

112TH CONGRESS  
1ST SESSION

# S. 1267

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

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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

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## 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.

○