

111TH CONGRESS
1ST SESSION

H. R. 3012

To require a review of existing trade agreements and renegotiation of existing trade agreements based on the review, to set terms for future trade agreements, to express the sense of the Congress that the role of Congress in trade policymaking should be strengthened, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2009

Mr. MICHAUD (for himself, Mr. ABERCROMBIE, Mr. ALTMIRE, Mr. ARCURI, Mr. BACA, Ms. BALDWIN, Mr. BOCCIERI, Mr. BOSWELL, Mr. BRADY of Pennsylvania, Mr. BRALEY of Iowa, Mr. CAPUANO, Mr. CARNAHAN, Mr. CARNEY, Mr. CARSON of Indiana, Mr. CHANDLER, Mr. CHILDERS, Mr. CLEAVER, Mr. COHEN, Mr. CONYERS, Mr. COSTELLO, Mr. CUMMINGS, Mrs. DAHLKEMPER, Mr. DEFazio, Mr. DELAHUNT, Ms. DELAURO, Mr. DINGELL, Mr. DOYLE, Ms. EDWARDS of Maryland, Mr. ELLISON, Mr. FILNER, Ms. FUDGE, Mr. GORDON of Tennessee, Mr. GRAYSON, Mr. AL GREEN of Texas, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HALL of New York, Mr. HARE, Mr. HASTINGS of Florida, Mr. HINCHEY, Ms. HIRONO, Mr. HOLDEN, Mr. HOLT, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JOHNSON of Georgia, Mr. JONES, Mr. KAGEN, Mr. KANJORSKI, Ms. KAPTUR, Mr. KILDEE, Ms. KILPATRICK of Michigan, Ms. KILROY, Mr. KISSELL, Mr. KUCINICH, Mr. LANGEVIN, Ms. LEE of California, Mr. LIPINSKI, Mr. LOEBSACK, Mr. LYNCH, Mr. MASSA, Ms. MCCOLLUM, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MOLLOHAN, Ms. MOORE of Wisconsin, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. MURTHA, Mr. NADLER of New York, Mrs. NAPOLITANO, Ms. NORTON, Mr. OBERSTAR, Mr. PALLONE, Mr. PAYNE, Mr. PERRIELLO, Mr. PETERS, Mr. PETERSON, Ms. PINGREE of Maine, Mr. RAHALL, Mr. ROSS, Mr. ROTHMAN of New Jersey, Ms. ROYBAL-ALLARD, Mr. RYAN of Ohio, Mr. SARBANES, Ms. SCHAKOWSKY, Mr. SCHAUER, Mr. SCOTT of Virginia, Ms. SHEA-PORTER, Mr. SHERMAN, Mr. SHULER, Ms. SLAUGHTER, Mr. SMITH of New Jersey, Mr. STUPAK, Ms. SUTTON, Mr. TIERNEY, Mr. TONKO, Mr. VISCLOSKY, Mr. WALZ, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Mr. WELCH, Mr. WILSON of Ohio, Ms. WOOLSEY, Mr. WU, and Mr. SPRATT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently deter-

mined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require a review of existing trade agreements and renegotiation of existing trade agreements based on the review, to set terms for future trade agreements, to express the sense of the Congress that the role of Congress in trade policymaking should be strengthened, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trade Reform, Ac-
 5 countability, Development, and Employment Act of 2009”
 6 or the “TRADE Act of 2009”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) CORE LABOR STANDARDS.—The term “core
 10 labor standards” means the core labor rights as
 11 stated in the Conventions of the International
 12 Labour Organization relating to—

13 (A) freedom of association and the effec-
 14 tive recognition of the right to collective bar-
 15 gaining;

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

3 (C) effective abolition of child labor; and

4 (D) elimination of discrimination with re-
5 spect to employment and occupation.

6 (2) FUNDAMENTAL HUMAN RIGHTS.—The term
7 “fundamental human rights” means the rights enu-
8 merated in the United Nations Universal Declara-
9 tion of Human Rights.

10 (3) MAJOR U.S. TRADE PARTNERS.—The term
11 “major U.S. trade partners” means Belgium, Brazil,
12 the People’s Republic of China, France, Germany,
13 Hong Kong, India, Ireland, Italy, Japan, the Repub-
14 lic of South Korea, Malaysia, the Netherlands, Tai-
15 wan, and the United Kingdom.

16 (4) MULTILATERAL ENVIRONMENTAL AGREE-
17 MENT.—The term “multilateral environmental
18 agreement” means any international agreement or
19 provision thereof to which the United States is a
20 party and which is intended to protect, or has the
21 effect of protecting, the environment or human
22 health.

23 (5) STATE.—The term “State” means each of
24 the several States, the District of Columbia, and any

1 commonwealth, territory, or possession of the United
2 States.

3 (6) TRADE AGREEMENTS.—

4 (A) IN GENERAL.—Except as provided in
5 section 4, the term “trade agreement” means—

6 (i) the North American Free Trade
7 Agreement;

8 (ii) the Dominican Republic-Central
9 America-United States Free Trade Agree-
10 ment; and

11 (iii) the Agreement Between the
12 United States of America and the
13 Hashemite Kingdom of Jordan on the Es-
14 tablishment of a Free Trade Area.

15 (B) URUGUAY ROUND AGREEMENTS.—Ex-
16 cept as provided in section 4, the term “trade
17 agreement” means—

18 (i) the General Agreement on Tariffs
19 and Trade (GATT 1994) annexed to the
20 WTO Agreement;

21 (ii) the WTO Agreement described in
22 section 2(9) of the Uruguay Round Agree-
23 ments Act (19 U.S.C. 3501(9));

1 (iii) any other agreement described in
2 section 101(d) of the Uruguay Round
3 Agreements Act (19 U.S.C. 3511(d)); and

4 (iv) any multilateral agreement en-
5 tered into by the United States under the
6 auspices of the World Trade Organization,
7 including any agreement relating to infor-
8 mation technology, telecommunications, or
9 financial services.

10 **SEC. 3. REVIEW AND REPORT ON EXISTING TRADE AGREE-**
11 **MENTS.**

12 (a) REVIEW AND REPORT.—

13 (1) IN GENERAL.—Not later than 270 days
14 after the date of the enactment of this Act, and
15 every 2 years thereafter, the Comptroller General of
16 the United States shall—

17 (A) conduct a review of all trade agree-
18 ments in force at the time of the review for the
19 purpose of evaluating the economic, environ-
20 mental, national security, health, safety, and
21 other effects of the trade agreements; and

22 (B) submit to the Congressional Trade
23 Agreement Review Committee established under
24 section 6 a report that includes the information

1 described under subsections (b) and (c) and the
2 recommendations required under subsection (d).

3 (2) COOPERATION OF AGENCIES.—The Sec-
4 retary of State, the Secretary of Agriculture, the
5 Secretary of Commerce, the Secretary of Labor, the
6 Secretary of the Treasury, and the heads of other
7 Federal departments and agencies shall cooperate
8 with the Comptroller General for purposes of facili-
9 tating preparation of the report.

10 (3) INFLATION-CONTROLLED DOLLARS.—Data
11 expressed in terms of United States dollars should
12 be in inflation adjusted terms unless otherwise indi-
13 cated.

14 (b) INFORMATION WITH RESPECT TO TRADE
15 AGREEMENTS.—The report required by subsection (a)
16 shall, with respect to each trade agreement, to the extent
17 practicable, include the following information covering the
18 period between the date on which the trade agreement en-
19 tered into force with respect to the United States and the
20 date on which the Comptroller General completes the re-
21 view:

22 (1) An analysis of indicators of the economic
23 impact of each trade agreement, including the fol-
24 lowing:

1 (A) The employment effects of the trade
2 agreement on job gains and losses in the United
3 States delineated by industry, year, and State,
4 taking note of specific firm, industry, or re-
5 gional cases of substantial trade agreement-re-
6 lated employment losses or gains, including a
7 list of the top ten industries that experienced
8 employment gains and losses in the United
9 States. In addition to utilizing existing govern-
10 ment data, the Comptroller General shall de-
11 velop and utilize a labor requirements model de-
12 rived from detailed input-output tables to esti-
13 mate the number of jobs supported or displaced
14 by shifts in the level and rate of change of
15 United States net exports and investment flows.

16 (B) The effects of the trade agreement on
17 changes in relative and absolute wage levels, in-
18 come distribution by decile, and hours worked
19 by sector and State, on a year-to-year basis, in
20 the United States. In addition to utilizing exist-
21 ing government data, the Comptroller General
22 shall develop and utilize factor content analyses,
23 product price regressions, computable general
24 equilibrium models, and other applicable meth-
25 ods to isolate the impact of the trade agreement

1 (and its associated investment flows) on
2 changes in relative and absolute wages and in-
3 come distribution by education, skill level, and
4 trade-sensitivity of various sectors, controlling
5 for appropriate indicators such as region, race,
6 and gender.

7 (C) The dollar value of domestic exports of
8 the United States and imports for consumption
9 into the United States delineated, to the extent
10 such information is available, by—

11 (i) Standard International Trade
12 Classification (SITC)-5,

13 (ii) Standard Industrial Classification
14 (SIC)-4,

15 (iii) North American Industry Classi-
16 fication (NAIC)-6,

17 (iv) the 10-digit classification number
18 under the Harmonized Tariff Schedule of
19 the United States,

20 (v) year, and

21 (vi) trade-partner country,

22 including listing those goods for which there
23 has been a change in 10 percent or more in bi-
24 lateral trade flows.

1 (D) The share of global production, pro-
2 ductive capacity, investment, exports and em-
3 ployment, and other indicators of the competi-
4 tive position (such as productivity gains and
5 patents registered) of industries in the United
6 States significantly affected by the trade agree-
7 ment, taking note of major production and em-
8 ployment offshoring trends and changes in
9 sourcing patterns before and after entry into
10 force of the trade agreement with respect to the
11 United States.

12 (2) An analysis of the effect on agriculture and
13 food-related outcomes, including the following:

14 (A)(i) The trend, on a year-by-year basis,
15 of prices and production volumes in the United
16 States, and exports from and imports into the
17 United States, of agricultural commodities, food
18 products, and ingredients thereof, that are im-
19 ported in significant volume into the United
20 States from a country that is a party to the
21 trade agreement.

22 (ii) For purposes of this subparagraph—

23 (I) the term “significant volume”
24 means, with respect to agricultural com-
25 modities, food products, or ingredients, 10

1 percent or more of domestic consumption
2 of such agricultural commodities, food
3 products, or ingredients; and

4 (II) imports of such agricultural com-
5 modities, food products, and ingredients
6 shall be measured according to the 4-digit
7 classification of the commodities, products,
8 and ingredients under the Harmonized
9 Tariff Schedule of the United States.

10 (B) An analysis of the effects, if any, on
11 the cost of agricultural programs in the United
12 States.

13 (C) The number of farms operating in the
14 United States, detailed by farm typology and
15 sales level, and the number of acres under pro-
16 duction by crop, for agricultural commodities
17 that are exported from the United States to a
18 country that is a party to the trade agreement,
19 on a year-by-year basis.

20 (D) An analysis of the effects, if any, on
21 market concentration, prices, and fair competi-
22 tion in the markets for agricultural commodities
23 and food products that are subject to signifi-
24 cant volumes of trade between the United

1 States and each other country that is a party
2 to the trade agreement.

3 (3)(A) An analysis of the progress in imple-
4 menting commitments under the trade agreement,
5 and the record of compliance with the terms of the
6 trade agreement, by—

7 (i) each country that is a party to the
8 trade agreement, in the case of a trade agree-
9 ment describe in section 2(6)(A); and

10 (ii) by each of the major U.S. trade part-
11 ners, in the case of a trade agreement described
12 in section 2(6)(B).

13 (B) A description of any outstanding disputes
14 between the United States and any other country
15 that is a party to the trade agreement, including a
16 description of laws, regulations, or policies of the
17 United States or any State that such other country
18 has challenged, or threatened to challenge, under the
19 trade agreement.

20 (4) An analysis of the ability of the United
21 States to ensure that each other country that is a
22 party to the trade agreement complies with United
23 States laws and regulations, including—

24 (A) complying with the customs laws of the
25 United States;

1 (B) making timely payment of duties owed
2 on goods imported into the United States, in-
3 cluding, in such analysis, the amount of duties
4 paid by such other country;

5 (C) meeting safety and inspection require-
6 ments with respect to food and other products
7 imported into the United States from such
8 other country;

9 (D) complying with prohibitions on the
10 transshipment of goods that are ultimately im-
11 ported into the United States; and

12 (E) enforcing the trade agreement, includ-
13 ing preventing dumping, subsidies, and cir-
14 cumvention.

15 (5) An analysis of any privatization of public
16 sector services in the United States or in any other
17 country that is a party to the trade agreement, if
18 the service involved is covered by the investment, fi-
19 nancial services, or services provisions of the trade
20 agreement, including any effect such privatization
21 has on the access of consumers to essential services,
22 such as health care, electricity, gas, water, telephone
23 service, or other utilities.

24 (6) An assessment of the impact of the intellec-
25 tual property provisions of the trade agreement on

1 the retail price of pharmaceuticals in any country
2 that is a party to the trade agreement and the ef-
3 fect, if any, that changes in the price of pharma-
4 ceuticals have had on access by consumers to medi-
5 cines.

6 (7) An analysis of the impact of government
7 procurement rules in the trade agreement on the
8 procurement of goods or services by United States
9 Federal or State government agencies, including an-
10 nual information on the value of goods and services
11 procured, delineated by Federal or State government
12 and agency, by good or service procured, and by the
13 country from which the good or service originated.

14 (8) An assessment of the impact of significant
15 currency movements, currency misalignment, or cur-
16 rency manipulation on the bilateral trade balance be-
17 tween the United States and each other country that
18 is a party to the trade agreement and each of the
19 major U.S. trade partners.

20 (c) INFORMATION ON COUNTRIES THAT ARE PAR-
21 TIES TO TRADE AGREEMENTS.—With respect to each
22 country with which the United States has a trade agree-
23 ment in effect, the report required under subsection (a)
24 shall include information regarding whether that coun-
25 try—

1 (1) has a democratic form of government;

2 (2) respects core labor rights, as defined by the
3 Committee of Experts on the Application of Conven-
4 tions and Recommendations and the Conference
5 Committee on the Application of Standards of the
6 International Labour Organization;

7 (3) respects fundamental human rights, as de-
8 termined by the Secretary of State in the annual
9 country reports on human rights of the Department
10 of State;

11 (4) is designated as a country of particular con-
12 cern with respect to religious freedom under section
13 402(b)(1) of the International Religious Freedom
14 Act of 1998 (22 U.S.C. 6442(b)(1));

15 (5) is on a list described in subparagraph (B)
16 or (C) of section 110(b)(1) of the Trafficking Vic-
17 tims Protection Act of 2000 (22 U.S.C. 7107(b)(1))
18 (commonly known as tier 2 or tier 3 of the Traf-
19 ficking in Persons List of the Department of State);

20 (6) has taken effective measures to combat and
21 prevent public and private corruption, including
22 measures with respect to tax evasion and money
23 laundering, and has ratified the Convention on Com-
24 bating Bribery of Foreign Public Officials in Inter-

1 national Business Transactions of the Organization
2 for Economic Cooperation and Development;

3 (7) complies with the multilateral environmental
4 agreements to which the country is a party;

5 (8) has in force adequate labor and environ-
6 mental laws and regulations, has devoted sufficient
7 resources to implementing those laws and regula-
8 tions, and has an adequate record of enforcement of
9 those laws and regulations;

10 (9) adequately protects intellectual property
11 rights;

12 (10) provides for governmental transparency,
13 due process of law, and respect for international
14 agreements; and

15 (11) poses potential concerns to the national se-
16 curity of the United States, including an assessment
17 of the transfer of technology, production, and serv-
18 ices from one country to another.

19 (d) RECOMMENDATIONS.—The report required under
20 subsection (a) shall include recommendations of the
21 Comptroller General for addressing issues with respect to
22 a trade agreement that are identified under subsections
23 (b) and (c). The recommendations shall include sugges-
24 tions for renegotiating the trade agreement based on the

1 requirements described in section 4(b) and for negotia-
2 tions with respect to new trade agreements.

3 (e) CITATIONS.—The Comptroller General shall in-
4 clude in the report required under subsection (a) citations
5 to the sources of data used in preparing the report and
6 a description of the methodologies employed in preparing
7 the report.

8 (f) TREND ANALYSIS.—The report required under
9 subsection (a) shall include a trend analysis of relative and
10 absolute wage levels on a year-to-year basis in—

11 (1) each country with which the United States
12 has a trade agreement described in section 2(6)(A);

13 (2) each major U.S. trade partner;

14 (3) each country with which the United States
15 has considered establishing a free trade agreement,
16 including South Africa, Vietnam, Malaysia, and
17 Thailand; and

18 (4) Cambodia.

19 (g) PUBLIC COMMENT.—In preparing the report re-
20 quired under subsection (a), the Comptroller General
21 shall—

22 (1) hold hearings that are open to the public;
23 and

24 (2) provide an opportunity for members of the
25 public to testify and submit written comments.

1 (h) PUBLIC AVAILABILITY.—The information in each
2 report required under subsection (a) shall be made avail-
3 able to the public not later than 14 days after the Comp-
4 troller General completes the report.

5 **SEC. 4. INCLUSION OF CERTAIN PROVISIONS IN TRADE**
6 **AGREEMENTS.**

7 (a) IN GENERAL.—

8 (1) REQUIREMENTS FOR EXPEDITED CONSID-
9 ERATION OF IMPLEMENTING LEGISLATION.—Not-
10 withstanding section 151 of the Trade Act of 1974
11 (19 U.S.C. 2191) or any other provision of law, any
12 bill implementing a trade agreement between the
13 United States and another country that is intro-
14 duced in the Congress after the date of the enact-
15 ment of this Act shall not be subject to expedited
16 consideration or special procedures regarding
17 amendment or debate unless the trade agreement
18 meets the requirements of subsection (b).

19 (2) TRADE AGREEMENT DEFINED.—For pur-
20 poses of this section, the term “trade agreement”
21 means any trade agreement entered into between the
22 United States and one or more countries.

23 (b) REQUIREMENTS.—The requirements referred to
24 in subsection (a) regarding a trade agreement between the
25 United States and another country are the following:

1 (1) LABOR STANDARDS.—The labor provisions
2 shall—

3 (A) be included in the core text of the
4 trade agreement;

5 (B) require each country that is party to
6 the trade agreement—

7 (i) to adopt and maintain as part of
8 its domestic law and regulations (including
9 in any designated zone in that country) the
10 core labor standards; and

11 (ii) to effectively enforce laws related
12 to core labor standards and acceptable con-
13 ditions of work with respect to minimum
14 wages, hours of work, and occupational
15 safety and health;

16 (C) prohibit a country that is a party to
17 the trade agreement from waiving or otherwise
18 derogating from its laws and regulations relat-
19 ing to the core labor standards and acceptable
20 conditions of work with respect to minimum
21 wages, hours of work, and occupational safety
22 and health;

23 (D) provide that failures to meet the labor
24 standards required by the trade agreement shall
25 be subject to effective dispute resolution and

1 enforcement mechanisms and penalties that are
2 included in the core text of the trade agreement
3 and that are at least as effective as the mecha-
4 nisms and penalties that apply to the commer-
5 cial provisions of the trade agreement;

6 (E) strengthen the capacity of each coun-
7 try that is a party to the trade agreement to
8 promote and enforce core labor standards;

9 (F) provide for the establishment of a com-
10 mission comprised of individuals with inter-
11 national and comparative labor rights expertise,
12 including representatives of independent labor
13 unions of countries that are parties to the trade
14 agreement, representatives of exporting busi-
15 nesses of countries that are parties to the trade
16 agreement, and independent academic research-
17 ers, to receive, investigate, review, and partici-
18 pate in the adjudication of any complaint filed
19 under the labor provisions of the trade agree-
20 ment, and vest the commission with the author-
21 ity to establish objective indicators to determine
22 compliance with the obligations set forth in sub-
23 paragraphs (B), (C), and (D); and

24 (G) require each country that is a party to
25 the trade agreement to cooperate fully with in-

1 vestigations by the commission required under
2 subparagraph (F).

3 (2) HUMAN RIGHTS STANDARDS.—The human
4 rights provisions shall—

5 (A) be included in the core text of the
6 trade agreement;

7 (B) require each country that is a party to
8 the trade agreement to recognize the United
9 Nations Universal Declaration of Human
10 Rights as a common standard of achievement
11 for all peoples and all nations;

12 (C) prohibit each country that is a party to
13 the trade agreement from waiving or otherwise
14 derogating from its laws and regulations relat-
15 ing to fundamental human rights;

16 (D) provide that failures to meet the fun-
17 damental human rights required by the trade
18 agreement shall be subject to effective dispute
19 resolution and enforcement mechanisms and
20 penalties that are included in the core text of
21 the trade agreement and that are at least as ef-
22 fective as the mechanisms and penalties that
23 apply to the commercial provisions of the trade
24 agreement;

1 (E) strengthen the capacity of each coun-
2 try that is a party to the trade agreement to
3 promote and enforce fundamental human
4 rights;

5 (F) provide for the establishment of a com-
6 mission composed of representatives specializing
7 in international and comparative human rights,
8 including representatives of independent human
9 rights organizations of countries who are par-
10 ties to the trade agreement and academic re-
11 searchers, to receive, investigate, review, and
12 participate in the adjudication of any complaint
13 filed under the human rights provisions of the
14 trade agreement, and vest the commission with
15 the authority to establish objective indicators to
16 determine compliance with the obligations set
17 forth in subparagraphs (B), (C), and (D); and

18 (G) require any other country that is a
19 party to the trade agreement to cooperate fully
20 with investigations by the commission required
21 under subparagraph (F).

22 (3) ENVIRONMENTAL AND PUBLIC SAFETY
23 STANDARDS.—The environmental provisions shall—

24 (A) be included in the core text of the
25 trade agreement;

1 (B) prohibit each country that is a party
2 to the trade agreement from weakening, elimi-
3 nating, or failing to enforce domestic environ-
4 mental or other public health or safety stand-
5 ards to promote trade or attract investment;

6 (C) require each country that is a party to
7 the trade agreement to implement and enforce
8 fully and effectively, including through domestic
9 law, the country's obligations under multilateral
10 environmental agreements and provide for the
11 enforcement of such obligations under the trade
12 agreement;

13 (D) prohibit the trade of goods derived
14 from illegally harvested or extracted natural re-
15 sources, at any stage of production, including
16 timber and timber products, fish, wildlife, and
17 associated products, mineral resources, and
18 other environmentally sensitive goods;

19 (E) provide that the failure to meet the en-
20 vironmental standards required by the trade
21 agreement be subject to dispute resolution and
22 enforcement mechanisms and penalties that are
23 at least as effective as the mechanisms and pen-
24 alties that apply to the commercial provisions of
25 the trade agreement; and

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

7 (4) FOOD AND PRODUCT HEALTH AND SAFETY
8 STANDARDS.—If the trade agreement contains
9 health and safety standards for food and other prod-
10 ucts, the trade agreement shall—

11 (A) establish that food, feed, food ingredi-
12 ents, and other related food products may be
13 imported into the United States from a country
14 that is a party to the trade agreement only if
15 such products meet or exceed United States
16 standards with respect to food safety, pes-
17 ticides, inspections, packaging, and labeling;

18 (B) establish that nonfood products may
19 be imported into the United States from a
20 country that is a party to the trade agreement
21 only if such products meet or exceed United
22 States standards with respect to health and
23 safety, inspections, packaging, and labeling;

24 (C) allow each country that is a party to
25 the trade agreement to impose standards de-

1 signed to protect public health and safety un-
2 less it can be clearly demonstrated that such
3 standards do not protect the public health or
4 safety;

5 (D)(i) authorize the Commissioner of Food
6 and Drugs and the Consumer Product Safety
7 Commission to assess the regulatory system of
8 each country that is a party to the trade agree-
9 ment to determine whether the system provides
10 the same or better protection of health and
11 safety for food and other products as provided
12 under the regulatory system of the United
13 States and authorize other appropriate United
14 States Federal agencies to assess the regulatory
15 system of each country that is party to the
16 trade agreement to determine whether the sys-
17 tem provides the same or better quality controls
18 on manufactured goods as provided under the
19 regulatory system of the United States;

20 (ii) if the Commissioner or the Commission
21 determines that the regulatory system of such
22 a country does not provide the same or better
23 protection of health and safety for food and
24 other products as provided under the regulatory
25 system of the United States, or another appro-

1 appropriate agency determines that the regulatory
2 system of such a country does not provide the
3 same or better quality controls on manufac-
4 tured goods as provided under the regulatory
5 system of the United States, provide that the
6 United States may prohibit the importation into
7 the United States of food and other products
8 from that country; and

9 (iii) provide a process by which producers
10 from countries whose regulatory systems are
11 determined pursuant to clause (ii) by the Com-
12 missioner, the Commission, or another appro-
13 priate agency not to provide the same or better
14 protection or quality controls as that provided
15 under the regulatory system of the United
16 States may have specific facilities inspected and
17 certified so as to allow products from approved
18 facilities to be imported into the United States;
19 and

20 (E) if harmonization of food or product
21 health or safety standards is necessary to facili-
22 tate trade, provide that such harmonization be
23 based on standards that are no less stringent
24 than standards in the United States.

1 (5) SERVICES PROVISIONS.—If the trade agree-
2 ment contains provisions related to the provision of
3 services, such provisions shall—

4 (A) preserve the right of United States
5 Federal, State, and local governments to main-
6 tain essential public services and to regulate,
7 for the benefit of the public, services provided
8 to consumers in the United States;

9 (B)(i) require each country that is a party
10 to the trade agreement to establish a positive
11 list of each service sector that will be subject to
12 the obligations of the country under the trade
13 agreement; and

14 (ii) apply the trade agreement only to the
15 service sectors that are on the list described in
16 clause (i);

17 (C) establish a general exception to market
18 access obligations that allows each country that
19 is a party to the trade agreement to maintain
20 or establish a ban on services that the country
21 considers harmful to public health or safety, the
22 environment, or public morals, if the ban is ap-
23 plied to domestic and foreign services and serv-
24 ice providers alike;

1 (D) require service providers of each coun-
2 try that is a party to the trade agreement that
3 provide services through commercial presence in
4 the United States to consumers in the United
5 States to comply with environmental, land use,
6 safety, privacy, transparency, professional quali-
7 fication, and consumer access laws and regula-
8 tions in the United States;

9 (E) require that services provided to con-
10 sumers in the United States, such as medical
11 and financial services, that are subject to pri-
12 vacy laws and regulations in the United States
13 may only be provided by service providers in
14 other countries that provide privacy protections
15 and protections for confidential information
16 that are equal to or exceed the protections pro-
17 vided by privacy laws and regulations in the
18 United States;

19 (F) not require the privatization of public
20 services in any country that is a party to the
21 trade agreement or the deregulation of a serv-
22 ice, including services related to national secu-
23 rity, social security, health, public safety, edu-
24 cation, water, sanitation, other utilities, ports,
25 or transportation;

1 (G) not subject local governments to the
2 service sector obligations under the trade agree-
3 ment;

4 (H) not include provisions with respect to
5 immigration or the movement of natural per-
6 sons; and

7 (I) not limit any nondiscriminatory na-
8 tional, regional, or local government program
9 that establishes reimbursement rates under
10 public health insurance programs, or otherwise
11 controls the costs of pharmaceuticals or medical
12 devices.

13 (6) INVESTMENT PROVISIONS.—If the trade
14 agreement contains provisions related to investment,
15 such provisions shall—

16 (A) preserve the ability of each country
17 that is a party to the trade agreement to regu-
18 late foreign investment in a manner consistent
19 with the needs and priorities of the country;

20 (B) allow each country that is a party to
21 the trade agreement to place prudential restric-
22 tions on speculative capital to reduce global fi-
23 nancial instability and trade volatility;

1 (C) not be subject to an investor-state dis-
2 pute settlement mechanism under the trade
3 agreement;

4 (D) ensure that foreign investors operating
5 in the United States are not afforded greater
6 rights than those afforded to domestic investors
7 by the Constitution and laws of the United
8 States;

9 (E) provide for government-to-government
10 dispute resolution relating to expropriation only
11 for those disputes relating to a government ac-
12 tion that destroys all value of the real property
13 of a foreign investor permanently, but not gov-
14 ernment actions that do not merely diminish
15 the value of property;

16 (F) define the term “investment” to mean
17 not more than a commitment of capital or ac-
18 quisition of real property and to exclude as-
19 sumption of risk or expectation of gain or prof-
20 it;

21 (G) define the term “investor” to mean
22 only a person who makes a commitment or ac-
23 quisition described in subparagraph (F); and

24 (H) define the standard of minimum treat-
25 ment to provide no greater legal rights than

1 United States citizens possess under the due
2 process clause of section 1 of the 14th amend-
3 ment to the Constitution of the United States.

4 (7) PROCUREMENT STANDARDS.—If the trade
5 agreement contains government procurement provi-
6 sions, such provisions shall—

7 (A) require each country that is a party to
8 the trade agreement to establish a positive list
9 of industry sectors, goods, or services that will
10 be subject to the obligations of the country
11 under the trade agreement;

12 (B) with respect to the United States,
13 apply only to State governments that specifi-
14 cally agree to the trade agreement and only to
15 the industry sectors, goods, or services specifi-
16 cally identified by the State government and
17 not apply to local governments; and

18 (C) include only technical specifications for
19 goods or services, supplier qualifications, or
20 other conditions for receiving government con-
21 tracts that do not undermine—

- 22 (i) prevailing wage policies;
23 (ii) recycled content policies;
24 (iii) sustainable harvest policies;
25 (iv) renewable energy policies;

1 (v) human rights; or

2 (vi) project labor agreements.

3 (8) INTELLECTUAL PROPERTY REQUIRE-
4 MENTS.—If the trade agreement contains provisions
5 related to the protection of intellectual property
6 rights, such provisions shall—

7 (A) promote adequate and effective protec-
8 tion of intellectual property rights;

9 (B) include only terms relating to patents
10 that do not, overtly or in application, limit the
11 flexibilities and rights established in the Dec-
12 laration on the TRIPS Agreement and Public
13 Health, adopted by the World Trade Organiza-
14 tion at the Fourth Ministerial Conference at
15 Doha, Qatar, on November 14, 2001, including
16 the flexibilities and rights relating to the pro-
17 motion of access to medicines and the issuance
18 of compulsory licenses on grounds determined
19 by member states;

20 (C) require that any provisions relating to
21 the patenting of traditional knowledge be con-
22 sistent with the Convention on Biological Diver-
23 sity, concluded at Rio de Janeiro June 5, 1992;
24 and

1 (D) ensure that the access of the public to
2 essential medicines and to technologies critical
3 to preventing climate change is not obstructed
4 by any provision of the trade agreement relat-
5 ing to the protection of intellectual property
6 rights.

7 (9) AGRICULTURAL STANDARDS.—If the trade
8 agreement contains provisions related to agriculture,
9 such provisions shall—

10 (A) ensure adequate and stable market re-
11 turns for farmers in each country that is a
12 party to the trade agreement;

13 (B) ensure adequate and affordable sup-
14 plies of safe food for consumers;

15 (C) protect the right of each country that
16 is a party to the trade agreement to encourage
17 conservation through the use of best practices
18 with respect to the management and production
19 of crops;

20 (D) ensure fair treatment of agricultural
21 workers in each country that is a party to the
22 trade agreement;

23 (E) protect the right of each country that
24 is a party to the trade agreement to prevent
25 dumping of agricultural commodities at below

1 the cost of production through border regula-
2 tions or other mechanisms and policies;

3 (F) protect the right of each country that
4 is a party to the trade agreement to establish
5 policies with respect to food and agriculture
6 that require farmers to receive fair remunera-
7 tion for management and labor that occurs on
8 farms and that allow for inventory management
9 and strategic food and renewable energy re-
10 serves, while ensuring that such policies do not
11 aid or abet, or otherwise contribute to or allow,
12 the dumping of agricultural commodities onto
13 world markets at below the cost of production;

14 (G) preserve any existing United States
15 law relating to antitrust and anticompetitive
16 business practices from being preempted or ren-
17 dered ineffective by the trade agreement; and

18 (H) not conflict with agricultural policy es-
19 tablished in the laws of the United States.

20 (10) TRADE REMEDIES AND SAFEGUARDS.—If
21 the trade agreement contains trade remedy provi-
22 sions, such provisions shall—

23 (A) preserve fully the ability of the United
24 States to enforce its trade laws, including anti-
25 dumping and countervailing duty laws and safe-

1 guard laws, the right to calculate 100 percent
2 of the dumping in all antidumping proceedings,
3 and the right to disburse domestically anti-
4 dumping and countervailing duties as the
5 United States so determines;

6 (B) not decrease the effectiveness of do-
7 mestic and international prohibitions on unfair
8 trade, especially prohibitions on dumping and
9 subsidies, and domestic and international safe-
10 guard provisions;

11 (C) establish mechanisms to address and
12 remedy market distortions that lead to dumping
13 and subsidization, including overcapacity, car-
14 telization, and market-access barriers, by im-
15 posing strong sanctions against subsidies, in-
16 cluding applying the countervailing duty law
17 when exporters receive tax rebates for indirect
18 taxes upon export;

19 (D) allow the United States to maintain
20 adequate safeguards for a minimum of two
21 years to ensure that surges of imported goods
22 do not result in economic burdens on workers,
23 firms, or farmers in the United States, includ-
24 ing providing that such safeguards go into ef-
25 fect based on certain criteria;

1 (E) establish mechanisms among the par-
2 ties to the trade agreement to examine the
3 trade consequences of significant currency
4 movements and to scrutinize whether a party's
5 currency is misaligned to promote a competitive
6 advantage in international trade; and

7 (F) if the currency of a country that is
8 party to the trade agreement is deliberately
9 misaligned, establish safeguard remedies that
10 apply for a minimum period of two years to off-
11 set substantial and sustained currency move-
12 ments and also allow, alternatively, for the ap-
13 plication of countervailing duties.

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

18 (A) incorporate due process rules and pro-
19 cedures, including ensuring that dispute resolu-
20 tion proceedings are open to the public, that
21 public access to information regarding enforce-
22 ment, disputes, and ongoing negotiations re-
23 lated to disputes is provided in a timely man-
24 ner, and that conflict of interest rules apply
25 fully to adjudicators;

1 (B) require that any dispute settlement
2 panel, including an appellate panel, addressing
3 issues involving intellectual property rights or
4 environmental, health, labor, human rights, or
5 other public interest issues include panelists
6 with expertise in such issues;

7 (C) require an expedited process for all
8 dispute settlement panels and processes relating
9 to violations of an agreement's labor, human
10 rights, and environmental obligations, recog-
11 nizing that environmental and labor rights and
12 the health, safety, and freedom of people and
13 possibly irreversible damage to the physical en-
14 vironment are fundamentally different than
15 property rights and thus require establishment
16 of more expeditious timelines, together with the
17 necessary resources for oversight and enforce-
18 ment; and

19 (D) require that panels reviewing anti-
20 dumping and countervailing duty proceedings of
21 a party to the trade agreement apply a stand-
22 ard of review that gives deference to the admin-
23 istrative authority of the party whose measure
24 is under review.

1 (12) TECHNICAL ASSISTANCE.—If the trade
2 agreement contains technical assistance provisions,
3 such provisions shall—

4 (A) be designed to raise standards in de-
5 veloping countries by providing assistance that
6 ensures respect for diversity of development
7 paths;

8 (B) be designed to empower civil society
9 and democratic governments to create sustain-
10 able, vibrant economies and respect basic
11 rights; and

12 (C) provide that technical assistance shall
13 not substitute for or supplant economic assist-
14 ance and not promote exportation of goods pro-
15 duced with the exploitation of labor or
16 unsustainable environmental practices.

17 (13) EXCEPTIONS FOR NATIONAL SECURITY
18 AND OTHER REASONS.—Each agreement shall—

19 (A) include an essential security exception
20 that permits a country that is a party to the
21 trade agreement to apply measures that the
22 country considers necessary for the mainte-
23 nance or restoration of international peace or
24 security, or the protection of its own essential
25 security interests, including with respect to in-

1 frastructure, services, manufacturing, and other
2 sectors;

3 (B) explicitly state that if a country in-
4 vokes the essential security exception in a dis-
5 pute settlement proceeding relating to any mat-
6 ter other than compliance with the agreement's
7 worker rights, environment, human rights,
8 health, or safety provisions, the dispute settle-
9 ment body hearing the matter shall find that
10 the exception applies;

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

18 (D) include in its list of general exceptions
19 the following language: "Notwithstanding any
20 other provision of this agreement, a provision of
21 law that is nondiscriminatory on its face and
22 relates to domestic health, consumer safety, the
23 environment, labor rights, worker health and
24 safety, economic equity, consumer access, the
25 provision of goods or services, or investment,

1 shall not be subject to challenge under the dis-
2 pute resolution mechanism established under
3 this agreement, unless the primary purpose of
4 the law is to discriminate with respect to mar-
5 ket access.”.

6 (14) FEDERALISM.—The trade agreement may
7 only require a State government in the United
8 States to comply with procurement, investment, or
9 services provisions contained in the trade agreement
10 if the State government has been consulted in full
11 and has given explicit consent to be bound by such
12 provisions.

13 (15) TAXATION.—Each agreement shall provide
14 for border tax equity for United States producers
15 and United States exporters in the assessment and
16 rebate of indirect taxes (such as consumption and
17 sales taxes), including by—

18 (A) prohibiting the imposition of such
19 taxes on United States exports when imported
20 in excess of the level of such taxes applied at
21 the border by the United States to imports
22 from parties to the trade agreement, or

23 (B) prohibiting the rebate of taxes on ex-
24 ports in amounts in excess of any such taxes re-
25 bated by the United States on United States

1 exports in excess of any such taxes rebated by
2 the United States,
3 or by adopting measures under both subparagraphs
4 (A) and (B).

5 **SEC. 5. RENEGOTIATION OF EXISTING TRADE AGREE-**
6 **MENTS.**

7 (a) PLAN.—The President shall, at the times speci-
8 fied under subsection (b), submit to the Congress a plan
9 for renegotiating each trade agreement that is in effect
10 on the date of the enactment of this Act to bring the trade
11 agreement into compliance with the requirements of sec-
12 tion 4(b).

13 (b) TIMING.—The plan under subsection (a) shall be
14 submitted not later than 90 days before the earlier of the
15 day on which the President—

16 (1) initiates negotiations with a foreign country
17 with respect to the trade agreement being renegoti-
18 ated; or

19 (2) submits a bill to Congress to implement the
20 revised trade agreement.

21 **SEC. 6. ESTABLISHMENT OF CONGRESSIONAL TRADE**
22 **AGREEMENT REVIEW COMMITTEE.**

23 (a) ESTABLISHMENT.—There is established a Con-
24 gressional Trade Agreement Review Committee (in this
25 section referred to as the “Committee”).

1 (b) FUNCTIONS.—

2 (1) IN GENERAL.—The Committee—

3 (A) shall receive the reports of the Comp-
4 troller General of the United States submitted
5 to the Committee under section 3(a)(1)(B);

6 (B) shall review the plan for renegotiation
7 of trade agreements submitted by the President
8 under section 5; and

9 (C) may, not later than 60 days after re-
10 ceiving the plan described in subparagraph (B),
11 taking into account the reports of the Comp-
12 troller General referred to in subparagraph (A),
13 add items for renegotiation to the plan, reject
14 recommendations in the plan, or otherwise
15 amend the plan.

16 (2) ACTION BY VOTE.—Action by the Com-
17 mittee under paragraph (1)(C) requires a vote of $\frac{2}{3}$
18 of the Members of the Committee.

19 (c) APPOINTMENT AND MEMBERSHIP.—The Com-
20 mittee shall be composed of the chair and ranking mem-
21 bers of the following:

22 (1) The Committee on Agriculture of the House
23 of Representatives.

24 (2) The Committee on Education and Labor of
25 the House of Representatives.

1 (3) The Committee on Energy and Commerce
2 of the House of Representatives.

3 (4) The Committee on Financial Services of the
4 House of Representatives.

5 (5) The Committee on Natural Resources of the
6 House of Representatives.

7 (6) The Committee on Ways and Means of the
8 House of Representatives.

9 (7) The Committee on Agriculture, Nutrition,
10 and Forestry of the Senate.

11 (8) The Committee on Banking, Housing, and
12 Urban Affairs of the Senate.

13 (9) The Committee on Commerce, Science, and
14 Transportation of the Senate.

15 (10) The Committee on Energy and Natural
16 Resources of the Senate.

17 (11) The Committee on Environment and Pub-
18 lic Works of the Senate.

19 (12) The Committee on Finance of the Senate.

20 (13) The Committee on Health, Education,
21 Labor, and Pensions of the Senate.

22 **SEC. 7. SENSE OF CONGRESS ON IMPROVING THE PROCESS**
23 **FOR UNITED STATES TRADE NEGOTIATIONS.**

24 It is the sense of the Congress that if Congress con-
25 siders legislation to provide for special procedures for the

1 consideration of bills to implement trade agreements, that
2 legislation should include—

3 (1) readiness criteria for the President to use in
4 determining whether a country—

5 (A) is able to meet its obligations under a
6 trade agreement;

7 (B) meets the requirements described in
8 section 3(c); and

9 (C) is an appropriate country with which
10 to enter into a trade agreement;

11 (2) a process by which the Committee on Fi-
12 nance of the Senate and the Committee on Ways
13 and Means of the House of Representatives review
14 the determination of the President described in
15 paragraph (1) to verify that the country meets the
16 criteria;

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

24 (4) binding negotiating objectives and require-
25 ments outlining what must and must not be included

1 in a trade agreement, including the requirements de-
2 scribed in section 4(b);

3 (5) a process for review and certification by the
4 Congress to ensure that the negotiating objectives
5 described in paragraph (4) have been met during the
6 negotiations;

7 (6) a process—

8 (A) by which a State may give informed
9 consent to be bound by nontariff provisions in
10 a trade agreement that relate to investment, the
11 service sector, and procurement; and

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

15 (7) a requirement that a trade agreement be
16 approved by a majority vote in both Houses of Con-
17 gress before the President may sign the trade agree-
18 ment.

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