Subtitle B—Participation in WTO**
4 **Panel Proceedings**

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

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

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

11 (2) to defend an action or determination of the
12 United States Government that is challenged,

13 a United States person that is supportive of the United
14 States Government’s position before the panel or Appellate
15 Body and that has a direct economic interest in the panel’s
16 or Appellate Body’s resolution of the matters in dispute
17 shall be permitted to participate in consultations and
18 panel or Appellate Body proceedings. The Trade Rep-
19 resentative shall issue regulations, consistent with sub-
20 sections (b) and (c), ensuring full and effective participa-
21 tion by any such person.

22 (b) ACCESS TO INFORMATION.—The Trade Rep-
23 resentative shall make available to persons described in
24 subsection (a) all information presented to or otherwise
25 obtained by the Trade Representative in connection with

1 the WTO dispute settlement proceeding in which such per-
2 sons are participating. The Trade Representative shall
3 promulgate regulations to protect information designated
4 as confidential in the proceeding.

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

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

12 (2) include, if appropriate, such person or the
13 person's appropriate representative as an advisory
14 member of the delegation in sessions of the dispute
15 settlement panel or Appellate Body;

16 (3) allow such person, if such person would
17 bring special knowledge to the proceeding, to appear
18 before the panel or Appellate Body, directly or
19 through counsel, under the supervision of responsible
20 United States Government officials; and

21 (4) in proceedings involving confidential infor-
22 mation, allow the appearance of such person only
23 through counsel as a member of the special delega-
24 tion.

1 **Subtitle C—Congressional Advisory**
2 **Commission on WTO Dispute**
3 **Settlement**

4 **SEC. 121. ESTABLISHMENT OF COMMISSION.**

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

9 (b) MEMBERSHIP.—

10 (1) COMPOSITION.—The Commission shall be
11 composed of 5 members, all of whom shall be judges
12 or former judges of the Federal judicial circuits and
13 shall be appointed by the Speaker of the House of
14 Representatives and the President pro tempore of
15 the Senate after considering the recommendations of
16 the Chairman and ranking member of each of the
17 appropriate congressional committees. Commis-
18 sioners shall be chosen without regard to political af-
19 filiation and solely on the basis of each Commis-
20 sioner’s fitness to perform the duties of a Commis-
21 sioner.

22 (2) DATE.—The appointments of the initial
23 members of the Commission shall be made not later
24 than 90 days after the date of the enactment of this
25 Act.

1 (c) PERIOD OF APPOINTMENT; VACANCIES.—

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

6 (2) VACANCIES.—

7 (A) IN GENERAL.—Any vacancy on the
8 Commission shall not affect its powers, but
9 shall be filled in the same manner in which the
10 original appointment was made and shall be
11 subject to the same conditions as the original
12 appointment.

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

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

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

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

1 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The
2 Commission shall select a Chairperson and Vice Chair-
3 person from among its members.

4 (h) FUNDING.—Members of the Commission shall be
5 allowed travel expenses, including per diem in lieu of sub-
6 sistence at rates authorized for employees of agencies
7 under subchapter I of chapter 57 of title 5, United States
8 Code, while away from their homes or regular places of
9 business in the performance of services for the Commis-
10 sion.

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

12 (a) ADVISING THE CONGRESS ON THE OPERATION
13 OF THE WTO DISPUTE SETTLEMENT SYSTEM.—

14 (1) IN GENERAL.—The Commission shall re-
15 view—

16 (A) all adverse findings that are—

17 (i) adopted by the Dispute Settlement
18 Body; and

19 (ii) the result of a proceeding initiated
20 against the United States by a WTO mem-
21 ber; and

22 (B) upon the request of either of the ap-
23 propriate congressional committees—

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

1 (I) that is adopted by the Dis-
2 pute Settlement Body; and

3 (II) in which the United States is
4 a complaining party; or

5 (ii) any other finding that is contained
6 in a report of a dispute settlement panel or
7 the Appellate Body that is adopted by the
8 Dispute Settlement Body.

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

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

15 (i) exceeded its authority or its terms
16 of reference;

17 (ii) added to the obligations, or dimin-
18 ished the rights, of the United States
19 under the Uruguay Round Agreement that
20 is the subject of the finding;

21 (iii) acted arbitrarily or capriciously,
22 engaged in misconduct, or demonstrably
23 departed from the procedures specified for
24 panels and the Appellate Body in the ap-
25 plicable Uruguay Round Agreement; or

1 (iv) deviated from the applicable
2 standard of review, including in anti-
3 dumping, countervailing duty, and other
4 trade remedy cases, the standard of review
5 set forth in Article 17.6 of the Agreement
6 on Implementation of Article VI of the
7 General Agreement on Tariffs and Trade
8 1994; and

9 (B) whether the finding is consistent with
10 the original understanding by the United States
11 of the Uruguay Round Agreement that is the
12 subject of the finding as explained in the state-
13 ment of administrative action approved under
14 section 101(a) of the Uruguay Round Agree-
15 ments Act (19 U.S.C. 3511(a)).

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

21 (b) DETERMINATION; REPORT.—

22 (1) DETERMINATION.—

23 (A) IN GENERAL.—Not later than 150
24 days after the date on which the Commission
25 receives notice of a report or request under sec-

1 tion 123(b), the Commission shall make a writ-
2 ten determination with respect to the matters
3 described in paragraph (2) of subsection (a), in-
4 cluding a full analysis of the basis for its deter-
5 mination. A vote by a majority of the members
6 of the Commission shall constitute a determina-
7 tion of the Commission, although the members
8 need not agree on the basis for their vote.

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

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

23 (c) AVAILABILITY TO THE PUBLIC.—Each report of
24 the Commission under subsection (b)(2), together with the

1 opinions included with the report, shall be made available
2 to the public.

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

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

11 (b) INFORMATION FROM INTERESTED PARTIES AND
12 FEDERAL AGENCIES.—

13 (1) NOTICE TO COMMISSION.—

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

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

1 adopts the adverse finding or other finding that
2 is the subject of the request.

3 (C) FINDINGS ADOPTED PRIOR TO AP-
4 POINTMENT OF COMMISSION.—With respect to
5 any adverse finding or other finding to which
6 section 122(a)(1)(B) applies and that is adopt-
7 ed before the date on which the first members
8 of the Commission are appointed under section
9 121(b)(2), either of the appropriate congress-
10 sional committees may make and notify the
11 Commission of a request under section
12 122(a)(1)(B) with respect to the adverse find-
13 ing or other finding not later than 1 year after
14 the date on which the first members of the
15 Commission are appointed under section
16 121(b)(2).

17 (2) SUBMISSIONS AND REQUESTS FOR INFOR-
18 MATION.—

19 (A) IN GENERAL.—The Commission shall
20 promptly publish in the Federal Register notice
21 of—

22 (i) the notice received under para-
23 graph (1) from the Trade Representative
24 or either of the appropriate congressional
25 committees; and

1 (ii) an opportunity for interested par-
2 ties to submit written comments to the
3 Commission.

4 (B) COMMENTS AVAILABLE TO PUBLIC.—
5 The Commission shall make comments sub-
6 mitted pursuant to subparagraph (A)(ii) avail-
7 able to the public.

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

18 (3) ACCESS TO PANEL AND APPELLATE BODY
19 DOCUMENTS.—

20 (A) IN GENERAL.—The Trade Representa-
21 tive shall make available to the Commission all
22 submissions and relevant documents relating to
23 an adverse finding described in section
24 122(a)(1), including any information contained
25 in such submissions and relevant documents

1 identified by the provider of the information as
2 proprietary information or information des-
3 igned as confidential by a foreign government.

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

10 (c) ASSISTANCE FROM FEDERAL AGENCIES; CON-
11 FIDENTIALITY.—

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

18 (2) CONFIDENTIALITY.—

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

1 (B) DISCLOSURE OF DOCUMENTS AND IN-
 2 FORMATION OF COMMISSION.—The Commission
 3 shall not be considered to be an agency for pur-
 4 poses of section 552 of title 5, United States
 5 Code.

6 **Subtitle D—Congressional Ap-**
 7 **proval of Regulatory Action Re-**
 8 **lating to Adverse WTO Deci-**
 9 **sions**

10 **SEC. 131. CONGRESSIONAL APPROVAL OF REGULATORY**
 11 **ACTIONS RELATING TO ADVERSE WTO DECI-**
 12 **SIONS.**

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

15 (1) in paragraph (1)—

16 (A) in subparagraph (E), by striking
 17 “and”;

18 (B) by redesignating subparagraph (F) as
 19 subparagraph (H); and

20 (C) by inserting after subparagraph (E)
 21 the following new subparagraphs:

22 “(F) the appropriate congressional com-
 23 mittees have received the report on the deter-
 24 minations of the Congressional Advisory Com-
 25 mission on WTO Dispute Settlement under sec-

1 tion 122(b)(2) of the Strengthening America’s
2 Trade Laws Act with respect to the relevant
3 dispute settlement panel or Appellate Body de-
4 cision;

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

13 (2) by amending paragraph (2) to read as fol-
14 lows:

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

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

1 ments Act (19 U.S.C. 3533(g)(1) (D) and (F))
2 on _____, relating to
3 _____.’, with the first blank space
4 being filled with the date on which the report
5 is submitted to the Congress and the second
6 blank space being filled with the specific modi-
7 fication proposed to the regulation or practice
8 of the United States.

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

14 (b) EFFECTIVE DATE.—

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

18 (2) MODIFICATIONS MADE BETWEEN JANUARY
19 1, 2007, AND THE DATE OF THE ENACTMENT OF
20 THIS ACT.—

21 (A) IN GENERAL.—Modifications to any
22 regulation or practice of a department or agen-
23 cy of the United States made pursuant to the
24 provisions of section 123(g) of the Uruguay
25 Round Agreements Act (19 U.S.C. 3533(g))

1 that became effective on or after January 1,
2 2007, and before the date of the enactment of
3 this Act, shall be suspended upon the enact-
4 ment of this Act and have no effect.

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

15 **Subtitle E—Clarification of Rights**
16 **and Obligations Through Nego-**
17 **tiations**

18 **SEC. 141. CLARIFICATION OF RIGHTS AND OBLIGATIONS IN**
19 **THE WTO THROUGH NEGOTIATIONS.**

20 (a) IN GENERAL.—After an adverse finding, the
21 United States shall work within the World Trade Organi-
22 zation to obtain clarification of the Uruguay Round Agree-
23 ment to which the adverse finding applies to conform the
24 Agreement to the understanding of the United States re-
25 garding the rights and obligations of the United States

1 and shall not modify the law, regulation, practice, or inter-
2 pretation of the United States in response to the adverse
3 finding if—

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

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

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

17 (b) APPLICABILITY.—

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

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

23 (A) IN GENERAL.—Any agency that modi-
24 fied a regulation, practice, or interpretation in
25 response to an adverse finding between January

1 1, 2002, and the date of the enactment of this
2 Act shall provide notice that the modification
3 shall cease to have force and effect on the date
4 that is 30 days after the date of the enactment
5 of this Act and such modification shall cease to
6 have force and effect on such date.

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

11 (i) investigations initiated—

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

23 (II) by the administering author-
24 ity under section 702(a) or 732(a) of
25 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. EXPORT PRICE AND CONSTRUCTED EXPORT**
 10 **PRICE.**

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

15 **SEC. 202. NONMARKET ECONOMY METHODOLOGY.**

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

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

20 “(A) IN GENERAL.—The administering au-
 21 thority, in valuing factors of production under
 22 paragraph (1), shall utilize, to the extent pos-
 23 sible, the prices or costs of factors of production
 24 in one or more market economy countries that
 25 are—

1 “(i) at a level of economic develop-
2 ment comparable to that of the nonmarket
3 economy country; and

4 “(ii) significant producers of com-
5 parable merchandise.

6 In this paragraph, the term ‘surrogate’ refers to
7 the values, calculations, and market economy
8 countries used under this subparagraph.

9 “(B) VALUING MATERIALS USED IN PRO-
10 DUCTION.—In determining the value of mate-
11 rials used in production under subparagraph
12 (A), the following applies:

13 “(i) The administering authority may
14 use the value of inputs that are purchased
15 from market economy suppliers and are
16 not suspected of being dumped or sub-
17 sidized, only for the quantity of such pur-
18 chases.

19 “(ii) All materials purchased or other-
20 wise obtained from nonmarket economy
21 countries shall be valued using surrogate
22 values under subparagraph (A).

23 “(iii) A purchased material shall be
24 viewed as suspected of being subsidized if
25 there are any affirmative findings by the

1 United States or another WTO member of
2 export subsidy programs in the supplying
3 country.

4 “(iv) A purchased material shall be
5 viewed as suspected of being dumped if
6 there are any affirmative findings by the
7 United States or other WTO member of
8 dumping in the general category of mer-
9 chandise, or if information supplied by the
10 petitioner or otherwise of record suggests
11 significant underpricing to the purchaser
12 in the nonmarket economy country.

13 “(v) Surrogate values for materials
14 from a market economy country shall be
15 disregarded as not reflective of prices in
16 that surrogate market only if prices in that
17 market are viewed as aberrational, such as
18 a case in which prices undersell or exceed
19 any reported price in that surrogate mar-
20 ket by a large amount.

21 “(vi) There shall be a presumption
22 that the administering authority will in-
23 clude all market prices from a surrogate
24 market. Prices that are high or low shall
25 be excluded only when it is demonstrated

1 that the prices are not reflective of prices
2 in the surrogate country for the relevant
3 category of merchandise.

4 “(vii) If amounts pertaining to the
5 cost of production of imports into a surro-
6 gate country from market economy sup-
7 pliers are used for valuing the materials
8 used, such amounts shall be valued on the
9 basis of CIF (cost, insurance, and freight),
10 plus duties paid, to provide a proxy for
11 prices in the surrogate country competing
12 with locally produced goods. Such values
13 shall not be reduced by the import duties.

14 “(C) VALUING LABOR.—

15 “(i) The administering authority may
16 use an average of wage rates for market
17 economies, but shall ensure that labor
18 rates used fully reflect all labor costs, in-
19 cluding benefits, health care, and pension
20 costs.

21 “(ii) Labor shall be the total labor
22 employed by a nonmarket economy country
23 producer or used by a nonmarket economy
24 country producer in the overall business,
25 with allocations to other merchandise pro-

1 duced or sold by that producer that is not
2 subject merchandise.

3 “(iii) Labor shall reflect the average
4 labor for all other producers in the non-
5 market economy country that are pro-
6 ducing the particular merchandise subject
7 to investigation or review, and shall not be
8 limited to operations used for export.

9 “(D) VALUING FACTORY OVERHEAD, SELL-
10 ING, GENERAL, AND ADMINISTRATIVE EX-
11 PENSES, AND PROFIT.—

12 “(i) IN GENERAL.—The administering
13 authority shall use the best information
14 available with respect to likely values of
15 factory overhead, selling, general, and ad-
16 ministrative expenses, and profit from a
17 surrogate country. If the values determined
18 under subparagraphs (B) and (C) for ma-
19 terials used and labor consumed result in
20 amounts that are demonstrably larger or
21 smaller than the amounts used in deter-
22 mining surrogate ratios from financial or
23 other reports from a surrogate country, ad-
24 justments shall be made to the ratios to re-
25 flect fully the level of such costs and prof-

1 its in the surrogate country on a per item
2 produced basis.

3 “(ii) RATIOS DEFINED.—For purposes
4 of this subparagraph, the term ‘ratios’
5 means—

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

8 “(II) the ratio of selling, general,
9 and administrative costs to factory
10 overhead, labor, materials, and en-
11 ergy; and

12 “(III) the ratio of profit to sell-
13 ing, general, and administrative costs,
14 factory overhead, labor, materials, and
15 energy.

16 “(E) USE OF CONFIDENTIAL INFORMA-
17 TION FROM A FOREIGN PRODUCER IN A SURRO-
18 GATE COUNTRY.—The administering authority
19 shall generally use publicly available informa-
20 tion to value factors of production, except that,
21 in a case in which any foreign producer in the
22 surrogate country that is willing to provide in-
23 formation to the administering authority on fac-
24 tors of production to produce the same class of
25 merchandise and such information is subject to

1 verification, the administering authority shall
 2 accept and use such information. The relation-
 3 ship of the foreign producer providing the infor-
 4 mation to a party to the proceeding shall not be
 5 a basis for disqualification.”.

6 **SEC. 203. DETERMINATIONS ON THE BASIS OF FACTS**
 7 **AVAILABLE.**

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

10 “(B) fails to provide such information by
 11 the deadline for submission of the information
 12 or in the form and manner required, and in
 13 conformity with prior administering authority
 14 determinations in the proceeding and final judi-
 15 cial decisions in the proceeding, subject to sub-
 16 sections (c)(1) and (e) of section 782,”.

17 **SEC. 204. CLARIFICATION OF DETERMINATION OF MATE-**
 18 **RIAL INJURY.**

19 (a) IN GENERAL.—Section 771(7) of the Tariff Act
 20 of 1930 (19 U.S.C. 1677(7)) is amended by adding at the
 21 end the following new subparagraph:

22 “(J) CLARIFICATION OF DETERMINATION
 23 OF MATERIAL INJURY.—In determining if there
 24 is material injury, or threat of material injury,
 25 by reason of imports of the subject merchan-

1 dise, the Commission shall make the Commis-
2 sion's determination without regard to—

3 “(i) whether other imports would have
4 replaced or are likely to replace imports of
5 the subject merchandise if an order were
6 issued or a suspension agreement were ac-
7 cepted under this title, or

8 “(ii) the effect of a potential order or
9 suspension agreement on the domestic in-
10 dustry, except for a finding required by
11 section 771(7)(F)(ii).”.

12 (b) LIKELIHOOD OF CONTINUATION OR RECUR-
13 RENCE OF MATERIAL INQUIRY.—Section 752(a)(4) of the
14 Tariff Act of 1930 (19 U.S.C. 1675a(a)(4)) is amended
15 by adding at the end the following: “In reaching a decision
16 as to whether revocation of an order or termination of a
17 suspended investigation is likely to lead to a continuation
18 or recurrence of material injury, the Commission shall
19 make its determination without regard to whether other
20 imports are likely to replace imports of the subject mer-
21 chandise if an order is revoked or a suspension agreement
22 terminated under this title.”.

1 **SEC. 205. REVOCATION OF NONMARKET ECONOMY COUN-**
2 **TRY STATUS.**

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

7 “(i) Any determination that a foreign
8 country is a nonmarket economy country
9 shall remain in effect until—

10 “(I) the administering authority
11 makes a final determination to revoke
12 the determination under subparagraph
13 (A); and

14 “(II) a joint resolution is enacted
15 into law pursuant to section 206 of
16 the Strengthening America’s Trade
17 Laws Act.”.

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

24 (1) the President shall notify the Committee on
25 Finance of the Senate and the Committee on Ways
26 and Means of the House of Representatives of that

1 determination not later than 10 days after the publi-
2 cation of the administering authority's final deter-
3 mination in the Federal Register;

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

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

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

24 (d) INTRODUCTION.—A joint resolution shall be in-
25 troduced (by request) in the House by the majority leader

1 of the House, for himself, or by Members of the House
2 designated by the majority leader of the House, and shall
3 be introduced (by request) in the Senate by the majority
4 leader of the Senate, for himself, or by Members of the
5 Senate designated by the majority leader of the Senate.

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

13 (f) PERIOD FOR COMMITTEE AND FLOOR CONSIDER-
14 ATION.—

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

1 House to which it was referred, or after such com-
2 mittee or committees have been discharged from fur-
3 ther consideration of the joint resolution. If, prior to
4 the passage by one House of a joint resolution of
5 that House, that House receives the same joint reso-
6 lution from the other House, then—

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

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

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

16 (g) FLOOR CONSIDERATION IN THE HOUSE.—

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

24 (2) DEBATE LIMITED.—Debate in the House of
25 Representatives on a joint resolution shall be limited

1 to not more than 20 hours, which shall be divided
2 equally between those favoring and those opposing
3 the joint resolution. A motion further to limit debate
4 shall not be debatable. It shall not be in order to
5 move to recommit a joint resolution or to move to
6 reconsider the vote by which a joint resolution is
7 agreed to or disagreed to.

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

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

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

24 (h) FLOOR CONSIDERATION IN THE SENATE.—

1 (1) MOTION PRIVILEGED.—A motion in the
2 Senate to proceed to the consideration of a joint res-
3 olution shall be privileged and not debatable. An
4 amendment to the motion shall not be in order, nor
5 shall it be in order to move to reconsider the vote
6 by which the motion is agreed to or disagreed to.

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

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

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

4 (i) RULES OF HOUSE OF REPRESENTATIVES AND
5 SENATE.—Subsections (c) through (h) are enacted by the
6 Congress—

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

17 (2) with full recognition of the constitutional
18 right of either House to change the rules (so far as
19 relating to the procedure of that House) at any time,
20 in the same manner and to the same extent as in
21 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 ECONOMY COUNTRIES AND**
 6 **STRENGTHENING APPLICATION OF THE LAW.**

7 (a) APPLICATION OF COUNTERVAILING DUTIES TO
 8 NONMARKET ECONOMIES.—Section 701(a)(1) of the Tar-
 9 iff Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by in-
 10 serting “(including a nonmarket economy country)” after
 11 “country” each place it appears.

12 (b) RECOGNITION OF COUNTERAVAILABLE SUBSIDIES
 13 IN NONMARKET ECONOMY COUNTRIES.—
 14 Section 771(5)(C) of the Tariff Act of 1930 (19 U.S.C.
 15 1677(5)(E)) is amended to read as follows:

16 “(C) OTHER FACTORS.—(i) The deter-
 17 mination of whether a subsidy exists shall be
 18 made without regard to—

19 “(I) whether the recipient of the sub-
 20 sidy is publicly or privately owned;

21 “(II) whether the subsidy is provided
 22 directly or indirectly on the manufacture,
 23 production, or export of merchandise; and

24 “(III)(aa) whether the country is a
 25 nonmarket economy country, or

1 “(bb) the level of economic reforms in
2 a country that is a nonmarket economy
3 country, at the time the subsidy is pro-
4 vided.

5 “(ii) The administering authority is not re-
6 quired to consider the effect of the subsidy in
7 determining whether a subsidy exists under this
8 paragraph.”.

9 (c) USE OF ALTERNATE METHODOLOGIES INVOLV-
10 ING CHINA.—Section 771(5)(E) of the Tariff Act of 1930
11 U.S.C. 1677(5)(E)) is amended by adding at the end the
12 following:

13 “If the administering authority encounters spe-
14 cial difficulties in identifying and calculating
15 the amount of a benefit under clauses (i)
16 through (iv) with respect to an investigation or
17 review involving the People’s Republic of China,
18 irrespective of whether the administering au-
19 thority determines that China is a nonmarket
20 economy country under paragraph (18) of this
21 section, the administering authority shall use
22 methodologies to identify and calculate the
23 amount of the benefit that take into account
24 the possibility that terms and conditions pre-
25 vailing in China may not always be available as

1 appropriate benchmarks. In applying such
2 methodologies, where practicable, the admin-
3 istering authority should take into account and
4 adjust terms and conditions prevailing in China
5 before using terms and conditions prevailing
6 outside of China. If the administering authority
7 has determined that China is a nonmarket
8 economy country under paragraph (18) of this
9 section, the administering authority shall pre-
10 sume that special difficulties exist in calculating
11 the amount of a benefit under clauses (i)
12 through (iv) with respect to an investigation or
13 review involving China and that it is not prac-
14 ticable to take into account and adjust terms
15 and conditions prevailing in China, and the ad-
16 ministering authority shall use terms and condi-
17 tions prevailing outside of China.”.

18 (d) SUBSIDIES PROVIDED TO STATE-OWNED ENTER-
19 PRISES IN THE PEOPLE’S REPUBLIC OF CHINA.—Section
20 771(5A) of the Tariff Act of 1930 (19 U.S.C. 1677(5A))
21 is amended by adding at the end the following:

22 “For purposes of this paragraph, subsidies provided
23 to state-owned enterprises in the People’s Republic
24 of China shall be deemed to be specific if, inter alia,
25 state-owned enterprises are the predominant recipi-

1 ents of such subsidies or state-owned enterprises re-
 2 ceive disproportionately large amounts of such sub-
 3 sidies.”.

4 (e) ANTIDUMPING PROVISIONS NOT AFFECTED.—

5 The amendments made by this section shall not affect the
 6 status of a country as a nonmarket economy country for
 7 the purposes of any matter relating to antidumping duties
 8 under subtitle B of title VII of the Tariff Act of 1930
 9 (19 U.S.C. 1673 et seq.). In cases involving a nonmarket
 10 economy country, no offset or reduction shall be made to
 11 the amount of either the antidumping or countervailing
 12 duty imposed based on the finding of a domestic subsidy
 13 and the simultaneous application of antidumping duties.

14 **SEC. 302. TREATMENT OF EXCHANGE-RATE MANIPULATION**

15 **AS COUNTERAVAILABLE SUBSIDY UNDER**

16 **TITLE VII OF THE TARIFF ACT OF 1930.**

17 (a) AMENDMENTS TO DEFINITION OF

18 COUNTERAVAILABLE SUBSIDY.—Section 771(5)(D) of the
 19 Tariff Act of 1930 (19 U.S.C. 1677(5)(D)) is amended—

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

21 The term”;

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

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

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

4 (b) DEFINITION OF EXCHANGE-RATE MANIPULA-
5 TION.—Section 771 of the Tariff Act of 1930 (19 U.S.C.
6 1677) is amended by inserting after paragraph (5B) the
7 following new paragraph:

8 “(5C) DEFINITION OF EXCHANGE-RATE MANIP-
9 ULATION.—

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

18 “(B) FACTORS.—In determining whether
19 exchange-rate manipulation is occurring and a
20 benefit thereby conferred, the administering au-
21 thority in each case—

22 “(i) shall consider the exporting coun-
23 try’s—

1 “(I) bilateral balance-of-trade
2 surplus or deficit with the United
3 States;

4 “(II) balance-of-trade surplus or
5 deficit with its other trading partners
6 individually and in the aggregate;

7 “(III) foreign direct investment
8 in its territory;

9 “(IV) currency-specific and ag-
10 gregate amounts of foreign currency
11 reserves; and

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

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

21 “(iii) shall measure the trade sur-
22 pluses or deficits described in subclauses
23 (I) and (II) of clause (i) with reference to
24 the trade data reported by the United
25 States and the other trading partners of

1 the exporting country, unless such trade
 2 data are not available or are demonstrably
 3 inaccurate, in which case the exporting
 4 country's trade data may be relied upon if
 5 shown to be sufficiently accurate and
 6 trustworthy.

7 “(C) TYPE OF ECONOMY.—A country
 8 found to be engaged in exchange-rate manipula-
 9 tion may have—

10 “(i) a market economy;

11 “(ii) a nonmarket economy; or

12 “(iii) a combination thereof.”.

13 **SEC. 303. AFFIRMATION OF NEGOTIATING OBJECTIVE ON**
 14 **BORDER TAXES.**

15 The Congress reaffirms the negotiating objective re-
 16 lating to border taxes set forth in section 2102(b)(15) of
 17 the Bipartisan Trade Promotion Authority Act of 2002
 18 (19 U.S.C. 3802(b)(15)).

19 **SEC. 304. PRESIDENTIAL CERTIFICATION; APPLICATION OF**
 20 **COUNTERVAILING DUTY LAW.**

21 (a) CERTIFICATION BY THE PRESIDENT.—

22 (1) IN GENERAL.—The President shall certify
 23 to the Congress by January 1, 2014, that, under the
 24 Agreement on Subsidies and Countervailing Meas-
 25 ures or subsequent agreement of the World Trade

1 Organization, the full or partial exemption, remis-
2 sion, or deferral specifically related to exports of di-
3 rect taxes is treated in the same manner as the full
4 or partial exemption, remission, or deferral specifi-
5 cally related to exports of indirect taxes.

6 (2) EFFECT OF FAILURE TO CERTIFY.—If the
7 President does not make the certification to Con-
8 gress required by paragraph (1) by January 1,
9 2014, the Secretary of Commerce, in any investiga-
10 tion conducted under subtitle A of title VII of the
11 Tariff Act of 1930 (19 U.S.C. 1671 et seq.) to de-
12 termine whether a countervailable subsidy is being
13 provided with respect to a product of a country that
14 provides the full or partial exemption, remission, or
15 deferral specifically related to exports of indirect
16 taxes on products exported from that country, shall
17 treat as a countervailable subsidy the full or partial
18 exemption, remission, or deferral specifically related
19 to exports of indirect taxes paid on that product.

20 (b) DEFINITIONS.—In this section:

21 (1) AGREEMENT ON SUBSIDIES AND COUNTER-
22 VAILING MEASURES.—The term “Agreement on Sub-
23 sidies and Countervailing Measures” means the
24 agreement referred to in section 101(d)(12) of the

1 Uruguay Round Agreements Act (19 U.S.C.
2 3511(d)(12)).

3 (2) DIRECT TAXES.—The term “direct taxes”
4 means taxes on wages, profits, interest, rents, royal-
5 ties, and all other forms of income, and taxes on the
6 ownership of real property.

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

10 (4) INDIRECT TAXES.—The term “indirect
11 taxes” means sales, excise, turnover, value added,
12 franchise, stamp, transfer, inventory, and equipment
13 taxes, border taxes, and all taxes other than direct
14 taxes and import charges.

15 (5) FULL OR PARTIAL EXEMPTION, REMISSION,
16 OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS
17 OF DIRECT TAXES.—The term “full or partial ex-
18 emption, remission, or deferral specifically related to
19 exports of direct taxes” means direct taxes that are
20 paid to the United States Government by a business
21 concern and are fully or partially exempted, remit-
22 ted, or deferred by the Government by reason of the
23 export by that business concern of its products from
24 the United States.

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

11 (c) EFFECTIVE PERIOD.—Subsection (a) shall cease
12 to be effective on the date on which the President makes
13 a certification described in subsection (a).

14 **TITLE IV—LIMITATION ON PRES-**
15 **IDENTIAL DISCRETION IN AD-**
16 **DRESSING MARKET DISRUP-**
17 **TION**

18 **SEC. 401. STANDARD FOR PRESIDENTIAL ACTION ON ITC**
19 **FINDING OF MARKET DISRUPTION.**

20 Section 421 of the Trade Act of 1974 (19 U.S.C.
21 2451) is amended—

22 (1) in subsection (a)—

23 (A) by inserting “any” before “increased
24 duties”; and

1 (B) by striking “, to the extent and for
2 such period” and all that follows to the end pe-
3 riod and inserting “recommended by the Inter-
4 national Trade Commission”;

5 (2) in subsection (e), in the second sentence, by
6 striking “agreed upon by either group” and all that
7 follows to the end period and inserting “shall be con-
8 sidered an affirmative determination under sub-
9 section (b)”;

10 (3) in subsection (f)—

11 (A) in the heading, by striking “ON PRO-
12 POSED REMEDIES” and inserting “FOR RE-
13 LIEF”;

14 (B) in the first sentence—

15 (i) by striking “the President or
16 Trade Representative may consider as”
17 and inserting “is to be considered”; and

18 (ii) by striking “the Commission shall
19 propose” and inserting “the Commission
20 shall recommend”; and

21 (C) in the second sentence, by striking
22 “proposed action” and inserting “recommended
23 action”;

24 (4) in subsection (g)(2)(B)—

1 (A) by striking “or may be considered by
2 the President or the Trade Representative as”
3 and inserting “or if the determination is consid-
4 ered to be”; and

5 (B) by striking “on proposed remedies”
6 and inserting “for relief”;

7 (5) in subsection (h)—

8 (A) in the heading, by striking “PROPOSED
9 MEASURE AND RECOMMENDATION TO THE
10 PRESIDENT” and inserting “RECOMMENDED
11 RELIEF AND REPORT BY TRADE REPRESENTA-
12 TIVE”;

13 (B) in paragraph (1)—

14 (i) by striking “measure proposed by
15 the Trade Representative to be taken pur-
16 suant to subsection (a)” and inserting “re-
17 lief recommended by the Commission
18 under subsection (f)”;

19 (ii) by striking “proposed measure”
20 and inserting “recommended relief”;

21 (C) in paragraph (2), by striking “on the
22 measure proposed by the Trade Representative”
23 and all that follows to the end period and in-
24 serting “, shall transmit a report to the Presi-

1 dent recommending what action to take under
2 subsection (k)”; and

3 (D) by adding at the end the following new
4 paragraph:

5 “(3) The Trade Representative, after submitting a
6 report to the President under paragraph (2), shall prompt-
7 ly make the report available to the public, excluding any
8 proprietary or confidential information. The Trade Rep-
9 resentative shall publish a summary of the report in the
10 Federal Register.”;

11 (6) in subsection (i)—

12 (A) in the flush sentence at the end of
13 paragraph (1), by striking “agreed upon by ei-
14 ther group” and all that follows to the end pe-
15 riod and inserting “shall be considered an af-
16 firmative determination of the Commission”;
17 and

18 (B) by striking paragraphs (2), (3), and
19 (4), and inserting the following:

20 “(2) On the date on which the Commission completes
21 its determinations under paragraph (1), the Commission
22 shall transmit a report on the determinations to the Presi-
23 dent and the Trade Representative, including the reasons
24 for its determinations. If the determinations under para-
25 graph (1) are affirmative or if the determinations are con-

1 sidered to be affirmative under paragraph (1), the Com-
2 mission shall include in its report its recommendations on
3 provisional relief to be taken to prevent or remedy the
4 market disruption. Only those members of the Commission
5 who agreed to the affirmative determinations under para-
6 graph (1) are eligible to vote on the recommended provi-
7 sional relief to prevent or remedy market disruption. Mem-
8 bers of the Commission who did not agree to the affirma-
9 tive determinations may submit, in the report, dissenting
10 or separate views regarding the determination and any
11 recommendation of provisional relief referred to in this
12 paragraph.

13 “(3) The provisional relief referred to in paragraph
14 (2) may include—

15 “(A) the imposition of or increase in any duty;

16 “(B) any modification, or imposition of any
17 quantitative restriction on the importation of any ar-
18 ticle into the United States; or

19 “(C) any combination of actions under subpara-
20 graph (A) or (B).

21 “(4) If the determinations under paragraph (1) are
22 affirmative or if the determinations are considered to be
23 affirmative under paragraph (1), the Trade Representa-
24 tive shall, within 10 days after receipt of the Commission’s
25 report, transmit a report to the President recommending

1 what action to take with respect to provisional relief under
2 subsection (k).

3 “(5)(A) The President shall proclaim any provisional
4 relief recommended by the Commission not later than 10
5 days after the date the President receives the report de-
6 scribed in paragraph (4) from the Trade Representative.

7 “(B) Any provisional relief proclaimed by the Presi-
8 dent pursuant to a determination of critical circumstances
9 shall remain in effect for a period not to exceed 200 days.

10 “(C) Provisional relief shall cease to apply upon the
11 effective date of relief proclaimed under subsection (a),
12 upon a decision by the President not to provide such relief
13 under subsection (k), or upon a negative determination by
14 the Commission under subsection (b).”;

15 (7) in subsection (j)—

16 (A) in paragraph (1), by striking “which
17 the Trade Representative considers to be” and
18 inserting “that is considered to be”; and

19 (B) by striking paragraph (2) and insert-
20 ing the following:

21 “(2) If no agreement is reached with the People’s Re-
22 public of China pursuant to consultations under para-
23 graph (1) in the time required for Presidential action
24 under subsection (k), or if the President determines that
25 an agreement reached pursuant to such consultations is

1 not preventing or remedying the market disruption at
2 issue in the time required for Presidential action under
3 subsection (k), the President shall provide import relief
4 in accordance with subsection (a).”;

5 (8) in subsection (k)—

6 (A) in the heading, by striking “STAND-
7 ARD FOR PRESIDENTIAL ACTION” and inserting
8 “TIMING FOR PRESIDENTIAL ACTION; EXCEP-
9 TIONS”;

10 (B) in paragraph (1), by striking “a rec-
11 ommendation from the Trade Representative”
12 and all that follows to the end period and in-
13 serting “a report from the Trade Representa-
14 tive under subsection (h)(2), the President
15 shall, pursuant to subsection (a), proclaim the
16 relief recommended by the Commission”; and

17 (C) by amending paragraph (2) to read as
18 follows:

19 “(2) The President may decline to proclaim relief
20 pursuant to subsection (a), may proclaim relief pursuant
21 to subsection (a) that differs from the relief recommended
22 by the Commission, may decline to proclaim provisional
23 relief pursuant to subsection (i), or may proclaim provi-
24 sional relief pursuant to subsection (i) that differs from
25 the relief recommended by the Commission—

1 “(A) only in extraordinary cases; and

2 “(B) only if the President determines that pro-
3 viding relief or provisional relief pursuant to sub-
4 section (a) or (i) or providing relief recommended by
5 the Commission pursuant to subsection (a) or (i)
6 would cause serious harm to the economic interests
7 or to the national security of the of the United
8 States.”;

9 (9) in subsection (l), by amending paragraph
10 (1) to read as follows:

11 “(1) The President’s decision under subsection (k)
12 shall be submitted to the Committee on Finance of the
13 Senate and the Committee on Ways and Means of the
14 House of Representatives and shall be published in the
15 Federal Register within 15 days of the decision. In the
16 submission to the committees and in publication in the
17 Federal Register, the President shall include the reasons
18 for the decision and the scope and duration of any action
19 taken. If the President takes action that differs from the
20 action recommended by the Commission under subsection
21 (f) or declines to take action pursuant to subsection
22 (k)(2), the President shall state in detail the reasons for
23 such action or inaction.”;

24 (10) by redesignating subsections (m) through
25 (o) as subsections (n) through (p), respectively;

1 (11) by inserting after subsection (l) the fol-
2 lowing new subsection:

3 “(m) IMPLEMENTATION OF ACTION RECOMMENDED
4 BY COMMISSION.—(1) If the President takes action that
5 differs from the action recommended by the Commission
6 under subsection (f) or declines to take action pursuant
7 to subsection (k)(2)(B)(i), the action recommended by the
8 Commission under subsection (f) shall take effect (as pro-
9 vided in subsection (n)(2)) upon the enactment of a joint
10 resolution described in paragraph (2) within the 90-day
11 period beginning on the date on which the President’s de-
12 cision is transmitted to the Congress pursuant to sub-
13 section (l).

14 “(2) For purposes of this section, the term ‘joint res-
15 olution’ means a joint resolution of the 2 Houses of the
16 Congress, the sole matter after the resolving clause of
17 which is as follows: ‘That the Congress does not approve
18 the action taken by, or the determination of, the President
19 under section 421 of the Trade Act of 1974, notice of
20 which was transmitted to the Congress on
21 _____.’, with the blank space being filled with the
22 appropriate case number and date.

23 “(3) The provisions of section 152(b), (c), (d), (e),
24 and (f) of the Trade Act of 1974 (19 U.S.C. 2192(b), (c),

1 (d), (e), and (f)) shall apply to joint resolutions under this
2 section.”;

3 (12) in subsection (n), as redesignated, by
4 striking “Import relief under this section” and all
5 that follows to the end period and inserting the fol-
6 lowing:

7 “(1) Except as provided in paragraph (2), import re-
8 lief under this section shall take effect not later than 15
9 days after the President’s determination to provide such
10 relief.

11 “(2) If the action recommended by the Commission
12 takes effect pursuant to subsection (m), the President
13 shall, within 15 days after the date of the enactment of
14 the joint resolution referred to in subsection (m), proclaim
15 the action recommended by the Commission under sub-
16 section (f). Such action shall take effect not later than
17 15 days after the date of the President’s proclamation.”;

18 (13) in subsection (o), as redesignated—

19 (A) in paragraph (1), by striking “6-
20 month” and inserting “1-year”; and

21 (B) in paragraph (3), by inserting “or
22 (m)” after “subsection (k)”; and

23 (14) in subsection (p), as redesignated—

24 (A) in paragraph (1), by inserting “or
25 (m)” after “subsection (k);”; and

1 (B) in paragraph (3), by striking “sub-
2 section (m)” and inserting “subsection (n)”.

3 **TITLE V—STRENGTHENING EN-**
4 **FORCEMENT OF INTELLEC-**
5 **TUAL PROPERTY RIGHTS AT**
6 **U.S. BORDERS**

7 **Subtitle A—Coordination of En-**
8 **forcement of Intellectual Prop-**
9 **erty Rights**

10 **SEC. 501. DEFINITIONS.**

11 In this title:

12 (1) ASSISTANT SECRETARY FOR ICE.—The term
13 “Assistant Secretary for ICE” means the Assistant
14 Secretary for U.S. Immigration and Customs En-
15 forcement.

16 (2) COMMISSIONER.—The term “Commis-
17 sioner” means the Commissioner responsible for
18 U.S. Customs and Border Protection.

19 (3) COUNTERFEITING; COUNTERFEIT GOODS.—

20 (A) COUNTERFEITING.—The term “coun-
21 terfeiting” means activities related to produc-
22 tion of or trafficking in goods, including pack-
23 aging, that bear a spurious mark or designation
24 that is identical to or substantially indistin-

1 guishable from a mark or designation protected
2 under the trademark laws or related legislation.

3 (B) COUNTERFEIT GOODS.—The term
4 “counterfeit goods” means those goods de-
5 scribed in subparagraph (A).

6 (4) CBP.—The term “CBP” means U.S. Cus-
7 toms and Border Protection.

8 (5) DIRECTOR.—The term “Director” means
9 the Director of Intellectual Property Rights Enforce-
10 ment of the Department of the Treasury established
11 in section 502.

12 (6) ENFORCEMENT OF INTELLECTUAL PROP-
13 ERTY RIGHTS.—The term “enforcement of intellec-
14 tual property rights” means activities to enforce
15 copyrights, patents, trademarks, and other forms of
16 intellectual property, including activities to control
17 counterfeiting and piracy, and activities to enforce
18 exclusion orders issued by the United States Inter-
19 national Trade Commission by reason of any of sub-
20 paragraphs (B) through (E) of subsection (a)(1) of
21 section 337 of the Tariff Act of 1930 (19 U.S.C.
22 1337(a)(1)(B) through (E)).

23 (7) EXCLUSION ORDER.—The term “exclusion
24 order” means an order of the United States Inter-
25 national Trade Commission issued under section

1 337(d) of the Tariff Act of 1930 to exclude goods
2 from entry into the United States.

3 (8) ICE.—The term “ICE” means U.S. Immi-
4 gration and Customs Enforcement.

5 (9) PIRACY; PIRATED GOODS.—

6 (A) PIRACY.—The term “piracy” means
7 activities related to production of or trafficking
8 in unauthorized copies or phonorecords of
9 works protected under copyright law or related
10 legislation.

11 (B) PIRATED GOODS.—The term “pirated
12 goods” means those copies or phonorecords de-
13 scribed in subparagraph (A).

14 **SEC. 502. DIRECTOR OF INTELLECTUAL PROPERTY RIGHTS**
15 **ENFORCEMENT.**

16 (a) ESTABLISHMENT.—There is established within
17 the Department of the Treasury the position of Director
18 of Intellectual Property Rights Enforcement.

19 (b) APPOINTMENT.—The Director shall be appointed
20 by the Secretary of the Treasury, and shall be responsible
21 to and shall report directly to the Deputy Secretary of the
22 Treasury.

23 (c) DUTIES.—The Director shall—

24 (1) coordinate all activities of the Department
25 of the Treasury involving the enforcement of intel-

1 lectual property rights, with particular reference to
2 the activities of CBP and ICE;

3 (2) oversee the development and implementa-
4 tion of the strategic plan for the enforcement of in-
5 tellectual property rights required under section 503;

6 (3) coordinate the policy and regulatory
7 changes set forth in subtitle D;

8 (4) serve as staff representative of the Depart-
9 ment of the Treasury in interagency bodies with re-
10 sponsibility for coordination of activities involving
11 the enforcement of intellectual property rights;

12 (5) conduct an evaluation of the effectiveness of
13 the organizational structure of CBP for reducing the
14 entry into the United States of counterfeit or pirated
15 goods, goods in violation of exclusion orders, and
16 other goods in violation of other intellectual property
17 rights; and

18 (6) carry out other duties, as assigned by the
19 Secretary or Deputy Secretary of the Treasury, to
20 improve the effectiveness of the efforts of the De-
21 partment of the Treasury under the laws within its
22 jurisdiction with respect to enforcement of intellec-
23 tual property rights.

1 **SEC. 503. STRATEGIC PLAN FOR THE ENFORCEMENT OF IN-**
2 **TELLECTUAL PROPERTY RIGHTS.**

3 (a) IN GENERAL.—The Director shall develop, for
4 approval by the Deputy Secretary of the Treasury, an an-
5 nual strategic plan for the enforcement of intellectual
6 property rights.

7 (b) CONSULTATION.—In developing the annual stra-
8 tegic plan required under subsection (a), the Director shall
9 consult with—

10 (1) the CBP coordinator of intellectual property
11 enforcement activities and the ICE coordinator of
12 intellectual property enforcement authorities ap-
13 pointed under section 504;

14 (2) all other entities within the Department of
15 the Treasury with expertise and experience in the
16 enforcement of intellectual property rights;

17 (3) the Advisory Committee;

18 (4) other agencies of the executive branch en-
19 gaged in the enforcement of intellectual property
20 rights, including any officials designated to coordi-
21 nate such enforcement efforts on an interagency
22 basis; and

23 (5) officials from foreign law enforcement agen-
24 cies and international organizations, including the
25 World Customs Organization, with experience and

1 expertise in border control measures relating to the
2 enforcement of intellectual property rights.

3 (c) CONTENTS OF PLAN.—The annual strategic plan
4 shall set forth objectives, goals, and strategies for more
5 effective use of the authorities of CBP and ICE relating
6 to the enforcement of intellectual property rights, and
7 shall—

8 (1) provide for specific measurement of the cur-
9 rent effectiveness of enforcement tools, including
10 targeting, examination, post-entry auditing, and pen-
11 alty actions;

12 (2) give priority to those enforcement tools de-
13 termined under paragraph (1) to be most effective;

14 (3) identify best practices, both in the United
15 States and abroad, in the enforcement of intellectual
16 property rights, taking into account the practices of
17 enforcement authorities of other countries, and im-
18 plement those practices;

19 (4) identify and apply the specific performance
20 measures to be used to evaluate the progress of CBP
21 and ICE in improving the effectiveness of its efforts
22 relating to the enforcement of intellectual property
23 rights;

24 (5) address border control programs adminis-
25 tered by CBP and ICE at ports of entry for pas-

1 sengers and freight, and at points of entry for postal
2 and courier services, as well as for goods in transit
3 through United States ports and in the process of
4 being exported from the United States;

5 (6) recommend the optimal feasible allocation of
6 human, financial, physical, and technological re-
7 sources that CBP and ICE should use to achieve the
8 goals of the annual strategic plan;

9 (7) report on the key activities of CBP and ICE
10 during the preceding year in the enforcement of in-
11 tellectual property rights ; and

12 (8) contain such other information as the Di-
13 rector considers appropriate to convey what CBP
14 and ICE will do, over the ensuing year, with respect
15 to the enforcement of intellectual property rights
16 and reduce the costs that violations of intellectual
17 property rights impose on the United States econ-
18 omy and public safety.

19 (d) SUBMISSION TO CONGRESS.—Upon the approval
20 by the Deputy Secretary of the Treasury of the annual
21 strategic plan, after ensuring its consistency with relevant
22 interagency strategic plans for the enforcement of intellec-
23 tual property rights, the Deputy Secretary of the Treasury
24 shall transmit the annual strategic plan to the Committee
25 on Finance of the Senate and the Committee on Ways and

1 Means of the House of Representatives, along with any
2 recommendations of the Department of the Treasury for
3 statutory changes or funding authorizations needed to im-
4 prove the effectiveness of the Department's efforts in the
5 enforcement of intellectual property rights.

6 (e) TIMING.—The Deputy Secretary of the Treasury
7 shall submit the annual strategic plan under subsection
8 (d) not later than 180 days after the date of the enact-
9 ment of this Act and annually thereafter.

10 **SEC. 504. CBP AND ICE COORDINATORS.**

11 (a) CBP COORDINATORS.—

12 (1) APPOINTMENT.—The Commissioner shall
13 appoint a CBP coordinator of intellectual property
14 rights enforcement activities (in this subtitle referred
15 to as the “CBP Coordinator”), who shall report di-
16 rectly to the Commissioner.

17 (2) DUTIES.—The CBP Coordinator shall—

18 (A) assist the Director of Intellectual
19 Property Rights Enforcement of the Depart-
20 ment of the Treasury in the development of the
21 annual strategic plan, and coordinate the imple-
22 mentation of those aspects of the plan that in-
23 volve CBP;

24 (B) coordinate all efforts, at all ports of
25 entry and elsewhere, carried out by CBP in the

1 enforcement of intellectual property rights, in-
2 cluding training and staffing;

3 (C) supervise the implementation of those
4 aspects of the regulatory and policy reforms set
5 out in this title that involve CBP; and

6 (D) carry out such other duties, as as-
7 signed by the Commissioner, the purpose of
8 which is to improve the performance of CBP in
9 the enforcement of intellectual property rights.

10 (b) ICE COORDINATOR.—

11 (1) APPOINTMENT.—The Assistant Secretary
12 for United States Immigration and Customs En-
13 forcement shall appoint an ICE coordinator of intel-
14 lectual property enforcement activities (referred to in
15 this subtitle as the “ICE Coordinator”), who shall
16 report directly to the Assistant Secretary for ICE.

17 (2) DUTIES.—The ICE Coordinator shall—

18 (A) assist the Director of Intellectual
19 Property Rights Enforcement of the Depart-
20 ment of the Treasury in the development of the
21 annual strategic plan, and coordinate the imple-
22 mentation of those aspects of the plan that in-
23 volve ICE;

1 (B) coordinate all efforts carried out by
2 ICE the enforcement of intellectual property
3 rights, including training and staffing;

4 (C) supervise the implementation of those
5 aspects of the regulatory and policy reforms set
6 out in this title that involve ICE; and

7 (D) carry out such other duties, as as-
8 signed by the Assistant Secretary for ICE, the
9 purpose which is to improve the performance of
10 ICE in the enforcement of intellectual property
11 rights.

12 **Subtitle B—Regulatory and Policy**
13 **Improvements Against Counter-**
14 **feiting and Piracy**

15 **SEC. 511. IN GENERAL.**

16 (a) COMMISSIONER'S RESPONSIBILITIES.—The Com-
17 missioner, acting through the CBP Coordinator, shall un-
18 dertake the initiatives provided in this subtitle.

19 (b) CBP COORDINATOR'S RESPONSIBILITIES.—Ex-
20 cept as otherwise provided in this subtitle, the CBP Coor-
21 dinator shall—

22 (1) prepare an annual report on activities car-
23 ried out under this subtitle; and

24 (2) provide the annual report to the Director of
25 Intellectual Property Rights Enforcement of the De-

1 partment of the Treasury in a timely manner that
2 will permit its inclusion in the annual strategic plan
3 prepared under section 503.

4 **SEC. 512. IDENTIFICATION OF CERTAIN UNLAWFUL GOODS.**

5 (a) IN GENERAL.—The Secretary of the Treasury,
6 acting through the Commissioner, shall accelerate efforts
7 to apply risk assessment modeling techniques to border
8 enforcement activities to combat counterfeiting and piracy.
9 These efforts shall include, but not be limited to—

10 (1) preparing a report and evaluation on CBP’s
11 pilot project in risk assessment modeling with re-
12 spect to shipments of counterfeit or pirated prod-
13 ucts;

14 (2) expanding the pilot project to include devel-
15 opment of a rule set for the Automated Targeting
16 System; and

17 (3) developing a plan for the development, test-
18 ing, evaluation, and continuous improvement of risk
19 assessment modeling techniques for purposes of tar-
20 geting goods that violate intellectual property rights.

21 (b) INCLUSION IN STRATEGIC PLAN.—The report
22 specified in subsection (a)(1), and the plan specified in
23 subsection (a)(3), shall be included in the annual strategic
24 plan that is prepared under section 503.

1 **SEC. 513. TRAINING IN NEW TECHNOLOGIES.**

2 (a) TRAINING OF PERSONNEL.—The Commissioner
3 shall consult with the Advisory Committee to determine
4 the feasibility of training CBP personnel in the use of new
5 technological means for detecting and identifying, at ports
6 of entry, counterfeit and pirated goods, and goods that
7 are the subject of exclusion orders, whether for entry into
8 the United States or in transit to other destinations.

9 (b) IDENTIFICATION OF TECHNOLOGIES AND
10 SOURCES OF TRAINING.—In consultation with the Advi-
11 sory Committee, the Commissioner shall identify—

12 (1) new technologies with the cost-effective ca-
13 pability to detect and identify goods described in
14 subsection (a) at ports of entry; and

15 (2) economical sources of training CBP per-
16 sonnel in using such new technologies,
17 to the extent such training is determined to be feasible
18 under subsection (a).

19 (c) REGULATORY AND POLICY CHANGES.—The
20 United States Government Accountability Office shall pro-
21 vide to the Congress a report analyzing the costs and bene-
22 fits of allowing necessary regulatory and policy changes
23 to enable the receipt of donations of hardware, software,
24 equipment, and similar technologies, and the acceptance
25 of training and other support services, from the private

1 sector, to facilitate the achievement of the purposes of this
2 section.

3 **SEC. 514. DISCLOSURE OF INFORMATION AND SAMPLES OF**
4 **SHIPMENTS TO INTELLECTUAL PROPERTY**
5 **OWNERS.**

6 The Commissioner shall make the necessary regu-
7 latory and policy changes to—

8 (1) increase disclosure to owners of copyrights,
9 trademarks, patents, and other forms of intellectual
10 property of information about shipments of goods
11 that have been detained at ports of entry on sus-
12 picion that their importation into, or transit
13 through, the United States would violate the intellec-
14 tual property rights of the owners of those rights,
15 including—

16 (A) disclosure of the identities and contact
17 information of all parties involved in the ship-
18 ments, including importers, exporters, declar-
19 ants, consignees, freight forwarders, and ware-
20 house owners;

21 (B) providing documents relating to the
22 shipments; and

23 (C) identifying points of origin and des-
24 tination of the shipments; and

1 (2) improve the process of making available to
2 representatives of owners of copyrights, trademarks,
3 patents, and other forms of intellectual property, in
4 an efficient and cost-effective manner, samples of
5 shipments of goods suspected of infringing intellec-
6 tual property rights, for the purpose of inspection or
7 analysis.

8 **SEC. 515. IMPROVEMENTS TO RECORDATION PROCESS.**

9 (a) IMPROVEMENTS IN RECORDATION PROCESS.—

10 The Commissioner shall make the necessary regulatory
11 and policy changes to ensure that the system for recorda-
12 tion of copyrights, trademarks, and other forms of intellec-
13 tual property that may be subject to recordation does not
14 impede the rapid seizure of goods that infringe the rights
15 of the owners of such copyrights, trademarks, and other
16 forms of intellectual property.

17 (b) SIMULTANEOUS RECORDATION.—

18 (1) IN GENERAL.—In consultation with the
19 Under Secretary of Commerce for Intellectual Prop-
20 erty and Director of the United States Patent and
21 Trademark Office, and the Register of Copyrights,
22 the Commissioner shall provide a system whereby
23 trademarks may be recorded with CBP simulta-
24 neously with the issuance of trademark registration,
25 and whereby copyrights of audiovisual works and

1 sound recordings may be recorded with CBP simul-
2 taneously with the filing of an application for a cer-
3 tificate of copyright registration or an application
4 for registration of another intellectual property right
5 under title 17, United States Code.

6 (2) DEFINITIONS.—In this subsection, the
7 terms “audiovisual works” and “sound recordings”
8 have the meanings given those terms in section 101
9 of title 17, United States Code.

10 **SEC. 516. IDENTIFICATION OF LOW-RISK SHIPPERS.**

11 (a) VOLUNTARY CERTIFICATION PROGRAM.—The
12 Commissioner shall create a voluntary certification pro-
13 gram for low-risk shippers that have taken specific meas-
14 ures to strengthen and protect their supply chains to pre-
15 vent the infiltration of counterfeit and pirated goods,
16 goods that are the subject to exclusions orders, and goods
17 that violate other forms of intellectual property rights.

18 (b) SELF CERTIFICATIONS; VERIFICATIONS.—The
19 program under subsection (a) shall generally operate on
20 a self-certification basis, except that the Commissioner
21 shall identify any circumstances in which third party
22 verifications and attestations are required for inclusion in
23 the program, which may include importations from the
24 People’s Republic of China.

1 (c) EXPEDITED MOVEMENT.—The Commissioner
2 shall create incentives for shippers to participate in the
3 certification program, including providing expedited move-
4 ment of the goods of the shippers through the customs
5 inspection process.

6 (d) DEFINITION.—In this section, the term “inter-
7 national supply chain” means the end-to-end process for
8 transporting goods to or from the United States beginning
9 with the point of origin (including manufacturer, supplier,
10 or vendor) through the point of distribution to the destina-
11 tion.

12 **SEC. 517. “WATCH LIST” DATABASE.**

13 (a) IN GENERAL.—The Commissioner shall prepare
14 a plan for the implementation of a “Watch List” database
15 of importers, shippers, freight forwarders, and other par-
16 ticipants in the import, export, and transshipment process,
17 whose activities merit additional scrutiny at ports of entry
18 with respect to the risk of importation or transshipment
19 of counterfeit or pirated goods and goods that are the sub-
20 ject to exclusions orders.

21 (b) WORKING GROUPS.—The Commissioner shall
22 consult with the Advisory Committee on the development
23 of criteria for the “Watch List” database.

24 (c) INFORMATION SOURCES.—The plan under sub-
25 section (a) shall identify legitimate information sources for

1 the database from within CBP, from other law enforce-
2 ment sources, and from the private sector.

3 (d) **CRITERIA FOR ACCESS TO DATABASE.**—The plan
4 under subsection (a) shall specify criteria under which the
5 database should be made available to qualified CBP and
6 other law enforcement officers, for intelligence purposes,
7 and for use in flagging and diverting for enhanced scru-
8 tiny shipments to ports of entry that are associated with
9 entities listed in the database.

10 (e) **OTHER MATTERS.**—The plan under subsection
11 (a) shall identify any regulatory or policy changes that the
12 Department of the Treasury would make in order to bring
13 the database into operation, as well as any recommenda-
14 tions for needed changes to legislation to make the data-
15 base more effective. The plan shall also include budget es-
16 timates for implementation and operation of the database,
17 and for evaluation of its effectiveness, and a timetable for
18 such implementation.

19 (f) **TIMING.**—The Commissioner shall complete the
20 plan in a timely fashion that will permit its inclusion in
21 the first annual strategic plan prepared under section 503.

22 **SEC. 518. CIVIL FINES FOR IMPORTATION OF PIRATED OR**
23 **COUNTERFEIT GOODS.**

24 (a) **LIMITATION ON MITIGATION, DISMISSAL, AND**
25 **VACATION OF FINES.**—Unless otherwise ordered by a

1 court of competent jurisdiction, any civil fine imposed pur-
2 suant to section 526(f) of the Tariff Act of 1930 (19
3 U.S.C. 1526(f))—

4 (1) may not be mitigated, except pursuant to
5 regulations issued by the Commissioner; and

6 (2) may not be dismissed or vacated, except
7 pursuant to regulations issued by the Commissioner
8 that require the specific approval of the Commis-
9 sioner or the Commissioner’s designee for such dis-
10 missal or vacation.

11 (b) EXTRAORDINARY CASES.—In issuing regulations
12 under subsection (a), the Commissioner shall ensure that
13 the mitigation, dismissal, or vacation of civil fines for in-
14 volvement in the importation, exportation, or trans-
15 shipment of pirated or counterfeit goods is limited to ex-
16 traordinary cases in which the interests of justice will
17 clearly be served by such action.

18 (c) REPORT TO CONGRESS.—The Commissioner
19 shall, not later than 180 days after the date of the enact-
20 ment of this Act, report to the Committee on Finance of
21 the Senate and the Committee on Ways and Means of the
22 House of Representatives on the following:

23 (1) Whether CBP currently has the authority to
24 employ effective collection techniques for collecting
25 civil fines it imposes on participants in the importa-

1 tion, exportation, or transshipment of pirated or
2 counterfeit goods.

3 (2) If CBP lacks such authority, the Commis-
4 sioner’s recommendations for legislation to provide
5 CBP with such authority.

6 (3) If CBP has such authority, how CBP is
7 using such authority, and with what results in terms
8 of increased collections of fines imposed.

9 (4) The Commissioner’s recommendations on
10 whether, in specific cases, copyright or trademark
11 owners should be authorized to pursue and collect
12 fines imposed because of activities that infringe their
13 intellectual property rights, and whether such copy-
14 right or trademark owners should be allowed to re-
15 tain some or all of the funds that they collect.

16 (5) Any other recommendations for statutory,
17 regulatory, or policy changes not under the control
18 of CBP that would improve the ability of CBP to
19 impose civil fines, at deterrent levels, on participants
20 in trafficking in counterfeit or pirated goods, and to
21 collect the fines imposed.

22 (d) DEFINITION.—As used in subsection (c), the term
23 “effective collection techniques” includes—

24 (1) confiscation of the proceeds of acts for
25 which civil fines can be imposed;

1 (2) seizure of and execution upon property ac-
2 quired with such proceeds;

3 (3) imposition of liens on the real or personal
4 property of persons upon whom civil fines are im-
5 posed;

6 (4) use of bonds to secure full payment of fines;

7 (5) piercing the corporate veil of corporations
8 upon which civil fines are imposed, in order to sat-
9 isfy the fine from the assets of natural persons or
10 of other legal persons; and

11 (6) engaging private sector entities to collect
12 civil fines imposed.

13 **Subtitle C—Training** 14 **Enhancements**

15 **SEC. 521. INTERNATIONAL TRAINING AND TECHNICAL AS-** 16 **SISTANCE ENHANCEMENTS.**

17 The Secretary of the Treasury shall take the nec-
18 essary steps—

19 (1) to increase staffing and resources of offices
20 of CBP and ICE engaged in providing training and
21 technical assistance to the customs services and en-
22 forcement agencies of other countries in order to im-
23 prove the effectiveness of such foreign services and
24 agencies in detecting, intercepting, and imposing de-
25 terrent penalties upon the export, import, or trans-

1 shipment of counterfeit or pirated goods, goods that
2 are the subject to exclusions orders, and goods that
3 violate other forms of intellectual property rights;

4 (2) to ensure that the Director, in order to
5 make the most efficient and effective use of training
6 and technical assistance resources—

7 (A) coordinates the international training
8 and technical assistance activities of CBP and
9 ICE as part of the Director's coordination re-
10 sponsibilities under section 502;

11 (B) gives priority to such activities in those
12 countries where such programs can be carried
13 out most effectively and with the greatest ben-
14 efit to protecting the intellectual property rights
15 of United States right holders;

16 (C) takes steps to minimize duplication,
17 overlap, or inconsistency of international train-
18 ing and technical assistance efforts; and

19 (D) coordinates such activities of the De-
20 partment of the Treasury with international
21 training and technical assistance activities
22 against counterfeiting and piracy carried out by
23 other agencies, and enhances the participation
24 of Department of the Treasury personnel in

1 interagency training and technical assistance
2 activities in this field.

3 **Subtitle D—New Legal Tools for** 4 **Border Enforcement**

5 **SEC. 531. EXPANDED PROHIBITIONS ON IMPORTATION OR** 6 **EXPORTATION OF COUNTERFEIT OR PIRAT-** 7 **ED GOODS.**

8 Section 526 of the Tariff Act of 1930 (19 U.S.C.
9 1526) is amended—

10 (1) in the section heading, by inserting “**OR**
11 **PROTECTED BY COPYRIGHT**” after “**TRADE-**
12 **MARK**”;

13 (2) in subsection (e), by inserting “or exported
14 from the United States” after “imported into the
15 United States”;

16 (3) in subsection (f), by striking paragraph (1)
17 and inserting the following:

18 “(1) Any person who engages in, directs, assists
19 financially or otherwise, or aids and abets the impor-
20 tation or exportation of merchandise that is seized
21 under subsection (e) of this section, or under regula-
22 tions issued pursuant to section 603(c) of title 17,
23 United States Code, shall be subject to a civil fine.”;
24 and

25 (4) in subsection (f)—

1 (A) by redesignating paragraph (4) as
2 paragraph (5); and

3 (B) by inserting after paragraph (3) the
4 following:

5 “(4) When the seizure giving rise to the civil fine is
6 made under circumstances indicating that the importation
7 or exportation was for the purpose of sale or public dis-
8 tribution of the good seized, the maximum fine amounts
9 set forth in paragraphs (2) and (3) shall be tripled.”.

10 **SEC. 532. DECLARATIONS REGARDING COUNTERFEIT AND**
11 **INFRINGING MERCHANDISE.**

12 (a) DECLARATIONS.—Section 485(a) of the Tariff
13 Act of 1930 (19 U.S.C. 1485(a)), is amended—

14 (1) in paragraph (1), by striking “Whether”
15 and inserting “whether”;

16 (2) in paragraph (2), by striking “That” and
17 inserting “that”;

18 (3) in paragraph (3)—

19 (A) by striking “That” and inserting
20 “that”; and

21 (B) by striking “and” after the semicolon;

22 (4) in paragraph (4)—

23 (A) by striking “That” and inserting
24 “that”; and

1 (B) by striking the period and inserting a
2 semicolon; and

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

4 “(5) that the merchandise being imported does
5 not bear a mark that is counterfeit as that term is
6 defined in section 45 of the of July 5, 1946 (com-
7 monly referred to as the ‘Trademark Act of 1946’;
8 15 U.S.C. 1127);

9 “(6) that the merchandise is not an infringing
10 copy or phonorecord or one whose making would
11 have constituted an infringement of copyright if title
12 17, United States Code, had applied; and

13 “(7) that the merchandise does not violate—

14 “(A) does not violate an exclusion order of
15 the United States International Trade Commis-
16 sion under section 337(d) by reason of any of
17 subparagraphs (B) through (E) of subsection
18 (a)(1) of section 337; or

19 “(B) infringe any other intellectual prop-
20 erty right not covered by subparagraph (A) or
21 by paragraph (5) or (6).”.

22 (b) REGULATIONS.—The Secretary of the Treasury
23 shall issue regulations requiring that the declarations re-
24 quired by paragraphs (5), (6), and (7) of section 485(a)
25 of the Tariff Act of 1930 be made by all persons arriving

1 in the United States with respect to articles carried on
2 their person or contained in their baggage.

3 **Subtitle E—Regulatory Authority**

4 **SEC. 541. REGULATORY AUTHORITY.**

5 The Secretary may issue such regulations as are nec-
6 essary to carry out this title.

7 **TITLE VI—MISCELLANEOUS**

8 **SEC. 601. APPLICATION TO CANADA AND MEXICO.**

9 Pursuant to article 1902 of the North American Free
10 Trade Agreement and section 408 of the North American
11 Free Trade Agreement Implementation Act (19 U.S.C.
12 3438), this Act and the amendments made by this Act
13 shall apply with respect to goods from Canada and Mexico.

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