

.....
(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

To require a review of existing trade agreements and renegotiation of existing trade agreements based on the review, to set terms for future trade agreements, to express the sense of the Congress that the role of Congress in trade policymaking should be strengthened, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MICHAUD introduced the following bill; which was referred to the Committee on _____

A BILL

To require a review of existing trade agreements and renegotiation of existing trade agreements based on the review, to set terms for future trade agreements, to express the sense of the Congress that the role of Congress in trade policymaking should be strengthened, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Trade Reform, Ac-
3 countability, Development, and Employment Act of 2009”
4 or the “TRADE Act of 2009”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) CORE LABOR STANDARDS.—The term “core
8 labor standards” means the core labor rights as
9 stated in the Conventions of the International
10 Labour Organization relating to—

11 (A) freedom of association and the effec-
12 tive recognition of the right to collective bar-
13 gaining;

14 (B) elimination of all forms of forced or
15 compulsory labor;

16 (C) effective abolition of child labor; and

17 (D) elimination of discrimination with re-
18 spect to employment and occupation.

19 (2) FUNDAMENTAL HUMAN RIGHTS.—The term
20 “fundamental human rights” means the rights enu-
21 merated in the United Nations Universal Declara-
22 tion of Human Rights.

23 (3) MAJOR U.S. TRADE PARTNERS.—The term
24 “major U.S. trade partners” means Belgium, Brazil,
25 the People’s Republic of China, France, Germany,
26 Hong Kong, India, Ireland, Italy, Japan, the Repub-

1 lic of South Korea, Malaysia, the Netherlands, Tai-
2 wan, and the United Kingdom.

3 (4) MULTILATERAL ENVIRONMENTAL AGREE-
4 MENT.—The term “multilateral environmental
5 agreement” means any international agreement or
6 provision thereof to which the United States is a
7 party and which is intended to protect, or has the
8 effect of protecting, the environment or human
9 health.

10 (5) STATE.—The term “State” means each of
11 the several State, the District of Columbia, and any
12 commonwealth, territory, or possession of the United
13 States.

14 (6) TRADE AGREEMENTS .—

15 (A) IN GENERAL.—Except as provided in
16 section 4, the term “trade agreement” means—

17 (i) the North American Free Trade
18 Agreement;

19 (ii) the Dominican Republic-Central
20 America-United States Free Trade Agree-
21 ment; and

22 (iii) the Agreement Between the
23 United States of America and the
24 Hashemite Kingdom of Jordan on the Es-
25 tablishment of a Free Trade Area.

1 (B) URUGUAY ROUND AGREEMENTS.—Ex-
2 cept as provided in section 4, the term “trade
3 agreement” means—

4 (i) the General Agreement on Tariffs
5 and Trade (GATT 1994) annexed to the
6 WTO Agreement;

7 (ii) the WTO Agreement described in
8 section 2(9) of the Uruguay Round Agree-
9 ments Act (19 U.S.C. 3501(9));

10 (iii) any other agreement described in
11 section 101(d) of the Uruguay Round
12 Agreements Act (19 U.S.C. 3511(d)); and

13 (iv) any multilateral agreement en-
14 tered into by the United States under the
15 auspices of the World Trade Organization,
16 including any agreement relating to infor-
17 mation technology, telecommunications, or
18 financial services.

19 **SEC. 3. REVIEW AND REPORT ON EXISTING TRADE AGREE-**
20 **MENTS.**

21 (a) REVIEW AND REPORT.—

22 (1) IN GENERAL.—Not later than 270 days
23 after the date of the enactment of this Act, and
24 every 2 years thereafter, the Comptroller General of
25 the United States shall—

1 (A) conduct a review of all trade agree-
2 ments in force at the time of the review for the
3 purpose of evaluating the economic, environ-
4 mental, national security, health, safety, and
5 other effects of the trade agreements; and

6 (B) submit to the Congressional Trade
7 Agreement Review Committee established under
8 section 6 a report that includes the information
9 described under subsections (b) and (c) and the
10 recommendations required under subsection (d).

11 (2) COOPERATION OF AGENCIES.—The Sec-
12 retary of State, the Secretary of Agriculture, the
13 Secretary of Commerce, the Secretary of Labor, the
14 Secretary of the Treasury, and the heads of other
15 Federal departments and agencies shall cooperate
16 with the Comptroller General for purposes of facili-
17 tating preparation of the report.

18 (3) INFLATION-CONTROLLED DOLLARS.—Data
19 expressed in terms of United States dollars should
20 be in inflation adjusted terms unless otherwise indi-
21 cated.

22 (b) INFORMATION WITH RESPECT TO TRADE
23 AGREEMENTS.—The report required by subsection (a)
24 shall, with respect to each trade agreement, to the extent
25 practicable, include the following information covering the

1 period between the date on which the trade agreement en-
2 tered into force with respect to the United States and the
3 date on which the Comptroller General completes the re-
4 view:

5 (1) An analysis of indicators of the economic
6 impact of each trade agreement, including the fol-
7 lowing:

8 (A) The employment effects of the trade
9 agreement on job gains and losses in the United
10 States delineated by industry, year, and State,
11 taking note of specific firm-, industry-, or re-
12 gional-cases of substantial trade agreement-re-
13 lated employment losses or gains, including a
14 list of the top ten industries that experienced
15 employment gains and losses in the United
16 States. In addition to utilizing existing govern-
17 ment data, the Comptroller General shall de-
18 velop and utilize a labor requirements model de-
19 rived from detailed input-output tables to esti-
20 mate the number of jobs supported or displaced
21 by shifts in the level and rate of change of
22 United States net exports and investment flows.

23 (B) The effects of the trade agreement on
24 changes in relative and absolute wage levels, in-
25 come distribution by decile, and hours worked

1 by sector and State, on a year to year basis, in
2 the United States. In addition to utilizing exist-
3 ing government data, the Comptroller General
4 shall develop and utilize factor content analyses,
5 product price regressions, computable general
6 equilibrium models, and other applicable meth-
7 ods to isolate the impact of the trade agreement
8 (and its associated investment flows) on
9 changes in relative and absolute wages and in-
10 come distribution by education, skill level, and
11 trade-sensitivity of various sectors, controlling
12 for appropriate indicators such as region, race,
13 and gender.

14 (C) The dollar value of domestic exports of
15 the United States and imports for consumption
16 into the United States delineated, to the extent
17 such information is available, by—

18 (i) Standard International Trade
19 Classification (SITC)-5,

20 (ii) Standard Industrial Classification
21 (SIC)-4,

22 (iii) North American Industry Classi-
23 fication (NAIC)-6,

1 (iv) the 10-digit classification number
2 under the Harmonized Tariff Schedule of
3 the United States,

4 (v) year, and

5 (vi) trade-partner country,

6 including listing those goods for which there
7 has been a change in 10 percent or more in bi-
8 lateral trade flows.

9 (D) The share of global production, pro-
10 ductive capacity, investment, exports and em-
11 ployment, and other indicators of the competi-
12 tive position (such as productivity gains and
13 patents registered) of industries in the United
14 States significantly affected by the trade agree-
15 ment, taking note of major production and em-
16 ployment offshoring trends and changes in
17 sourcing patterns before and after entry into
18 force of the trade agreement with respect to the
19 United States.

20 (2) An analysis of the effect on agriculture and
21 food-related outcomes, including the following:

22 (A)(i) The trend, on a year-by-year basis,
23 of prices and production volumes in the United
24 States, and exports from and imports into the
25 United States, of agricultural commodities, food

1 products, and ingredients thereof, that are im-
2 ported in significant volume into the United
3 States from a country that is a party to the
4 trade agreement.

5 (ii) For purposes of this subparagraph—

6 (I) the term “significant volume”
7 means, with respect to agricultural com-
8 modities, food products, or ingredients,¹⁰
9 percent or more of domestic consumption
10 of such agricultural commodities, food
11 products, or ingredients; and

12 (II) imports of such agricultural com-
13 modities, food products, and ingredients
14 shall be measured according to the 4-digit
15 classification of the commodities, products,
16 and ingredients under the Harmonized
17 Tariff Schedule of the United States.

18 (B) An analysis of the effects, if any, on
19 the cost of agricultural programs in the United
20 States.

21 (C) The number of farms operating in the
22 United States, detailed by farm typology and
23 sales level, and the number of acres under pro-
24 duction by crop, for agricultural commodities
25 that are exported from the United States to a

1 country that is a party to the trade agreement,
2 on a year-by-year basis.

3 (D) An analysis of the effects, if any, on
4 market concentration, prices, and fair competi-
5 tion in the markets for agricultural commodities
6 and food products that are subject to signifi-
7 cant volumes of trade between the United
8 States and each other country that is a party
9 to the trade agreement.

10 (3)(A) An analysis of the progress in imple-
11 menting commitments under the trade agreement,
12 and the record of compliance with the terms of the
13 trade agreement, by—

14 (i) each country that is a party to the
15 trade agreement, in the case of a trade agree-
16 ment describe in section 2(6)(A); and

17 (ii) by each of the major U.S. trade part-
18 ners, in the case of a trade agreement described
19 in section 2(6)(B).

20 (B) A description of any outstanding disputes
21 between the United States and any other country
22 that is a party to the trade agreement, including a
23 description of laws, regulations, or policies of the
24 United States or any State that such other country

1 has challenged, or threatened to challenge, under the
2 trade agreement.

3 (4) An analysis of the ability of the United
4 States to ensure that each other country that is a
5 party to the trade agreement complies with United
6 States laws and regulations, including—

7 (A) complying with the customs laws of the
8 United States;

9 (B) making timely payment of duties owed
10 on goods imported into the United States, in-
11 cluding, in such analysis, the amount of duties
12 paid by such other country;

13 (C) meeting safety and inspection require-
14 ments with respect to food and other products
15 imported into the United States from such
16 other country;

17 (D) complying with prohibitions on the
18 transshipment of goods that are ultimately im-
19 ported into the United States; and

20 (E) enforcing the trade agreement, includ-
21 ing preventing dumping, subsidies, and cir-
22 cumvention.

23 (5) An analysis of any privatization of public
24 sector services in the United States or in any other
25 country that is a party to the trade agreement, if

1 the service involved is covered by the investment, fi-
2 nancial services, or services provisions of the trade
3 agreement, including any effect such privatization
4 has on the access of consumers to essential services,
5 such as health care, electricity, gas, water, telephone
6 service, or other utilities.

7 (6) An assessment of the impact of the intellec-
8 tual property provisions of the trade agreement on
9 the retail price of pharmaceuticals in any country
10 that is a party to the trade agreement and the ef-
11 fect, if any, that changes in the price of pharma-
12 ceuticals have had on access by consumers to medi-
13 cines.

14 (7) An analysis of the impact of government
15 procurement rules in the trade agreement on the
16 procurement of goods or services by United States
17 Federal or State government agencies, including an-
18 nual information on the value of goods and services
19 procured, delineated by Federal or State government
20 and agency, by good or service procured, and by the
21 country from which the good or service originated.

22 (8) An assessment of the impact of significant
23 currency movements, currency misalignment, or cur-
24 rency manipulation on the bilateral trade balance be-
25 tween the United States and each other country that

1 is a party to the trade agreement and each of the
2 major U.S. trade partners.

3 (c) INFORMATION ON COUNTRIES THAT ARE PAR-
4 TIES TO TRADE AGREEMENTS.—With respect to each
5 country with which the United States has a trade agree-
6 ment in effect, the report required under subsection (a)
7 shall include information regarding whether that coun-
8 try—

9 (1) has a democratic form of government;

10 (2) respects core labor rights, as defined by the
11 Committee of Experts on the Application of Conven-
12 tions and Recommendations and the Conference
13 Committee on the Application of Standards of the
14 International Labour Organization;

15 (3) respects fundamental human rights, as de-
16 termined by the Secretary of State in the annual
17 country reports on human rights of the Department
18 of State;

19 (4) is designated as a country of particular con-
20 cern with respect to religious freedom under section
21 402(b)(1) of the International Religious Freedom
22 Act of 1998 (22 U.S.C. 6442(b)(1));

23 (5) is on a list described in subparagraph (B)
24 or (C) of section 110(b)(1) of the Trafficking Vic-
25 tims Protection Act of 2000 (22 U.S.C. 7107(b)(1))

1 (commonly known as tier 2 or tier 3 of the Traf-
2 ficking in Persons List of the Department of State);

3 (6) has taken effective measures to combat and
4 prevent public and private corruption, including
5 measures with respect to tax evasion and money
6 laundering, and has ratified the Convention on Com-
7 bating Bribery of Foreign Public Officials in Inter-
8 national Business Transactions of the Organization
9 for Economic Cooperation and Development;

10 (7) complies with the multilateral environmental
11 agreements to which the country is a party;

12 (8) has in force adequate labor and environ-
13 mental laws and regulations, has devoted sufficient
14 resources to implementing those laws and regula-
15 tions, and has an adequate record of enforcement of
16 those laws and regulations;

17 (9) adequately protects intellectual property
18 rights;

19 (10) provides for governmental transparency,
20 due process of law, and respect for international
21 agreements; and

22 (11) poses potential concerns to the national se-
23 curity of the United States, including an assessment
24 of the transfer of technology, production, and serv-
25 ices from one country to another.

1 (d) RECOMMENDATIONS.—The report required under
2 subsection (a) shall include recommendations of the
3 Comptroller General for addressing issues with respect to
4 a trade agreement that are identified under subsections
5 (b) and (c). The recommendations shall include sugges-
6 tions for renegotiating the trade agreement based on the
7 requirements described in section 4(b) and for negotia-
8 tions with respect to new trade agreements.

9 (e) CITATIONS.—The Comptroller General shall in-
10 clude in the report required under subsection (a) citations
11 to the sources of data used in preparing the report and
12 a description of the methodologies employed in preparing
13 the report.

14 (f) TREND ANALYSIS.—The report required under
15 subsection (a) shall include a trend analysis of relative and
16 absolute wage levels on a year-to-year basis in—

17 (1) each country with which the United States
18 has a trade agreement described in section 2(6)(A);

19 (2) each major U.S. trade partner;

20 (3) each country with which the United States
21 has considered establishing a free trade agreement,
22 including South Africa, Vietnam, Malaysia, and
23 Thailand; and

24 (4) Cambodia.

1 (g) PUBLIC COMMENT.—In preparing the report re-
2 quired under subsection (a), the Comptroller General
3 shall—

4 (1) hold hearings that are open to the public;
5 and

6 (2) provide an opportunity for members of the
7 public to testify and submit written comments.

8 (h) PUBLIC AVAILABILITY.—The information in each
9 report required under subsection (a) shall be made avail-
10 able to the public not later than 14 days after the Comp-
11 troller General completes the report.

12 **SEC. 4. INCLUSION OF CERTAIN PROVISIONS IN TRADE**
13 **AGREEMENTS.**

14 (a) IN GENERAL.—

15 (1) REQUIREMENTS FOR EXPEDITED CONSID-
16 ERATION OF IMPLEMENTING LEGISLATION.—Not-
17 withstanding section 151 of the Trade Act of 1974
18 (19 U.S.C. 2191) or any other provision of law, any
19 bill implementing a trade agreement between the
20 United States and another country that is intro-
21 duced in the Congress after the date of the enact-
22 ment of this Act shall not be subject to expedited
23 consideration or special procedures regarding
24 amendment or debate unless the trade agreement
25 meets the requirements of subsection (b).

1 (2) TRADE AGREEMENT DEFINED.—For pur-
2 poses of this section, the term “trade agreement”
3 means any trade agreement entered into between the
4 United States and one or more countries.

5 (b) REQUIREMENTS.—The requirements referred to
6 in subsection (a) regarding a trade agreement between the
7 United States and another country are the following:

8 (1) LABOR STANDARDS.—The labor provisions
9 shall—

10 (A) be included in the core text of the
11 trade agreement;

12 (B) require each country that is party to
13 the trade agreement—

14 (i) to adopt and maintain as part of
15 its domestic law and regulations (including
16 in any designated zone in that country) the
17 core labor standards; and

18 (ii) to effectively enforce laws related
19 to core labor standards and acceptable con-
20 ditions of work with respect to minimum
21 wages, hours of work, and occupational
22 safety and health;

23 (C) prohibit a country that is a party to
24 the trade agreement from waiving or otherwise
25 derogating from its laws and regulations relat-

1 ing to the core labor standards and acceptable
2 conditions of work with respect to minimum
3 wages, hours of work, and occupational safety
4 and health;

5 (D) provide that failures to meet the labor
6 standards required by the trade agreement shall
7 be subject to effective dispute resolution and
8 enforcement mechanisms and penalties that are
9 included in the core text of the trade agreement
10 and that are at least as effective as the mecha-
11 nisms and penalties that apply to the commer-
12 cial provisions of the trade agreement;

13 (E) strengthen the capacity of each coun-
14 try that is a party to the trade agreement to
15 promote and enforce core labor standards;

16 (F) provide for the establishment of a com-
17 mission comprised of individuals with inter-
18 national and comparative labor rights expertise,
19 including representatives of independent labor
20 unions of countries that are parties to the trade
21 agreement, representatives of exporting busi-
22 nesses of countries that are parties to the trade
23 agreement, and independent academic research-
24 ers, to receive, investigate, review, and partici-
25 pate in the adjudication of any complaint filed

1 under the labor provisions of the trade agree-
2 ment, and vest the commission with the author-
3 ity to establish objective indicators to determine
4 compliance with the obligations set forth in sub-
5 paragraphs (B), (C), and (D); and

6 (G) require each country that is a party to
7 the trade agreement to cooperate fully with in-
8 vestigations by the commission required under
9 subparagraph (F).

10 (2) HUMAN RIGHTS STANDARDS.—The human
11 rights provisions shall—

12 (A) be included in the core text of the
13 trade agreement;

14 (B) require each country that is a party to
15 the trade agreement to recognize the United
16 Nations Universal Declaration of Human
17 Rights as a common standard of achievement
18 for all peoples and all nations;

19 (C) prohibit each country that is a party to
20 the trade agreement from waiving or otherwise
21 derogating from its laws and regulations relat-
22 ing to fundamental human rights;

23 (D) provide that failures to meet the fun-
24 damental human rights required by the trade
25 agreement shall be subject to effective dispute

1 resolution and enforcement mechanisms and
2 penalties that are included in the core text of
3 the trade agreement and that are at least as ef-
4 fective as the mechanisms and penalties that
5 apply to the commercial provisions of the trade
6 agreement;

7 (E) strengthen the capacity of each coun-
8 try that is a party to the trade agreement to
9 promote and enforce fundamental human
10 rights;

11 (F) provide for the establishment of a com-
12 mission composed of representatives specializing
13 in international and comparative human rights,
14 including representatives of independent human
15 rights organizations of countries who are par-
16 ties to the trade agreement and academic re-
17 searchers, to receive, investigate, review, and
18 participate in the adjudication of any complaint
19 filed under the human rights provisions of the
20 trade agreement, and vest the commission with
21 the authority to establish objective indicators to
22 determine compliance with the obligations set
23 forth in subparagraphs (B), (C), and (D); and

24 (G) require any other country that is a
25 party to the trade agreement to cooperate fully

1 with investigations by the commission required
2 under subparagraph (F).

3 (3) ENVIRONMENTAL AND PUBLIC SAFETY
4 STANDARDS.—The environmental provisions shall—

5 (A) be included in the core text of the
6 trade agreement;

7 (B) prohibit each country that is a party
8 to the trade agreement from weakening, elimi-
9 nating, or failing to enforce domestic environ-
10 mental or other public health or safety stand-
11 ards to promote trade or attract investment;

12 (C) require each country that is a party to
13 the trade agreement to implement and enforce
14 fully and effectively, including through domestic
15 law, the country's obligations under multilateral
16 environmental agreements and provide for the
17 enforcement of such obligations under the trade
18 agreement;

19 (D) prohibit the trade of goods derived
20 from illegally harvested or extracted natural re-
21 sources, at any stage of production, including
22 timber and timber products, fish, wildlife, and
23 associated products, mineral resources, and
24 other environmentally sensitive goods;

1 (E) provide that the failure to meet the en-
2 vironmental standards required by the trade
3 agreement be subject to dispute resolution and
4 enforcement mechanisms and penalties that are
5 at least as effective as the mechanisms and pen-
6 alties that apply to the commercial provisions of
7 the trade agreement; and

8 (F) allow each country that is a party to
9 the trade agreement to adopt and implement
10 environmental, health, and safety standards,
11 recognizing the legitimate right of governments
12 to protect the environment and public health
13 and safety.

14 (4) FOOD AND PRODUCT HEALTH AND SAFETY
15 STANDARDS.—If the trade agreement contains
16 health and safety standards for food and other prod-
17 ucts, the trade agreement shall—

18 (A) establish that food, feed, food ingredi-
19 ents, and other related food products may be
20 imported into the United States from a country
21 that is a party to the trade agreement only if
22 such products meet or exceed United States
23 standards with respect to food safety, pes-
24 ticides, inspections, packaging, and labeling;

1 (B) establish that nonfood products may
2 be imported into the United States from a
3 country that is a party to the trade agreement
4 only if such products meet or exceed United
5 States standards with respect to health and
6 safety, inspections, packaging, and labeling;

7 (C) allow each country that is a party to
8 the trade agreement to impose standards de-
9 signed to protect public health and safety un-
10 less it can be clearly demonstrated that such
11 standards do not protect the public health or
12 safety;

13 (D)(i) authorize the Commissioner of Food
14 and Drugs and the Consumer Product Safety
15 Commission to assess the regulatory system of
16 each country that is a party to the trade agree-
17 ment to determine whether the system provides
18 the same or better protection of health and
19 safety for food and other products as provided
20 under the regulatory system of the United
21 States and authorize other appropriate United
22 States Federal agencies to assess the regulatory
23 system of each country that is party to the
24 trade agreement to determine whether the sys-
25 tem provides the same or better quality controls

1 on manufactured goods as provided under the
2 regulatory system of the United States;

3 (ii) if the Commissioner or the Commission
4 determines that the regulatory system of such
5 a country does not provide the same or better
6 protection of health and safety for food and
7 other products as provided under the regulatory
8 system of the United States, or another appro-
9 priate agency determines that the regulatory
10 system of such a country does not provide the
11 same or better quality controls on manufac-
12 tured goods as provided under the regulatory
13 system of the United States, provide that the
14 United States may prohibit the importation into
15 the United States of food and other products
16 from that country; and

17 (iii) provide a process by which producers
18 from countries whose regulatory systems are
19 determined pursuant to clause (ii) by the Com-
20 missioner, the Commission, or another appro-
21 priate agency not to provide the same or better
22 protection or quality controls as that provided
23 under the regulatory system of the United
24 States may have specific facilities inspected and
25 certified so as to allow products from approved

1 facilities to be imported into the United States;
2 and

3 (E) if harmonization of food or product
4 health or safety standards is necessary to facili-
5 tate trade, provide that such harmonization be
6 based on standards that are no less stringent
7 than standards in the United States.

8 (5) SERVICES PROVISIONS.—If the trade agree-
9 ment contains provisions related to the provision of
10 services, such provisions shall—

11 (A) preserve the right of United States
12 Federal, State, and local governments to main-
13 tain essential public services and to regulate,
14 for the benefit of the public, services provided
15 to consumers in the United States;

16 (B)(i) require each country that is a party
17 to the trade agreement to establish a positive
18 list of each service sector that will be subject to
19 the obligations of the country under the trade
20 agreement; and

21 (ii) apply the trade agreement only to the
22 service sectors that are on the list described in
23 clause (i);

24 (C) establish a general exception to market
25 access obligations that allows each country that

1 is a party to the trade agreement to maintain
2 or establish a ban on services that the country
3 considers harmful to public health or safety, the
4 environment, or public morals, if the ban is ap-
5 plied to domestic and foreign services and serv-
6 ice providers alike;

7 (D) require service providers of each coun-
8 try that is a party to the trade agreement that
9 provide services through commercial presence in
10 the United States to consumers in the United
11 States to comply with environmental, land use,
12 safety, privacy, transparency, professional quali-
13 fication, and consumer access laws and regula-
14 tions in the United States;

15 (E) require that services provided to con-
16 sumers in the United States, such as medical
17 and financial services, that are subject to pri-
18 vacy laws and regulations in the United States
19 may only be provided by service providers in
20 other countries that provide privacy protections
21 and protections for confidential information
22 that are equal to or exceed the protections pro-
23 vided by privacy laws and regulations in the
24 United States;

1 (F) not require the privatization of public
2 services in any country that is a party to the
3 trade agreement or the deregulation of a serv-
4 ice, including services related to national secu-
5 rity, social security, health, public safety, edu-
6 cation, water, sanitation, other utilities, ports,
7 or transportation;

8 (G) not subject local governments to the
9 service sector obligations under the trade agree-
10 ment;

11 (H) not include provisions with respect to
12 immigration or the movement of natural per-
13 sons; and

14 (I) not limit any nondiscriminatory na-
15 tional, regional, or local government program
16 that establishes reimbursement rates under
17 public health insurance programs, or otherwise
18 controls the costs of pharmaceuticals or medical
19 devices.

20 (6) INVESTMENT PROVISIONS.—If the trade
21 agreement contains provisions related to investment,
22 such provisions shall—

23 (A) preserve the ability of each country
24 that is a party to the trade agreement to regu-

1 late foreign investment in a manner consistent
2 with the needs and priorities of the country;

3 (B) allow each country that is a party to
4 the trade agreement to place prudential restric-
5 tions on speculative capital to reduce global fi-
6 nancial instability and trade volatility;

7 (C) not be subject to an investor-state dis-
8 pute settlement mechanism under the trade
9 agreement;

10 (D) ensure that foreign investors operating
11 in the United States are not afforded greater
12 rights than those afforded to domestic investors
13 by the Constitution and laws of the United
14 States;

15 (E) provide for government-to-government
16 dispute resolution relating to expropriation only
17 for those disputes relating to a government ac-
18 tion that destroys all value of the real property
19 of a foreign investor permanently, but not gov-
20 ernment actions that do not merely diminish
21 the value of property;

22 (F) define the term “investment” to mean
23 not more than a commitment of capital or ac-
24 quisition of real property and to exclude as-

1 sumption of risk or expectation of gain or prof-
2 it;

3 (G) define the term “investor” to mean
4 only a person who makes a commitment or ac-
5 quisition described in subparagraph (F); and

6 (H) define the standard of minimum treat-
7 ment to provide no greater legal rights than
8 United States citizens possess under the due
9 process clause of section 1 of the 14th amend-
10 ment to the Constitution of the United States.

11 (7) PROCUREMENT STANDARDS.—If the trade
12 agreement contains government procurement provi-
13 sions, such provisions shall—

14 (A) require each country that is a party to
15 the trade agreement to establish a positive list
16 of industry sectors, goods, or services that will
17 be subject to the obligations of the country
18 under the trade agreement;

19 (B) with respect to the United States,
20 apply only to State governments that specifi-
21 cally agree to the trade agreement and only to
22 the industry sectors, goods, or services specifi-
23 cally identified by the State government and
24 not apply to local governments; and

1 (C) include only technical specifications for
2 goods or services, supplier qualifications, or
3 other conditions for receiving government con-
4 tracts that do not undermine—

5 (i) prevailing wage policies;

6 (ii) recycled content policies;

7 (iii) sustainable harvest policies;

8 (iv) renewable energy policies;

9 (v) human rights; or

10 (vi) project labor agreements.

11 (8) INTELLECTUAL PROPERTY REQUIRE-
12 MENTS.—If the trade agreement contains provisions
13 related to the protection of intellectual property
14 rights, such provisions shall—

15 (A) promote adequate and effective protec-
16 tion of intellectual property rights;

17 (B) include only terms relating to patents
18 that do not, overtly or in application, limit the
19 flexibilities and rights established in the Dec-
20 laration on the TRIPS Agreement and Public
21 Health, adopted by the World Trade Organiza-
22 tion at the Fourth Ministerial Conference at
23 Doha, Qatar on November 14, 2001, including
24 the flexibilities and rights relating to the pro-
25 motion of access to medicines and the issuance

1 of compulsory licenses on grounds determined
2 by member states;

3 (C) require that any provisions relating to
4 the patenting of traditional knowledge be con-
5 sistent with the Convention on Biological Diver-
6 sity, concluded at Rio de Janeiro June 5, 1992;
7 and

8 (D) ensure that the access of the public to
9 essential medicines and to technologies critical
10 to preventing climate change is not obstructed
11 by any provision of the trade agreement relat-
12 ing to the protection of intellectual property
13 rights.

14 (9) AGRICULTURAL STANDARDS.—If the trade
15 agreement contains provisions related to agriculture,
16 such provisions shall—

17 (A) ensure adequate and stable market re-
18 turns for farmers in each country that is a
19 party to the trade agreement;

20 (B) ensure adequate and affordable sup-
21 plies of safe food for consumers;

22 (C) protect the right of each country that
23 is a party to the trade agreement to encourage
24 conservation through the use of best practices

1 with respect to the management and production
2 of crops;

3 (D) ensure fair treatment of agricultural
4 workers in each country that is a party to the
5 trade agreement;

6 (E) protect the right of each country that
7 is a party to the trade agreement to prevent
8 dumping of agricultural commodities at below
9 the cost of production through border regula-
10 tions or other mechanisms and policies;

11 (F) protect the right of each country that
12 is a party to the trade agreement to establish
13 policies with respect to food and agriculture
14 that require farmers to receive fair remunera-
15 tion for management and labor that occurs on
16 farms and that allow for inventory management
17 and strategic food and renewable energy re-
18 serves, while ensuring that such policies do not
19 aid or abet, or otherwise contribute to or allow,
20 the dumping of agricultural commodities onto
21 world markets at below the cost of production;

22 (G) preserve any existing United States
23 law relating to antitrust and anticompetitive
24 business practices from being preempted or ren-
25 dered ineffective by the trade agreement; and

1 (H) not conflict with agricultural policy es-
2 tablished in the laws of the United States.

3 (10) TRADE REMEDIES AND SAFEGUARDS.—If
4 the trade agreement contains trade remedy provi-
5 sions, such provisions shall—

6 (A) preserve fully the ability of the United
7 States to enforce its trade laws, including anti-
8 dumping and countervailing duty laws and safe-
9 guard laws, the right to calculate 100 percent
10 of the dumping in all antidumping proceedings,
11 and the right to disburse domestically anti-
12 dumping and countervailing duties as the
13 United States so determines;

14 (B) not decrease the effectiveness of do-
15 mestic and international prohibitions on unfair
16 trade, especially prohibitions on dumping and
17 subsidies, and domestic and international safe-
18 guard provisions;

19 (C) establish mechanisms to address and
20 remedy market distortions that lead to dumping
21 and subsidization, including overcapacity, car-
22 telization, and market-access barriers, by im-
23 posing strong sanctions against subsidies, in-
24 cluding applying the countervailing duty law

1 when exporters receive tax rebates for indirect
2 taxes upon export;

3 (D) allow the United States to maintain
4 adequate safeguards for a minimum of two
5 years to ensure that surges of imported goods
6 do not result in economic burdens on workers,
7 firms, or farmers in the United States, includ-
8 ing providing that such safeguards go into ef-
9 fect based on certain criteria;

10 (E) establish mechanisms among the par-
11 ties to the trade agreement to examine the
12 trade consequences of significant currency
13 movements and to scrutinize whether a party's
14 currency is misaligned to promote a competitive
15 advantage in international trade; and

16 (F) if the currency of a country that is
17 party to the trade agreement is deliberately
18 misaligned, establish safeguard remedies that
19 apply for a minimum period of two years to off-
20 set substantial and sustained currency move-
21 ments and also allow, alternatively, for the ap-
22 plication of countervailing duties.

23 (11) DISPUTE RESOLUTION AND ENFORCEMENT
24 PROVISIONS.—If the trade agreement contains provi-

1 sions related to dispute resolution, such provisions
2 shall—

3 (A) incorporate due process rules and pro-
4 cedures, including ensuring that dispute resolu-
5 tion proceedings are open to the public, that
6 public access to information regarding enforce-
7 ment, disputes, and ongoing negotiations re-
8 lated to disputes is provided in a timely man-
9 ner, and that conflict of interest rules apply
10 fully to adjudicators;

11 (B) require that any dispute settlement
12 panel, including an appellate panel, addressing
13 issues involving intellectual property rights or
14 environmental, health, labor, human rights, or
15 other public interest issues include panelists
16 with expertise in such issues; and

17 (C) require an expedited process for all
18 dispute settlement panels and processes relating
19 to violations of an agreement's labor, human
20 rights, and environmental obligations, recog-
21 nizing that environmental and labor rights and
22 the health, safety, and freedom of people and
23 possibly irreversible damage to the physical en-
24 vironment are fundamentally different than
25 property rights and thus require establishment

1 of more expeditious timelines, together with the
2 necessary resources for oversight and enforce-
3 ment; and

4 (D) require that panels reviewing anti-
5 dumping and countervailing duty proceedings of
6 a party to the trade agreement apply a stand-
7 ard of review that gives deference to the admin-
8 istrative authority of the party whose measure
9 is under review.

10 (12) TECHNICAL ASSISTANCE.—If the trade
11 agreement contains technical assistance provisions,
12 such provisions shall—

13 (A) be designed to raise standards in de-
14 veloping countries by providing assistance that
15 ensures respect for diversity of development
16 paths;

17 (B) be designed to empower civil society
18 and democratic governments to create sustain-
19 able, vibrant economies and respect basic
20 rights; and

21 (C) provide that technical assistance shall
22 not substitute for or supplant economic assist-
23 ance and not promote exportation of goods pro-
24 duced with the exploitation of labor or
25 unsustainable environmental practices.

1 (13) EXCEPTIONS FOR NATIONAL SECURITY
2 AND OTHER REASONS.—Each agreement shall—

3 (A) include an essential security exception
4 that permits a country that is a party to the
5 trade agreement to apply measures that the
6 country considers necessary for the mainte-
7 nance or restoration of international peace or
8 security, or the protection of its own essential
9 security interests, including with respect to in-
10 frastructure, services, manufacturing, and other
11 sectors;

12 (B) explicitly state that if a country in-
13 vokes the essential security exception in a dis-
14 pute settlement proceeding relating to any mat-
15 ter other than compliance with the agreement's
16 worker rights, environment, human rights,
17 health, or safety provisions, the dispute settle-
18 ment body hearing the matter shall find that
19 the exception applies;

20 (C) include a provision that gives priority
21 to the implementation of bilateral or multilat-
22 eral agreements relating to public health,
23 human and labor rights, the environment, or
24 other public interest goals in the event of any

1 inconsistency between the trade agreement and
2 such bilateral or multilateral agreement; and

3 (D) include in its list of general exceptions
4 the following language: “Notwithstanding any
5 other provision of this agreement, a provision of
6 law that is nondiscriminatory on its face and
7 relates to domestic health, consumer safety, the
8 environment, labor rights, worker health and
9 safety, economic equity, consumer access, the
10 provision of goods or services, or investment,
11 shall not be subject to challenge under the dis-
12 pute resolution mechanism established under
13 this agreement, unless the primary purpose of
14 the law is to discriminate with respect to mar-
15 ket access.”.

16 (14) FEDERALISM.—the trade agreement may
17 only require a State government in the United
18 States to comply with procurement, investment, or
19 services provisions contained in the trade agreement
20 if the State government has been consulted in full
21 and has given explicit consent to be bound by such
22 provisions.

23 (15) TAXATION.—Each agreement shall provide
24 for border tax equity for United States producers
25 and United States exporters in the assessment and

1 rebate of indirect taxes (such as consumption and
2 sales taxes), including by—

3 (A) prohibiting the imposition of such
4 taxes on United States exports when imported
5 in excess of the level of such taxes applied at
6 the border by the United States to imports
7 from parties to the trade agreement, or

8 (B) prohibiting the rebate of taxes on ex-
9 ports in amounts in excess of any such taxes re-
10 bated by the United States on United States
11 exports in excess of any such taxes rebated by
12 the United States,

13 or by adopting measures under both subparagraphs
14 (A) and (B).

15 **SEC. 5. RENEGOTIATION OF EXISTING TRADE AGREE-**
16 **MENTS.**

17 (a) **PLAN.**—The President shall, at the times speci-
18 fied under subsection (b), submit to the Congress a plan
19 for renegotiating each trade agreement that is in effect
20 on the date of the enactment of this Act to bring the trade
21 agreement into compliance with the requirements of sec-
22 tion 4(b).

23 (b) **TIMING.**—The plan under subsection (a) shall be
24 submitted not later than 90 days before the earlier of the
25 day on which the President—

1 (2) ACTION BY VOTE.—Action by the Com-
2 mittee under paragraph (1)(C) requires a vote of
3 $\frac{2}{3}$ of The members of the Committee.

4 (c) APPOINTMENT AND MEMBERSHIP.—The Com-
5 mittee shall be composed of the chair and ranking mem-
6 bers of the following:

7 (1) The Committee on Agriculture of the House
8 of Representatives.

9 (2) The Committee on Education and Labor of
10 the House of Representatives.

11 (3) The Committee on Energy and Commerce
12 of the House of Representatives.

13 (4) The Committee on Financial Services of the
14 House of Representatives.

15 (5) The Committee on Natural Resources of the
16 House of Representatives.

17 (6) The Committee on Ways and Means of the
18 House of Representatives.

19 (7) The Committee on Agriculture, Nutrition,
20 and Forestry of the Senate.

21 (8) The Committee on Banking, Housing, and
22 Urban Affairs of the Senate.

23 (9) The Committee on Commerce, Science, and
24 Transportation of the Senate.

1 (10) The Committee on Energy and Natural
2 Resources of the Senate.

3 (11) The Committee on Environment and Pub-
4 lic Works of the Senate.

5 (12) The Committee on Finance of the Senate.

6 (13) The Committee on Health, Education,
7 Labor, and Pensions of the Senate.

8 **SEC. 7. SENSE OF CONGRESS ON IMPROVING THE PROCESS**
9 **FOR UNITED STATES TRADE NEGOTIATIONS.**

10 It is the sense of the Congress that if Congress con-
11 siderers legislation to provide for special procedures for the
12 consideration of bills to implement trade agreements, that
13 legislation should include—

14 (1) readiness criteria for the President to use in
15 determining whether a country—

16 (A) is able to meet its obligations under a
17 trade agreement;

18 (B) meets the requirements described in
19 section 3(c); and

20 (C) is an appropriate country with which
21 to enter into a trade agreement;

22 (2) a process by which the Committee on Fi-
23 nance of the Senate and the Committee on Ways
24 and Means of the House of Representatives review
25 the determination of the President described in

1 paragraph (1) to verify that the country meets the
2 criteria;

3 (3) requirements for consultation with Congress
4 during trade negotiations that require more frequent
5 consultations than required by the Bipartisan Trade
6 Promotion Authority Act of 2002 (19 U.S.C. 3801
7 et seq.), including a process for consultation with
8 any committee of Congress with jurisdiction over
9 any area covered by the negotiations;

10 (4) binding negotiating objectives and require-
11 ments outlining what must and must not be included
12 in a trade agreement, including the requirements de-
13 scribed in section 4(b);

14 (5) a process for review and certification by the
15 Congress to ensure that the negotiating objectives
16 described in paragraph (4) have been met during the
17 negotiations;

18 (6) a process—

19 (A) by which a State may give informed
20 consent to be bound by nontariff provisions in
21 a trade agreement that relate to investment, the
22 service sector, and procurement; and

23 (B) that prevents a State from being
24 bound by the provisions described in subpara-
25 graph (A) if the State has not consented; and

1 (7) a requirement that a trade agreement be
2 approved by a majority vote in both Houses of Con-
3 gress before the President may sign the trade agree-
4 ment.