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

IN THE SENATE OF THE UNITED STATES

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

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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “International Intellectual Property Protection and Enforcement Act of 2008”.
SEC. 2. SPECIAL RULES FOR COUNTRIES ON THE PRIORITY WATCH LIST OF THE UNITED STATES TRADE REPRESENTATIVE.

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

“(g) Special Rules for Foreign Countries on the Priority Watch List.—

“(1) Action Plans.—

“(A) In general.—Not later than 90 days after the date on which the Trade Representative submits the National Trade Estimate under section 181(b), the Trade Representative shall, in consultation with the officers described in subsection (b)(2)(A), develop an action plan described in subparagraph (C) with respect to each foreign country described in subparagraph (B).

“(B) Foreign country described.—The Trade Representative shall develop an action plan pursuant to subparagraph (A) with respect to each foreign country that—

“(i) the Trade Representative has identified for placement on the priority watch list; and
“(ii) has remained on such list for at least 1 year.

“(C) ACTION PLAN DESCRIBED.—An action plan developed pursuant to subparagraph (A) shall contain the benchmarks described in subparagraph (D) and be designed to assist the foreign country to—

“(i) achieve—

“(I) adequate and effective protection of intellectual property rights; and

“(II) fair and equitable market access for United States persons that rely upon intellectual property protection; or

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

“(D) BENCHMARKS DESCRIBED.—The benchmarks contained in an action plan developed pursuant to subparagraph (A) are such legislative, institutional, enforcement, or other actions as the Trade Representative determines to be necessary for the foreign country to achieve the goals described in clause (i) or (ii) of subparagraph (C).
“(2) FAILURE TO MEET ACTION PLAN BENCH-
MARKS.—

“(A) IN GENERAL.—If, 1 year after the date on which an action plan is developed under paragraph (1)(A), the President, in consultation with the Trade Representative, determines that the foreign country to which the action plan applies has not substantially complied with the benchmarks described in paragraph (1)(D), the President may take one or more of the actions described in subparagraph (B) with respect to the foreign country.

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

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

“(I) the foreign country is a party to the Agreement on Govern-
ment Procurement referred to in sec-
tion 101(d)(17) of the Uruguay Round Agreements Act (19 U.S.C.
3511(d)(17)) or any other international agreement relating to government procurement to which the United States is also a party; and

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

“(ii) OVERSEAS PRIVATE INVESTMENT CORPORATION FINANCING.—Suspend, restrict, or prohibit the approval of new financing (including loans, guarantees, other credits, insurance, and reinsurance) by the Overseas Private Investment Corporation with respect to a project located in the foreign country or in which an entity of the foreign country participates.

“(iii) EXPORT-IMPORT BANK FINANCING.—Suspend, restrict, or prohibit the approval of new financing (including loans, guarantees, other credits, insurance, and reinsurance) by the Export-Import Bank of the United States in connection with the export of any good or service to the foreign country or an entity of the foreign country.
“(iv) MULTILATERAL DEVELOPMENT BANK FINANCING.—Instruct the United States Executive Director of each multilateral development bank (as defined in section 1307 of the International Financial Institutions Act (22 U.S.C. 262m-7)) to oppose the approval of any new financing (including loans, guarantees, other credits, insurance, and reinsurance) by the multilateral development bank to the government of the foreign country or with respect to a project located in the foreign country or in which an entity of the foreign country participates.

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

“(vi) PREFERENTIAL TRADE PROGRAMS.—Suspend, limit, or withdraw any preferential treatment for which the foreign country qualifies under the General-
ized System of Preferences under title V of
the Trade Act of 1974 (19 U.S.C. 2461 et
seq.), the Caribbean Basin Economic Re-
covery Act (19 U.S.C. 2701 et seq.), the
Andean Trade Preference Act (19 U.S.C.
3201 et seq.), or the African Growth and
Opportunity Act (19 U.S.C. 3701 et seq.).

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

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

“(h) ANNUAL REPORT.—Not later than 30 days after
the date on which the Trade Representative submits the
National Trade Estimate under section 181(b), the Trade
Representative shall transmit to the Committee on Ways
and Means of the House of Representatives and the Com-
mittee on Finance of the Senate a report on actions taken
under this section during the 12 months preceding such report, and the reasons for such actions, including—

“(1) any foreign countries identified under subsection (a);

“(2) a description of progress made in achieving improved intellectual property protection and market access for persons relying on intellectual property rights; and

“(3) a description of the action plans developed under subsection (g) and any actions taken by foreign countries under such plans.”.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Office of the United States Trade Representative such sums as may be necessary to provide assistance to any developing country to which an action plan applies under section 182(g) of the Trade Act of 1974, as amended by subsection (a), to facilitate the efforts of the developing country to comply with the benchmarks contained in the action plan. Such assistance may include capacity building, activities designed to increase awareness of intellectual property rights, and training for officials responsible for enforcing intellectual property rights in the developing country.
(2) Developing Country Defined.—For purposes of this subsection, the term "developing country" means a country classified by the World Bank as having a low-income or lower-middle-income economy.

(c) Savings.—Nothing in this section shall be construed as limiting the authority of the President or the United States Trade Representative to develop action plans other than action plans described in section 182(g) of the Trade Act of 1974, as amended by subsection (a), or to take any action otherwise authorized by law in response to the failure of a foreign country to provide adequate and effective protection and enforcement of intellectual property rights.

SEC. 3. ADDITIONAL PERSONNEL IN COUNTRIES WITH COMMERCIALLY SIGNIFICANT RELATIONSHIPS WITH THE UNITED STATES.

(a) In General.—Not later than 2 years after the date of the enactment of this Act, the President shall ensure that an intellectual property attaché with the title of Minister-Counselor is placed in the United States embassy of each foreign country with which the President determines the United States has a commercially significant relationship.
(b) Functions of Attachés.—An intellectual property attaché placed in a United States embassy in a foreign country under subsection (a) shall—

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

(2) gather and provide any information requested by the United States Trade Representative for purposes of developing or determining compliance with an action plan described in section 182(g) of the Trade Act of 1974, as amended by section 2(a).

(e) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.