

109TH CONGRESS
2^D SESSION

S. 2317

To amend the Trade Act of 1974 to require the United States Trade Representative to identify trade enforcement priorities and to take action with respect to priority foreign country trade practices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2006

Mr. BAUCUS (for himself, Mr. HATCH, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Trade Act of 1974 to require the United States Trade Representative to identify trade enforcement priorities and to take action with respect to priority foreign country trade practices, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trade Competitiveness
5 Act of 2006”.

1 **SEC. 2. IDENTIFICATION OF TRADE ENFORCEMENT PRIOR-**
2 **ITIES.**

3 (a) IN GENERAL.—Title III of the Trade Act of 1974
4 (19 U.S.C. 2411 et seq.) is amended by adding at the end
5 the following:

6 **“SEC. 311. IDENTIFICATION OF TRADE ENFORCEMENT PRI-**
7 **ORITIES.**

8 “(a) IDENTIFICATION AND ANNUAL REPORT.—

9 “(1) IN GENERAL.—Within 75 days after the
10 submission of the report required by section 181(b),
11 the United States Trade Representative shall annu-
12 ally—

13 “(A) identify United States trade enforce-
14 ment priorities;

15 “(B) identify enforcement actions that the
16 Trade Representative has taken during the pre-
17 vious year and review the impact these enforce-
18 ment actions have had in addressing foreign
19 trade barriers;

20 “(C) identify priority foreign country trade
21 practices on which the Trade Representative
22 will focus its enforcement efforts; and

23 “(D) submit to the Committee on Finance
24 of the Senate and the Committee on Ways and
25 Means of the House of Representatives and
26 publish in the Federal Register a report on the

1 priorities, actions, and practices identified in
2 subparagraphs (A), (B), and (C).

3 “(2) FACTORS TO CONSIDER.—In identifying
4 priority foreign country trade practices under para-
5 graph (1), the Trade Representative shall focus on
6 those practices, the elimination of which is likely to
7 have the most significant potential to increase
8 United States economic growth, either directly or
9 through the establishment of a beneficial precedent.
10 The Trade Representative shall take into account all
11 relevant factors, including—

12 “(A) the major barriers and trade dis-
13 torting practices described in the most recent
14 available National Trade Estimate Report re-
15 quired under section 181(b);

16 “(B) the findings and practices described
17 in the most recent available report required
18 under—

19 “(i) section 182;

20 “(ii) section 1377 of the Omnibus
21 Trade and Competitiveness Act of 1988;

22 “(iii) section 3005 of the Omnibus
23 Trade and Competitiveness Act of 1988;

24 “(iv) section 421 of the Act entitled
25 ‘An Act to authorize extension of non-

1 discriminatory treatment (normal trade re-
2 lations treatment) to the People’s Republic
3 of China, and to establish a framework for
4 relations between the United States and
5 the People’s Republic of China’ (22 U.S.C.
6 6951); and

7 “(v) any other report prepared by the
8 Trade Representative or any other agency
9 relating to international trade and invest-
10 ment;

11 “(C) the trade agreements to which a for-
12 eign country is a party and its compliance with
13 those agreements;

14 “(D) the medium- and long-term implica-
15 tions of foreign government procurement plans;
16 and

17 “(E) the international competitive position
18 and export potential of United States products
19 and services.

20 “(3) OTHER ITEMS IN REPORT.—The Trade
21 Representative may include in the report a descrip-
22 tion of foreign country trade practices that may in
23 the future warrant identification as a priority for-
24 eign country trade practice.

1 “(4) PRIORITIES NOT IDENTIFIED.—If the
2 Trade Representative does not identify a priority
3 foreign country trade practice in the report required
4 under paragraph (1), the Trade Representative shall
5 set out in detail in that report the reasons for failing
6 to do so.

7 “(b) CONSULTATION.—

8 “(1) IN GENERAL.—Not later than 45 days
9 after the submission of the report required by sec-
10 tion 181(b), the Trade Representative shall consult
11 with the Committee on Finance of the Senate and
12 the Committee on Ways and Means of the House of
13 Representatives with respect to the priorities, ac-
14 tions, and practices to be identified in the report
15 under subsection (a).

16 “(2) VOTE OF COMMITTEE.—If, as a result of
17 the consultations described in paragraph (1), either
18 the Committee on Finance of the Senate or the
19 Committee on Ways and Means of the House of
20 Representatives requests identification of a priority
21 foreign country trade practice by majority vote of ei-
22 ther Committee, the Trade Representative shall in-
23 clude such identification in its annual report.

24 “(3) DETERMINATION NOT TO INCLUDE PRI-
25 ORITY FOREIGN COUNTRY TRADE PRACTICES.—The

1 Trade Representative may determine not to include
2 the priority foreign country trade practice requested
3 under paragraph (2) in its annual report only if the
4 Trade Representative finds that—

5 “(A) such practice is already being ad-
6 dressed under provisions of United States trade
7 law, under the Uruguay Round Agreements (as
8 defined in section 2(7) of the Uruguay Round
9 Agreements Act (19 U.S.C. 3501(7))), under
10 any bilateral or regional trade agreement, or as
11 part of trade negotiations with that foreign
12 country or other countries, and progress is
13 being made toward the elimination of such
14 practice; or

15 “(B) identification of such practice as a
16 priority foreign country trade practice would be
17 contrary to the interests of United States trade
18 policy.

19 “(4) REASONS FOR DETERMINATION.—In the
20 case of a determination made pursuant to paragraph
21 (3), the Trade Representative shall set forth in de-
22 tail the reasons for that determination in the report
23 required under subsection (a)(1).

24 “(c) INVESTIGATION AND RESOLUTION.—

1 “(1) IN GENERAL.—Upon submission of the re-
2 port required by subsection (a), the Trade Rep-
3 resentative shall, with respect to any priority foreign
4 country trade practice identified, seek satisfactory
5 resolution with the country concerned under the aus-
6 pices of the World Trade Organization, pursuant to
7 a bilateral or regional trade agreement to which the
8 United States is a party, or by any other means. A
9 satisfactory resolution may include elimination of the
10 practice or, if not feasible, providing for compen-
11 satory trade benefits.

12 “(2) CONSULTATIONS; INVESTIGATIONS.—Not
13 later than 120 days after the transmission of the re-
14 port required under subsection (a), the Trade Rep-
15 resentative shall, with respect to any priority foreign
16 country trade practice identified—

17 “(A) initiate dispute settlement consulta-
18 tions in the World Trade Organization;

19 “(B) initiate dispute settlement consulta-
20 tions under the applicable provisions of any bi-
21 lateral or regional trade agreement to which the
22 United States is a party;

23 “(C) initiate an investigation under section
24 302(b)(1) of this Act;

1 “(D) seek to negotiate an agreement that
2 provides for the elimination of the priority for-
3 eign country trade practice or, if elimination of
4 the practice is not feasible, an agreement that
5 provides for compensatory trade benefits; or

6 “(E) take any additional action necessary
7 to eliminate the priority foreign country trade
8 practice.

9 “(3) REPORT.—On the day the Trade Rep-
10 representative takes action under subparagraph (E) of
11 paragraph (2), the Trade Representative shall trans-
12 mit to Congress a report describing the action and
13 the reasons for taking the actions. If the Trade Rep-
14 resentative takes action under subparagraph (E) of
15 paragraph (2), the Trade Representative shall state
16 in detail the reasons the Trade Representative did
17 not take action under subparagraphs (A) through
18 (D) of such paragraph.

19 “(d) ADDITIONAL REPORTING.—The Trade Rep-
20 resentative shall report to the Committee on Finance of
21 the Senate and the Committee on Ways and Means of the
22 House of Representatives every 6 months on the progress
23 being made to realize the trade enforcement priorities
24 identified in subsection (a)(1)(A) and the steps being

1 taken to address the priority foreign country trade prac-
 2 tices identified in subsection (a)(1)(C).”.

3 (b) CONFORMING AMENDMENT.—The table of con-
 4 tents for the Trade Act of 1974 is amended by inserting
 5 after the item relating to section 310, the following new
 6 item:

“Sec. 311. Identification of trade enforcement priorities.”.

7 **SEC. 3. ESTABLISHMENT OF POSITION OF CHIEF TRADE**
 8 **ENFORCEMENT OFFICER.**

9 (a) ESTABLISHMENT OF POSITION.—Section
 10 141(b)(2) of the Trade Act of 1974 (19 U.S.C.
 11 2171(b)(2)) is amended to read as follows:

12 “(2) There shall be in the Office 3 Deputy
 13 United States Trade Representatives, 1 Chief Agri-
 14 cultural Negotiator, and 1 Chief Trade Enforcement
 15 Officer. The 3 Deputy United States Trade Rep-
 16 resentatives, the Chief Agricultural Negotiator, and
 17 the Chief Trade Enforcement Officer shall be ap-
 18 pointed by the President, by and with the advice and
 19 consent of the Senate. As an exercise of the rule-
 20 making of the Senate, any nomination of a Deputy
 21 United States Trade Representative, the Chief Agri-
 22 cultural Negotiator, or the Chief Trade Enforcement
 23 Officer submitted to the Senate for its advice and
 24 consent, and referred to a committee, shall be re-
 25 ferred to the Committee on Finance. Each Deputy

1 United States Trade Representative, the Chief Agri-
2 cultural Negotiator, and the Chief Trade Enforce-
3 ment Officer shall hold office at the pleasure of the
4 President and shall have the rank of Ambassador.”.

5 (b) FUNCTIONS OF POSITION.—Section 141(c) of the
6 Trade Act of 1974 (19 U.S.C. 2171(c)) is amended by
7 adding at the end the following new paragraph:

8 “(6) The principal function of the Chief Trade
9 Enforcement Officer shall be to ensure that United
10 States trading partners comply with trade agree-
11 ments to which the United States is a party. The
12 Chief Trade Enforcement Officer shall assist the
13 United States Trade Representative in investigating
14 and prosecuting disputes before the World Trade
15 Organization, and pursuant to other trade agree-
16 ments to which the United States is a party, and
17 shall assist the United States Trade Representative
18 in carrying out the Trade Representative’s functions
19 under subsection (d). The Chief Trade Enforcement
20 Officer shall make recommendations with respect to
21 the administration of United States trade laws relat-
22 ing to foreign government barriers to United States
23 goods, services, intellectual property, government
24 procurement, and other trade matters. The Chief
25 Trade Enforcement Officer shall perform such other

1 functions as the United States Trade Representative
2 may direct.”.

3 (c) COMPENSATION.—Section 5314 of title 5, United
4 States Code, is amended by inserting “Chief Trade En-
5 forcement Officer” as a new item after “Negotiator”.

6 **SEC. 4. TRADE ENFORCEMENT WORKING GROUP.**

7 (a) ESTABLISHMENT.—Not later than 90 days after
8 the date of the enactment of this Act, the United States
9 Trade Representative shall establish an interagency Trade
10 Enforcement Working Group (in this section referred to
11 as the “Working Group”) which shall be chaired by the
12 Chief Trade Enforcement Officer of the Office of the
13 United States Trade Representative.

14 (b) MEMBERSHIP.—The Working Group shall include
15 representatives from the Departments of Commerce, State
16 Treasury, Agriculture, and such other departments and
17 agencies as the United States Trade Representative con-
18 siders appropriate.

19 (c) RESPONSIBILITY.—It shall be the responsibility
20 of the Working Group to assist the Chief Trade Enforce-
21 ment Officer in carrying out the principle functions de-
22 scribed in section 141(c)(6) of the Trade Act of 1974.

1 **SEC. 5. SENSE OF CONGRESS REGARDING EXCHANGE**
2 **RATES AND IMF REFORM.**

3 (a) FINDINGS.—The Congress makes the following
4 findings:

5 (1) The global economy today is characterized
6 by massive imbalances that risk substantial disrup-
7 tion to global economic growth.

8 (2) The United States current account deficit is
9 at the heart of these global economic imbalances,
10 predicted to reach \$800,000,000,000 in 2005.

11 (3) A current account deficit of this size is
12 unsustainable and threatens the global economy with
13 disruption and recession.

14 (4) Policies to manipulate exchange rates help
15 drive global economic imbalances and the United
16 States current account deficit.

17 (5) Asian central banks appear to manipulate
18 their currency through protracted, large-scale inter-
19 vention in currency markets, largely concentrated in
20 United States dollar assets.

21 (6) The policies of Asian central banks keep
22 Asian currencies from appreciating meaningfully
23 against the dollar.

24 (7) Protracted, large-scale intervention in inter-
25 national currency markets runs counter to Article
26 IV, section 1, paragraph (iii) of the International

1 Monetary Fund Articles of Agreement and the Gen-
2 eral Principles governing the Article as adopted by
3 the International Monetary Fund Executive Board.

4 (8) A principal function of the International
5 Monetary Fund is to monitor exchange rate regimes
6 and to act to prevent sustained currency market ma-
7 nipulation like that seen today in Asia.

8 (9) The United States is the largest shareholder
9 in the International Monetary Fund and is therefore
10 best positioned to urge the International Monetary
11 Fund to enforce its provisions on exchange rate poli-
12 cies.

13 (10) The Department of the Treasury has to
14 date not been successful in urging the International
15 Monetary Fund to enforce Article IV, section 1,
16 paragraph (iii) of the International Monetary Fund
17 Articles of Agreement.

18 (b) SENSE OF THE CONGRESS.—

19 (1) EXCHANGE RATE INTERVENTION.—It is the
20 sense of the Congress that—

21 (A) the President should instruct the
22 United States Executive Director to the Inter-
23 national Monetary Fund to request the Man-
24 aging Director of the Fund to use more aggres-
25 sively the Fund's power to request consultations

1 with any member country regarding that coun-
2 try's exchange rate policies. The purpose of the
3 consultations is to determine, and recommend
4 remedial action (if necessary), in a transparent
5 manner—

6 (i) the extent of a country's direct or
7 indirect intervention in currency markets
8 for purposes contrary to the Articles of
9 Agreement of the International Monetary
10 Fund;

11 (ii) the effects of the intervention on
12 the value of the currencies on member
13 countries; and

14 (iii) the effects of the interventions on
15 international economic imbalances; and

16 (B) the President should instruct the
17 United States Executive Director to the Inter-
18 national Monetary Fund to propose that the
19 International Monetary Fund issue a semi-an-
20 nual report on exchange rate policies that ad-
21 dresses all cases of large-scale intervention in
22 international currency markets, determines the
23 effect of these interventions on exchange rates,
24 and proposes remedial action to curtail such
25 practices.

1 (2) REFORM OF THE INTERNATIONAL MONE-
2 TARY FUND.—It is the sense of the Congress that
3 the President should support efforts to reform the
4 International Monetary Fund to facilitate greater
5 vigilance over global exchange rates, and to ensure
6 the governance structure of the International Mone-
7 tary Fund represents the global economy, by in-
8 structing the United States Executive Director to
9 the International Monetary Fund to—

10 (A) lead a sustained and cooperative effort
11 to reform the International Monetary Fund Ex-
12 ecutive Board to better represent large emerg-
13 ing economies, including those in Asia;

14 (B) lead a sustained and cooperative effort
15 to reform the weighted votes of Member States
16 to better represent the significance of large
17 emerging economies, including those in Asia;
18 and

19 (C) lead a comprehensive effort to review
20 and improve the transparency of the Inter-
21 national Monetary Fund, including publication
22 of member country data and information re-
23 lated to exchange rate policies.

1 **SEC. 6. INFORMATION AND ADVICE FROM PRIVATE AND**
2 **PUBLIC SECTORS.**

3 Section 135 of the Trade Act of 1974 (19 U.S.C.
4 2155) is amended—

5 (1) in subsection (a)(1)—

6 (A) by striking “and” at the end of sub-
7 paragraph (B);

8 (B) by striking the period at the end of
9 subparagraph (C) and inserting “; and”; and

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

11 “(D) preventing the loss of Federal and
12 State sovereignty in the negotiation, implemen-
13 tation, and enforcement of a trade agreement.”;

14 (2) in subsection (a)(2), by adding at the end
15 the following:

16 “(E) The prevention of the loss of Federal
17 and State sovereignty during the negotiation,
18 implementation, and enforcement of trade
19 agreements.”;

20 (3) in subsection (e)(1), in the first sentence, by
21 inserting before the end period the following: “, in-
22 cluding an assessment of the effect of the trade
23 agreement on Federal and State sovereignty and the
24 extent to which State and local governments were
25 consulted in the negotiation of the free trade agree-
26 ment”; and

1 (4) in subsection (e)(2), after “United States”,
2 by inserting the following: “, maintains Federal and
3 State sovereignty,”.

4 **SEC. 7. SENSE OF CONGRESS REGARDING SOVEREIGNTY.**

5 (a) FINDINGS.—The Congress makes the following
6 findings:

7 (1) America’s economic growth and prosperity
8 is best served by embracing strategies to open fair
9 global markets, investing in innovative research and
10 technologies that create the industries and jobs, and
11 engaging in, rather than being isolated from, the
12 challenges of international competition in an increas-
13 ingly interconnected world.

14 (2) The overall negotiating objectives of our
15 Nation in negotiating trade agreements and treaties
16 includes economic growth, employment creation, sus-
17 tainable development, and improvements to living
18 standards and market opportunities.

19 (3) Another primary responsibility of the
20 United States Government is to ensure that Federal
21 and State laws are not usurped by foreign govern-
22 ments or organizations.

23 (4) A World Trade Organization (WTO) panel
24 recently concluded that United States prohibitions
25 on Internet gambling violate the United States com-

1 mitments under the WTO. Specifically, the panel
2 found that Federal and State gambling laws of the
3 United States that prohibit companies located in An-
4 tigua and Barbuda from providing Internet gam-
5 bling services to United States consumers conflict
6 with international trade obligations under the Gen-
7 eral agreement on Trade in Services (GATS).

8 (b) SENSE OF CONGRESS.—It is the sense of the
9 Congress that—

10 (1) in addition to the overall trade negotiating
11 objectives of the United States relating to economic
12 growth, employment creation, sustainable develop-
13 ment, and improvement to living standards and mar-
14 ket opportunities, the United States policy should be
15 to prevent the loss of Federal and State sovereignty
16 in the negotiation, implementation, and enforcement
17 of any trade agreement; and

18 (2) laws that State and local governments have
19 validly adopted, that are constitutional, and that re-
20 flect locally appropriate responses to the needs of
21 State and local governments and residents, should
22 not be overridden by provisions in trade agreements.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriate \$5,000,000 to
3 the United States Trade Representative to carry out the
4 provisions of this Act.

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