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To modify the standards for responding to import surges under section 201 of the Trade Act of 1974, to establish mechanisms for agricultural 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

OCTOBER 13, 1999

Mr. BAUCUS 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 agricultural 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 “Agriculture Import
5 Surge Relief 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 (b)(2)(A) by striking “sub-
23 paragraph (B)” and inserting “subparagraphs (B)
24 and (C)”;

25 (4) in subsection (b)(2), by adding at the end
26 the following new subparagraph:

1 “(C) For petitions involving agriculture,
2 the Commission shall make the determination
3 under paragraph (1) within 60 days (90 days if
4 the petition alleges that critical circumstances
5 exist) after the date on which the petition is
6 filed, the request or resolution is received, or
7 the motion is adopted, as the case may be.”.

8 (5) in subsection (c)—

9 (A) by amending paragraph (1)(A) to read
10 as follows:

11 “(A) with respect to serious injury—

12 “(i) change in the level of sales, pro-
13 duction, productivity, capacity utilization,
14 profits and losses, and employment,

15 “(ii) the significant idling of produc-
16 tive facilities in the domestic industry,

17 “(iii) the inability of a significant
18 number of firms to carry out domestic pro-
19 duction operations at a reasonable level of
20 profit, and

21 “(iv) significant unemployment or
22 underemployment within the domestic in-
23 dustry;”;

24 (B) in paragraph (1)(B)—

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

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

5 “(iv) foreign production capacity, for-
6 eign inventories, the level of demand in
7 third country markets, and the availability
8 of other export markets to absorb any ad-
9 ditional exports; and”;

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

12 “(C) with respect to cause—

13 “(i) the rate, amount, and timing of
14 the increase in imports of the product con-
15 cerned in absolute and relative terms, in-
16 cluding whether there has been an increase
17 in imports over a short period of time, and

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

20 (D) by redesignating paragraphs (3)
21 through (6) as paragraphs (6) through (9), re-
22 spectively;

23 (E) by striking paragraph (2) and insert-
24 ing the following:

1 “(2) In making determinations under para-
2 graph (1) (A) and (B), if domestic producers inter-
3 nally transfer significant production of the article
4 like or directly competitive with the imported article
5 for the production of a downstream article and sell
6 significant production of the article like or directly
7 competitive with the imported article in the mer-
8 chant market, and the Commission finds that—

9 “(A) the article like or directly competitive
10 with the imported article produced that is inter-
11 nally transferred for processing into that down-
12 stream article does not enter the merchant mar-
13 ket for the article like or directly competitive
14 with the imported article,

15 “(B) the article like or directly competitive
16 with the imported article is the predominant
17 material input in the production of that down-
18 stream article, and

19 “(C) the production of the article like or
20 directly competitive with the imported article
21 sold in the merchant market is not generally
22 used in the production of the downstream arti-
23 cle,

24 then the Commission, in determining market share
25 and the factors affecting financial performance set

1 forth in paragraph (1) (A) and (B), shall focus pri-
2 marily on the merchant market for the article like
3 or directly competitive with the imported article.

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

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

11 “(A) consider the condition of the domestic
12 industry over the course of the relevant busi-
13 ness cycle, but may not aggregate the causes of
14 declining demand associated with a recession or
15 economic downturn in the United States econ-
16 omy into a single cause of serious injury or
17 threat of injury; and

18 “(B) examine factors other than imports
19 which may cause or threaten to cause serious
20 injury to the domestic industry.

21 The Commission shall include the results of its ex-
22 amination under subparagraph (B) in the report
23 submitted by the Commission to the President under
24 subsection (e).

1 “(5) In making determinations under sub-
 2 section (b), the Commission shall consider whether
 3 any change in the volume of imports that has oc-
 4 curred since a petition under subsection (a) was filed
 5 or a request under subsection (b) was made is re-
 6 lated to the pendency of the investigation, and if so,
 7 the Commission may reduce the weight accorded to
 8 the data for the period after the petition under sub-
 9 section (a) was filed or the request under subsection
 10 (b) was made in making its determination of serious
 11 injury, or the threat thereof.”; and

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

13 (i) by striking “and (B)” and insert-
 14 ing “, (B), and (C)”; and

15 (ii) by striking “be a substantial cause
 16 of serious injury, or the threat thereof,”
 17 and inserting “cause or threaten to cause
 18 serious injury”;

19 (6) in subsection (d)—

20 (A) in paragraph (1)(A)(ii), by striking
 21 “be, or likely to be a substantial cause of seri-
 22 ous injury, or the threat thereof,” and inserting
 23 “cause, or be likely to cause, or threaten to
 24 cause, or be likely to threaten to cause, serious
 25 injury”;

1 (B) in paragraph (1)(C), in the matter fol-
2 lowing clause (ii), by striking “a substantial
3 cause of serious injury, or the threat thereof,”
4 and inserting “causing or threatening to cause
5 serious injury”;

6 (C) by amending paragraph (2)(A) to read
7 as follows:

8 “(2)(A) When a petition filed under subsection
9 (a) or a request filed under subsection (b) alleges
10 that critical circumstances exist and requests that
11 provisional relief be provided under this subsection
12 with respect to imports of the article identified in
13 the petition or request, the Commission shall, not
14 later than 45 days after the petition or request is
15 filed, determine, on the basis of available informa-
16 tion, whether—

17 “(i) there is clear evidence that increased
18 imports (either actual or relative to domestic
19 production) of the article are causing or threat-
20 ening to cause serious injury to the domestic in-
21 dustry producing an article like or directly com-
22 petitive with the imported article; and

23 “(ii) delay in taking action under this
24 chapter would cause damage to that industry
25 that would be difficult to repair.

1 In making the determination under clause (ii), the
 2 Commission should consider, among other factors
 3 that it considers relevant, the timing and volume of
 4 the imports, including whether there has been an in-
 5 crease in imports over a short period of time, and
 6 any other circumstances indicating that delay in tak-
 7 ing action under this chapter would cause damage to
 8 the industry that would be difficult to repair.”; and

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

11 (c) PRESIDENTIAL DETERMINATIONS.—

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

15 (A) in paragraph (1)(A), by striking “and
 16 provide greater economic and social benefits
 17 than costs” and inserting “and will not have an
 18 adverse impact on the United States substan-
 19 tially out of proportion to the benefits of such
 20 action”;

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

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

“except that the President shall give substantially greater weight to the factors set out in clause (i) than to those set out in clauses (ii) and (iii);”;

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

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

(E) at the end of paragraph (2), add the following flush sentence:

“In taking into account the factors under this paragraph, the President shall give greater weight to the recommendation and report of the Commission.”.

(2) IMPLEMENTATION OF ACTION RECOMMENDED BY COMMISSION.—

(A) JOINT RESOLUTION.—Section 203(c) of the Trade Act of 1974 (19 U.S.C. 2253(c)) is amended by striking “90” and inserting “45”.

(B) COMPUTATION OF TIME.—Section 152(c)(1) of the Trade Act of 1974 (19 U.S.C. 2192(c)(1)) is amended by striking “not counting any day which is excluded under section 154(b),” and inserting “counting all calendar

1 days in the case of a resolution described in
2 subsection (a)(1)(A), and not counting any day
3 which is excluded under section 154(b) in the
4 case of a resolution described in subsection (a)
5 (1)(B) or (2),”.

6 (d) MONITORING, MODIFICATION, AND TERMINATION
7 OF ACTION.—Section 204(a)(4) of the Trade Act of 1974
8 (19 U.S.C. 2254(a)(4)) is amended by striking “Upon re-
9 quest of the President, the” and inserting “The”.

10 (e) CONFORMING AMENDMENTS.—

11 (1) Section 203(e)(6)(B) of the Trade Act of
12 1974 (19 U.S.C. 2253(e)(6)(B)) is amended by
13 striking “substantially”.

14 (2) Section 264(c) of the Trade Act of 1974
15 (19 U.S.C. 2354(c)) is amended by striking “a sub-
16 stantial cause of serious injury or threat thereof”
17 and inserting “causing or threatening to cause seri-
18 ous injury”.

19 (3) Section 154(b) of the Trade Act of 1974
20 (19 U.S.C. 2194(b)) is amended by striking the
21 matter that precedes paragraph (1) and inserting
22 the following:

23 “(b) The 90-day period referred to in section
24 407(c)(2) shall be computed by excluding—”.

1 **SEC. 3. AMENDMENTS TO SECTION 332 OF THE TARIFF ACT**
2 **OF 1930.**

3 Section 332 of the Tariff Act of 1930 (19 U.S.C.
4 1332) is amended by adding at the end the following:

5 “(h) REQUEST FOR AGRICULTURAL PRODUCT IM-
6 PORT MONITORING.—

7 “(1) IN GENERAL.—Any entity, including a
8 trade association, firm, certified or recognized union,
9 or group of workers, which is representative of a do-
10 mestic industry that produces an agricultural prod-
11 uct that is like or directly competitive with an im-
12 ported agricultural product, may file a request with
13 the President pursuant to paragraph (2) for the
14 monitoring of imports of such agricultural product
15 under subsection (g).

16 “(2) TIME FOR PRESIDENTIAL ACTION.—If the
17 request filed under paragraph (1) alleges that an ag-
18 ricultural product is being imported into the United
19 States in such increased quantities as to cause seri-
20 ous injury, or threat thereof, to a domestic industry,
21 the President, within 45 days after receiving the re-
22 quest, shall determine if monitoring is appropriate.

23 “(3) MONITORING BY COMMISSION.—If the de-
24 termination under paragraph (2) is affirmative, the
25 President shall request, under subsection (g), that

1 the Commission monitor and investigate the imports
 2 concerned for a period not to exceed 2 years.”.

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

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

12 **SEC. 5. ESTABLISHMENT OF IMPORT MONITORING PRO-**
 13 **GRAM.**

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

17 “(h) AGRICULTURAL PRODUCTS IMPORT MONI-
 18 TORING AND ENFORCEMENT SUPPORT PROGRAM.—There
 19 is established an Agricultural Import Monitoring and En-
 20 forcement Program—

21 “(1) to promote and defend policy with respect
 22 to United States import safeguards and counter-
 23 vailing or antidumping duty actions if challenged in
 24 the World Trade Organization; and

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

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

7 Section 484(f) of the Tariff Act of 1930 (19 U.S.C.
8 1484(f)) is amended—

9 (1) by striking “The Secretary” and inserting
10 “(1) The Secretary”; and

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

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

20 **SEC. 7. PRODUCT MONITORING.**

21 (a) IN GENERAL.—The Secretary of Commerce shall
22 monitor imports on a quarterly basis for import surges
23 and potential unfair trade through the year 2005. Prod-
24 ucts to be monitored shall be determined by the Secretary
25 of Commerce based on the import surge data compiled by

1 the Secretary, but shall include, at a minimum, agricul-
2 tural products and other import-sensitive products identi-
3 fied by United States industries or entities representative
4 of a United States industry that meet the necessary cri-
5 teria established by the Secretary. In determining whether
6 to monitor imports of a specific product, the Secretary
7 shall consider the percentage increase in imports, the vol-
8 ume or value of imports, as appropriate, the level of im-
9 port penetration, and any other factors the Secretary con-
10 sider necessary.

11 (b) REPORTING REQUIREMENTS.—Within 30 days
12 after the release of the official December import statistics
13 for calendar year 1999 and each year thereafter through
14 calendar year 2005, the Secretary of Commerce shall sub-
15 mit a report to Congress summarizing the monitoring ac-
16 tivities under this section for that calendar year and iden-
17 tifying products to be monitored in the next calendar year.
18 In addition, in the report to Congress covering calendar
19 year 2004, the Secretary of Commerce shall determine
20 whether trade conditions during the calendar year 2004
21 merit extending the import monitoring program beyond
22 the program's scheduled expiration at the end of calendar
23 year 2005.

1 **SEC. 8. ITC INVESTIGATION OF ANTICOMPETITIVE PRAC-**
2 **TICES IN INTERNATIONAL AGRICULTURAL**
3 **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 agricultural
10 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 agricultural products, evaluate the
 7 compatibility of import licensing programs with obliga-
 8 tions under the World Trade Organization, and propose
 9 steps to be taken to address anticompetitive practices and
 10 practices inconsistent with the World Trade Organization.

11 (c) DEFINITIONS.—In this section, the term “anti-
 12 competitive practices in the international trade of agricul-
 13 tural products” means—

14 (1) monopolies or cartels, whether or not sanc-
 15 tioned by government authorities, which restrict the
 16 output, delivery, or pricing of agricultural products;

17 (2) agreements between agricultural products
 18 producers, whether or not sanctioned by government
 19 authorities, to restrict the flow of agricultural prod-
 20 ucts or limit price competition in the international
 21 trade of agricultural products; and

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

