

112TH CONGRESS
2D SESSION

H. R. 6538

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2012

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

A BILL

To establish trade negotiating objectives with respect to the application of sanitary and phytosanitary measures to agricultural products, 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 **TITLE I—AGRICULTURAL TRADE**
4 **FACILITATION**

5 **SECTION 101. SHORT TITLE.**

6 This title may be cited as the “Agricultural Trade
7 Facilitation Act”.

8 **SEC. 102. CONGRESSIONAL FINDINGS.**

9 Congress finds the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **SEC. 103. TRADE NEGOTIATING OBJECTIVES OF THE**
18 **UNITED STATES WITH RESPECT TO THE AP-**
19 **PLICATION OF SANITARY AND**
20 **PHYTOSANITARY MEASURES TO AGRICUL-**
21 **TURAL PRODUCTS.**

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

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

6 (b) PRINCIPAL TRADE NEGOTIATING OBJECTIVES.—
7 The principal trade negotiating objectives of the United
8 States with respect to the application of sanitary and
9 phytosanitary measures to agricultural products are the
10 following:

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

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

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

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

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

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

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

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

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

19 **SEC. 104. EFFECTIVE DATE.**

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

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

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

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

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

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

11 **TITLE II—GENERALIZED SYSTEM**
12 **OF PREFERENCES IMPROVE-**
13 **MENT**

14 **SEC. 201. SHORT TITLE.**

15 This title may be cited as the “Generalized System
16 of Preferences Improvement Act”.

17 **SEC. 202. DESIGNATION OF BENEFICIARY DEVELOPING**
18 **COUNTRIES.**

19 Section 502 of the Trade Act of 1974 (19 U.S.C.
20 2462) is amended—

21 (1) in subsection (b)(2)—

22 (A) in subparagraph (C)—

23 (i) by striking “(C)” and inserting
24 “(C)(i)”; and

1 (ii) by adding at the end the fol-
2 lowing:

3 “(ii) Such country enters into an agree-
4 ment to afford preferential treatment to the
5 products of a developed country, other than the
6 United States, unless the President determines
7 and certifies to Congress that it is in the na-
8 tional interests of the United States to des-
9 ignate such country as a beneficiary developing
10 country under this title.”;

11 (B) by inserting after subparagraph (H)
12 the following:

13 “(I) Such country improperly uses sanitary
14 and phytosanitary measures, technical barriers
15 to trade, or other non-tariff trade barriers
16 through a sustained or recurring course of ac-
17 tion or inaction, in a manner negatively affect-
18 ing trade between the country and the United
19 States.”; and

20 (C) in the matter following subparagraph
21 (I) (as added by subparagraph (B) of this para-
22 graph), by striking “and (H)” and inserting
23 “(H), and (I)”; and
24 (2) in subsection (c)—

1 (A) in paragraph (6), by striking “and” at
2 the end;

3 (B) in paragraph (7), by striking the pe-
4 riod at the end and inserting “; and”; and

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

6 “(8) whether or not and the extent to which
7 such country, in accordance with its capacity, adopts
8 and follows international sanitary or phytosanitary
9 standards and provides scientific justifications for
10 deviations from such standards.”.

11 **SEC. 203. REVIEW AND REPORT TO CONGRESS.**

12 Section 504 of the Trade Act of 1974 (19 U.S.C.
13 2464) is amended—

14 (1) in the section heading, by striking “**RE-**
15 **PORT**” and inserting “**REPORTS**”;

16 (2) by striking “The President” and inserting
17 “(a) REPORT ON WORKER RIGHTS AND CHILD
18 LABOR.—The President”; and

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

20 “(b) REPORT ON MARKET ACCESS.—

21 “(1) IN GENERAL.—The President shall submit
22 an annual report to the Congress on the status of
23 market access within each covered beneficiary devel-
24 oping country, including findings with respect to
25 whether or not the beneficiary country, in accord-

1 ance with its capacity, has adopted and followed
2 international sanitary and phytosanitary standards
3 and provides scientific justifications for deviations
4 from such standards. The report shall also include
5 findings as to whether or not each covered bene-
6 ficiary developing country has improperly used sani-
7 tary and phytosanitary measures, technical barriers
8 to trade, and other non-tariff trade barriers.

9 “(2) COVERED BENEFICIARY DEVELOPING
10 COUNTRY.—In paragraph (1), the term ‘covered ben-
11 eficiary developing country ’ means a beneficiary de-
12 veloping country that is one of the top 20 bene-
13 ficiary developing countries in terms of dollar value
14 of duty-free imports of articles under this title as
15 identified on an annual basis by the United States
16 International Trade Commission.”.

17 **TITLE III—UNITED STATES-**
18 **BRAZIL JOINT COMMISSION**
19 **ON COMMERCE AND TRADE**

20 **SEC. 301. SHORT TITLE.**

21 This title may be cited as the “United States-Brazil
22 Joint Commission on Commerce and Trade Act”.

23 **SEC. 302. PURPOSE.**

24 The purpose of this title is to establish the United
25 States-Brazil Joint Commission on Commerce and Trade

1 to address bilateral trade matters, seek removal of trade
2 barriers, and promote commercial opportunities, between
3 the United States and Brazil.

4 **SEC. 303. UNITED STATES-BRAZIL JOINT COMMISSION ON**
5 **COMMERCE AND TRADE.**

6 (a) ESTABLISHMENT OF UNITED STATES-BRAZIL
7 JOINT COMMISSION ON COMMERCE AND TRADE.—

8 (1) IN GENERAL.—There is established a com-
9 mission to be known as the United States-Brazil
10 Joint Commission on Commerce and Trade (in this
11 section referred to as the “Commission”).

12 (2) PURPOSE.—The purpose of the Commission
13 is to improve the bilateral trade and economic rela-
14 tionship between the United States and Brazil by es-
15 tablishing high level reviews of barriers to trade be-
16 tween the two countries, to promote commercial op-
17 portunities between the United States and Brazil,
18 and to facilitate the dialogue necessary to examine
19 the mutual benefits of free trade.

20 (3) MEMBERSHIP OF COMMISSION.—

21 (A) COMPOSITION.—The Commission shall
22 be composed of 16 members. The composition
23 of the Commission shall be divided equally be-
24 tween the United States Government and the

1 Republic of Brazil. United States Commis-
2 sioners shall be appointed as follows:

3 (i) Two persons shall be appointed by
4 the President pro tempore of the Senate
5 upon the recommendation of the majority
6 leader of the Senate, after consultation
7 with the Chairman of the Committee on
8 Finance and the Chairman of the Com-
9 mittee on Foreign Relations of the Senate.

10 (ii) Two persons shall be appointed by
11 the President pro tempore of the Senate
12 upon the recommendation of the minority
13 leader of the Senate, after consultation
14 with the ranking minority member of the
15 Committee on Finance and the ranking mi-
16 nority member of the Committee on For-
17 eign Relations of the Senate.

18 (iii) Two persons shall be appointed
19 by the Speaker of the House of Represent-
20 atives, after consultation with the Chair-
21 man of the Committee on Ways and Means
22 and the Chairman of the Committee on
23 Foreign Affairs of the House of Represent-
24 atives.

1 (iv) Two persons shall be appointed
2 by the minority leader of the House of
3 Representatives, after consultation with
4 the ranking minority member of the Com-
5 mittee on Ways and Means and the rank-
6 ing minority member of the Committee on
7 Foreign Affairs of the House of Represent-
8 atives.

9 (B) QUALIFICATIONS.—Individuals ap-
10 pointed to the Commission shall be individuals
11 who have expertise in international trade mat-
12 ters and United States-Brazil relations.

13 (4) PERIOD OF APPOINTMENT; VACANCIES.—

14 (A) IN GENERAL.—Members of the Com-
15 mission shall be appointed to 2-year terms.

16 (B) STAGGERING OF TERMS.—Each ap-
17 pointing authority referred to under clauses (i)
18 through (iv) of paragraph (3)(A) shall—

19 (i) make the appointments on a stag-
20 gered term basis, so that of the members
21 initially appointed—

22 (I) 1 of the 2 appointments shall
23 be for a term expiring on December
24 31, 2014; and

1 (II) the other appointment shall
2 be for a term expiring on December
3 31, 2015; and

4 (ii) make the appointments not later
5 than 30 days after the date on which each
6 new Congress convenes.

7 (C) REAPPOINTMENT.—Members of the
8 Commission may be reappointed for additional
9 terms of service as members of the Commission.

10 (D) VACANCIES.—Any vacancy in the
11 Commission shall not affect its powers, but
12 shall be filled in the same manner as the origi-
13 nal appointment.

14 (5) CHAIRMEN.—The members of the Commis-
15 sion shall select co-Chairmen, one from the United
16 States and one from Brazil.

17 (6) MEETINGS.—The Commission shall meet at
18 the call of the Chairmen.

19 (A) INITIAL MEETING.—Not later than 30
20 days after the date on which all members of the
21 Commission have been appointed, the Commis-
22 sion shall hold its first meeting.

23 (B) SUBSEQUENT MEETINGS.—The Com-
24 mission shall meet at the call of the Chairmen
25 of the Commission, with the responsibility of

1 chairing proceedings alternating between the
2 United States and Brazil.

3 (C) QUORUM.—A majority of the members
4 of the Commission shall constitute a quorum
5 for the transaction of business of the Commis-
6 sion.

7 (7) VOTING.—Each member of the Commission
8 shall be entitled to one vote, which shall be equal to
9 the vote of every other member of the Commission.

10 (b) DUTIES.—Not later than December 1 of each
11 year (beginning in 2014), the Commission shall submit to
12 the United States Congress and the National Congress of
13 Brazil a report regarding the status and economic impact
14 of trade relations between the United States and Brazil.
15 The report shall include a full analysis, along with conclu-
16 sions and recommendations for legislative and administra-
17 tive actions, if any, concerning barriers to trade and the
18 enhancement of economic ties.

19 (c) HEARINGS.—

20 (1) IN GENERAL.—The Commission or, at its
21 direction, any panel or member of the Commission,
22 may for the purpose of carrying out the provisions
23 of this section, hold hearings, sit and act at times
24 and places, take testimony, receive evidence, and ad-

1 minister oaths to the extent that the Commission or
2 such panel or member considers advisable.

3 (2) INFORMATION.—The Commission may se-
4 cure directly from any Federal department or agency
5 information that the Commission considers nec-
6 essary to enable the Commission to carry out its du-
7 ties under this section, unless that information is
8 deemed to contain sensitive national intelligence in-
9 formation or is otherwise subject to rules concerning
10 state secrets.

11 (d) COMMISSION PERSONNEL MATTERS.—

12 (1) COMPENSATION OF MEMBERS.—United
13 States Members of the Commission shall be com-
14 pensated in the same manner provided for the com-
15 pensation of members of the Trade Deficit Review
16 Commission under subsections (g)(1) and (g)(6) of
17 section 127 of the Trade Deficit Review Commission
18 Act (19 U.S.C. 2213 note).

19 (2) TRAVEL EXPENSES.—Travel expenses of
20 the United States Commissioners shall be allowed in
21 the same manner provided for the allowance of the
22 travel expenses of the Trade Deficit Review Commis-
23 sion under section 127(g)(2) of the Trade Deficit
24 Review Commission Act.

1 (3) STAFF.—An executive director and other
2 additional personnel for the Commission shall be ap-
3 pointed, compensated, and terminated in the same
4 manner provided for the appointment, compensation,
5 and termination of the executive director and other
6 personnel of the Trade Deficit Review Commission
7 under section 127(g)(3) and section 127(g)(6) of the
8 Trade Deficit Review Commission Act. The executive
9 director and any personnel who are employees of the
10 United States-Brazil Joint Commission on Com-
11 merce and Trade shall be employees under section
12 2105 of title 5, United States Code, for purposes of
13 chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that
14 title.

15 (4) DETAIL OF GOVERNMENT EMPLOYEES.—
16 Federal Government employees may be detailed to
17 the Commission in the same manner provided for
18 the detail of Federal Government employees to the
19 Trade Deficit Review Commission under section
20 127(g)(4) of the Trade Deficit Review Commission
21 Act.

22 (5) ASSIGNMENT OF PERSONNEL BY THE GOV-
23 ERNMENT OF BRAZIL.—The Commission shall work
24 with the Government of Brazil to secure the appro-
25 priate expertise to carry out its work, including

1 through the assignment to the Commission of staff
2 officials selected by the Government of Brazil and
3 the temporary or ongoing employment of Brazilian
4 nationals.

5 (6) FOREIGN TRAVEL FOR OFFICIAL PUR-
6 POSES.—Foreign travel for official purposes by Com-
7 missioners to and from official proceedings may be
8 authorized by the Chairmen of the Commission.
9 Travel by the staff of the Commission for official
10 purposes may be authorized by the Chairmen of the
11 Commission only when necessary to carry out essen-
12 tial activities that could not otherwise be conducted
13 using alternative means.

14 (7) PROCUREMENT OF TEMPORARY AND INTER-
15 MITTENT SERVICES.—The Chairmen of the Commis-
16 sion may procure temporary and intermittent serv-
17 ices for the Commission in the same manner pro-
18 vided for the procurement of temporary and inter-
19 mittent services for the Trade Deficit Review Com-
20 mission under section 127(g)(5) of the Trade Deficit
21 Review Commission Act.

22 (8) PRIVATELY FUNDED TRAVEL.—The Chair-
23 men of the Commission may authorize privately
24 funded travel by members and staff of the Commis-
25 sion for activities related to the duties of the Com-

1 mission. The Commission shall disclose to the public,
2 not later than 60 days after the privately funded
3 travel occurs, the source of the funding, together
4 with the itinerary of the activities of members and
5 staff of the Commission participating in the pri-
6 vately funded travel.

7 (e) ASSISTANCE IN PERFORMING DUTIES.—The
8 President of the United States shall provide for the trans-
9 fer to the Commission of such staff, materials, and infra-
10 structure (including leased premises) of Federal depart-
11 ments and agencies as the President considers necessary
12 to assist the Commission in carrying out its duties.

13 (f) AUTHORIZATION OF APPROPRIATIONS.—

14 (1) IN GENERAL.—There is authorized to be
15 appropriated to the Commission for fiscal year 2013,
16 and for each fiscal year thereafter, such sums as
17 may be necessary to enable the Commission to carry
18 out its duties under this section.

19 (2) AVAILABILITY.—Amounts appropriated to
20 the Commission pursuant to this subsection shall re-
21 main available until expended.

1 **TITLE IV—NEGOTIATIONS WITH**
2 **EUROPEAN UNION**

3 **SEC. 401. SHORT TITLE.**

4 This title may be referred to as the “Transatlantic
5 Commerce and Trade Enhancement Act”.

6 **SEC. 402. TRADE AGREEMENT AUTHORITY WITH RESPECT**
7 **TO THE EUROPEAN UNION.**

8 (a) **AUTHORITY.**—Subject to subsection (b), the
9 President is authorized to seek to conduct negotiations
10 with the European Union for purposes of entering into
11 a trade agreement with the European Union to reduce ex-
12 isting duties or other import restrictions of the European
13 Union or the United States that are unduly burdening and
14 restricting the foreign trade of the United States.

15 (b) **CONGRESSIONAL NOTIFICATION AND CONSULTA-**
16 **TION.**—The exercise of the authority of subsection (a)
17 shall be subject to all applicable congressional notification
18 and consultation requirements provided for under any
19 other provision of law.

○