

***THE TRADE ENFORCEMENT ACT OF 2009***  
***(HR 496)***

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On January 14, 2009 House Ways and Means Committee Democratic leaders introduced legislation that would significantly strengthen and alter US trade remedy laws and practice. The Trade Enforcement Act of 2009 seeks to reinvigorate domestic practices to fight unfair trade. One of the major components is the creation of the Office of Congressional Trade Enforcer, allowing Congress to appoint an individual with the independent ability to investigate barriers to US trade and submit “indictments” for dispute resolution procedures against foreign practices to the Office of the US Trade Representative (“USTR”). The USTR General Counsel would be elevated to ambassadorial rank under the legislation. A brief summary of the major sections of the legislation follows. Similar legislation was introduced in the 110<sup>th</sup> Congress and was cosponsored by President Obama while a member of the Senate.

1. Elimination of Foreign Barriers to Exports of US Goods and Services

USTR must submit an annual report summarizing US trade expansion priorities and discriminatory foreign country practices

USTR must initiate consultations with each foreign country to resolve the discriminatory foreign practices identified in the report

Creation of the Office of the Congressional Trade Enforcer, the head of which can issue “indictments” to the USTR regarding the manner in which a foreign trade practice violates any free trade agreement

2. Restore and Enhance US Trade Remedies

Fully implements and codifies the US Department of Commerce’s (“DOC”) practice of applying countervailing duties to unfairly subsidized and injurious imports from nonmarket economies, such as China and Vietnam.

Limits executive branch discretion to refuse application of the China special safeguard mechanism that allows temporary relief where Chinese imports cause market disruption to US industry

Contains a “Sense of Congress” that numerous World Trade Organization Appellate Body decisions finding the DOC application of the “zeroing” methodology in antidumping cases impose extra-contractual obligations

3. Combat Counterfeiting and Piracy and Improve Import Safety

Establishes a Director of Intellectual Property Rights Enforcement and an advisory committee to monitor enforcement issues

Creates a public-private import safety program and requires the use of “unique identifiers” to identify the source of goods imposing threats to human, animal, plant life or health