

H.R. 496, THE TRADE ENFORCEMENT ACT OF 2009

To promote a trade agenda that reflects American values, we need to ensure that U.S. workers, farmers, and businesses are getting a fair shake in the global marketplace and U.S. consumers have confidence that the products they buy are safe. H.R. 496, the Trade Enforcement Act of 2009, will help make this possible. The bill will open foreign markets for American exporters, strengthen our trade remedies against unfairly traded imports, improve import safety, and combat counterfeit and pirated imports.

ELIMINATE BARRIERS TO AMERICAN EXPORTS

America's trading partners don't always live up to the commitments they make in trade agreements with the United States -- and the Bush Administration too often failed to insist that they do. From 1995 through 2000, the United States filed an average of 11 WTO cases per year to open foreign markets for U.S. goods and services. From 2001 through 2008, the United States filed an average of just three cases per year. To ensure that our trading partners live up to their trade obligations, the Trade Enforcement Act of 2009 will:

- **Require USTR to Address Non-Tariff Barriers that Unfairly Shut Out U.S. Products.** U.S. exporters frequently face unfair non-tariff barriers to U.S. exports, including unjustifiable sanitary measures on agricultural products and barriers that keep U.S. manufactured exports out of foreign markets. The bill requires USTR to identify annually "priority foreign countries" with unfair barriers and take action.
- **Prioritize America's Trade Enforcement Efforts.** The bill restores the "Super 301" provision signed into law by President Reagan and requires USTR to prioritize annually the most significant barriers to U.S. exports and work to eliminate them.
- **Create Office of Congressional Trade Enforcer.** The Office will investigate barriers to U.S. exports, develop complaints against foreign countries, and call on USTR to file cases.
- **Elevate USTR's General Counsel to Ambassadorial Rank.** The Senate-confirmed officer will work to ensure that our trading partners comply with their trade agreements.

RESTORE AND ENHANCE U.S. TRADE REMEDIES

The trade remedy provisions in the bill will help to ensure that the United States *fully* utilizes its rights under the WTO to combat unfair trade. These provisions will not affect the vast majority of imports. But they are critical to the American workers, farmers, and businesses who are hurt by unfairly traded imports. The bill will:

- **Lock in "CVD NME" and Ensure that Subsidies are Fully Counted.** In 2007, the Department of Commerce began applying countervailing duties ("CVDs") to unfairly subsidized and injurious imports from nonmarket economy countries ("NMEs"), like China. The bill locks in Commerce's change in practice, ensures that Commerce fully captures NME subsidy practices, and ensures that Congress has a role in determining when an NME should be treated as a market economy country.
- **Safeguard U.S. Industries' Interests.** Critical to Congress' approval of China's WTO entry was the inclusion of a safeguard mechanism providing temporary relief if Chinese imports caused market disruption to an industry in the United States. Four times, the independent International Trade

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Commission recommended relief, and four times President Bush refused to provide that relief; plants have closed and jobs have been lost as a result. The bill would limit executive branch discretion to deny relief.

- **Fix Mandatory Offsets (“Zeroing”) at Home and in WTO.** The WTO Appellate Body, contradicting successive WTO panels of trade experts, has imposed a new requirement not contained in the WTO agreements by mandating that the United States offset dumped sales with non-dumped sales. The bill contains a Sense of Congress that the Appellate Body should adhere to the WTO’s strict requirement that the Appellate Body not create new rights or obligations. The Department of Commerce has stated that the WTO Appellate Body decisions are “devoid of legal merit,” yet has nonetheless chosen to implement the decisions in ways that fail to capture the unfair trade practice. The bill overturns Commerce’s decision and directs it to come up with an approach that captures fully the unfair trade practice.
- **Correct *Bratsk*.** The bill corrects the *Bratsk* decision, in which a U.S. court incorrectly interpreted U.S. antidumping or countervailing duty law to limit the ability of U.S. companies to obtain relief from unfairly traded imports.

COMBAT COUNTERFEITING AND PIRACY; IMPROVE IMPORT SAFETY

Some overseas governments and businesses are not playing by the rules. They are sending products to the United States that violate our health and safety laws. They are shipping pirated copies of American movies and music and producing counterfeit goods. To address these problems, the Trade Enforcement Act of 2009 will:

- **Enforce U.S. Intellectual Property Rights (IPR).** The bill creates a Director of IPR Enforcement and an IPR Enforcement advisory committee to advise on IPR enforcement issues; promotes the use of new technology to better fight infringement of intellectual property rights (IPR); creates a “watch list” for suspected bad actors; and prevents Customs from excusing fines assessed for illegal imports.
- **Improve Import Safety.** The bill creates a voluntary government-private sector import safety program, requires the use of “unique identifiers” to facilitate identifying the source of goods that pose health and safety threats, and establishes new sanctions for repeated non-compliance with U.S. health and safety laws.
- **Increase Staffing, Resources, Training and Coordination.** The bill authorizes the support, resources and training that Customs and Immigration and Customs Enforcement need and deserve to carry out their import safety and IPR enforcement responsibilities.

The American public wants trade policies shaped in ways that raise living standards within the United States and abroad and that enable U.S. workers, farmers and businesses to compete on a level playing field. Among other things, this requires the fair but vigorous enforcement of U.S. trade laws and agreements. The Trade Enforcement Act of 2009 will take critical steps toward achieving that goal.