

106TH CONGRESS
1ST SESSION

S. 1008

To modify the standards for responding to import surges under section 201 of the Trade Act of 1974, to establish mechanisms for import monitoring and the prevention of circumvention of United States trade laws, and to strengthen the enforcement of United States trade remedy laws.

IN THE SENATE OF THE UNITED STATES

MAY 11, 1999

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

A BILL

To modify the standards for responding to import surges under section 201 of the Trade Act of 1974, to establish mechanisms for import monitoring and the prevention of circumvention of United States trade laws, and to strengthen the enforcement of United States trade remedy laws.

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 “Import Surge Relief
5 Act”.

1 **SEC. 2. AMENDMENTS TO CHAPTER 1 OF TITLE II OF THE**
2 **TRADE ACT OF 1974.**

3 (a) TEST FOR POSITIVE ADJUSTMENTS TO IMPORT
4 COMPETITION.—Section 201(a) of the Trade Act of 1974
5 (19 U.S.C. 2251(a)) is amended by striking “be a sub-
6 stantial cause of serious injury, or the threat thereof,” and
7 inserting “cause or threaten to cause serious injury”.

8 (b) INVESTIGATIONS AND DETERMINATIONS.—Sec-
9 tion 202 of the Trade Act of 1974 (19 U.S.C. 2252) is
10 amended—

11 (1) in subsection (b)(1)(A), by striking “be a
12 substantial cause of serious injury, or the threat
13 thereof,” and inserting “cause or threaten to cause
14 serious injury”;

15 (2) by amending subsection (b)(1)(B) to read
16 as follows:

17 “(B) For purposes of this section, the term
18 ‘cause’ refers to a cause that contributes signifi-
19 cantly to serious injury, or the threat thereof, to the
20 domestic industry but need not be equal to or great-
21 er than any other cause.”;

22 (3) in subsection (c)—

23 (A) by amending paragraph (1)(A) to read
24 as follows:

25 “(A) with respect to serious injury—

“(i) change in the level of sales, production, productivity, capacity utilization, profits and losses, and employment,

“(ii) the significant idling of productive facilities in the domestic industry,

“(iii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and

“(iv) significant unemployment or underemployment within the domestic industry;”;

(B) in paragraph (1)(B)—

(i) in clause (iii), by striking “; and” and inserting “, and”; and

(ii) by inserting after clause (iii) the following:

“(iv) foreign production capacity, foreign inventories, the level of demand in third country markets, and the availability of other export markets to absorb any additional exports; and”;

(C) by amending paragraph (1)(C) to read as follows:

“(C) with respect to cause—

1 “(i) the rate, amount, and timing of
 2 the increase in imports of the product con-
 3 cerned in absolute and relative terms, in-
 4 cluding whether there has been a substan-
 5 tial increase in imports over a short period
 6 of time, and

7 “(ii) the share of the domestic market
 8 taken by increased imports.”;

9 (D) by redesignating paragraphs (3)
 10 through (6) as paragraphs (6) through (9), re-
 11 spectively;

12 (E) by striking paragraph (2) and insert-
 13 ing the following:

14 “(2) In making determinations under para-
 15 graph (1) (A) and (B), if domestic producers inter-
 16 nally transfer significant production of the article
 17 like or directly competitive with the imported article
 18 for the production of a downstream article and sell
 19 significant production of the article like or directly
 20 competitive with the imported article in the mer-
 21 chant market, and the Commission finds that—

22 “(A) the article like or directly competitive
 23 with the imported article produced that is inter-
 24 nally transferred for processing into that down-
 25 stream article does not enter the merchant mar-

1 ket for the article like or directly competitive
 2 with the imported article,

3 “(B) the article like or directly competitive
 4 with the imported article is the predominant
 5 material input in the production of that down-
 6 stream article, and

7 “(C) the production of the article like or
 8 directly competitive with the imported article
 9 sold in the merchant market is not generally
 10 used in the production of the downstream arti-
 11 cle,

12 then the Commission, in determining market share
 13 and the factors affecting financial performance set
 14 forth in paragraph (1) (A) and (B), shall focus pri-
 15 marily on the merchant market for the article like
 16 or directly competitive with the imported article.

17 “(3) For purposes of paragraph (2), the terms
 18 ‘internally transfer’, ‘downstream article’, and ‘mer-
 19 chant market’ have the same meanings as those
 20 terms have when used in section 771(7)(C)(iv) of the
 21 Tariff Act of 1930 (19 U.S.C. 1677(7)(C)(iv)).

22 “(4) In making determinations under sub-
 23 section (b), the Commission shall—

24 “(A) consider the condition of the domestic
 25 industry over the course of the relevant busi-

1 ness cycle, but may not aggregate the causes of
2 declining demand associated with a recession or
3 economic downturn in the United States econ-
4 omy into a single cause of serious injury or
5 threat of injury; and

6 “(B) examine factors other than imports
7 which may cause or threaten to cause serious
8 injury to the domestic industry.

9 The Commission shall include the results of its ex-
10 amination under subparagraph (B) in the report
11 submitted by the Commission to the President under
12 subsection (e).

13 “(5) In making determinations under sub-
14 section (b), the Commission shall consider whether
15 any change in the volume of imports that has oc-
16 curred since a petition under subsection (a) was filed
17 or a request under subsection (b) was made is re-
18 lated to the pendency of the investigation, and if so,
19 the Commission may reduce the weight accorded to
20 the data for the period after the petition under sub-
21 section (a) was filed or the request under subsection
22 (b) was made in making its determination of serious
23 injury, or the threat thereof.”; and

24 (F) in paragraph (5), as so redesignated—

1 (i) by striking “and (B)” and insert-
 2 ing “, (B), and (C)”; and

3 (ii) by striking “be a substantial cause
 4 of serious injury, or the threat thereof,”
 5 and inserting “cause or threaten to cause
 6 serious injury”;

7 (4) in subsection (d)—

8 (A) in paragraph (1)(A)(ii), by striking
 9 “be, or likely to be a substantial cause of seri-
 10 ous injury, or the threat thereof,” and inserting
 11 “cause, or be likely to cause, or threaten to
 12 cause, or be likely to threaten to cause, serious
 13 injury”;

14 (B) in paragraph (1)(C), in the matter fol-
 15 lowing clause (ii), by striking “a substantial
 16 cause of serious injury, or the threat thereof,”
 17 and inserting “causing or threatening to cause
 18 serious injury”;

19 (C) by amending paragraph (2)(A) to read
 20 as follows:

21 “(2)(A) When a petition filed under subsection
 22 (a) or a request filed under subsection (b) alleges
 23 that critical circumstances exist and requests that
 24 provisional relief be provided under this subsection
 25 with respect to imports of the article identified in

1 the petition or request, the Commission shall, not
 2 later than 45 days after the petition or request is
 3 filed, determine, on the basis of available informa-
 4 tion, whether—

5 “(i) there is clear evidence that increased
 6 imports (either actual or relative to domestic
 7 production) of the article are causing or threat-
 8 ening to cause serious injury to the domestic in-
 9 dustry producing an article like or directly com-
 10 petitive with the imported article; and

11 “(ii) delay in taking action under this
 12 chapter would cause damage to that industry
 13 that would be difficult to repair.

14 In making the determination under clause (ii), the
 15 Commission should consider, among other factors
 16 that it considers relevant, the timing and volume of
 17 the imports, including whether there has been a sub-
 18 stantial increase in imports over a short period of
 19 time, and any other circumstances indicating that
 20 delay in taking action under this chapter would
 21 cause damage to the industry that would be difficult
 22 to repair.”; and

23 (D) in paragraph (2)(D), by striking “30”
 24 and inserting “20”.

25 (c) PRESIDENTIAL DETERMINATIONS.—

1 (1) ACTION BY PRESIDENT.—Section 203(a) of
2 the Trade Act of 1974 (19 U.S.C. 2253(a)) is
3 amended—

4 (A) in paragraph (1)(A), by striking “and
5 provide greater economic and social benefits
6 than costs” and inserting “and will not have an
7 adverse impact on the United States substan-
8 tially out of proportion to the benefits of such
9 action”;

10 (B) in paragraph (2)(F), by striking the
11 semicolon at the end of clause (iii) and insert-
12 ing a comma;

13 (C) in paragraph (2)(F), by inserting im-
14 mediately after clause (iii) the following:

15 “except that the President shall give substan-
16 tially greater weight to the factors set out in
17 clause (i) than to those set out in clauses (ii)
18 and (iii);”; and

19 (D) by amending paragraph (2)(I) to read
20 as follows:

21 “(I) the potential for harm to the national
22 security of the United States; and”.

23 (2) IMPLEMENTATION OF ACTION REC-
24 OMMENDED BY COMMISSION.—

1 (A) JOINT RESOLUTION.—Section 203(c)
 2 of the Trade Act of 1974 (19 U.S.C. 2253(c))
 3 is amended by striking “90” and inserting
 4 “60”.

5 (B) COMPUTATION OF TIME.—Section
 6 152(c)(1) of the Trade Act of 1974 (19 U.S.C.
 7 2192(c)(1)) is amended by striking “not count-
 8 ing any day which is excluded under section
 9 154(b),” and inserting “counting all calendar
 10 days in the case of a resolution described in
 11 subsection (a)(1)(A), and not counting any day
 12 which is excluded under section 154(b) in the
 13 case of a resolution described in subsection (a)
 14 (1)(B) or (2),”.

15 (d) CONFORMING AMENDMENTS.—

16 (1) Section 203(e)(6)(B) of the Trade Act of
 17 1974 (19 U.S.C. 2253(e)(6)(B)) is amended by
 18 striking “substantially”.

19 (2) Section 264(c) of the Trade Act of 1974
 20 (19 U.S.C. 2354(c)) is amended by striking “a sub-
 21 stantial cause of serious injury or threat thereof”
 22 and inserting “causing or threatening to cause seri-
 23 ous injury”.

24 (3) Section 154(b) of the Trade Act of 1974
 25 (19 U.S.C. 2194(b)) is amended by striking the

1 matter that precedes paragraph (1) and inserting
2 the following:

3 “(b) The 90-day period referred to in section
4 407(c)(2) shall be computed by excluding—”.

5 **SEC. 3. AMENDMENTS TO SECTION 332 OF THE TARIFF ACT**
6 **OF 1930.**

7 Section 332 of the Tariff Act of 1930 (19 U.S.C.
8 1332) is amended by adding at the end the following:

9 “(h) REQUEST FOR MONITORING.—

10 “(1) IN GENERAL.—Any entity, including a
11 trade association, firm, certified or recognized union,
12 or group of workers, which is representative of a do-
13 mestic industry that produces an article that is like
14 or directly competitive with an imported article, may
15 file a request with the President pursuant to para-
16 graph (2) for the monitoring of imports of such arti-
17 cle under subsection (g).

18 “(2) TIME FOR PRESIDENTIAL ACTION.—If the
19 request filed under paragraph (1) alleges that an ar-
20 ticle is being imported into the United States in
21 such increased quantities as to cause serious injury,
22 or threat thereof, to a domestic industry, the Presi-
23 dent, within 45 days after receiving the request,
24 shall determine if monitoring is appropriate.

1 “(3) MONITORING BY COMMISSION.—If the de-
 2 termination under paragraph (2) is affirmative, the
 3 President shall request, under subsection (g), that
 4 the Commission monitor and investigate the imports
 5 concerned for a period not to exceed 2 years.”.

6 **SEC. 4. EARLY RELEASE OF IMPORT DATA.**

7 In order to facilitate the early identification of poten-
 8 tially disruptive import surges, the Director of the Office
 9 of Management and Budget may grant an exception to
 10 the publication dates established for the release of data
 11 on United States international trade in goods and services
 12 in order to permit public access to preliminary inter-
 13 national trade import data, if the Director notifies Con-
 14 gress of the early release of the data.

15 **SEC. 5. ESTABLISHMENT OF IMPORT MONITORING PRO-**
 16 **GRAM.**

17 Section 301 of the Customs Procedural Reform and
 18 Simplification Act of 1978 (19 U.S.C. 2075) is amended
 19 by adding at the end the following:

20 “(h) STEEL AND AGRICULTURAL PRODUCTS IMPORT
 21 MONITORING AND ENFORCEMENT SUPPORT PROGRAM.—
 22 There is established a Steel and Agricultural Import Moni-
 23 toring and Enforcement Program—

24 “(1) to promote and defend policy with respect
 25 to United States import safeguards and counter-

1 vailing or antidumping duty actions if challenged in
 2 the World Trade Organization; and

3 “(2) to identify foreign trade-distorting meas-
 4 ures and develop policies and responsive actions to
 5 address them.”.

6 **SEC. 6. HTS SUFFIX FOR MERCHANDISE SUBJECT TO ANTI-**
 7 **DUMPING OR COUNTERVAILING DUTY**
 8 **ORDER.**

9 Section 484(f) of the Tariff Act of 1930 (19 U.S.C.
 10 1484(f)) is amended—

11 (1) by striking “The Secretary” and inserting
 12 “(1) The Secretary”; and

13 (2) by adding at the end the following:

14 “(2) The Secretary of the Treasury, the Secretary of
 15 Commerce, and the International Trade Commission shall
 16 establish a suffix to the Harmonized Tariff Schedule of
 17 the United States for merchandise that is subject to coun-
 18 tervailing duty orders or antidumping duty orders under
 19 title VII of this Act, or subject to actions by the President
 20 under chapter 1 of title II, or section 406, of the Trade
 21 Act of 1974.”.

22 **SEC. 7. PRODUCT MONITORING.**

23 (a) IN GENERAL.—The Secretary of Commerce shall
 24 monitor imports on a monthly basis for import surges and
 25 potential unfair trade through the year 2000. Products to

1 be monitored shall be determined by the Secretary of Com-
2 merce based on the import surge data compiled by the
3 Secretary, but shall include, at a minimum, steel products,
4 agricultural products, and other import-sensitive products
5 identified by United States industries or entities rep-
6 resentative of a United States industry that meet the nec-
7 essary criteria established by the Secretary. In deter-
8 mining whether to monitor imports of a specific product,
9 the Secretary shall consider the percentage increase in im-
10 ports, the volume or value of imports, as appropriate, the
11 level of import penetration, and any other factors the Sec-
12 retary considers necessary.

13 (b) REPORTING REQUIREMENTS.—Within 30 days
14 after the release of the official December import statistics
15 for calendar year 1999 and for calendar year 2000, the
16 Secretary of Commerce shall submit a report to Congress
17 summarizing the monitoring activities under this section
18 for that calendar year and identifying products to be mon-
19 itored in the next calendar year. In addition, in the report
20 to Congress covering calendar year 1999, the Secretary
21 of Commerce shall determine whether trade conditions
22 during the calendar year 1999 merit extending the import
23 monitoring program beyond the program's scheduled expi-
24 ration at the end of calendar year 2000.

1 **SEC. 8. ITC INVESTIGATION OF ANTICOMPETITIVE PRAC-**
2 **TICES IN INTERNATIONAL STEEL AND AGRI-**
3 **CULTURAL PRODUCTS TRADE.**

4 (a) IN GENERAL.—Not later than 30 days after the
5 date of enactment of this Act, the United States Inter-
6 national Trade Commission shall commence an investiga-
7 tion under section 332 of the Tariff Act of 1930—

8 (1) to collect information on anticompetitive
9 practices in the international trade of steel and agri-
10 cultural products;

11 (2) to assess the adverse effects of such prac-
12 tices on United States producers, workers, and con-
13 sumers;

14 (3) to collect information on import licensing
15 arrangements of other members of the World Trade
16 Organization; and

17 (4) to report to the Committees on Ways and
18 Means and Agriculture of the House of Representa-
19 tives, the Committees on Finance and Agriculture,
20 Nutrition, and Forestry of the Senate, and the
21 United States Trade Representative on its findings
22 within 1 year after the date of enactment of this
23 Act.

24 (b) INCLUSION IN NATIONAL TRADE ESTIMATE RE-
25 PORT.—The United States Trade Representative shall in-
26 clude the findings of the International Trade Commission

1 under subsection (a) in a special section of the report sub-
 2 mitted under section 181(b) of the Trade Act of 1974
 3 after the 1-year period beginning on the date of enactment
 4 of this Act. In that section, the Trade Representative shall
 5 identify and explain any anticompetitive practices in the
 6 international trade of steel and agricultural products,
 7 evaluate the compatibility of import licensing programs
 8 with obligations under the World Trade Organization, and
 9 propose steps to be taken to address anticompetitive prac-
 10 tices and practices inconsistent with the World Trade Or-
 11 ganization.

12 (c) DEFINITIONS.—In this section, the term “anti-
 13 competitive practices in the international trade of steel
 14 and agricultural products” means—

15 (1) monopolies or cartels, whether or not sanc-
 16 tioned by government authorities, which restrict the
 17 output, delivery, or pricing of steel products or agri-
 18 cultural products;

19 (2) agreements between steel producers (or ag-
 20 ricultural products producers), whether or not sanc-
 21 tioned by government authorities, to restrict the flow
 22 of steel products (or agricultural products) or limit
 23 price competition in the international trade of steel
 24 or agricultural products; and

- 1 (3) coercion or threats by manufacturers to dis-
- 2 tributors or consumers which have the effect of re-
- 3 stricting imports of steel or agricultural products.

