

110TH CONGRESS  
2D SESSION

# S. 3464

To amend the Trade Act of 1974 to improve the international protection and enforcement of intellectual property rights, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2008

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

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## A BILL

To amend the Trade Act of 1974 to improve the international protection and enforcement of intellectual property rights, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “International Intellec-  
5       tual Property Protection and Enforcement Act of 2008”.

1 **SEC. 2. SPECIAL RULES FOR COUNTRIES ON THE PRIORITY**  
2 **WATCH LIST OF THE UNITED STATES TRADE**  
3 **REPRESENTATIVE.**

4 (a) IN GENERAL.—Section 182 of the Trade Act of  
5 1974 (19 U.S.C. 2242) is amended by striking subsection  
6 (g) and inserting the following:

7 “(g) SPECIAL RULES FOR FOREIGN COUNTRIES ON  
8 THE PRIORITY WATCH LIST.—

9 “(1) ACTION PLANS.—

10 “(A) IN GENERAL.—Not later than 90  
11 days after the date on which the Trade Rep-  
12 resentative submits the National Trade Esti-  
13 mate under section 181(b), the Trade Rep-  
14 resentative shall, in consultation with the offi-  
15 cers described in subsection (b)(2)(A), develop  
16 an action plan described in subparagraph (C)  
17 with respect to each foreign country described  
18 in subparagraph (B).

19 “(B) FOREIGN COUNTRY DESCRIBED.—  
20 The Trade Representative shall develop an ac-  
21 tion plan pursuant to subparagraph (A) with  
22 respect to each foreign country that—

23 “(i) the Trade Representative has  
24 identified for placement on the priority  
25 watch list; and

1                   “(ii) has remained on such list for at  
2                   least 1 year.

3                   “(C) ACTION PLAN DESCRIBED.—An ac-  
4                   tion plan developed pursuant to subparagraph  
5                   (A) shall contain the benchmarks described in  
6                   subparagraph (D) and be designed to assist the  
7                   foreign country to—

8                   “(i) achieve—

9                   “(I) adequate and effective pro-  
10                  tection of intellectual property rights;  
11                  and

12                  “(II) fair and equitable market  
13                  access for United States persons that  
14                  rely upon intellectual property protec-  
15                  tion; or

16                  “(ii) make significant progress toward  
17                  achieving the goals described in clause (i).

18                  “(D) BENCHMARKS DESCRIBED.—The  
19                  benchmarks contained in an action plan devel-  
20                  oped pursuant to subparagraph (A) are such  
21                  legislative, institutional, enforcement, or other  
22                  actions as the Trade Representative determines  
23                  to be necessary for the foreign country to  
24                  achieve the goals described in clause (i) or (ii)  
25                  of subparagraph (C).

1           “(2) FAILURE TO MEET ACTION PLAN BENCH-  
2           MARKS.—

3           “(A) IN GENERAL.—If, 1 year after the  
4           date on which an action plan is developed under  
5           paragraph (1)(A), the President, in consultation  
6           with the Trade Representative, determines that  
7           the foreign country to which the action plan ap-  
8           plies has not substantially complied with the  
9           benchmarks described in paragraph (1)(D), the  
10          President may take one or more of the actions  
11          described in subparagraph (B) with respect to  
12          the foreign country.

13          “(B) PRESIDENTIAL ACTION DE-  
14          SCRIBED.—The President may take the fol-  
15          lowing actions pursuant to subparagraph (A):

16               “(i) GOVERNMENT PROCUREMENT.—  
17               Suspend, restrict, or prohibit new or re-  
18               newed procurement by the Federal Govern-  
19               ment of goods or services from the foreign  
20               country, unless—

21                       “(I) the foreign country is a  
22                       party to the Agreement on Govern-  
23                       ment Procurement referred to in sec-  
24                       tion 101(d)(17) of the Uruguay  
25                       Round Agreements Act (19 U.S.C.

1           3511(d)(17)) or any other inter-  
2           national agreement relating to govern-  
3           ment procurement to which the  
4           United States is also a party; and

5                   “(II) such suspension, restriction,  
6                   or prohibition would violate any such  
7                   agreement.

8                   “(ii) OVERSEAS PRIVATE INVESTMENT  
9                   CORPORATION FINANCING.—Suspend, re-  
10                  strict, or prohibit the approval of new fi-  
11                  nancing (including loans, guarantees, other  
12                  credits, insurance, and reinsurance) by the  
13                  Overseas Private Investment Corporation  
14                  with respect to a project located in the for-  
15                  eign country or in which an entity of the  
16                  foreign country participates.

17                  “(iii) EXPORT-IMPORT BANK FINANC-  
18                  ING.—Suspend, restrict, or prohibit the ap-  
19                  proval of new financing (including loans,  
20                  guarantees, other credits, insurance, and  
21                  reinsurance) by the Export-Import Bank of  
22                  the United States in connection with the  
23                  export of any good or service to the foreign  
24                  country or an entity of the foreign country.

1           “(iv) MULTILATERAL DEVELOPMENT  
2 BANK FINANCING.—Instruct the United  
3 States Executive Director of each multilat-  
4 eral development bank (as defined in sec-  
5 tion 1307 of the International Financial  
6 Institutions Act (22 U.S.C. 262m-7)) to  
7 oppose the approval of any new financing  
8 (including loans, guarantees, other credits,  
9 insurance, and reinsurance) by the multi-  
10 lateral development bank to the govern-  
11 ment of the foreign country or with respect  
12 to a project located in the foreign country  
13 or in which an entity of the foreign coun-  
14 try participates.

15           “(v) TRADE AND DEVELOPMENT  
16 AGENCY.—Suspend, restrict, or prohibit  
17 the provision of assistance by the United  
18 States Trade and Development Agency in  
19 connection with a project located in the  
20 foreign country or in which an entity of  
21 the foreign country participates.

22           “(vi) PREFERENTIAL TRADE PRO-  
23 GRAMS.—Suspend, limit, or withdraw any  
24 preferential treatment for which the for-  
25 eign country qualifies under the General-

1            ized System of Preferences under title V of  
2            the Trade Act of 1974 (19 U.S.C. 2461 et  
3            seq.), the Caribbean Basin Economic Re-  
4            covery Act (19 U.S.C. 2701 et seq.), the  
5            Andean Trade Preference Act (19 U.S.C.  
6            3201 et seq.), or the African Growth and  
7            Opportunity Act (19 U.S.C. 3701 et seq.).

8            “(C) RESTORATION OF BENEFITS.—The  
9            President shall revoke any actions taken with  
10           respect to a foreign country under subpara-  
11           graph (B) on the date on which the President,  
12           in consultation with the Trade Representative,  
13           determines and certifies to Congress that the  
14           foreign country has substantially complied with  
15           the benchmarks described in paragraph (1)(D).

16           “(3) PRIORITY WATCH LIST DEFINED.—For  
17           purposes of this subsection, the term ‘priority watch  
18           list’ means the priority watch list established by the  
19           Trade Representative.

20           “(h) ANNUAL REPORT.—Not later than 30 days after  
21           the date on which the Trade Representative submits the  
22           National Trade Estimate under section 181(b), the Trade  
23           Representative shall transmit to the Committee on Ways  
24           and Means of the House of Representatives and the Com-  
25           mittee on Finance of the Senate a report on actions taken

1 under this section during the 12 months preceding such  
2 report, and the reasons for such actions, including—

3 “(1) any foreign countries identified under sub-  
4 section (a);

5 “(2) a description of progress made in achiev-  
6 ing improved intellectual property protection and  
7 market access for persons relying on intellectual  
8 property rights; and

9 “(3) a description of the action plans developed  
10 under subsection (g) and any actions taken by for-  
11 eign countries under such plans.”.

12 (b) AUTHORIZATION OF APPROPRIATIONS.—

13 (1) IN GENERAL.—There are authorized to be  
14 appropriated to the Office of the United States  
15 Trade Representative such sums as may be nec-  
16 essary to provide assistance to any developing coun-  
17 try to which an action plan applies under section  
18 182(g) of the Trade Act of 1974, as amended by  
19 subsection (a), to facilitate the efforts of the devel-  
20 oping country to comply with the benchmarks con-  
21 tained in the action plan. Such assistance may in-  
22 clude capacity building, activities designed to in-  
23 crease awareness of intellectual property rights, and  
24 training for officials responsible for enforcing intel-  
25 lectual property rights in the developing country.



1           (2) DEVELOPING COUNTRY DEFINED.—For  
2           purposes of this subsection, the term “developing  
3           country” means a country classified by the World  
4           Bank as having a low-income or lower-middle-income  
5           economy.

6           (c) SAVINGS.—Nothing in this section shall be con-  
7           strued as limiting the authority of the President or the  
8           United States Trade Representative to develop action  
9           plans other than action plans described in section 182(g)  
10          of the Trade Act of 1974, as amended by subsection (a),  
11          or to take any action otherwise authorized by law in re-  
12          sponse to the failure of a foreign country to provide ade-  
13          quate and effective protection and enforcement of intellec-  
14          tual property rights.

15   **SEC. 3. ADDITIONAL PERSONNEL IN COUNTRIES WITH**  
16                           **COMMERCIALLY SIGNIFICANT RELATION-**  
17                           **SHIPS WITH THE UNITED STATES.**

18          (a) IN GENERAL.—Not later than 2 years after the  
19          date of the enactment of this Act, the President shall en-  
20          sure that an intellectual property attaché with the title of  
21          Minister-Counselor is placed in the United States embassy  
22          of each foreign country with which the President deter-  
23          mines the United States has a commercially significant re-  
24          lationship.

1 (b) FUNCTIONS OF ATTACHÉS.—An intellectual  
2 property attaché placed in a United States embassy in a  
3 foreign country under subsection (a) shall—

4 (1) serve as a liaison between the United States  
5 and the foreign country on matters relating to the  
6 protection and enforcement of intellectual property  
7 rights; and

8 (2) gather and provide any information re-  
9 quired by the United States Trade Representative  
10 for purposes of developing or determining compli-  
11 ance with an action plan described in section 182(g)  
12 of the Trade Act of 1974, as amended by section  
13 2(a).

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
15 are authorized to be appropriated such sums as may be  
16 necessary to carry out this section.

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