

106TH CONGRESS  
1ST SESSION

# S. 1741

To amend United States trade laws to address more effectively import crises.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 1999

Mr. DURBIN (for himself, Mr. ROCKEFELLER, Mr. BYRD, Mr. HOLLINGS, Mr. HATCH, and Mr. SANTORUM) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend United States trade laws to address more effectively import crises.

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 “Fair Trade Law En-  
5       hancement Act of 1999”.

# **TITLE I—SAFEGUARD AMENDMENTS**

## **SEC. 101. CAUSATION STANDARD.**

(a) CHANGE IN CAUSATION STANDARD.—(1) Section 201(a) of the Trade Act of 1974 (19 U.S.C. 2251(a)) is amended by striking “substantial”.

(2) Section 202 of the Trade Act of 1974 (19 U.S.C. 2252) is amended—

(A) in subsection (b)(1)(A), by striking “substantial”;

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

“(B) Imports are a cause of serious injury, or the threat thereof, when a causal link can be established between imports and the domestic industry’s injury.”;

(C) in subsection (c)(1)(C), by striking “substantial cause” and inserting “the causal link”;

(D) in subsection (c)(3), by striking “substantial”; and

(E) in subsection (d)(2)(A)(i), by striking “substantial”.

(b) CONFORMING AMENDMENT.—Section 264(c) of the Trade Act of 1974 (19 U.S.C. 2354(c)) is amended by striking “substantial”.

1 **SEC. 102. CAPTIVE PRODUCTION.**

2 Section 202(c)(4) of the Trade Act of 1974 (19  
3 U.S.C. 2252(c)(4)) is amended—

4 (1) by striking “and” at the end of subpara-  
5 graph (B);

6 (2) by striking the period at the end of sub-  
7 paragraph (C) and inserting “; and”; and

8 (3) by adding after subparagraph (C) the fol-  
9 lowing:

10 “(D) shall, in cases in which domestic pro-  
11 ducers transfer internally, including to related  
12 parties, significant production of the like or di-  
13 rectly competitive article for the production of  
14 a downstream article and sell significant pro-  
15 duction of the like or directly competitive article  
16 in the merchant market, focus on the merchant  
17 market when determining the domestic indus-  
18 try’s market share and other relevant factors.

19 For purposes of this section, a party is related to  
20 another party if the first party controls, is controlled  
21 by, or is under common control with, that other  
22 party.”.

23 **SEC. 103. PRESUMPTION OF THREAT AND OF CRITICAL CIR-**  
24 **CUMSTANCES.**

25 Section 202 of the Trade Act of 1974 (19 U.S.C.  
26 2252) is amended—

1           (1) in subsection (c)(1), by inserting at the end  
2           the following flush sentences:

3           “Notwithstanding subparagraph (B), if the Commis-  
4           sion finds that, at any time during the 12-month pe-  
5           riod preceding the initiation of an investigation,  
6           there has been a rapid decline in domestic prices for  
7           the like or directly competitive article and a rapid  
8           increase in imports of the imported article, the Com-  
9           mission shall apply a rebuttable presumption that  
10          the domestic industry is threatened with serious in-  
11          jury by reason of such imports. For purposes of the  
12          preceding sentence, the term ‘rapid’ means a change  
13          of 10 percent or more from one calendar quarter to  
14          the next, and the price decline and the increase in  
15          imports need not be contemporaneous. In any case  
16          in which this presumption does not apply, or in  
17          which it applies but is rebutted, the Commission  
18          shall conduct a threat of serious injury analysis as  
19          if no such presumption applied.”; and

20          (2) in subsection (d)(2)(A), by adding at the  
21          end the following flush sentences:

22          “‘If the Commission finds that, at any time during  
23          the 12-month period preceding the initiation of an  
24          investigation, there has been a rapid decline in do-  
25          mestic prices for the like or directly competitive arti-

1 cle and a rapid increase in imports of the imported  
 2 article, the Commission shall apply a rebuttable pre-  
 3 sumption that the criteria in clauses (i) and (ii) are  
 4 met. For purposes of this paragraph, the term  
 5 ‘rapid’ means a change of 10 percent or more from  
 6 one calendar quarter to the next, and the price de-  
 7 cline and the increase in imports need not be con-  
 8 temporaneous. In any case in which this presump-  
 9 tion does not apply, or in which it applies but is re-  
 10 butted, the Commission shall conduct a critical cir-  
 11 cumstances analysis as if no such presumption ap-  
 12 plied.”.

13 **SEC. 104. INJURY FACTORS.**

14 Section 202(c)(1)(A) of the Trade Act of 1974 (19  
 15 U.S.C. 2252(c)(1)(A)) is amended to read as follows:

16 “(A) with respect to serious injury—

17 “(i) the rate and amount of the in-  
 18 crease in imports of the product concerned  
 19 in absolute and relative terms;

20 “(ii) the share of the domestic market  
 21 taken by increased imports;

22 “(iii) changes in the level of sales;

23 “(iv) production;

24 “(v) productivity;

25 “(vi) capacity utilization;

1 “(vii) profits and losses; and

2 “(viii) employment;”.

3 **TITLE II—AMENDMENTS TO**  
 4 **TITLE VII OF THE TARIFF ACT**  
 5 **OF 1930**

6 **SEC. 201. CAPTIVE PRODUCTION.**

7 Section 771(7)(C)(iv) of the Tariff Act of 1930 (19  
 8 U.S.C. 1677(7)(C)(iv)) is amended to read as follows:

9 “(iv) CAPTIVE PRODUCTION.—If do-  
 10 mestic producers transfer internally, in-  
 11 cluding to affiliated persons as defined in  
 12 section 771(33), significant production of  
 13 the domestic like product for the produc-  
 14 tion of a downstream article and sell sig-  
 15 nificant production of the domestic like  
 16 product in the merchant market, then the  
 17 Commission, in determining market share  
 18 and the factors affecting financial perform-  
 19 ance set forth in clause (iii), shall focus on  
 20 the merchant market.”.

21 **SEC. 202. CUMULATION.**

22 Section 771(7)(G)(i) of the Tariff Act of 1930 (19  
 23 U.S.C. 1677(7)(G)(i)) is amended to read as follows:

24 “(i) IN GENERAL.—For purposes of  
 25 clauses (i) and (ii) of subparagraph (C),

and subject to clause (ii), the Commission shall cumulatively assess the volume and effect of imports of the subject merchandise from all countries subject to petitions filed under section 702(b) or 732(b), or subject to investigations initiated under 702(a) or 732(a), if such petitions were filed, or such investigations were initiated, within 90 days before the date on which the Commission is required to make its final injury determination, and if such imports compete with each other and with the domestic like products in the United States market.”.

**SEC. 203. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND INJURY.**

Section 771(7)(C) of the Tariff act of 1930 (19 U.S.C. 1677(7)(C)), as amended by section 201, is amended by adding at the end the following new clause:

“(v) IMPORTS; BASIS FOR AFFIRMATIVE DETERMINATION.—The Commission shall not weigh against other factors the injury caused by imports found by the administering authority to be dumped or provided a countervailable subsidy. Rather, if

the imports are a contributing cause of injury to the domestic industry, the Commission shall make an affirmative determination, unless the injury caused by the imports is inconsequential, immaterial, or unimportant.”.

**SEC. 204. PRESUMPTION OF THREAT OF MATERIAL INJURY.**

Section 771(7)(F) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(F)) is amended by redesignating clause (iii) as clause (iv) and inserting after clause (ii) the following new clause:

“(iii) PRESUMPTION OF THREAT OF MATERIAL INJURY.—Notwithstanding clauses (i) and (ii), if the Commission finds that, at any time during the 12-month period preceding the initiation of an investigation, there has been a rapid decline in domestic prices for the domestic like product and a rapid increase in imports of the subject merchandise, the Commission shall apply a rebuttable presumption that the domestic industry is threatened with material injury by reason of such imports. For purposes of this clause, the term ‘rapid’ means a change of 10 per-



cent or more from one calendar quarter to the next, and the price decline and the increase in imports need not be contemporaneous. In any case in which this presumption does not apply, or in which it applies but is rebutted, the Commission shall conduct a threat of injury analysis as if no such presumption applied.”.

**SEC. 205. PRESUMPTION OF CRITICAL CIRCUMSTANCES.**

(a) INITIAL FINDING BY COMMISSION.—

(1) COUNTERAVAILABLE SUBSIDY.—Section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) is amended by adding at the end the following:

“(3) DETERMINATION OF RAPID DECLINE.—

Any preliminary determination by the Commission under this subsection shall include a determination of whether at any time during the 12-month period preceding the initiation of the investigation there has been a rapid decline in domestic prices for the domestic like product. For purposes of this paragraph, the term ‘rapid’ means a change of 10 percent or more from one calendar quarter to the next.”.

1           (2) DUMPING.—Section 733(a) of the Tariff  
 2   Act of 1930 (19 U.S.C. 1673b(a)) is amended by  
 3   adding at the end the following:

4           “(3) DETERMINATION OF RAPID DECLINE.—  
 5   Any preliminary determination by the Commission  
 6   under this subsection shall include a determination  
 7   of whether at any time during the 12-month period  
 8   preceding the initiation of the investigation there has  
 9   been a rapid decline in domestic prices for the do-  
 10   mestic like product. For purposes of this paragraph,  
 11   the term ‘rapid’ means a change of 10 percent or  
 12   more from one calendar quarter to the next.”.

13       (b) COUNTERVAILING DUTY CASES.—

14           (1) PRELIMINARY DETERMINATIONS BY ADMIN-  
 15   ISTERING AUTHORITY.—Section 703(e) of the Tariff  
 16   Act of 1930 (19 U.S.C. 1671b(e)) is amended by re-  
 17   designating paragraph (2) as paragraph (3) and in-  
 18   serting after paragraph (1) the following:

19           “(2) PRESUMPTION OF CRITICAL CIR-  
 20   CUMSTANCES.—Notwithstanding paragraph (1), if  
 21   the Commission has found under subsection (a)(3) a  
 22   rapid decline in domestic prices during a 12-month  
 23   period and the administering authority finds that a  
 24   rapid increase in imports of the subject merchandise  
 25   occurred during the same 12-month period, the ad-

1        administering authority shall apply a rebuttable pre-  
2        sumption that critical circumstances exist with re-  
3        spect to such imports. For purposes of this para-  
4        graph, the term ‘rapid’ means a change of 10 per-  
5        cent or more from one calendar quarter to the next,  
6        and the price decline and the increase in imports  
7        need not be contemporaneous. In any case in which  
8        this presumption does not apply, or in which it ap-  
9        plies but is rebutted, the administering authority  
10       shall conduct a critical circumstances analysis as if  
11       no such presumption applied.”.

12                (2)    FINAL DETERMINATIONS BY ADMIN-  
13        ISTERING AUTHORITY.—Section 705(a) of the Tariff  
14        Act of 1930 (19 U.S.C. 1671d(a)) is amended by re-  
15        designating paragraph (3) as paragraph (4) and in-  
16        serting after paragraph (2) the following new para-  
17        graph:

18                “(3)    CRITICAL CIRCUMSTANCES DETERMINA-  
19        TIONS; SPECIAL RULE.—Notwithstanding paragraph  
20        (2), if the Commission has found under section  
21        703(a)(3) a rapid decline in domestic prices during  
22        a 12-month period, and the administering authority  
23        finds that a rapid increase in imports of the subject  
24        merchandise occurred during the same 12-month pe-  
25        riod, the administering authority shall apply a rebut-

1       table presumption that critical circumstances exist  
 2       with respect to such imports. For purposes of this  
 3       paragraph, the term ‘rapid’ means a change of 10  
 4       percent or more from one calendar quarter to the  
 5       next, and the price decline and the increase in im-  
 6       ports need not be contemporaneous. In any case in  
 7       which this presumption does not apply, or in which  
 8       it applies but is rebutted, the administering author-  
 9       ity shall conduct a critical circumstances analysis as  
 10      if no such presumption applied.”.

11           (3) FINAL DETERMINATIONS BY COMMISSION.—  
 12      Section 705(b)(4)(A) of the Tariff Act of 1930 (19  
 13      U.S.C. 1671d(b)(4)(A)) is amended by inserting  
 14      after clause (ii) the following new clause:

15                   “(iii) PRESUMPTION THAT STANDARD  
 16                   FOR RETROACTIVE APPLICATION IS MET.—  
 17                   Notwithstanding clause (ii), if the Commis-  
 18                   sion determines that, at any time during  
 19                   the 12-month period since the initiation of  
 20                   the investigation, there has been a rapid  
 21                   decline in domestic prices for the domestic  
 22                   like product and a rapid increase in im-  
 23                   ports of the subject merchandise, the Com-  
 24                   mission shall apply a rebuttable presump-  
 25                   tion that the imports subject to the affirm-

1           ative determination under subsection (a)(2)  
 2           are likely to undermine seriously the reme-  
 3           dial effect of the countervailing duty order  
 4           to be issued under section 706. For pur-  
 5           poses of this clause, the term ‘rapid’ means  
 6           a change of 10 percent or more from one  
 7           calendar quarter to the next, and the price  
 8           decline and the increase in imports need  
 9           not be contemporaneous. In any case in  
 10          which this presumption does not apply, or  
 11          in which it applies but is rebutted, the  
 12          Commission shall conduct a critical cir-  
 13          cumstances analysis as if no such pre-  
 14          sumption applied.”.

15       (c) ANTIDUMPING CASES.—

16           (1) PRELIMINARY DETERMINATIONS BY ADMIN-  
 17          ISTERING AUTHORITY.—Section 733(e) of the Tariff  
 18          Act of 1930 (19 U.S.C. 1673b(e)) is amended by re-  
 19          designating paragraph (2) as paragraph (3) and in-  
 20          serting after paragraph (1) the following new para-  
 21          graph:

22           “(2)   PRESUMPTION   OF   CRITICAL   CIR-  
 23          CUMSTANCES.—Notwithstanding paragraph (1), if  
 24          the Commission has found under subsection (a)(3) a  
 25          rapid decline in domestic prices during a 12-month

1 period and the administering authority finds that a  
 2 rapid increase in imports of the subject merchandise  
 3 occurred during the same 12-month period, the ad-  
 4 ministering authority shall apply a rebuttable pre-  
 5 sumption that critical circumstances exist with re-  
 6 spect to such imports. For purposes of this para-  
 7 graph, the term ‘rapid’ means a change of 10 per-  
 8 cent or more from one calendar quarter to the next,  
 9 and the price decline and the increase in imports  
 10 need not be contemporaneous. In any case in which  
 11 this presumption does not apply, or in which it ap-  
 12 plies but is rebutted, the administering authority  
 13 shall conduct a critical circumstances analysis as if  
 14 no such presumption applied.”.

15 (2) FINAL DETERMINATIONS BY ADMIN-  
 16 ISTERING AUTHORITY.—Section 735(a) of the Tariff  
 17 Act of 1930 (19 U.S.C. 1673d(a)) is amended by re-  
 18 designating paragraph (4) as paragraph (5) and in-  
 19 serting after paragraph (3) the following:

20 “(4) CRITICAL CIRCUMSTANCES DETERMINA-  
 21 TIONS; SPECIAL RULE.—Notwithstanding paragraph  
 22 (3), if the Commission has found under section  
 23 733(a)(3) a rapid decline in domestic prices during  
 24 a 12-month period, and the administering authority  
 25 finds that a rapid increase in imports of the subject

1 merchandise occurred during the same 12-month pe-  
 2 riod, the administering authority shall apply a rebut-  
 3 table presumption that critical circumstances exist  
 4 with respect to such imports. For purposes of this  
 5 paragraph, the term ‘rapid’ means a change of 10  
 6 percent or more from one calendar quarter to the  
 7 next, and the price decline and the increase in im-  
 8 ports need not be contemporaneous. In any case in  
 9 which this presumption does not apply, or in which  
 10 it applies but is rebutted, the administering author-  
 11 ity shall conduct a critical circumstances analysis as  
 12 if no such presumption applied.”.

13 (3) FINAL DETERMINATIONS BY COMMISSION.—  
 14 Section 735(b)(4)(A) of the Tariff Act of 1930 (19  
 15 U.S.C. 1673d(b)(4)(A)) is amended by adding after  
 16 clause (ii) the following:

17 “(iii) PRESUMPTION THAT STANDARD  
 18 FOR RETROACTIVE APPLICATION IS MET.—  
 19 Notwithstanding clause (ii), if the Commis-  
 20 sion determines that, at any time during  
 21 the 12-month period since the initiation of  
 22 the investigation, there has been a rapid  
 23 decline in domestic prices for the domestic  
 24 like product and a rapid increase in im-  
 25 ports of the subject merchandise, the Com-

1 mission shall apply a rebuttable presump-  
 2 tion that the imports subject to the affirm-  
 3 ative determination under subsection (a)(3)  
 4 are likely to undermine seriously the reme-  
 5 dial effect of the antidumping duty order  
 6 to be issued under section 736. For pur-  
 7 poses of this clause, the term ‘rapid’ means  
 8 a change of 10 percent or more from one  
 9 calendar quarter to the next, and the price  
 10 decline and the increase in imports need  
 11 not be contemporaneous. In any case in  
 12 which this presumption does not apply, or  
 13 in which it applies but is rebutted, the  
 14 Commission shall conduct a critical cir-  
 15 cumstances analysis as if no such pre-  
 16 sumption applied.”.

17 **SEC. 206. PREVENTION OF CIRCUMVENTION.**

18 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.  
 19 1677j(c)) is amended to read as follows:

20 “(c) MINOR ALTERATIONS OF MERCHANDISE.—The  
 21 class or kind of merchandise subject to—

22 “(1) an investigation under this subtitle,

23 “(2) an antidumping duty order issued under  
 24 section 736,



1 “(3) a finding issued under the Antidumping  
2 Act, 1921, or

3 “(4) a countervailing duty order issued under  
4 section 706 or section 303,  
5 shall include articles whose form or appearance has been  
6 altered in minor respects by changes in production process  
7 (including raw agricultural products that have undergone  
8 minor processing), regardless of any change in tariff clas-  
9 sification and regardless of whether the merchandise de-  
10 scription used in the investigation, order, or finding would  
11 otherwise exclude the altered article.”.

12 **SEC. 207. DOMESTIC INDUSTRY SUPPORT FOR SUSPENSION**  
13 **AGREEMENTS.**

14 (a) COUNTERVAILING DUTY CASES.—Section 704(d)  
15 of the Tariff Act of 1930 (19 U.S.C. 1671c(d)(1)) is  
16 amended—

17 (1) in paragraph (1)—

18 (A) by striking “and” at the end of sub-  
19 paragraph (A);

20 (B) by striking the period at the end of  
21 subparagraph (B), and inserting “, and”; and

22 (C) by inserting after subparagraph (B)  
23 the following new subparagraph:

24 “(C) the domestic producers or workers  
25 who support the agreement account for more

1           than 50 percent of the production of the domes-  
 2           tic like product produced by those expressing an  
 3           opinion on the agreement.”; and

4           (2) by adding at the end the following new  
 5   paragraph:

6           “(4) SPECIAL RULES RELATING TO DOMESTIC  
 7   PRODUCER AND WORKER SUPPORT.—

8           “(A) DETERMINATION OF INDUSTRY SUP-  
 9   PORT.—

10           “(i) CERTAIN POSITIONS DIS-  
 11   REGARDED.—

12           “(I) PRODUCERS RELATED TO  
 13   FOREIGN PRODUCERS.—In deter-  
 14   mining industry support under para-  
 15   graph (1)(C), the administering au-  
 16   thority shall disregard the position of  
 17   domestic producers who support the  
 18   agreement, if such producers are re-  
 19   lated to foreign producers, as defined  
 20   in section 771(4)(B)(ii), unless such  
 21   domestic producers demonstrate that  
 22   their interests as domestic producers  
 23   would be adversely affected if the  
 24   agreement is not accepted.

1                   “(II) PRODUCERS WHO ARE IM-  
2                   PORTERS.—The administering author-  
3                   ity may disregard the position of do-  
4                   mestic producers of a domestic like  
5                   product who are importers of the sub-  
6                   ject merchandise.

7                   “(ii) SPECIAL RULE FOR REGIONAL  
8                   INDUSTRIES.—If the petition which led to  
9                   the proposed suspension agreement alleges  
10                  that the industry is a regional industry,  
11                  the administering authority shall determine  
12                  whether the agreement is supported by or  
13                  on behalf of the industry by applying para-  
14                  graph (1)(C) on the basis of production in  
15                  the region.

16                  “(B) NATIONAL SECURITY EXCEPTION.—  
17                  In any case in which the administering author-  
18                  ity determines that the domestic producers or  
19                  workers who support the agreement do not ac-  
20                  count for more than 50 percent of the produc-  
21                  tion of the domestic like product produced by  
22                  those expressing an opinion on the agreement,  
23                  the administering authority may accept the  
24                  agreement, notwithstanding the provisions of  
25                  paragraph (1)(C), if the President determines

1 and certifies to the administering authority that  
 2 failure to accept the agreement would under-  
 3 mine the national security interests of the  
 4 United States or pose an extraordinary threat  
 5 to the economy of the United States.”.

6 (b) ANTIDUMPING DUTY CASES.—Section 734(d) of  
 7 the Tariff Act of 1930 (19 U.S.C. 1673c(d)) is amended—

8 (1) by redesignating paragraphs (1) and (2) as  
 9 subparagraphs (A) and (B), respectively;

10 (2) by striking “The administering authority”  
 11 and inserting:

12 “(1) IN GENERAL.—The administering author-  
 13 ity”;

14 (3) by striking “and” at the end of subpara-  
 15 graph (A), as redesignated;

16 (4) by striking the period at the end of sub-  
 17 paragraph (B), as redesignated, and inserting “,  
 18 and”;

19 (5) by inserting after subparagraph (B), as re-  
 20 designated, the following new subparagraph:

21 “(C) the domestic producers or workers  
 22 who support the agreement account for more  
 23 than 50 percent of the production of the domes-  
 24 tic like product produced by those expressing an  
 25 opinion on the agreement.”; and

1           (6) by adding at the end the following new  
2 paragraph:

3           “(2) SPECIAL RULES RELATING TO DOMESTIC  
4 PRODUCER AND WORKER SUPPORT.—

5           “(A) DETERMINATION OF INDUSTRY SUP-  
6 PORT.—

7           “(i) CERTAIN POSITIONS DIS-  
8 REGARDED.—

9           “(I) PRODUCERS RELATED TO  
10 FOREIGN PRODUCERS.—In deter-  
11 mining domestic producer or worker  
12 support for purposes of paragraph  
13 (1)(C), the administering authority  
14 shall disregard the position of domes-  
15 tic producers who support the agree-  
16 ment, if such producers are related to  
17 foreign producers, as defined in sec-  
18 tion 771(4)(B)(ii), unless such domes-  
19 tic producers demonstrate that their  
20 interests as domestic producers would  
21 be adversely affected if the agreement  
22 is not accepted.

23           “(II) PRODUCERS WHO ARE IM-  
24 PORTERS.—The administering author-  
25 ity may disregard the position of do-

1                   mestic producers of a domestic like  
2                   product who are importers of the sub-  
3                   ject merchandise.

4                   “(ii) SPECIAL RULE FOR REGIONAL  
5                   INDUSTRIES.—If the petition which led to  
6                   the proposed suspension agreement alleges  
7                   the industry is a regional industry, the ad-  
8                   ministering authority shall determine  
9                   whether the agreement is supported by or  
10                  on behalf of the industry by applying para-  
11                  graph (1)(C) on the basis of production in  
12                  the region.

13                  “(B) NATIONAL SECURITY EXCEPTION.—  
14                  In any case in which the administering author-  
15                  ity determines that the domestic producers or  
16                  workers who support the agreement do not ac-  
17                  count for more than 50 percent of the produc-  
18                  tion of the domestic like product produced by  
19                  those expressing an opinion on the agreement,  
20                  the administering authority may accept the  
21                  agreement, notwithstanding the provisions of  
22                  paragraph (1)(C), if the President determines  
23                  and certifies to the administering authority that  
24                  failure to accept the agreement would under-  
25                  mine the national security interests of the

1 United States or pose an extraordinary threat  
 2 to the economy of the United States.”.

3 **SEC. 208. IMPACT OF SAFEGUARD DETERMINATIONS ON 5-**  
 4 **YEAR REVIEW DETERMINATIONS.**

5 Section 752(a) of the Tariff Act of 1930 (19 U.S.C.  
 6 1675a(a)) is amended by adding at the end the following  
 7 new paragraph:

8 “(9) IMPACT OF PRIOR SERIOUS INJURY DE-  
 9 TERMINATIONS.—

10 “(A) AFFIRMATIVE SERIOUS INJURY DE-  
 11 TERMINATIONS.—If the Commission has re-  
 12 cently determined, under chapter 1 of title II of  
 13 the Trade Act of 1974, that the domestic indus-  
 14 try producing particular merchandise suffers  
 15 from or is threatened with serious injury by  
 16 reason of increased imports, the Commission  
 17 shall apply a rebuttable presumption that mate-  
 18 rial injury is ongoing for purposes of any 5-year  
 19 review under section 751(c) involving the same  
 20 merchandise. The Commission shall not treat  
 21 the imposition of measures under chapter 1 of  
 22 title II of the Trade Act of 1974 resulting from  
 23 such an affirmative determination as reducing  
 24 the likelihood of continuation or recurrence of  
 25 material injury for purposes of the 5-year re-

view. For purposes of this subparagraph, the term ‘recently’ means within the 48-month period ending on the date on which the 5-year review is initiated.

“(B) **NEGATIVE SERIOUS INJURY DETERMINATIONS.**—If the Commission has previously determined, under chapter 1 of title II of the Trade Act of 1974, that a domestic industry is not suffering from or threatened with serious injury by reason of increased imports, the Commission shall treat that determination as having no impact on the Commission’s determination in a subsequent 5-year review under section 751(c) involving the same merchandise as to whether material injury is likely to continue or recur if an antidumping or countervailing duty order is lifted.”.

**SEC. 209. REIMBURSEMENT OF DUTIES.**

Section 772(d) of the Tariff Act of 1930 (19 U.S.C. 1677a(d)) is amended—

- (1) by striking “and” at the end of paragraph
- (2);
- (2) by striking the period at the end of paragraph (3) and inserting a semicolon; and



1           (3) by adding at the end the following new  
2 paragraphs:

3           “(4) if the importer is the producer or exporter,  
4 or the importer and the producer or exporter are af-  
5 filiated persons, an amount equal to the dumping  
6 margin calculated under section 771(35)(A), unless  
7 the producer or exporter is able to demonstrate that  
8 the importer was in no way reimbursed for any anti-  
9 dumping duties paid; and

10          “(5) if the importer is the producer or exporter,  
11 or the importer and the producer or exporter are af-  
12 filiated persons, an amount equal to the net  
13 countervailable subsidy calculated under section  
14 771(6), unless the producer or exporter is able to  
15 demonstrate that the importer was in no way reim-  
16 bursed for any antidumping duties paid.”.

17 **SEC. 210. TRANSACTIONS BETWEEN AFFILIATED PARTIES.**

18          Section 773(f) of the Tariff Act of 1930 (19 U.S.C.  
19 1677b(f)) is amended—

20           (1) in paragraph (2), by striking “A trans-  
21 action” and inserting “Regardless of whether the ad-  
22 ministering authority determines to treat affiliated  
23 persons as a single entity for other purposes, a  
24 transaction”; and

1           (2) in paragraph (3), by striking “If” and in-  
 2           serting “Regardless of whether the administering  
 3           authority determines to treat affiliated persons as a  
 4           single entity for other purposes, if”.

5 **SEC. 211. PERISHABLE AGRICULTURAL PRODUCTS.**

6           (a) DEFINITION OF INDUSTRIES.—Section 771(4)(A)  
 7 of the Tariff Act of 1930 (19 U.S.C. 1677(4)(A)) is  
 8 amended by adding at the end the following: “If the Com-  
 9 mission determines that an agricultural product has a  
 10 short shelf life and is a perishable product, the Commis-  
 11 sion shall treat the producers of the product in a defined  
 12 period or season as the domestic industry. If the sub-  
 13 heading under the Harmonized Tariff Schedule of the  
 14 United States for an agricultural product has a 6- or 8-  
 15 digit classification based on the period of time during the  
 16 calendar year in which the product is harvested or im-  
 17 ported, such periods of time constitute a defined period  
 18 or season for purposes of this paragraph.”.

19           (b) DETERMINATION OF INJURY.—Section  
 20 771(7)(D) of the Tariff Act of 1930 (19 U.S.C.  
 21 1677(7)(D)) is amended by adding at the end the fol-  
 22 lowing new clauses:

23                           “(iii) In the case of an agricultural in-  
 24                           dustry involving a perishable product with  
 25                           a short shelf life, if a request for seasonal

1 evaluation has been made by the peti-  
 2 tioners, the Commission shall consider the  
 3 factors in subparagraph (C) on a seasonal  
 4 basis during the period identified as rel-  
 5 evant.

6 “(iv) In the case of agricultural prod-  
 7 ucts, partially picked or unpicked crops  
 8 and abandoned acreage may be considered  
 9 in lieu of other measures of capacity and  
 10 capacity utilization.

11 “(v) The impact of other factors, such  
 12 as weather, on agricultural production and  
 13 producers shall not be weighed against the  
 14 contribution of the imported subject mer-  
 15 chandise to the condition of the domestic  
 16 industry.”.

17 **SEC. 212. FULL RECOGNITION OF SUBSIDY CONFERRED**  
 18 **THROUGH PROVISION OF GOODS AND SERV-**  
 19 **ICES AND PURCHASE OF GOODS.**

20 Section 771(5)(E) of the Tariff Act of 1930 (19  
 21 U.S.C. 1677(5)(E)) is amended by adding at the end the  
 22 following: “If transactions in the country which is the sub-  
 23 ject of the investigation or review do not reflect market  
 24 conditions due to government action associated with provi-  
 25 sion of the goods or service or purchase of the goods, de-

1 termination of the adequacy of remuneration shall be  
2 through comparison with the most comparable market  
3 price elsewhere in the world.”.

## 4           **TITLE III—STEEL IMPORT** 5                           **NOTIFICATION**

### 6   **SEC. 301. STEEL IMPORT NOTIFICATION AND MONITORING** 7                           **PROGRAM.**

8           (a) IN GENERAL.—Not later than 30 days after the  
9 date of enactment of this Act, the Secretary of Commerce,  
10 in consultation with the Secretary of the Treasury, shall  
11 establish and implement a steel import notification and  
12 monitoring program. The program shall include a require-  
13 ment that any person importing a product classified under  
14 chapter 72 or 73 of the Harmonized Tariff Schedule of  
15 the United States obtain an import notification certificate  
16 before such products are entered into the United States.

17           (b) STEEL IMPORT NOTIFICATION CERTIFICATES.—

18                   (1) IN GENERAL.—In order to obtain a steel  
19 import notification certificate, an importer shall sub-  
20 mit to the Secretary of Commerce an application  
21 containing—

22                           (A) the importer’s name and address;

23                           (B) the name and address of the supplier  
24 of the goods to be imported;

1 (C) the name and address of the producer  
2 of the goods to be imported;

3 (D) the country of origin of the goods;

4 (E) the country from which the goods are  
5 to be imported;

6 (F) the United States Customs port of  
7 entry where the goods will be entered;

8 (G) the expected date of entry of the goods  
9 into the United States;

10 (H) a description of the goods, including  
11 the classification of such goods under the Har-  
12 monized Tariff Schedule of the United States;

13 (I) the quantity (in kilograms and net  
14 tons) of the goods to be imported;

15 (J) the cost insurance freight (CIF) and  
16 free alongside ship (FAS) values of the goods to  
17 be entered;

18 (K) whether the goods are being entered  
19 for consumption or for entry into a bonded  
20 warehouse or foreign trade zone;

21 (L) a certification that the information  
22 furnished in the certificate application is cor-  
23 rect; and

1 (M) any other information the Secretary of  
2 Commerce determines to be necessary and ap-  
3 propriate.

4 (2) ENTRY INTO CUSTOMS TERRITORY.—In the  
5 case of merchandise classified under chapter 72 or  
6 73 of the Harmonized Tariff Schedule of the United  
7 States that is initially entered into a bonded ware-  
8 house or foreign trade zone, a steel import notifica-  
9 tion certificate shall be required before the merchan-  
10 dise is entered into the customs territory of the  
11 United States.

12 (3) ISSUANCE OF STEEL IMPORT NOTIFICATION  
13 CERTIFICATE.—The Secretary of Commerce shall  
14 issue a steel import notification certificate to any  
15 person who files an application that meets the re-  
16 quirements of this section. Such certificate shall be  
17 valid for a period of 30 days from the date of  
18 issuance.

19 (c) STATISTICAL INFORMATION.—

20 (1) IN GENERAL.—The Secretary of Commerce  
21 shall compile and publish on a weekly basis informa-  
22 tion described in paragraph (2).

23 (2) INFORMATION DESCRIBED.—Information  
24 described in this paragraph means information ob-  
25 tained from steel import notification certificate ap-

1        plications concerning steel imported into the United  
2        States and includes with respect to such imports the  
3        Harmonized Tariff Schedule of the United States  
4        classification (to the tenth digit), the country of ori-  
5        gin, the port of entry, quantity, value of steel im-  
6        ported, and whether the imports are entered for con-  
7        sumption or are entered into a bonded warehouse or  
8        foreign trade zone. Such information shall also be  
9        compiled in aggregate form and made publicly avail-  
10       able by the Secretary of Commerce on a weekly basis  
11       by public posting through an Internet website. The  
12       information provided under this section shall be in  
13       addition to any information otherwise required by  
14       law.

15       (d) FEES.—The Secretary of Commerce may pre-  
16       scribe reasonable fees and charges to defray the costs of  
17       carrying out the provisions of this section, including a fee  
18       for issuing a certificate under this section.

19       (e) SINGLE PRODUCER AND EXPORTER COUN-  
20       TRIES.—Notwithstanding any other provision of law, the  
21       Secretary of Commerce shall make publicly available all  
22       information required to be released pursuant to subsection  
23       (c), including information obtained regarding imports  
24       from a foreign producer or exporter that is the only pro-

1 ducer or exporter of goods subject to this section from a  
2 foreign country.

3 (f) REGULATIONS.—The Secretary of Commerce may  
4 prescribe such rules and regulations relating to the steel  
5 import notification and monitoring program as may be  
6 necessary to carry out the provisions of this section.

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