

S 1267 IS

112th CONGRESS

1st Session

S. 1267

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

IN THE SENATE OF THE UNITED STATES

June 23, 2011

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the `Strengthening America's Trade Laws Act'.

(b) Table of Contents- The table of contents for 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.



FEEDBACK

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.

TITLE I--DISPUTE SETTLEMENT

Subtitle A--Findings, Purpose, and Definitions

SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) Findings- The Congress finds the following:

(1) The United States joined the World Trade Organization as an original member with the goal of creating an improved global trading system and providing expanded economic opportunities for United States workers, farmers, and businesses.

(2) The dispute settlement rules of the WTO were created to enhance the likelihood that governments will observe their WTO obligations.

(3) Successful operation of the WTO dispute settlement system was critical to congressional approval of the Uruguay Round Agreements and is critical to continued support by the United States for the WTO. In particular, it is imperative that dispute settlement panels and the Appellate Body--

(A) operate with fairness and in an impartial manner;

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

(C) not add to the obligations, or diminish the rights, of WTO members under the Uruguay Round Agreements in violation of Articles 3.2 and 19.2 of the Dispute Settlement Understanding.

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

(5) In particular, several reports of dispute settlement panels and the Appellate Body have added to the obligations and diminished the rights of WTO members, particularly under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards.

(6) In order to come into compliance with reports of dispute settlement panels and the Appellate Body that have been adopted by the Dispute Settlement Body, the Congress may need to amend or repeal statutes of the United States. In such cases, the Congress must have a high degree of confidence that the reports are in accordance with paragraph (3).

(7) The Congress needs impartial, objective, and juridical advice to determine the appropriate response to reports of dispute settlement panels and the Appellate Body.

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

(b) Purpose- It is the purpose of this subtitle to provide for the establishment of the Congressional Advisory Commission on WTO Dispute Settlement to provide objective and impartial advice to the Congress on the operation of the dispute settlement system of the World Trade Organization.

SEC. 102. DEFINITIONS.

In this title:

(1) ADVERSE FINDING- The term `adverse finding' means--

(A) in a proceeding of a dispute settlement panel or the Appellate Body that is initiated against the United States, a finding by the panel or the Appellate Body that any law, regulation, practice, or interpretation of the United States, or any State, is inconsistent with the obligations of the United States under a Uruguay Round Agreement (or nullifies or impairs benefits accruing to a WTO member under such an Agreement); or

(B) in a proceeding of a panel or the Appellate Body in which the United States is a complaining party, any finding by the panel or the Appellate Body that a measure of the party complained against is not inconsistent with that party's obligations under a Uruguay Round Agreement (or does not nullify or impair benefits accruing to the United States under such an Agreement).

(2) APPELLATE BODY- The term `Appellate Body' means the Appellate Body established by the Dispute Settlement Body pursuant to Article 17.1 of the Dispute Settlement Understanding.

(3) APPROPRIATE CONGRESSIONAL COMMITTEES- The term `appropriate congressional committees' means the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(4) DISPUTE SETTLEMENT BODY- The term `Dispute Settlement Body' means the Dispute Settlement Body established pursuant to the Dispute Settlement Understanding.

(5) DISPUTE SETTLEMENT PANEL; PANEL- The terms `dispute settlement panel' and `panel' mean a panel established pursuant to Article 6 of the Dispute Settlement Understanding.

(6) DISPUTE SETTLEMENT UNDERSTANDING- The term `Dispute Settlement Understanding' means the Understanding on Rules and Procedures Governing the Settlement of Disputes referred to in section 101(d)(16) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(16)).

(7) TERMS OF REFERENCE- The term `terms of reference' has the meaning given that term in the Dispute Settlement Understanding.

(8) TRADE REPRESENTATIVE- The term `Trade Representative' means the United States Trade Representative.

(9) UNITED STATES PERSON- The term `United States person' means--

(A) a United States citizen or an alien admitted for permanent residence into the United States; and

(B) a corporation, partnership, labor organization, or other legal entity organized under the laws of the United States or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(10) URUGUAY ROUND AGREEMENT- The term `Uruguay Round Agreement' means any of the Agreements described in section 101(d) of the Uruguay Round Agreements Act.

(11) WORLD TRADE ORGANIZATION; WTO- The terms `World Trade Organization' and `WTO' mean the organization established pursuant to the WTO Agreement.

(12) WTO AGREEMENT- The term `WTO Agreement' means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(13) WTO MEMBER- The term `WTO member' has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act (19 U.S.C. 3501(10)).

Subtitle B--Participation in WTO Panel Proceedings

SEC. 111. PARTICIPATION IN WTO PANEL PROCEEDINGS.

(a) In General- If the Trade Representative, in proceedings before a dispute settlement panel or the Appellate Body of the WTO, seeks--

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

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

a United States person that is supportive of the United States Government's position before the panel or Appellate Body and that has a direct economic interest in the panel's or Appellate Body's resolution of the matters in dispute shall be permitted to participate in consultations and panel or Appellate Body proceedings. The Trade Representative shall issue regulations, consistent with subsections (b) and (c), ensuring full and effective participation by any such person.

(b) Access to Information- The Trade Representative shall make available to persons described in subsection (a) all information presented to or otherwise obtained by the Trade Representative in connection with the WTO dispute settlement proceeding in which such persons are participating. The Trade Representative shall promulgate regulations to protect information designated as confidential in the proceeding.

(c) Participation in Panel Process- Upon request from a person described in subsection (a), the Trade Representative shall--

(1) consult in advance with such person regarding the content of written submissions from the United States to the panel or Appellate Body concerned or to the other member countries involved;

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

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

(4) in proceedings involving confidential information, allow the appearance of such person only through counsel as a member of the special delegation.

Subtitle C--Congressional Advisory Commission on WTO Dispute Settlement

SEC. 121. ESTABLISHMENT OF COMMISSION.

(a) Establishment- There is established a commission to be known as the Congressional Advisory Commission on WTO Dispute Settlement (in this subtitle referred to as the 'Commission').

(b) Membership-

(1) COMPOSITION- The Commission shall be composed of 5 members, all of whom shall be judges or former judges of the Federal judicial circuits and shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after considering the recommendations of the Chairman and ranking member of each of the appropriate congressional committees. Commissioners shall be chosen without regard to political affiliation and solely on the basis of each Commissioner's fitness to perform the duties of a Commissioner.

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

(c) Period of Appointment; Vacancies-

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

(2) VACANCIES-

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

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

(d) Initial Meeting- Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) Meetings- Except for the initial meeting, the Commission shall meet at the call of the Chairperson.

(f) Quorum- A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) Chairperson and Vice Chairperson- The Commission shall select a Chairperson and Vice Chairperson from among its members.

(h) Funding- Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

SEC. 122. DUTIES OF THE COMMISSION.

(a) Advising the Congress on the Operation of the WTO Dispute Settlement System-

(1) IN GENERAL- The Commission shall review--

(A) all adverse findings that are--

(i) adopted by the Dispute Settlement Body; and

(ii) the result of a proceeding initiated against the United States by a WTO member; and

(B) upon the request of either of the appropriate congressional committees--

(i) any adverse finding of a dispute settlement panel or the Appellate Body--

(I) that is adopted by the Dispute Settlement Body; and

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

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

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

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

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

(ii) added to the obligations, or diminished the rights, of the United States under the Uruguay Round Agreement that is the subject of the finding;

(iii) acted arbitrarily or capriciously, engaged in misconduct, or demonstrably departed from the procedures specified for panels and the Appellate Body in the applicable Uruguay Round Agreement; or

(iv) deviated from the applicable standard of review, including in antidumping, countervailing duty, and other trade remedy cases, the standard of review set forth in Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; and

(B) whether the finding is consistent with the original understanding by the United States of the Uruguay Round Agreement that is the subject of the finding as explained in the statement of administrative action approved under section 101(a) of the Uruguay Round Agreements Act (19 U.S.C. 3511(a)).

(3) NO DEFERENCE- In advising the Congress under paragraph (2), the Commission shall not accord deference to findings of law made by the dispute settlement panel or the Appellate Body, as the case may be.

(b) Determination; Report-

(1) DETERMINATION-

(A) IN GENERAL- Not later than 150 days after the date on which the Commission receives notice of a report or request under section 123(b), the Commission shall make a written determination with respect to the matters described in paragraph (2) of subsection (a), including a full analysis of the basis for its determination. A vote by a majority of the members of the Commission shall constitute a determination of the Commission, although the members need not agree on the basis for their vote.

(B) DISSENTING OR CONCURRING OPINIONS- Any member of the Commission who disagrees with a determination of the Commission or who concurs in such a determination on a basis different from that of the Commission or other members of the Commission, may write an opinion expressing such disagreement or concurrence, as the case may be.

(2) REPORT- The Commission shall promptly report the determinations described in paragraph (1)(A) to the appropriate congressional committees. The Commission shall include with the report any opinions written under paragraph (1)(B) with respect to the determination.

(c) Availability to the Public- Each report of the Commission under subsection (b)(2), together with the opinions included with the report, shall be made available to the public.

SEC. 123. POWERS OF THE COMMISSION.

(a) Hearings- The Commission may hold a public hearing to solicit views concerning an adverse finding or other finding described in section 122(a)(1), if the Commission considers such hearing to be necessary to carry out the purpose of this subtitle. The Commission shall provide reasonable notice of a hearing held pursuant to this subsection.

(b) Information From Interested Parties and Federal Agencies-

(1) NOTICE TO COMMISSION-

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

(B) UNDER SECTION 122(a)(1)(B)- Either of the appropriate congressional committees may make and notify the Commission of a request under section 122(a)(1)(B) not later than 1 year after the Dispute Settlement Body adopts the adverse finding or other finding that is the subject of the request.

(C) FINDINGS ADOPTED PRIOR TO APPOINTMENT OF COMMISSION- With respect to any adverse finding or other finding to which section 122(a)(1)(B) applies and that is adopted before the date on which the first members of the Commission are appointed under section 121(b)(2), either of the appropriate congressional committees may make and notify the Commission of a request under section 122(a)(1)(B) with respect to the adverse finding or other finding not later than 1 year after the date on which the first members of the Commission are appointed under section 121(b)(2).

(2) SUBMISSIONS AND REQUESTS FOR INFORMATION-

(A) IN GENERAL- The Commission shall promptly publish in the Federal Register notice of--

- (i) the notice received under paragraph (1) from the Trade Representative or either of the appropriate congressional committees; and
- (ii) an opportunity for interested parties to submit written comments to the Commission.

(B) COMMENTS AVAILABLE TO PUBLIC- The Commission shall make comments submitted pursuant to subparagraph (A)(ii) available to the public.

(C) INFORMATION FROM FEDERAL AGENCIES AND DEPARTMENTS- The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subtitle. Upon the request of the chairperson of the Commission, the head of such department or agency shall furnish the information requested to the Commission in a timely manner.

(3) ACCESS TO PANEL AND APPELLATE BODY DOCUMENTS-

(A) IN GENERAL- The Trade Representative shall make available to the Commission all submissions and relevant documents relating to an adverse finding described in section 122(a)(1), including any information contained in such submissions and relevant documents identified by the provider of the information as proprietary information or information designated as confidential by a foreign government.

(B) PUBLIC ACCESS- Any document that the Trade Representative submits to the Commission shall be available to the public, except information that is identified as proprietary or confidential or the disclosure of which would otherwise violate the rules of the WTO.

(c) Assistance From Federal Agencies; Confidentiality-

(1) ADMINISTRATIVE ASSISTANCE- Any agency or department of the United States that is designated by the President shall provide administrative services, funds, facilities, staff, or other support services to the Commission to assist the Commission with the performance of the Commission's functions.

(2) CONFIDENTIALITY-

(A) DOCUMENTS AND INFORMATION FROM AGENCIES- The Commission shall protect from disclosure any document or information submitted to it by a department or agency of the United States that the agency or department requests be kept confidential.

(B) DISCLOSURE OF DOCUMENTS AND INFORMATION OF COMMISSION- The Commission shall not be considered to be an agency for purposes of section 552 of title 5, United States Code.

Subtitle D--Congressional Approval of Regulatory Action Relating to Adverse WTO Decisions

SEC. 131. CONGRESSIONAL APPROVAL OF REGULATORY ACTIONS RELATING TO ADVERSE WTO DECISIONS.

(a) In General- Section 123(g) of the Uruguay Round Agreements Act (19 U.S.C. 3533(g)) is amended--

(1) in paragraph (1)--

(A) in subparagraph (E), by striking `and';

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

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

`(F) the appropriate congressional committees have received the report on the determinations of the Congressional Advisory Commission on WTO Dispute Settlement under section 122(b)(2) of the Strengthening America's Trade Laws Act with respect to the relevant dispute settlement panel or Appellate Body decision;

`(G) a joint resolution, described in paragraph (2), approving the proposed modification or final rule is enacted into law after the appropriate congressional committees receive the report on the determinations of the Congressional Advisory Commission on WTO Dispute Settlement under section 122(b)(2) of the Strengthening America's Trade Laws Act; and'; and

(2) by amending paragraph (2) to read as follows:

`(2) JOINT RESOLUTION TO APPROVE MODIFICATION IN AGENCY REGULATION OR PRACTICE-

`(A) IN GENERAL- For the purposes of paragraph (1)(G), a joint resolution is a joint resolution of the 2 Houses of the Congress, the matter after the resolving clause of which is as follows: `That the Congress approves the modifications to the regulation or practice of the United States proposed in a report submitted to the Congress under subparagraph (D) or (F) of section 123(g)(1) of the Uruguay Round Agreements Act (19 U.S.C. 3533(g)(1) (D) and (F)) on **XXXXXXX**, relating to **XXXXXX**.' with the first blank space being filled with the date on which the report is submitted to the Congress and the second blank space being filled with the specific modification proposed to the regulation or practice of the United States.

`(B) PROCEDURAL PROVISIONS- The procedural provisions of subsections (d) through (i) of section 206 of the Strengthening America's Trade Laws Act shall apply to a joint resolution described in subparagraph (A).'

(b) Effective Date-

(1) IN GENERAL- The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) MODIFICATIONS MADE BETWEEN JANUARY 1, 2007, AND THE DATE OF THE ENACTMENT OF THIS ACT-

(A) IN GENERAL- Modifications to any regulation or practice of a department or agency of the United States made pursuant to the provisions of section 123(g) of the Uruguay Round Agreements Act (19 U.S.C. 3533(g)) that became effective on or after January 1, 2007, and before the date of the enactment of this Act, shall be suspended upon the enactment of this Act and have no effect.

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

Subtitle E--Clarification of Rights and Obligations Through Negotiations

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

(a) In General- After an adverse finding, the United States shall work within the World Trade Organization to obtain clarification of the Uruguay Round Agreement to which the adverse finding applies to conform the Agreement to the understanding of the United States regarding the rights and obligations of the United States and shall not modify the law, regulation, practice, or interpretation of the United States in response to the adverse finding if--

(1) the United States has stated at the Dispute Settlement Body that the adverse finding has created obligations never agreed to by the United States;

(2) either of the appropriate congressional committees by resolution finds that the adverse finding has created obligations never agreed to by the United States; or

(3) the Congressional Advisory Commission on WTO Dispute Resolution makes a determination under section 122(a)(2)(A)(ii) that the adverse finding has created obligations never agreed to by the United States.

(b) Applicability-

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

(2) EFFECT ON MODIFICATION OF REGULATION, PRACTICE, OR INTERPRETATION ADOPTED BEFORE ENACTMENT OF THIS ACT-

(A) IN GENERAL- Any agency that modified a regulation, practice, or interpretation in response to an adverse finding between January 1, 2002, and the date of the enactment of this Act shall provide notice that the modification shall cease to have force and effect on the date that is 30 days after the date of the enactment of this Act and such modification shall cease to have force and effect on such date.

(B) APPLICABILITY IN TRADE REMEDY CASES- The cessation of the force and effect of the modification described in subparagraph (A) shall apply with respect to--

(i) investigations initiated--

(I) on the basis of petitions filed under section 702(b), 732(b), or 783(a) of the Tariff Act of 1930 (19 U.S.C. 1671a(b), 1673a(b), and 1677n(a)) or section 202(a), 221, 251(a), or 292(a) of the Trade Act of 1974 (19 U.S.C. 2252(a), 2271, 2341(a), and 2401a(a)) after the date on which the modification ceases to have force and effect under subparagraph (A);

(II) by the administering authority under section 702(a) or 732(a) of the Tariff Act of 1930 (19 U.S.C. 1671a(a) and 1673a(a)) after such date; or

(III) under section 753 of the Tariff Act of 1930 (19 U.S.C. 1675b) after such date;

(ii) reviews initiated under section 751 of the Tariff Act of 1930 (19 U.S.C. 1675)--

(I) by the administering authority or the International Trade Commission on their own initiative after such date; or

(II) pursuant to a request filed after such date; and

(iii) all proceedings conducted under section 129 of the Uruguay Round Agreements Act (19 U.S.C. 3538) commenced after such date.

(3) EFFECT ON PRIOR STATUTORY CHANGES-

(A) IN GENERAL- Paragraph (2)(A) shall not apply to modifications to statutes of the United States made in response to adverse findings.

(B) CLARIFICATION OF UNITED STATES RIGHTS- If a statute of the United States has been modified in response to an adverse finding, the United States shall obtain clarification of the rights and obligations of the United States affected by the adverse finding pursuant to subsection (a).

TITLE II--STRENGTHENING ANTIDUMPING AND COUNTERVAILING DUTY LAWS

SEC. 201. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE.

Section 772(c)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1677a(c)(2)(A)) is amended by inserting ` (including antidumping and countervailing duties imposed under this title)' after `duties'.

SEC. 202. NONMARKET ECONOMY METHODOLOGY.

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

` (4) VALUATION OF FACTORS OF PRODUCTION-

` (A) IN GENERAL- The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are--

` (i) at a level of economic development comparable to that of the nonmarket economy country; and

` (ii) significant producers of comparable merchandise.

In this paragraph, the term `surrogate' refers to the values, calculations, and market economy countries used under this subparagraph.

` (B) VALUING MATERIALS USED IN PRODUCTION- In determining the value of materials used in production under subparagraph (A), the following applies:

- ` (i) The administering authority may use the value of inputs that are purchased from market economy suppliers and are not suspected of being dumped or subsidized, only for the quantity of such purchases.
- ` (ii) All materials purchased or otherwise obtained from nonmarket economy countries shall be valued using surrogate values under subparagraph (A).
- ` (iii) A purchased material shall be viewed as suspected of being subsidized if there are any affirmative findings by the United States or another WTO member of export subsidy programs in the supplying country.
- ` (iv) A purchased material shall be viewed as suspected of being dumped if there are any affirmative findings by the United States or other WTO member of dumping in the general category of merchandise, or if information supplied by the petitioner or otherwise of record suggests significant underpricing to the purchaser in the nonmarket economy country.
- ` (v) Surrogate values for materials from a market economy country shall be disregarded as not reflective of prices in that surrogate market only if prices in that market are viewed as aberrational, such as a case in which prices undersell or exceed any reported price in that surrogate market by a large amount.
- ` (vi) There shall be a presumption that the administering authority will include all market prices from a surrogate market. Prices that are high or low shall be excluded only when it is demonstrated that the prices are not reflective of prices in the surrogate country for the relevant category of merchandise.
- ` (vii) If amounts pertaining to the cost of production of imports into a surrogate country from market economy suppliers are used for valuing the materials used, such amounts shall be valued on the basis of CIF (cost, insurance, and freight), plus duties paid, to provide a proxy for prices in the surrogate country competing with locally produced goods. Such values shall not be reduced by the import duties.

` (C) VALUING LABOR-

- ` (i) The administering authority may use an average of wage rates for market economies, but shall ensure that labor rates used fully reflect all labor costs, including benefits, health care, and pension costs.
- ` (ii) Labor shall be the total labor employed by a nonmarket economy country producer or used by a nonmarket economy country producer in the overall business, with allocations to other merchandise produced or sold by that producer that is not subject merchandise.
- ` (iii) Labor shall reflect the average labor for all other producers in the nonmarket economy country that are producing the particular merchandise subject to investigation or review, and shall not be limited to operations used for export.

` (D) VALUING FACTORY OVERHEAD, SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES, AND PROFIT-

- ` (i) IN GENERAL- The administering authority shall use the best information available with respect to likely values of factory overhead, selling, general, and administrative expenses, and profit from a surrogate country. If the values determined under subparagraphs (B) and (C) for materials used and labor consumed result in amounts that are demonstrably larger or smaller than the amounts used in determining surrogate ratios from financial or other reports from a surrogate country, adjustments shall be made to the ratios to reflect fully the level of such costs and profits in the surrogate country on a per item produced basis.
- ` (ii) RATIOS DEFINED- For purposes of this subparagraph, the term `ratios' means--
 - ` (I) the ratio of factory overhead to labor, materials, and energy;
 - ` (II) the ratio of selling, general, and administrative costs to factory overhead, labor, materials, and energy; and
 - ` (III) the ratio of profit to selling, general, and administrative costs, factory overhead, labor, materials, and energy.

` (E) USE OF CONFIDENTIAL INFORMATION FROM A FOREIGN PRODUCER IN A SURROGATE COUNTRY- The administering authority shall generally use publicly available information to value factors of production, except that, in a case in which any foreign producer in the surrogate country that is willing to provide information to the administering authority on factors of production to produce the same class of merchandise and such information is subject to verification, the administering authority shall accept and use such information. The relationship of the foreign producer providing the information to a party to the proceeding shall not be a basis for disqualification.'

SEC. 203. DETERMINATIONS ON THE BASIS OF FACTS AVAILABLE.

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

^ (B) fails to provide such information by the deadline for submission of the information or in the form and manner required, and in conformity with prior administering authority determinations in the proceeding and final judicial decisions in the proceeding, subject to subsections (c)(1) and (e) of section 782, '.

SEC. 204. CLARIFICATION OF DETERMINATION OF MATERIAL INJURY.

(a) In General- Section 771(7) of the Tariff Act of 1930 (19 U.S.C. 1677(7)) is amended by adding at the end the following new subparagraph:

^ (J) CLARIFICATION OF DETERMINATION OF MATERIAL INJURY- In determining if there is material injury, or threat of material injury, by reason of imports of the subject merchandise, the Commission shall make the Commission's determination without regard to--

^ (i) whether other imports would have replaced or are likely to replace imports of the subject merchandise if an order were issued or a suspension agreement were accepted under this title, or

^ (ii) the effect of a potential order or suspension agreement on the domestic industry, except for a finding required by section 771(7)(F)(ii).'

(b) Likelihood of Continuation or Recurrence of Material Inquiry- Section 752(a)(4) of the Tariff Act of 1930 (19 U.S.C. 1675a(a)(4)) is amended by adding at the end the following: ^ In reaching a decision as to whether revocation of an order or termination of a suspended investigation is likely to lead to a continuation or recurrence of material injury, the Commission shall make its determination without regard to whether other imports are likely to replace imports of the subject merchandise if an order is revoked or a suspension agreement terminated under this title.'

SEC. 205. REVOCATION OF NONMARKET ECONOMY COUNTRY STATUS.

(a) Amendment of Definition of ^ Nonmarket Economy Country'- Section 771(18)(C)(i) of the Tariff Act of 1930 (19 U.S.C. 1677(18)(C)(i)) is amended to read as follows:

^ (i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until--

^ (I) the administering authority makes a final determination to revoke the determination under subparagraph (A); and

^ (II) a joint resolution is enacted into law pursuant to section 206 of the Strengthening America's Trade Laws Act.'

(b) Notification by President; Joint Resolution- Whenever the administering authority makes a final determination under section 771(18)(C)(i)(I) of the Tariff Act of 1930 (19 U.S.C. 1677(18)(C)(i)(I)) to revoke the determination that a foreign country is a nonmarket economy country--

(1) the President shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of that determination not later than 10 days after the publication of the administering authority's final determination in the Federal Register;

(2) the President shall transmit to the Congress a request that a joint resolution be introduced pursuant to this section; and

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

(c) Definition- For purposes of this section, the term ^ joint resolution' means only a joint resolution of the 2 Houses of the Congress, the matter after the resolving clause of which is as follows: ^ That the Congress approves the change of nonmarket economy status with respect to the products of **XXXXX** transmitted by the President to the Congress on **XXXXX**.' , the first blank space being filled in with the name of the country with respect to which a determination has been made under section 771(18)(C)(i) of the Tariff Act of 1930 (19 U.S.C. 1677(18)(C)(i)), and the second blank space being filled with the date on which the President notified the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives under subsection (b)(1).

(d) Introduction- A joint resolution shall be introduced (by request) in the House by the majority leader of the House, for himself, or by Members of the House designated by the majority leader of the House, and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself, or by Members of the Senate designated by the majority leader of the Senate.

(e) Amendments Prohibited- No amendment to a joint resolution shall be in order in either the House of Representatives or the Senate, and no motion to suspend the application of this subsection shall be in order in either House, nor shall it be in order in either House for the presiding officer to entertain a request to suspend the application of this subsection by unanimous consent.

(f) Period for Committee and Floor Consideration-

(1) IN GENERAL- If the committee or committees of either House to which a joint resolution has been referred have not reported the joint resolution at the close of the 45th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the joint resolution and it shall be placed on the appropriate calendar. A vote on final passage of the joint resolution shall be taken in each House on or before the close of the 15th day

after the joint resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the joint resolution. If, prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then--

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House, but

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

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

(g) Floor Consideration in the House-

(1) MOTION PRIVILEGED- A motion in the House of Representatives to proceed to the consideration of a joint resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) DEBATE LIMITED- Debate in the House of Representatives on a joint resolution shall be limited to not more than 20 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a joint resolution or to move to reconsider the vote by which a joint resolution is agreed to or disagreed to.

(3) MOTIONS TO POSTPONE- Motions to postpone, made in the House of Representatives with respect to the consideration of a joint resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(4) APPEALS- All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a joint resolution shall be decided without debate.

(5) OTHER RULES- Except to the extent specifically provided in the preceding provisions of this subsection, consideration of a joint resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(h) Floor Consideration in the Senate-

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

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

(3) CONTROL OF DEBATE- Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

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

(i) Rules of House of Representatives and Senate- Subsections (c) through (h) are enacted by the Congress--

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such subsections (c) through (h) are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of joint resolutions described in subsection (c), and subsections (c) through (h) supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

TITLE III --EXPANSION OF APPLICABILITY OF COUNTERVAILING DUTIES

SEC. 301. APPLICATION OF COUNTERVAILING DUTIES TO NONMARKET ECONOMY COUNTRIES AND STRENGTHENING APPLICATION OF THE LAW.

(a) Application of Countervailing Duties to Nonmarket Economies- Section 701(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by inserting '(including a nonmarket economy country)' after 'country' each place it appears.

(b) Recognition of Countervailable Subsidies in Nonmarket Economy Countries- Section 771(5)(C) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(E)) is amended to read as follows:

(C) OTHER FACTORS- (i) The determination of whether a subsidy exists shall be made without regard to--

(I) whether the recipient of the subsidy is publicly or privately owned;

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

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

(bb) the level of economic reforms in a country that is a nonmarket economy country, at the time the subsidy is provided.

(ii) The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph.'

(c) Use of Alternate Methodologies Involving China- Section 771(5)(E) of the Tariff Act of 1930 U.S.C. 1677(5)(E)) is amended by adding at the end the following:

If the administering authority encounters special difficulties in identifying and calculating the amount of a benefit under clauses (i) through (iv) with respect to an investigation or review involving the People's Republic of China, irrespective of whether the administering authority determines that China is a nonmarket economy country under paragraph (18) of this section, the administering authority shall use methodologies to identify and calculate the amount of the benefit that take into account the possibility that terms and conditions prevailing in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the administering authority should take into account and adjust terms and conditions prevailing in China before using terms and conditions prevailing outside of China. If the administering authority has determined that China is a nonmarket economy country under paragraph (18) of this section, the administering authority shall presume that special difficulties exist in calculating the amount of a benefit under clauses (i) through (iv) with respect to an investigation or review involving China and that it is not practicable to take into account and adjust terms and conditions prevailing in China, and the administering authority shall use terms and conditions prevailing outside of China.'

(d) Subsidies Provided to State-Owned Enterprises in the People's Republic of China- Section 771(5A) of the Tariff Act of 1930 (19 U.S.C. 1677(5A)) is amended by adding at the end the following:

For purposes of this paragraph, subsidies provided to state-owned enterprises in the People's Republic of China shall be deemed to be specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies.'

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

SEC. 302. TREATMENT OF EXCHANGE-RATE MANIPULATION AS COUNTERAVAILABLE SUBSIDY UNDER TITLE VII OF THE TARIFF ACT OF 1930.

(a) Amendments to Definition of Countervailable Subsidy- Section 771(5)(D) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(D)) is amended--

(1) by striking 'The term' and inserting '(i) The term';

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

(3) by adding at the end the following:

(ii) The term 'provides a financial contribution' includes engaging in exchange-rate manipulation (as defined in paragraph (5C)).'

(b) Definition of Exchange-Rate Manipulation- Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by inserting after paragraph (5B) the following new paragraph:

(5C) DEFINITION OF EXCHANGE-RATE MANIPULATION-

(A) IN GENERAL- For purposes of paragraphs (5) and (5A), the term 'exchange-rate manipulation' means protracted large-scale intervention by a country to undervalue the country's currency in the exchange market that prevents effective balance-of-payments adjustment or that gains an unfair competitive

advantage over any other country.

` (B) FACTORS- In determining whether exchange-rate manipulation is occurring and a benefit thereby conferred, the administering authority in each case--

` (i) shall consider the exporting country's--

` (I) bilateral balance-of-trade surplus or deficit with the United States;

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

` (III) foreign direct investment in its territory;

` (IV) currency-specific and aggregate amounts of foreign currency reserves; and

` (V) mechanisms employed to maintain its currency at a fixed exchange rate relative to another currency and, particularly, the nature, duration, monetary expenditures, and potential monetary expenditures of those mechanisms;

` (ii) may consider such other economic factors as are relevant; and

` (iii) shall measure the trade surpluses or deficits described in subclauses (I) and (II) of clause (i) with reference to the trade data reported by the United States and the other trading partners of the exporting country, unless such trade data are not available or are demonstrably inaccurate, in which case the exporting country's trade data may be relied upon if shown to be sufficiently accurate and trustworthy.

` (C) TYPE OF ECONOMY- A country found to be engaged in exchange-rate manipulation may have--

` (i) a market economy;

` (ii) a nonmarket economy; or

` (iii) a combination thereof.'

SEC. 303. AFFIRMATION OF NEGOTIATING OBJECTIVE ON BORDER TAXES.

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

SEC. 304. PRESIDENTIAL CERTIFICATION; APPLICATION OF COUNTERVAILING DUTY LAW.

(a) Certification by the President-

(1) IN GENERAL- The President shall certify to the Congress by January 1, 2014, that, under the Agreement on Subsidies and Countervailing Measures or subsequent agreement of the World Trade Organization, the full or partial exemption, remission, or deferral specifically related to exports of direct taxes is treated in the same manner as the full or partial exemption, remission, or deferral specifically related to exports of indirect taxes.

(2) EFFECT OF FAILURE TO CERTIFY- If the President does not make the certification to Congress required by paragraph (1) by January 1, 2014, the Secretary of Commerce, in any investigation conducted under subtitle A of title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.) to determine whether a countervailable subsidy is being provided with respect to a product of a country that provides the full or partial exemption, remission, or deferral specifically related to exports of indirect taxes on products exported from that country, shall treat as a countervailable subsidy the full or partial exemption, remission, or deferral specifically related to exports of indirect taxes paid on that product.

(b) Definitions- In this section:

(1) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES- The term `Agreement on Subsidies and Countervailing Measures' means the agreement referred to in section 101(d)(12) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(12)).

(2) DIRECT TAXES- The term `direct taxes' means taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property.

(3) IMPORT CHARGES- The term `import charges' means tariffs, duties, and other fiscal charges that are levied on imports.

(4) INDIRECT TAXES- The term `indirect taxes' means sales, excise, turnover, value added, franchise, stamp, transfer, inventory, and equipment taxes, border

taxes, and all taxes other than direct taxes and import charges.

(5) FULL OR PARTIAL EXEMPTION, REMISSION, OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS OF DIRECT TAXES- The term `full or partial exemption, remission, or deferral specifically related to exports of direct taxes' means direct taxes that are paid to the United States Government by a business concern and are fully or partially exempted, remitted, or deferred by the Government by reason of the export by that business concern of its products from the United States.

(6) FULL OR PARTIAL EXEMPTION, REMISSION, OR DEFERRAL SPECIFICALLY RELATED TO EXPORTS OF INDIRECT TAXES- The term `full or partial exemption, remission, or deferral specifically related to exports of indirect taxes' means indirect taxes that are paid to the government of a country by a business concern and are fully or partially exempted, remitted, or deferred by that government by reason of the export by that business concern of its products from that country.

(c) Effective Period- Subsection (a) shall cease to be effective on the date on which the President makes a certification described in subsection (a).

TITLE IV--LIMITATION ON PRESIDENTIAL DISCRETION IN ADDRESSING MARKET DISRUPTION

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

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

(1) in subsection (a)--

(A) by inserting `any' before `increased duties'; and

(B) by striking `, to the extent and for such period' and all that follows to the end period and inserting `recommended by the International Trade Commission';

(2) in subsection (e), in the second sentence, by striking `agreed upon by either group' and all that follows to the end period and inserting `shall be considered an affirmative determination under subsection (b)';

(3) in subsection (f)--

(A) in the heading, by striking `on Proposed Remedies' and inserting `for Relief';

(B) in the first sentence--

(i) by striking `the President or Trade Representative may consider as' and inserting `is to be considered'; and

(ii) by striking `the Commission shall propose' and inserting `the Commission shall recommend'; and

(C) in the second sentence, by striking `proposed action' and inserting `recommended action';

(4) in subsection (g)(2)(B)--

(A) by striking `or may be considered by the President or the Trade Representative as' and inserting `or if the determination is considered to be'; and

(B) by striking `on proposed remedies' and inserting `for relief';

(5) in subsection (h)--

(A) in the heading, by striking `Proposed Measure and Recommendation to the President' and inserting `Recommended Relief and Report by Trade Representative';

(B) in paragraph (1)--

(i) by striking `measure proposed by the Trade Representative to be taken pursuant to subsection (a)' and inserting `relief recommended by the Commission under subsection (f)'; and

(ii) by striking `proposed measure' and inserting `recommended relief';

(C) in paragraph (2), by striking `on the measure proposed by the Trade Representative' and all that follows to the end period and inserting `, shall transmit a report to the President recommending what action to take under subsection (k)'; and

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

` (3) The Trade Representative, after submitting a report to the President under paragraph (2), shall promptly make the report available to the public, excluding any proprietary or confidential information. The Trade Representative shall publish a summary of the report in the Federal Register.';

(6) in subsection (i)--

(A) in the flush sentence at the end of paragraph (1), by striking `agreed upon by either group' and all that follows to the end period and inserting `shall be considered an affirmative determination of the Commission'; and

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

` (2) On the date on which the Commission completes its determinations under paragraph (1), the Commission shall transmit a report on the determinations to the President and the Trade Representative, including the reasons for its determinations. If the determinations under paragraph (1) are affirmative or if the determinations are considered to be affirmative under paragraph (1), the Commission shall include in its report its recommendations on provisional relief to be taken to prevent or remedy the market disruption. Only those members of the Commission who agreed to the affirmative determinations under paragraph (1) are eligible to vote on the recommended provisional relief to prevent or remedy market disruption. Members of the Commission who did not agree to the affirmative determinations may submit, in the report, dissenting or separate views regarding the determination and any recommendation of provisional relief referred to in this paragraph.

` (3) The provisional relief referred to in paragraph (2) may include--

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

` (B) any modification, or imposition of any quantitative restriction on the importation of any article into the United States; or

` (C) any combination of actions under subparagraph (A) or (B).

` (4) If the determinations under paragraph (1) are affirmative or if the determinations are considered to be affirmative under paragraph (1), the Trade Representative shall, within 10 days after receipt of the Commission's report, transmit a report to the President recommending what action to take with respect to provisional relief under subsection (k).

` (5)(A) The President shall proclaim any provisional relief recommended by the Commission not later than 10 days after the date the President receives the report described in paragraph (4) from the Trade Representative.

` (B) Any provisional relief proclaimed by the President pursuant to a determination of critical circumstances shall remain in effect for a period not to exceed 200 days.

` (C) Provisional relief shall cease to apply upon the effective date of relief proclaimed under subsection (a), upon a decision by the President not to provide such relief under subsection (k), or upon a negative determination by the Commission under subsection (b).';

(7) in subsection (j)--

(A) in paragraph (1), by striking `which the Trade Representative considers to be' and inserting `that is considered to be'; and

(B) by striking paragraph (2) and inserting the following:

` (2) If no agreement is reached with the People's Republic of China pursuant to consultations under paragraph (1) in the time required for Presidential action under subsection (k), or if the President determines that an agreement reached pursuant to such consultations is not preventing or remedying the market disruption at issue in the time required for Presidential action under subsection (k), the President shall provide import relief in accordance with subsection (a).';

(8) in subsection (k)--

(A) in the heading, by striking `Standard for Presidential Action' and inserting `Timing for Presidential Action; Exceptions';

(B) in paragraph (1), by striking `a recommendation from the Trade Representative' and all that follows to the end period and inserting `a report from the Trade Representative under subsection (h)(2), the President shall, pursuant to subsection (a), proclaim the relief recommended by the Commission'; and

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

` (2) The President may decline to proclaim relief pursuant to subsection (a), may proclaim relief pursuant to subsection (a) that differs from the relief recommended by the Commission, may decline to proclaim provisional relief pursuant to subsection (i), or may proclaim provisional relief pursuant to subsection (i) that differs from the relief recommended by the Commission--

` (A) only in extraordinary cases; and

` (B) only if the President determines that providing relief or provisional relief pursuant to subsection (a) or (i) or providing relief recommended by the Commission pursuant to subsection (a) or (i) would cause serious harm to the economic interests or to the national security of the of the United States.';

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

` (1) The President's decision under subsection (k) shall be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives and shall be published in the Federal Register within 15 days of the decision. In the submission to the committees and in publication in the Federal Register, the President shall include the reasons for the decision and the scope and duration of any action taken. If the President takes action that differs from the action recommended by the Commission under subsection (f) or declines to take action pursuant to subsection (k)(2), the President shall state in detail the reasons for such action or inaction.';

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

(11) by inserting after subsection (l) the following new subsection:

` (m) Implementation of Action Recommended by Commission- (1) If the President takes action that differs from the action recommended by the Commission under subsection (f) or declines to take action pursuant to subsection (k)(2)(B)(i), the action recommended by the Commission under subsection (f) shall take effect (as provided in subsection (n)(2)) upon the enactment of a joint resolution described in paragraph (2) within the 90-day period beginning on the date on which the President's decision is transmitted to the Congress pursuant to subsection (l).

` (2) For purposes of this section, the term `joint resolution' means a joint resolution of the 2 Houses of the Congress, the sole matter after the resolving clause of which is as follows: `That the Congress does not approve the action taken by, or the determination of, the President under section 421 of the Trade Act of 1974, notice of which was transmitted to the Congress on **XXXXXX**.' with the blank space being filled with the appropriate case number and date.

` (3) The provisions of section 152(b), (c), (d), (e), and (f) of the Trade Act of 1974 (19 U.S.C. 2192(b), (c), (d), (e), and (f)) shall apply to joint resolutions under this section.';

(12) in subsection (n), as redesignated, by striking `Import relief under this section' and all that follows to the end period and inserting the following:

` (1) Except as provided in paragraph (2), import relief under this section shall take effect not later than 15 days after the President's determination to provide such relief.

` (2) If the action recommended by the Commission takes effect pursuant to subsection (m), the President shall, within 15 days after the date of the enactment of the joint resolution referred to in subsection (m), proclaim the action recommended by the Commission under subsection (f). Such action shall take effect not later than 15 days after the date of the President's proclamation.';

(13) in subsection (o), as redesignated--

(A) in paragraph (1), by striking `6-month' and inserting `1-year'; and

(B) in paragraph (3), by inserting `or (m)' after `subsection (k)'; and

(14) in subsection (p), as redesignated--

(A) in paragraph (1), by inserting `or (m)' after `subsection (k)'; and

(B) in paragraph (3), by striking `subsection (m)' and inserting `subsection (n)'.

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

Subtitle A--Coordination of Enforcement of Intellectual Property Rights

SEC. 501. DEFINITIONS.

In this title:

(1) ASSISTANT SECRETARY FOR ICE- The term `Assistant Secretary for ICE' means the Assistant Secretary for U.S. Immigration and Customs Enforcement.

(2) COMMISSIONER- The term `Commissioner' means the Commissioner responsible for U.S. Customs and Border Protection.

(3) COUNTERFEITING; COUNTERFEIT GOODS-

(A) COUNTERFEITING- The term `counterfeiting' means activities related to production of or trafficking in goods, including packaging, that bear a spurious mark or designation that is identical to or substantially indistinguishable from a mark or designation protected under the trademark laws or related legislation.

(B) COUNTERFEIT GOODS- The term `counterfeit goods' means those goods described in subparagraph (A).

(4) CBP- The term `CBP' means U.S. Customs and Border Protection.

(5) DIRECTOR- The term `Director' means the Director of Intellectual Property Rights Enforcement of the Department of the Treasury established in section 502.

(6) ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS- The term `enforcement of intellectual property rights' means activities to enforce copyrights, patents, trademarks, and other forms of intellectual property, including activities to control counterfeiting and piracy, and activities to enforce exclusion orders issued by the United States International Trade Commission by reason of any of subparagraphs (B) through (E) of subsection (a)(1) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(a)(1)(B) through (E)).

(7) EXCLUSION ORDER- The term `exclusion order' means an order of the United States International Trade Commission issued under section 337(d) of the Tariff Act of 1930 to exclude goods from entry into the United States.

(8) ICE- The term `ICE' means U.S. Immigration and Customs Enforcement.

(9) PIRACY; PIRATED GOODS-

(A) PIRACY- The term `piracy' means activities related to production of or trafficking in unauthorized copies or phonorecords of works protected under copyright law or related legislation.

(B) PIRATED GOODS- The term `pirated goods' means those copies or phonorecords described in subparagraph (A).

SEC. 502. DIRECTOR OF INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT.

(a) Establishment- There is established within the Department of the Treasury the position of Director of Intellectual Property Rights Enforcement.

(b) Appointment- The Director shall be appointed by the Secretary of the Treasury, and shall be responsible to and shall report directly to the Deputy Secretary of the Treasury.

(c) Duties- The Director shall--

(1) coordinate all activities of the Department of the Treasury involving the enforcement of intellectual property rights, with particular reference to the activities of CBP and ICE;

(2) oversee the development and implementation of the strategic plan for the enforcement of intellectual property rights required under section 503;

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

(4) serve as staff representative of the Department of the Treasury in interagency bodies with responsibility for coordination of activities involving the enforcement of intellectual property rights;

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

(6) carry out other duties, as assigned by the Secretary or Deputy Secretary of the Treasury, to improve the effectiveness of the efforts of the Department of the Treasury under the laws within its jurisdiction with respect to enforcement of intellectual property rights.

SEC. 503. STRATEGIC PLAN FOR THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS.

(a) In General- The Director shall develop, for approval by the Deputy Secretary of the Treasury, an annual strategic plan for the enforcement of intellectual property rights.

(b) Consultation- In developing the annual strategic plan required under subsection (a), the Director shall consult with--

- (1) the CBP coordinator of intellectual property enforcement activities and the ICE coordinator of intellectual property enforcement authorities appointed under section 504;
- (2) all other entities within the Department of the Treasury with expertise and experience in the enforcement of intellectual property rights;
- (3) the Advisory Committee;
- (4) other agencies of the executive branch engaged in the enforcement of intellectual property rights, including any officials designated to coordinate such enforcement efforts on an interagency basis; and
- (5) officials from foreign law enforcement agencies and international organizations, including the World Customs Organization, with experience and expertise in border control measures relating to the enforcement of intellectual property rights.

(c) Contents of Plan- The annual strategic plan shall set forth objectives, goals, and strategies for more effective use of the authorities of CBP and ICE relating to the enforcement of intellectual property rights, and shall--

- (1) provide for specific measurement of the current effectiveness of enforcement tools, including targeting, examination, post-entry auditing, and penalty actions;
- (2) give priority to those enforcement tools determined under paragraph (1) to be most effective;
- (3) identify best practices, both in the United States and abroad, in the enforcement of intellectual property rights, taking into account the practices of enforcement authorities of other countries, and implement those practices;
- (4) identify and apply the specific performance measures to be used to evaluate the progress of CBP and ICE in improving the effectiveness of its efforts relating to the enforcement of intellectual property rights;
- (5) address border control programs administered by CBP and ICE at ports of entry for passengers and freight, and at points of entry for postal and courier services, as well as for goods in transit through United States ports and in the process of being exported from the United States;
- (6) recommend the optimal feasible allocation of human, financial, physical, and technological resources that CBP and ICE should use to achieve the goals of the annual strategic plan;
- (7) report on the key activities of CBP and ICE during the preceding year in the enforcement of intellectual property rights ; and
- (8) contain such other information as the Director considers appropriate to convey what CBP and ICE will do, over the ensuing year, with respect to the enforcement of intellectual property rights and reduce the costs that violations of intellectual property rights impose on the United States economy and public safety.

(d) Submission to Congress- Upon the approval by the Deputy Secretary of the Treasury of the annual strategic plan, after ensuring its consistency with relevant interagency strategic plans for the enforcement of intellectual property rights, the Deputy Secretary of the Treasury shall transmit the annual strategic plan to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, along with any recommendations of the Department of the Treasury for statutory changes or funding authorizations needed to improve the effectiveness of the Department's efforts in the enforcement of intellectual property rights.

(e) Timing- The Deputy Secretary of the Treasury shall submit the annual strategic plan under subsection (d) not later than 180 days after the date of the enactment of this Act and annually thereafter.

SEC. 504. CBP AND ICE COORDINATORS.

(a) CBP Coordinators-

(1) APPOINTMENT- The Commissioner shall appoint a CBP coordinator of intellectual property rights enforcement activities (in this subtitle referred to as the 'CBP Coordinator'), who shall report directly to the Commissioner.

(2) DUTIES- The CBP Coordinator shall--

- (A) assist the Director of Intellectual Property Rights Enforcement of the Department of the Treasury in the development of the annual strategic plan, and coordinate the implementation of those aspects of the plan that involve CBP;

(B) coordinate all efforts, at all ports of entry and elsewhere, carried out by CBP in the enforcement of intellectual property rights, including training and staffing;

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

(D) carry out such other duties, as assigned by the Commissioner, the purpose of which is to improve the performance of CBP in the enforcement of intellectual property rights.

(b) ICE Coordinator-

(1) APPOINTMENT- The Assistant Secretary for United States Immigration and Customs Enforcement shall appoint an ICE coordinator of intellectual property enforcement activities (referred to in this subtitle as the `ICE Coordinator'), who shall report directly to the Assistant Secretary for ICE.

(2) DUTIES- The ICE Coordinator shall--

(A) assist the Director of Intellectual Property Rights Enforcement of the Department of the Treasury in the development of the annual strategic plan, and coordinate the implementation of those aspects of the plan that involve ICE;

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

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

(D) carry out such other duties, as assigned by the Assistant Secretary for ICE, the purpose which is to improve the performance of ICE in the enforcement of intellectual property rights.

Subtitle B--Regulatory and Policy Improvements Against Counterfeiting and Piracy

SEC. 511. IN GENERAL.

(a) Commissioner's Responsibilities- The Commissioner, acting through the CBP Coordinator, shall undertake the initiatives provided in this subtitle.

(b) CBP Coordinator's Responsibilities- Except as otherwise provided in this subtitle, the CBP Coordinator shall--

(1) prepare an annual report on activities carried out under this subtitle; and

(2) provide the annual report to the Director of Intellectual Property Rights Enforcement of the Department of the Treasury in a timely manner that will permit its inclusion in the annual strategic plan prepared under section 503.

SEC. 512. IDENTIFICATION OF CERTAIN UNLAWFUL GOODS.

(a) In General- The Secretary of the Treasury, acting through the Commissioner, shall accelerate efforts to apply risk assessment modeling techniques to border enforcement activities to combat counterfeiting and piracy. These efforts shall include, but not be limited to--

(1) preparing a report and evaluation on CBP's pilot project in risk assessment modeling with respect to shipments of counterfeit or pirated products;

(2) expanding the pilot project to include development of a rule set for the Automated Targeting System; and

(3) developing a plan for the development, testing, evaluation, and continuous improvement of risk assessment modeling techniques for purposes of targeting goods that violate intellectual property rights.

(b) Inclusion in Strategic Plan- The report specified in subsection (a)(1), and the plan specified in subsection (a)(3), shall be included in the annual strategic plan that is prepared under section 503.

SEC. 513. TRAINING IN NEW TECHNOLOGIES.

(a) Training of Personnel- The Commissioner shall consult with the Advisory Committee to determine the feasibility of training CBP personnel in the use of new technological means for detecting and identifying, at ports of entry, counterfeit and pirated goods, and goods that are the subject of exclusion orders, whether for entry into the United States or in transit to other destinations.

(b) Identification of Technologies and Sources of Training- In consultation with the Advisory Committee, the Commissioner shall identify--

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

(2) economical sources of training CBP personnel in using such new technologies,

to the extent such training is determined to be feasible under subsection (a).

(c) Regulatory and Policy Changes- The United States Government Accountability Office shall provide to the Congress a report analyzing the costs and benefits of allowing necessary regulatory and policy changes to enable the receipt of donations of hardware, software, equipment, and similar technologies, and the acceptance of training and other support services, from the private sector, to facilitate the achievement of the purposes of this section.

SEC. 514. DISCLOSURE OF INFORMATION AND SAMPLES OF SHIPMENTS TO INTELLECTUAL PROPERTY OWNERS.

The Commissioner shall make the necessary regulatory and policy changes to--

(1) increase disclosure to owners of copyrights, trademarks, patents, and other forms of intellectual property of information about shipments of goods that have been detained at ports of entry on suspicion that their importation into, or transit through, the United States would violate the intellectual property rights of the owners of those rights, including--

(A) disclosure of the identities and contact information of all parties involved in the shipments, including importers, exporters, declarants, consignees, freight forwarders, and warehouse owners;

(B) providing documents relating to the shipments; and

(C) identifying points of origin and destination of the shipments; and

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

SEC. 515. IMPROVEMENTS TO RECORDATION PROCESS.

(a) Improvements in Recordation Process- The Commissioner shall make the necessary regulatory and policy changes to ensure that the system for recordation of copyrights, trademarks, and other forms of intellectual property that may be subject to recordation does not impede the rapid seizure of goods that infringe the rights of the owners of such copyrights, trademarks, and other forms of intellectual property.

(b) Simultaneous Recordation-

(1) IN GENERAL- In consultation with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the Register of Copyrights, the Commissioner shall provide a system whereby trademarks may be recorded with CBP simultaneously with the issuance of trademark registration, and whereby copyrights of audiovisual works and sound recordings may be recorded with CBP simultaneously with the filing of an application for a certificate of copyright registration or an application for registration of another intellectual property right under title 17, United States Code.

(2) DEFINITIONS- In this subsection, the terms `audiovisual works' and `sound recordings' have the meanings given those terms in section 101 of title 17, United States Code.

SEC. 516. IDENTIFICATION OF LOW-RISK SHIPPERS.

(a) Voluntary Certification Program- The Commissioner shall create a voluntary certification program for low-risk shippers that have taken specific measures to strengthen and protect their supply chains to prevent the infiltration of counterfeit and pirated goods, goods that are the subject to exclusions orders, and goods that violate other forms of intellectual property rights.

(b) Self Certifications; Verifications- The program under subsection (a) shall generally operate on a self-certification basis, except that the Commissioner shall identify any circumstances in which third party verifications and attestations are required for inclusion in the program, which may include importations from the People's Republic of China.

(c) Expedited Movement- The Commissioner shall create incentives for shippers to participate in the certification program, including providing expedited movement of the goods of the shippers through the customs inspection process.

(d) Definition- In this section, the term `international supply chain' means the end-to-end process for transporting goods to or from the United States beginning with

the point of origin (including manufacturer, supplier, or vendor) through the point of distribution to the destination.

SEC. 517. `WATCH LIST' DATABASE.

- (a) In General- The Commissioner shall prepare a plan for the implementation of a `Watch List' database of importers, shippers, freight forwarders, and other participants in the import, export, and transshipment process, whose activities merit additional scrutiny at ports of entry with respect to the risk of importation or transshipment of counterfeit or pirated goods and goods that are the subject to exclusions orders.
- (b) Working Groups- The Commissioner shall consult with the Advisory Committee on the development of criteria for the `Watch List' database.
- (c) Information Sources- The plan under subsection (a) shall identify legitimate information sources for the database from within CBP, from other law enforcement sources, and from the private sector.
- (d) Criteria for Access to Database- The plan under subsection (a) shall specify criteria under which the database should be made available to qualified CBP and other law enforcement officers, for intelligence purposes, and for use in flagging and diverting for enhanced scrutiny shipments to ports of entry that are associated with entities listed in the database.
- (e) Other Matters- The plan under subsection (a) shall identify any regulatory or policy changes that the Department of the Treasury would make in order to bring the database into operation, as well as any recommendations for needed changes to legislation to make the database more effective. The plan shall also include budget estimates for implementation and operation of the database, and for evaluation of its effectiveness, and a timetable for such implementation.
- (f) Timing- The Commissioner shall complete the plan in a timely fashion that will permit its inclusion in the first annual strategic plan prepared under section 503.

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

- (a) Limitation on Mitigation, Dismissal, and Vacation of Fines- Unless otherwise ordered by a court of competent jurisdiction, any civil fine imposed pursuant to section 526(f) of the Tariff Act of 1930 (19 U.S.C. 1526(f))--
 - (1) may not be mitigated, except pursuant to regulations issued by the Commissioner; and
 - (2) may not be dismissed or vacated, except pursuant to regulations issued by the Commissioner that require the specific approval of the Commissioner or the Commissioner's designee for such dismissal or vacation.
- (b) Extraordinary Cases- In issuing regulations under subsection (a), the Commissioner shall ensure that the mitigation, dismissal, or vacation of civil fines for involvement in the importation, exportation, or transshipment of pirated or counterfeit goods is limited to extraordinary cases in which the interests of justice will clearly be served by such action.
- (c) Report to Congress- The Commissioner shall, not later than 180 days after the date of the enactment of this Act, report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the following:
 - (1) Whether CBP currently has the authority to employ effective collection techniques for collecting civil fines it imposes on participants in the importation, exportation, or transshipment of pirated or counterfeit goods.
 - (2) If CBP lacks such authority, the Commissioner's recommendations for legislation to provide CBP with such authority.
 - (3) If CBP has such authority, how CBP is using such authority, and with what results in terms of increased collections of fines imposed.
 - (4) The Commissioner's recommendations on whether, in specific cases, copyright or trademark owners should be authorized to pursue and collect fines imposed because of activities that infringe their intellectual property rights, and whether such copyright or trademark owners should be allowed to retain some or all of the funds that they collect.
 - (5) Any other recommendations for statutory, regulatory, or policy changes not under the control of CBP that would improve the ability of CBP to impose civil fines, at deterrent levels, on participants in trafficking in counterfeit or pirated goods, and to collect the fines imposed.
- (d) Definition- As used in subsection (c), the term `effective collection techniques' includes--
 - (1) confiscation of the proceeds of acts for which civil fines can be imposed;
 - (2) seizure of and execution upon property acquired with such proceeds;
 - (3) imposition of liens on the real or personal property of persons upon whom civil fines are imposed;

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

(5) piercing the corporate veil of corporations upon which civil fines are imposed, in order to satisfy the fine from the assets of natural persons or of other legal persons; and

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

Subtitle C--Training Enhancements

SEC. 521. INTERNATIONAL TRAINING AND TECHNICAL ASSISTANCE ENHANCEMENTS.

The Secretary of the Treasury shall take the necessary steps--

(1) to increase staffing and resources of offices of CBP and ICE engaged in providing training and technical assistance to the customs services and enforcement agencies of other countries in order to improve the effectiveness of such foreign services and agencies in detecting, intercepting, and imposing deterrent penalties upon the export, import, or transshipment of counterfeit or pirated goods, goods that are the subject to exclusions orders, and goods that violate other forms of intellectual property rights;

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

(A) coordinates the international training and technical assistance activities of CBP and ICE as part of the Director's coordination responsibilities under section 502;

(B) gives priority to such activities in those countries where such programs can be carried out most effectively and with the greatest benefit to protecting the intellectual property rights of United States right holders;

(C) takes steps to minimize duplication, overlap, or inconsistency of international training and technical assistance efforts; and

(D) coordinates such activities of the Department of the Treasury with international training and technical assistance activities against counterfeiting and piracy carried out by other agencies, and enhances the participation of Department of the Treasury personnel in interagency training and technical assistance activities in this field.

Subtitle D--New Legal Tools for Border Enforcement

SEC. 531. EXPANDED PROHIBITIONS ON IMPORTATION OR EXPORTATION OF COUNTERFEIT OR PIRATED GOODS.

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

(1) in the section heading, by inserting `or protected by copyright' after `trademark';

(2) in subsection (e), by inserting `or exported from the United States' after `imported into the United States';

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

`(1) Any person who engages in, directs, assists financially or otherwise, or aids and abets the importation or exportation of merchandise that is seized under subsection (e) of this section, or under regulations issued pursuant to section 603(c) of title 17, United States Code, shall be subject to a civil fine.'; and

(4) in subsection (f)--

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

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

`(4) When the seizure giving rise to the civil fine is made under circumstances indicating that the importation or exportation was for the purpose of sale or public distribution of the good seized, the maximum fine amounts set forth in paragraphs (2) and (3) shall be tripled.'.

SEC. 532. DECLARATIONS REGARDING COUNTERFEIT AND INFRINGING MERCHANDISE.

(a) Declarations- Section 485(a) of the Tariff Act of 1930 (19 U.S.C. 1485(a)), is amended--

(1) in paragraph (1), by striking `Whether' and inserting `whether';

(2) in paragraph (2), by striking `That' and inserting `that';

(3) in paragraph (3)--

(A) by striking `That' and inserting `that'; and

(B) by striking `and' after the semicolon;

(4) in paragraph (4)--

(A) by striking `That' and inserting `that'; and

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

(5) by adding at the end the following:

`(5) that the merchandise being imported does not bear a mark that is counterfeit as that term is defined in section 45 of the of July 5, 1946 (commonly referred to as the `Trademark Act of 1946'; 15 U.S.C. 1127);

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

`(7) that the merchandise does not violate--

`(A) does not violate an exclusion order of the United States International Trade Commission under section 337(d) by reason of any of subparagraphs (B) through (E) of subsection (a)(1) of section 337; or

`(B) infringe any other intellectual property right not covered by subparagraph (A) or by paragraph (5) or (6).'

(b) Regulations- The Secretary of the Treasury shall issue regulations requiring that the declarations required by paragraphs (5), (6), and (7) of section 485(a) of the Tariff Act of 1930 be made by all persons arriving in the United States with respect to articles carried on their person or contained in their baggage.

Subtitle E--Regulatory Authority

SEC. 541. REGULATORY AUTHORITY.

The Secretary may issue such regulations as are necessary to carry out this title.

TITLE VI--MISCELLANEOUS

SEC. 601. APPLICATION TO CANADA AND MEXICO.

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

END

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