

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 3283**  
**OFFERED BY MR. THOMAS OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

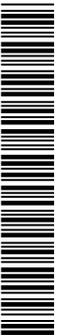
**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “United States Trade  
3 Rights Enforcement Act”.

**4 SEC. 2. SENSE OF CONGRESS.**

5       It is the sense of Congress that—

6           (1) United States producers that believe they  
7       are injured by subsidized imports from nonmarket  
8       economy countries have not been able to obtain relief  
9       through countervailing duty actions because the De-  
10      partment of Commerce has declined to make coun-  
11      tervailing duty determinations for nonmarket econ-  
12      omy countries in part because it lacks explicit legal  
13      authority to do so;



14           (2) explicitly making the countervailing duty  
15      law under subtitle A of title VII of the Tariff Act  
16      of 1930 (19 U.S.C. 1671 et seq.) applicable to ac-  
17      tions by nonmarket economy countries would give

1 United States producers access to import relief  
2 measures that directly target government subsidies;

3 (3) the Bureau of Customs and Border Protec-  
4 tion of the Department of Homeland Security has  
5 encountered particular problems in collecting coun-  
6 tervailing and antidumping duties from new shippers  
7 who default on their bonding obligations;

8 (4) this behavior may detract from the ability  
9 of United States companies to recover from competi-  
10 tion found to be unfair under international trade  
11 laws;

12 (5) accordingly, it is appropriate, for a test pe-  
13 riod, to suspend the availability of bonds for new  
14 shippers and instead require cash deposits;

15 (6) more analysis and assessment is needed to  
16 determine the appropriate policy to respond to this  
17 and other problems experienced in the collection of  
18 duties and the impact that policy changes could have  
19 on legitimate United States trade and United States  
20 trade obligations;

21 (7) given the developments in the ongoing  
22 World Trade Organization (WTO) negotiations re-  
23 lating to trade remedies, Congress reiterates its re-  
24 solve as expressed in House Concurrent Resolution  
25 262 (107th Congress), which was overwhelmingly



1 approved by the House of Representatives on No-  
2 vember 7, 2001, by a vote of 410 to 4;

3 (8) the United States Trade Representative  
4 should monitor compliance by United States trading  
5 partners with their trade obligations and systemati-  
6 cally identify areas of noncompliance;

7 (9) the United States Trade Representative  
8 should then aggressively resolve noncompliance  
9 through consultations with United States trading  
10 partners;

11 (10) however, should efforts to resolve disputes  
12 through consultation fail, the United States Trade  
13 Representative should vigorously pursue United  
14 States rights through dispute settlement in every  
15 available forum;

16 (11) given the huge growth in trade with the  
17 People's Republic of China, its impact on the United  
18 States economy, and the complaints voiced by many  
19 United States interests that China is not complying  
20 with its international trade obligations, the United  
21 States Trade Representative should place particular  
22 emphasis on identifying and resolving disputes with  
23 China that limit United States exports, particularly  
24 concerning compliance with obligations relating to  
25 intellectual property rights and enforcement, tariff



1 and nontariff barriers, subsidies, technical barriers  
2 to trade, sanitary and phytosanitary issues, non-  
3 market-based industrial policies, distribution rights,  
4 and regulatory transparency;

5 (12) in addition, the United States Trade Rep-  
6 resentative should place particular emphasis on  
7 trade barriers imposed by Japan, specifically the  
8 Japanese trade ban on United States beef without  
9 scientific justification, the Japanese sanitary and  
10 phytosanitary restrictions on United States agricul-  
11 tural products, Japanese policies on pharmaceutical  
12 and medical device reference pricing, insurance  
13 cross-subsidization, and privatization in a variety of  
14 sectors that discriminate against United States com-  
15 panies;

16 (13) the fixed exchange rate that the People's  
17 Republic of China has maintained until recently has  
18 been a substantial distortion to world markets,  
19 blocking the price mechanism, impeding adjustment  
20 of international imbalances, and serving as a source  
21 of large and increasing risk to the Chinese economy;

22 (14) such behavior has effectively prevented  
23 market forces from operating efficiently in the Peo-  
24 ple's Republic of China, distorting world trade;



1           (15) in a welcome move, the People's Republic  
2 of China has now begun to move to a more flexible  
3 exchange rate, and it should continue to so move to  
4 a market-based exchange rate as soon as possible;

5           (16) in light of this recent positive development,  
6 the Secretary of Treasury should provide to Con-  
7 gress a periodic assessment of the mechanism adopt-  
8 ed by the Chinese Government to relate its currency  
9 to a basket of foreign currencies and the degree to  
10 which the application of this mechanism moves the  
11 currency closer to a market-based representation of  
12 its value;

13           (17) in addition, Japan's policy of intervening  
14 to influence the value of its currency and its prolific  
15 barriers to trade create distortions that disadvantage  
16 United States exporters;

17           (18) this adverse impact is magnified by Ja-  
18 pan's role in the global marketplace, combined with  
19 its chronic surplus, weak economy, deflationary  
20 economy, low growth rate, and lack of consumer  
21 spending; and

22           (19) accordingly, the United States Trade Rep-  
23 resentative should have additional resources in the  
24 Office of the General Counsel, the Office of Moni-  
25 toring and Enforcement, the Office of China Affairs,



1 and the Office of Japan, Korea, and APEC Affairs  
2 to address a variety of needs that will best enable  
3 United States companies, farmers, and workers to  
4 benefits from the trade agreements to which the  
5 United States has around the world.

6 **SEC. 3. APPLICATION OF COUNTERVAILING DUTIES TO**  
7 **NONMARKET ECONOMY COUNTRIES.**

8 (a) AMENDMENTS.—

9 (1) COUNTERVAILING DUTIES IMPOSED.—Sec-  
10 tion 701(a)(1) of the Tariff Act of 1930 (19 U.S.C.  
11 1671(a)(1)) is amended by inserting “(including a  
12 nonmarket economy country)” after “country” each  
13 place it appears.

14 (2) DEFINITION OF COUNTERVAILABLE SUB-  
15 SIDY.—Section 771(5)(E) of such Act (19 U.S.C.  
16 1677(5)(E)) is amended by adding at the end the  
17 following new sentences: “With respect to the Peo-  
18 ple’s Republic of China, if the administering author-  
19 ity encounters special difficulties in calculating the  
20 amount of a benefit under clause (i), (ii), (iii), or  
21 (iv) of this subparagraph, the administering author-  
22 ity may use methodologies for identifying and meas-  
23 uring the subsidy benefit which take into account  
24 the possibility that prevailing terms and conditions  
25 in China may not always be available as appropriate



1 benchmarks. When applying such methodologies,  
2 where practicable, the administering authority  
3 should adjust such prevailing terms and conditions  
4 before considering the use of terms and conditions  
5 prevailing outside China.”.

6 (b) PROHIBITION ON DOUBLE COUNTING.—In apply-  
7 ing section 701(a)(1) of the Tariff Act of 1930, as amend-  
8 ed by subsection (a), to a class or kind of merchandise  
9 of a nonmarket economy country, the administering au-  
10 thority shall ensure that—

11 (1) any countervailable subsidy is not double  
12 counted in an antidumping order under section 731  
13 of such Act (19 U.S.C. 1673) on the same class or  
14 kind of merchandise of the country; and

15 (2) the application of section 701(a)(1) of such  
16 Act is consistent with the international obligations of  
17 the United States.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 subsection (a) apply to any petition filed under section 702  
20 of the Tariff Act of 1930 (19 U.S.C. 1671a) on or after  
21 30 days after the date of the enactment of this Act, and  
22 the provisions contained in subsection (b) apply to any  
23 subsequent determination made under section 733, 735,  
24 or 751 of such Act (19 U.S.C. 1673b, 1673d, or 1675).



1 **SEC. 4. NEW SHIPPER REVIEW AMENDMENT.**

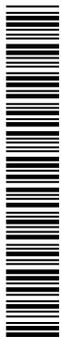
2 (a) SUSPENSION OF THE AVAILABILITY OF BONDS  
3 TO NEW SHIPPERS.—Clause (iii) of section 751(a)(2)(B)  
4 of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)(iii))  
5 shall not be effective during the 3-year period beginning  
6 on the date of the enactment of this Act.

7 (b) REPORT ON THE IMPACT OF THE SUSPENSION.—  
8 Not later than 2 years after the date of the enactment  
9 of this Act, the Secretary of the Treasury, in consultation  
10 with the Secretary of Commerce, the United States Trade  
11 Representative, and the Secretary of Homeland Security,  
12 shall submit to the Committee on Finance of the Senate  
13 and the Committee on Ways and Means of the House of  
14 Representatives a report containing—

15 (1) recommendations on whether the suspension  
16 of the effectiveness of section 751(a)(2)(B)(iii) of  
17 the Tariff Act of 1930 should be extended beyond  
18 the date provided in subsection (a) of this section;  
19 and

20 (2) assessments of the effectiveness of any ad-  
21 ministrative measures that have been implemented  
22 to address the difficulties giving rise to the suspen-  
23 sion under subsection (a) of this section, including—

24 (A) problems in assuring the collection of  
25 antidumping duties on imports from new ship-  
26 pers; and



1 (B) burdens imposed on legitimate trade  
2 and commerce by the suspension of availability  
3 of bonds to new shippers by reason of the sus-  
4 pension under subsection (a).

5 (c) REPORT ON COLLECTION PROBLEMS AND ANAL-  
6 YSIS OF PROPOSED SOLUTIONS.—

7 (1) REPORT.—Not later than 90 days after the  
8 date of the enactment of this Act, the Secretary of  
9 the Treasury, in consultation with the Commissioner  
10 of the Bureau of Customs and Border Protection  
11 and the Secretary of Commerce, shall submit to the  
12 Committee on Ways and Means of the House of  
13 Representatives and the Committee on Finance of  
14 the Senate a report describing the major problems  
15 experienced in the collection of duties, including  
16 fraudulent activities intended to avoid payment of  
17 duties, with an estimate of the total amount of un-  
18 collected duties for the previous fiscal year and a  
19 breakdown across product lines describing the rea-  
20 sons duties were uncollected.

21 (2) RECOMMENDATIONS.—The report shall  
22 make recommendations on additional actions to ad-  
23 dress remaining problems related to duty collections  
24 and, for each recommendation, provide an analysis  
25 of how the recommendation would address the spe-



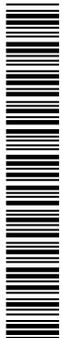
1 cific problem or problems cited and the impact that  
2 implementing the recommendation would have on  
3 international trade and commerce (including any ad-  
4 ditional costs imposed on United States businesses  
5 and whether the implementation of the revision is  
6 likely to violate any international trade obligations).

7 **SEC. 5. COMPREHENSIVE MONITORING OF COMPLIANCE BY**  
8 **THE PEOPLE'S REPUBLIC OF CHINA WITH ITS**  
9 **INTERNATIONAL TRADE OBLIGATIONS.**

10 (a) INTELLECTUAL PROPERTY RIGHTS COMPLI-  
11 ANCE.—

12 (1) IN GENERAL.—In accordance with the  
13 terms of the Agreement of WTO Accession for the  
14 People's Republic of China, subsequent agreements  
15 by Chinese authorities through the U.S.-China Joint  
16 Commission on Commerce and Trade (JCCT), and  
17 other obligations by Chinese officials related to its  
18 trade obligations, the United States Trade Rep-  
19 resentative and the Secretary of Commerce shall un-  
20 dertake to ensure that the Government of the Peo-  
21 ple's Republic China has taken the following steps:

22 (A) The Chinese Government has increased  
23 the number of civil and criminal prosecutions of  
24 intellectual property rights violators by the end  
25 of 2005 to a level that significantly decreases



1 the current amount of infringing products for  
2 sale within China.

3 (B) China's Supreme People's Court, Su-  
4 preme People's Procuratorate, and Ministry of  
5 Public Security have issued draft guidelines for  
6 public comment to ensure the timely referral of  
7 intellectual property rights violations from ad-  
8 ministrative bodies to criminal prosecution.

9 (C) The Chinese Ministry of Public Secu-  
10 rity and the General Administration of Customs  
11 have issued regulations to ensure the timely  
12 transfer of intellectual property rights cases for  
13 criminal investigation.

14 (D) The Chinese Ministry of Public Secu-  
15 rity has established a leading group responsible  
16 for overall research, planning, and coordination  
17 of all intellectual property rights criminal en-  
18 forcement to ensure a focused and coordinated  
19 nationwide enforcement effort.

20 (E) The Chinese Government has estab-  
21 lished a bilateral intellectual property rights law  
22 enforcement working group in cooperation with  
23 the United States whose members will cooper-  
24 ate on enforcement activities to reduce cross-  
25 border infringing activities.



1 (F) The Chinese Government has aggress-  
2 sively countered movie piracy by dedicating en-  
3 forcement teams to pursue enforcement actions  
4 against pirates and has regularly instructed en-  
5 forcement authorities nationwide that copies of  
6 films and audio-visual products still in censor-  
7 ship or import review or otherwise not yet au-  
8 thorized for distribution are deemed pirated and  
9 subject to enhanced enforcement.

10 (G) By the end of 2005, the Chinese Gov-  
11 ernment has completed its legalization program  
12 to ensure that all central, provincial, and local  
13 government offices are using only licensed soft-  
14 ware and by the end of 2006 has extended the  
15 program to enterprises (including state-owned  
16 enterprises).

17 (H) The Chinese Government, having de-  
18 clared that software end-user piracy is consid-  
19 ered to constitute “harm to the public interest”  
20 and as such will be subject to administrative  
21 penalties nationwide, has initiated civil and  
22 criminal prosecutions of software end-user vio-  
23 lators.

24 (I) The Chinese Government has appointed  
25 an Intellectual Property Rights Ombudsman at



1 the Chinese Embassy in Washington, D.C., to  
2 serve as the point of contact for United States  
3 companies, particularly small- and medium-  
4 sized businesses, seeking to secure and enforce  
5 their intellectual property rights in China or ex-  
6 periencing intellectual property rights problems  
7 in China.

8 (J) The relevant Chinese agencies, includ-  
9 ing the Ministry of Commerce, the China  
10 Trademark Office, the State Intellectual Prop-  
11 erty Office, and the National Copyright Admin-  
12 istration of China have significantly improved  
13 intellectual property rights enforcement at trade  
14 shows and issued new regulations to achieve  
15 this goal.

16 (K) Not later than June 30, 2006, the  
17 Chinese State Council has submitted to the Na-  
18 tional People's Congress the legislative package  
19 needed for China to accede to the World Intel-  
20 lectual Property Organization (WIPO) Internet  
21 treaties.

22 (L) The Chinese Government has taken  
23 steps to enforce intellectual property right laws  
24 against Internet piracy, including through en-  
25 forcement at Internet cafes.



1 (M) The Chinese Government, having con-  
2 firmed that the criminal penalty thresholds in  
3 the 2004 Judicial Interpretation are applicable  
4 to sound recordings, has instituted civil and  
5 criminal prosecutions against such violators.

6 (N) The Chinese Government has initiated  
7 civil and criminal prosecutions against exporters  
8 of infringing recordings.

9 (2) DISPUTE SETTLEMENT PROCEEDINGS IN  
10 WTO.—If the President determines that the People’s  
11 Republic of China has not met each of the obliga-  
12 tions described in subparagraphs (A) through (N) of  
13 paragraph (1) or taken steps that result in signifi-  
14 cant improvements in protection of intellectual prop-  
15 erty rights in accordance with its trade obligations,  
16 then the President shall assign such resources as are  
17 necessary to collect evidence of such trade agreement  
18 violations for use in dispute settlement proceedings  
19 against China in the World Trade Organization.

20 (b) ACCESS FOR EXPORTS OF UNITED STATES  
21 GOODS.—In accordance with the terms of the Agreement  
22 of WTO Accession for the People’s Republic of China, sub-  
23 sequent agreements by Chinese authorities through the  
24 U.S.-China Joint Commission on Commerce and Trade  
25 (JCCT), and other obligations by Chinese officials related



1 to its trade obligations, the United States Trade Rep-  
2 resentative and the Secretary of Commerce shall under-  
3 take to ensure that the Government of the People's Re-  
4 public of China has taken the following steps:

5 (1) China has taken steps to ensure that United  
6 States products can be freely distributed in China,  
7 including by approving a significant backlog of dis-  
8 tribution license applications and by preparing a reg-  
9 ulatory guide for businesses seeking to acquire dis-  
10 tribution rights that expands on the guidelines an-  
11 nounced in April 2005.

12 (2) Chinese officials have permitted all enter-  
13 prises in China, including those located in bonded  
14 zones, to acquire licenses to distribute goods  
15 throughout China.

16 (3) The Chinese Government has submitted  
17 regulations on management of direct selling to the  
18 Chinese State Council for review and taken any ad-  
19 ditional steps necessary to provide a legal basis for  
20 United States direct sales firms to sell United States  
21 goods directly to households in China.

22 (4) The Chinese Government has issued final  
23 regulations on direct selling, including with respect  
24 to distribution of imported goods and fixed location  
25 requirements.

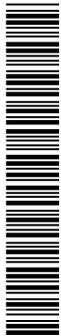


1 (c) ACCESS FOR EXPORTS OF UNITED STATES SERV-  
2 ICES.—In accordance with the terms of the Agreement of  
3 WTO Accession for the People’s Republic of China, subse-  
4 quent agreements by Chinese authorities through the  
5 U.S.-China Joint Commission on Commerce and Trade  
6 (JCCT), and other obligations by Chinese officials related  
7 to its trade obligations, the United States Trade Rep-  
8 resentative and the Secretary of Commerce shall under-  
9 take to ensure that the Government of the People’s Re-  
10 public of China has taken the following steps:

11 (1) The Chinese Government has convened a  
12 meeting of the U.S.-China Insurance Dialogue be-  
13 fore the end of 2005 to discuss regulatory concerns  
14 and barriers to further liberalization of the sector.

15 (2) The Chinese Government has made senior  
16 level officials available to meet under the JCCT In-  
17 formation Technology Working Group to discuss  
18 capitalization requirements, resale services, and  
19 other issues as agreed to by the two sides.

20 (d) ACCESS FOR UNITED STATES AGRICULTURE.—  
21 In accordance with the terms of the Agreement of WTO  
22 Accession for the People’s Republic of China, subsequent  
23 agreements by Chinese authorities through the U.S.-China  
24 Joint Commission on Commerce and Trade (JCCT), and  
25 other obligations by Chinese officials related to its trade



1 obligations, the United States Trade Representative and  
2 the Secretary of Agriculture shall undertake to ensure that  
3 the Government of the People's Republic of China has  
4 taken the following steps:

5 (1) China has completed the regulatory ap-  
6 proval process for a United States-produced corn  
7 biotech variety.

8 (2) China's Administration of Quality Super-  
9 vision, Inspection and Quarantine has implemented  
10 the 2005 Memorandum of Understanding between  
11 the United States and China designed to facilitate  
12 cooperation on animal and plant health safety issues  
13 and improve efforts to expand United States access  
14 to China's markets for agricultural commodities.

15 (e) ACCOUNTING OF CHINESE SUBSIDIES.—In ac-  
16 cordance with the terms of the Agreement of WTO Acces-  
17 sion for the People's Republic of China, subsequent agree-  
18 ments by Chinese authorities through the U.S.-China  
19 Joint Commission on Commerce and Trade (JCCT), and  
20 other obligations by Chinese officials related to its trade  
21 obligations, the United States Trade Representative and  
22 the Secretary of Commerce shall undertake to ensure that  
23 the Government of the People's Republic of China has pro-  
24 vided a detailed accounting of its subsidies to the World  
25 Trade Organization by the end of 2005.



1 (f) REPORTS.—

2 (1) BIENNIAL REPORT.—Not later than six  
3 months after the date of the enactment of this Act,  
4 and every six months thereafter, the President  
5 should transmit to the Committee on Ways and  
6 Means of the House of Representatives and the  
7 Committee on Finance of the Senate a report that  
8 contains—

9 (A) a description of the specific steps  
10 taken by the Government of the People's Re-  
11 public of China to meet its obligations described  
12 in subsections (a) through (e) of this section  
13 (other than obligations described in subsections  
14 (a)(1)(A) and (G), (b)(1), (c)(1), and (e));

15 (B) an analysis of the extent to which Chi-  
16 nese officials are attempting in good faith to  
17 meet such obligations; and

18 (C) a description of the actions, if any, the  
19 President will take to obtain compliance by  
20 China if the President determines that the Chi-  
21 nese Government is failing to meet such obliga-  
22 tions, including pursuing United States rights  
23 under the dispute settlement provisions of the  
24 World Trade Organization, as appropriate.



1           (2) MONTHLY REPORT.—Not later than 30  
2 days after the date of the enactment of this Act, and  
3 every 30 days thereafter, the President should trans-  
4 mit to the Committee on Ways and Means of the  
5 House of Representatives and the Committee on Fi-  
6 nance of the Senate a report that contains—

7           (A) a description of the specific steps  
8 taken by the Government of the People’s Re-  
9 public of China to meet its obligations described  
10 in subsections (a)(1)(A) and (G), (b)(1), (c)(1),  
11 and (e);

12           (B) an analysis of the extent to which Chi-  
13 nese officials are attempting in good faith to  
14 meet such obligations; and

15           (C) a description of the actions, if any, the  
16 President will take to obtain compliance by  
17 China if the President determines that the Chi-  
18 nese Government is failing to meet such obliga-  
19 tions, including pursuing United States rights  
20 under the dispute settlement provisions of the  
21 World Trade Organization, as appropriate.

22 **SEC. 6. REPORTS ON CURRENCY MANIPULATION BY FOR-**  
23 **EIGN COUNTRIES.**

24           (a) REPORT ON CURRENCY MANIPULATION.—Not  
25 later than 60 days after the date of the enactment of this



1 Act, the Secretary of the Treasury shall submit to the ap-  
2 propriate congressional committees a report that—

3 (1) defines currency manipulation;

4 (2) describes actions of foreign countries that  
5 will be considered to be currency manipulation; and

6 (3) describes how statutory provisions address-  
7 ing currency manipulation by trading partners of the  
8 United States contained in, and relating to, section  
9 40 of the Bretton Woods Agreements Act (22  
10 U.S.C. 286y) and sections 3004 and 3005 of the Ex-  
11 change Rates and International Economic Policy Co-  
12 ordination Act of 1988 (22 U.S.C. 5304 and 5305)  
13 can be better clarified administratively to provide for  
14 improved and more predictable evaluation.

15 (b) REPORT ON ACTIONS BY CHINA.—

16 (1) IN GENERAL.—In light of the recent posi-  
17 tive announcement by the Government of the Peo-  
18 ple's Republic of China with respect to increased ex-  
19 change rate flexibility, the Secretary of the Treasury  
20 shall submit to the appropriate congressional com-  
21 mittees a report that examines the mechanism  
22 adopted by the Chinese Government to relate its cur-  
23 rency to a basket of foreign currencies and the de-  
24 gree to which the application of this mechanism



1 moves the currency closer to a market-based rep-  
2 resentation of its value.

3 (2) DEADLINE.— The initial report required by  
4 this subsection shall be submitted to the appropriate  
5 congressional committees not later than 180 days  
6 after the date of the enactment of this Act and sub-  
7 sequent reports shall be included in the report re-  
8 quired under section 3005 of the Exchange Rates  
9 and International Economic Policy Coordination Act  
10 of 1988 (22 U.S.C. 5305).

11 (c) DEFINITION.—In this section, the term “appro-  
12 priate congressional committees” means—

13 (1) the Committee on Ways and Means and the  
14 Committee on Financial Services of the House of  
15 Representatives; and

16 (2) the Committee on Finance and the Com-  
17 mittee on Banking, Housing, and Urban Affairs of  
18 the Senate

19 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS FOR THE OF-**  
20 **FICE OF THE UNITED STATES TRADE REP-**  
21 **RESENTATIVE.**

22 (a) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) IN GENERAL.—Section 141(g)(1)(A) of the  
24 Trade Act of 1974 (19 U.S.C. 2171(g)(1)(A)) is



1 amended by striking clauses (i) and (ii) and insert-  
2 ing the following:

3 “(i) \$44,779,000 for fiscal year 2006.

4 “(ii) \$47,018,000 for fiscal year 2007.”.

5 (2) RULE OF CONSTRUCTION.—The amendment  
6 made by paragraph (1) shall not be construed to af-  
7 fect the availability of funds appropriated pursuant  
8 to section 141(g)(1)(A) of the Trade Act of 1974 be-  
9 fore the date of the enactment of this Act.

10 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE  
11 OFFICE OF THE GENERAL COUNSEL AND CERTAIN  
12 OTHER OFFICES.—There are authorized to be appro-  
13 priated to the Office of the United States Trade Rep-  
14 resentative for the appointment of additional staff in or  
15 enhanced activities by the Office of the General Counsel,  
16 the Office of Monitoring and Enforcement, the Office of  
17 China Affairs, and the Office of Japan, Korea, and APEC  
18 Affairs—

19 (1) \$4,000,000 for fiscal year 2006; and

20 (2) \$4,000,000 for fiscal year 2007.

21 (c) SENSE OF CONGRESS.—It is the sense of the Con-  
22 gress that the enforcement of United States rights and  
23 of obligations of United States trading partners under  
24 trade agreements has gained such significance that the  
25 United States Trade Representative should determine



1 which of its current positions is most responsible for car-  
2 rying out these important enforcement duties and should  
3 assign that position, in addition to any other title, the title  
4 of Chief Enforcement Officer.

5 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS FOR THE**  
6 **UNITED STATES INTERNATIONAL TRADE**  
7 **COMMISSION.**

8 (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
9 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C.  
10 1330(e)(2)(A)) is amended by striking clauses (i) and (ii)  
11 and inserting the following:

12 “(i) \$62,752,000 for fiscal year 2006.

13 “(ii) \$65,890,000 for fiscal year 2007.”.

14 (b) RULE OF CONSTRUCTION.—The amendment  
15 made by subsection (a) shall not be construed to affect  
16 the availability of funds appropriated pursuant to section  
17 section 330(e)(2)(A) of the Tariff Act of 1930 before the  
18 date of the enactment of this Act.

19 (c) STUDY AND REPORT ON TRADE AND ECONOMIC  
20 RELATIONS WITH CHINA.—

21 (1) STUDY.—

22 (A) IN GENERAL.—The United States  
23 International Trade Commission shall carry out  
24 a comprehensive study on trade and economic  
25 relations between the United States and the



1 People's Republic of China which addresses  
2 China's economic policies, including its ex-  
3 change rate policy, the competitiveness of its in-  
4 dustries, the composition and nature of its  
5 trade patterns, and other elements impacting  
6 the United States trade account, industry, com-  
7 petitiveness, and employment.

8 (B) REQUIREMENTS.—In carrying out the  
9 study under subparagraph (A), the United  
10 States International Trade Commission shall  
11 undertake the following:

12 (i) An analysis of the United States  
13 trade and investment relationship with  
14 China, with a focus on the United States-  
15 China trade balance and trends affecting  
16 particular industries, products, and sectors  
17 in agriculture, manufacturing, and serv-  
18 ices. The analysis shall provide context for  
19 understanding the U.S.-China trade and  
20 investment relationship, by including infor-  
21 mation regarding China's economic rela-  
22 tionships with third countries and China's  
23 changing policy regime and business envi-  
24 ronment. The analysis shall include a focus  
25 on United States-China trade in goods and



1 services, United States direct investment in  
2 China, China's foreign direct investment in  
3 the United States, and the relationship be-  
4 tween trade and investment. The analysis  
5 shall make adjustments, where possible, for  
6 merchandise passed through Hong Kong.

7 (ii) An analysis of the competitive  
8 conditions in China affecting United States  
9 exports and United States direct invest-  
10 ment. The analysis shall take into account,  
11 to the extent feasible, significant factors  
12 including tariffs and non-tariff measures,  
13 competition from Chinese domestic firms  
14 and foreign-based companies operating in  
15 China, the Chinese regulatory environ-  
16 ment, including specific regulations and  
17 overall regulatory transparency, and other  
18 Chinese industrial and financial policies. In  
19 addition, the analysis shall examine the  
20 specific competitive conditions facing  
21 United States producers in key industries,  
22 products, services, and sectors, potentially  
23 including computer and telecommuni-  
24 cations hardware, textiles, grains, cotton,



1 and financial services based on trade and  
2 investment flows.

3 (iii) An examination of the role and  
4 importance of intellectual property rights  
5 issues, such as patents, copyrights, and li-  
6 censing, in specific industries in China, in-  
7 cluding the pharmaceutical industry, the  
8 software industry, and the entertainment  
9 industry.

10 (iv) An analysis of the effects on glob-  
11 al commodity markets of China's growing  
12 demand for energy and raw materials.

13 (v) An examination of whether or not  
14 increased United States imports from  
15 China reflect displacement of United  
16 States imports from third countries or  
17 United States domestic production, and  
18 the role of intermediate and value-added  
19 goods processing in China's pattern of  
20 trade.

21 (2) REPORT.—Not later than one year after the  
22 date of the enactment of this Act, the United States  
23 International Trade Commission shall submit to the  
24 Committee on Ways and Means of the House of  
25 Representatives and the Committee on Finance of



1 the Senate a report that contains the results of the  
2 study carried out under paragraph (1).

3 **SEC. 9. SENSE OF CONGRESS REGARDING EXPANSION OF**  
4 **MEMBERSHIP IN THE AGREEMENT ON GOV-**  
5 **ERNMENT PROCUREMENT OF THE WTO.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) Nondiscriminatory, procompetitive, merit-  
8 based, and technology-neutral procurement of goods  
9 and services is essential so that governments can ac-  
10 quire the best goods to meet their needs for the best  
11 value.

12 (2) The Agreement on Government Procure-  
13 ment (GPA) of the World Trade Organization  
14 (WTO) provides a multilateral framework of rights  
15 and obligations founded on such principles.

16 (3) The United States is a member of the GPA,  
17 along with Canada, the European Union (including  
18 its 25 member States: Austria, Belgium, Cyprus, the  
19 Czech Republic, Denmark, Estonia, Finland,  
20 France, Germany, Greece, Hungary, Ireland, Italy,  
21 Latvia, Lithuania, Luxemburg, Malta, the Nether-  
22 lands, Poland, Portugal, Slovak Republic, Slovenia,  
23 Spain, Sweden, and the United Kingdom), Hong  
24 Kong, Iceland, Israel, Japan, Korea, Liechtenstein,



1 the Netherlands with respect to Aruba, Norway,  
2 Singapore, and Switzerland.

3 (4) Albania, Bulgaria, Georgia, Jordan, the  
4 Kyrgyz Republic, Moldova, Oman, Panama, and Tai-  
5 wan are currently negotiating to accede to the GPA.

6 (5) The People's Republic of China joined the  
7 WTO in December 2001, signaling to the inter-  
8 national community its commitment to greater open-  
9 ness.

10 (6) When China joined the WTO, it committed,  
11 in its protocol of accession, to negotiate entry into  
12 the GPA "as soon as possible".

13 (7) More than 3 years after its entry into the  
14 WTO, China has not commenced negotiations to join  
15 the GPA.

16 (8) Recent legal developments in China illus-  
17 trate the importance and urgency of expanding  
18 membership in the GPA.

19 (9) In 2002, China enacted a law on govern-  
20 ment procurement that incorporates preferences for  
21 domestic goods and services.

22 (10) The first sector for which the Chinese  
23 Government has sought to implement the new gov-  
24 ernment procurement law is computer software.



1           (11) In March 2005 the Chinese Government  
2 released draft regulations governing the procurement  
3 of computer software.

4           (12) The draft regulations require that non-  
5 Chinese software companies meet conditions relating  
6 to outsourcing of software development work to  
7 China, technology transfer, and similar require-  
8 ments, in order to be eligible to participate in the  
9 Chinese Government market.

10          (13) As a result of the proposed regulations, it  
11 appears likely that a very substantial amount of  
12 American software will be excluded from the govern-  
13 ment procurement process in China. The draft soft-  
14 ware regulations threatened to close off a market  
15 with a potential value of more than \$8 billion to  
16 United States firms.

17          (14) United States software companies have  
18 made a substantial commitment to the Chinese mar-  
19 ket and have made a substantial contribution to the  
20 development of China's software industry.

21          (15) The outright exclusion of substantial  
22 amounts of software not of Chinese origin that is  
23 apparently contemplated in the regulations is out of  
24 step with domestic preferences that exist in the pro-



1       curement laws and practices of other WTO member  
2       countries, including the United States.

3           (16) The draft regulations do not adhere to the  
4       principles of nondiscriminatory, procompetitive,  
5       merit-based, and technology-neutral procurement  
6       embodied in the GPA.

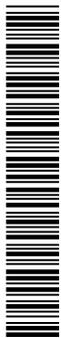
7           (17) The software piracy rate in China has  
8       never fallen below 90 percent over the past 10 years.

9           (18) Chinese Government entities represent a  
10      very significant portion of the software market in  
11      China that is not dominated by piracy.

12          (19) The combined effect of rampant software  
13      piracy and the proposed discriminatory government  
14      procurement regulations will be a nearly impen-  
15      etrable barrier to market access for the United  
16      States software industry in China.

17          (20) The United States trade deficit with China  
18      in 2004 was \$162,000,000,000, the highest with any  
19      economy in the world, and a 12.4 percent increase  
20      over 2003.

21          (21) China's Premier, Wen Jiabao, has com-  
22      mitted to rectify this serious imbalance by increasing  
23      China's imports of goods and services from the  
24      United States.



1           (22) The proposed software procurement regu-  
2           lations that were described by the Chinese Govern-  
3           ment in November 2004 incorporate policies that are  
4           fully at odds with Premier Wen's commitment to in-  
5           crease China's imports from the United States, and  
6           will add significantly to the trade imbalance between  
7           the United States and China.

8           (23) Once it is fully implemented, the discrimi-  
9           natory aspects of China's government procurement  
10          law will apply to all goods and services that the gov-  
11          ernment procures.

12          (24) Other developing countries may follow the  
13          lead of China.

14          (25) In July 2005, senior officials of the Chi-  
15          nese Government announced at the U.S.-China Joint  
16          Committee on Commerce and Trade that China  
17          would accelerate its efforts to join the GPA and to-  
18          ward this end will initiate technical consultations  
19          with other WTO member countries and accordingly  
20          delay issuing draft regulations on software procure-  
21          ment, as it further considers public comments and  
22          makes revisions in light of WTO rules.

23          (b) SENSE OF CONGRESS.—It is the sense of Con-  
24          gress that—



1           (1) the Government of the United States should  
2           strive to expand membership in the Agreement on  
3           Government Procurement of the World Trade Orga-  
4           nization (WTO);

5           (2) the Government of the United States should  
6           ensure that the Government of the People's Republic  
7           of China meets its WTO obligations as recently af-  
8           firmed through its commitment in July 2005  
9           through the U.S.-China Joint Committee on Com-  
10          merce and Trade, to join the WTO Agreement on  
11          Government Procurement.

12          (3) the Government of the United States should  
13          seek a commitment from the Government of the  
14          People's Republic of China to maintain its suspen-  
15          sion of the implementation of its law on government  
16          procurement, pending the conclusion of negotiations  
17          to accede to the Agreement on Government Procure-  
18          ment of the WTO;

19          (4) the Government of the United States should  
20          seek commitments from the Government of the Peo-  
21          ple's Republic of China and other countries that are  
22          not yet members of the Agreement on Government  
23          Procurement of the WTO to implement the prin-  
24          ciples of openness, transparency, fair competition  
25          based on merit, nondiscrimination, and account-



1 ability in their government procurement as embodied  
2 in that agreement; and  
3 (5) the President should direct all appropriate  
4 officials of the United States to raise these concerns  
5 with appropriate officials of the People's Republic of  
6 China and other trading partners.

