

107TH CONGRESS
1ST SESSION

S. 979

To amend United States trade laws to address more effectively import crises,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2001

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

A BILL

To amend United States trade laws to address more
effectively import crises, and for other purposes.

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 “Trade Law Reform
5 Act of 2001”.

1 **TITLE I—SAFEGUARD**
2 **AMENDMENTS**

3 **SEC. 101. AMENDMENTS TO CHAPTER 1 OF TITLE II OF THE**
4 **TRADE ACT OF 1974.**

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

10 (b) INVESTIGATIONS AND DETERMINATIONS.—Sec-
11 tion 202 of such Act (19 U.S.C. 2252) is amended—

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

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

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

23 (3) in subsection (c)—

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

1 “(A) with respect to serious injury—

2 “(i) change in the level of sales, pro-
3 duction, productivity, capacity utilization,
4 profits and losses, and employment,

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

7 “(iii) the inability of a significant
8 number of firms to carry out domestic pro-
9 duction operations at a reasonable level of
10 profit, and

11 “(iv) significant unemployment or
12 underemployment within the domestic in-
13 dustry;”;

14 (B) in paragraph (1)(B)—

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

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

19 “(iv) foreign production capacity, for-
20 eign inventories, the level of demand in
21 third country markets, and the availability
22 of other export markets to absorb any ad-
23 ditional exports; and”;

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

1 “(C) with respect to cause—

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

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

10 (D) by redesignating paragraphs (3)
11 through (6) as paragraphs (5) through (8), re-
12 spectively;

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

15 “(2) In making determinations under para-
16 graph (1)(A) and (B), if domestic producers inter-
17 nally transfer, including to affiliated persons as de-
18 fined in section 771(33) of the Tariff Act of 1930,
19 significant production of the article like or directly
20 competitive with the imported article for the produc-
21 tion of a downstream article and sell significant pro-
22 duction of the article like or directly competitive
23 with the imported article in the merchant market,
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) In making determinations under sub-
5 section (b), the Commission shall—

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

13 “(B) examine factors other than imports
14 which may cause or threaten to cause serious
15 injury to the domestic industry.

16 The Commission shall include the results of its ex-
17 amination under subparagraph (B) in the report
18 submitted by the Commission to the President under
19 subsection (e).

20 “(4) In making determinations under sub-
21 section (b), the Commission shall consider whether
22 any change in the volume of imports that has oc-
23 curred since a petition under subsection (a) was filed
24 or a request under subsection (b) was made is re-
25 lated to the pendency of the investigation, and if so,

1 the Commission may reduce the weight accorded to
2 the data for the period after the petition under sub-
3 section (a) was filed or the request under subsection
4 (b) was made in making its determination of serious
5 injury, or the threat thereof.”; and

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

7 (i) by striking “and (B)” and insert-
8 ing “, (B), and (C)”;

9 (ii) by striking “be a substantial cause
10 of serious injury, or the threat thereof,”
11 and inserting “cause or threaten to cause
12 serious injury”;

13 (4) in subsection (d)—

14 (A) in paragraph (1)(A)(ii), by striking
15 “be, or likely to be a substantial cause of seri-
16 ous injury, or the threat thereof,” and inserting
17 “cause, or be likely to cause, or threaten to
18 cause, or be likely to threaten to cause, serious
19 injury”;

20 (B) in paragraph (1)(C), in the matter fol-
21 lowing clause (ii), by striking “a substantial
22 cause of serious injury, or the threat thereof,”
23 and inserting “causing or threatening to cause
24 serious injury”;

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

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

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

18 “(ii) delay in taking action under this
19 chapter would cause damage to that industry
20 that would be difficult to repair.

21 In making the evaluation under clause (ii), the Com-
22 mission should consider, among other factors that it
23 considers relevant, the timing and volume of the im-
24 ports, including whether there has been a substantial
25 increase in imports over a short period of time, and

1 any other circumstances indicating that delay in tak-
2 ing action under this chapter would cause damage to
3 the industry that would be difficult to repair.”; and

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

6 (c) PRESIDENTIAL DETERMINATIONS.—

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

10 (A) in paragraph (1)(A), by striking “and
11 provide greater economic and social benefits
12 than costs” and inserting “and will not have an
13 adverse impact on the United States clearly
14 greater than the benefits of such action”;

15 (B) in paragraph (2)(F), by striking “com-
16 pensation;” at the end of clause (iii) and insert-
17 ing the following: “compensation,
18 except that the President shall give substan-
19 tially greater weight to the factors set out in
20 clause (i) than to those set out in clauses (ii)
21 and (iii);”; and

22 (C) by amending paragraph (2)(I) to read
23 as follows:

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

1 (2) IMPLEMENTATION OF ACTION REC-
2 COMMENDED BY COMMISSION.—(A) Section 203(c) of
3 the Trade Act of 1974 (19 U.S.C. 2253(c)) is
4 amended by striking “90” and inserting “60”.

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

13 (d) CONFORMING AMENDMENTS.—

14 (1) Section 203(e)(6)(B) of the Trade Act of
15 1974 (19 U.S.C. 2253(e)(6)(B)) is amended by
16 striking “substantially”.

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

22 (3) Section 154(b) of the Trade Act of 1974
23 (19 U.S.C. 2194(b)) is amended by striking the
24 matter that precedes paragraph (1) and inserting
25 the following:

1 “(b) The 60-day period referred to in section 203(c)
2 and the 90-day period referred to in section 407(e)(2)
3 shall be computed by excluding—”.

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

7 **SEC. 201. CAPTIVE PRODUCTION.**

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

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

1 **SEC. 202. PRICE.**

2 Section 771(7)(C)(ii) of the Tariff Act of 1930 (19
3 U.S.C. 1677(7)(C)(ii)) is amended by adding at the end
4 the following flush sentence:

5 “The Commission shall not conclude that
6 imports of the subject merchandise do not
7 have a significant effect on prices merely
8 because of the volume of imports of the
9 subject merchandise.”.

10 **SEC. 203. VULNERABILITY OF INDUSTRY.**

11 Section 771(7)(C)(iii) of the Tariff Act of 1930 (19
12 U.S.C. 1677(7)(C)(iii)) is amended in the last sentence
13 by striking the period at the end and inserting “, including
14 whether the industry is vulnerable to the effects of imports
15 of the subject merchandise.”.

16 **SEC. 204. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND**
17 **INJURY.**

18 Section 771(7)(E)(ii) of the Tariff Act of 1930 (19
19 U.S.C. 1677(7)(E)(ii)) is amended by adding at the end
20 the following: “The Commission need not determine the
21 significance of imports of the subject merchandise relative
22 to other economic factors.”.

23 **SEC. 205. PREVENTION OF CIRCUMVENTION.**

24 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.
25 1677j(e)) is amended by adding at the end the following
26 new paragraph:

1 “(3) SPECIAL RULE.—The administering au-
2 thority shall apply paragraph (1) with respect to al-
3 tered merchandise excluded from or not specifically
4 included in the merchandise description used in an
5 outstanding order or finding, if such application is
6 not inconsistent with the affirmative determination
7 of the Commission on which the order or finding is
8 based.”.

9 **SEC. 206. PERISHABLE AGRICULTURAL PRODUCTS.**

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

23 (b) DETERMINATION OF INJURY.—Section
24 771(7)(D) of the Tariff Act of 1930 (19 U.S.C.

1 1677(7)(D)) is amended by adding at the end the fol-
2 lowing new clauses:

3 “(iii) In the case of an agricultural in-
4 dustry involving a perishable product with
5 a short shelf life, if a request for seasonal
6 evaluation has been made by the peti-
7 tioners, the Commission shall consider the
8 factors in subparagraph (C) on a seasonal
9 basis during the period identified as rel-
10 evant.

11 “(iv) In the case of agricultural prod-
12 ucts, partially picked or unpicked crops
13 and abandoned acreage may be considered
14 in lieu of other measures of capacity and
15 capacity utilization.

16 “(v) The impact of other factors, such
17 as weather, on agricultural production and
18 producers shall not be weighed against the
19 contribution of the imported subject mer-
20 chandise to the condition of the domestic
21 industry.”.

1 **SEC. 207. FULL RECOGNITION OF SUBSIDY CONFERRED**
2 **THROUGH PROVISION OF GOODS AND SERV-**
3 **ICES AND PURCHASE OF GOODS.**

4 Section 771(5)(E) of the Tariff Act of 1930 (19
5 U.S.C. 1677(5)(E)) is amended by adding at the end the
6 following: “If transactions in the country which is the sub-
7 ject of the investigation or review do not reflect market
8 conditions due to government action associated with provi-
9 sion of the good or service or purchase of the goods, deter-
10 mination of the adequacy of remuneration shall be through
11 comparison with the most comparable market price else-
12 where in the world.”.

13 **TITLE III—STEEL IMPORT NOTI-**
14 **FICATION AND MONITORING;**
15 **EARLY RELEASE OF IMPORT**
16 **DATA**

17 **SEC. 301. STEEL IMPORT NOTIFICATION AND MONITORING**
18 **PROGRAM.**

19 (a) IN GENERAL.—Not later than 30 days after the
20 date of the enactment of this Act, the Secretary of Com-
21 merce, in consultation with the Secretary of the Treasury,
22 shall establish and implement a steel import notification
23 and monitoring program. The program shall include a re-
24 quirement that any person importing a product classified
25 under chapter 72 or 73 of the Harmonized Tariff Schedule
26 of the United States obtain an import notification certifi-

1 cate before such products are entered into the United
2 States.

3 (b) STEEL IMPORT NOTIFICATION CERTIFICATES.—

4 (1) IN GENERAL.—In order to obtain a steel
5 import notification certificate, an importer shall sub-
6 mit to the Secretary of Commerce an application
7 containing—

8 (A) the importer's name and address;

9 (B) the name and address of the supplier
10 of the goods to be imported;

11 (C) the name and address of the producer
12 of the goods to be imported;

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

14 (E) the country from which the goods are
15 to be imported;

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

18 (G) the expected date of entry of the goods
19 into the United States;

20 (H) a description of the goods, including
21 the classification of such goods under the Har-
22 monized Tariff Schedule of the United States;

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

1 (J) the cost insurance freight (CIF) and
2 free alongside ship (FAS) values of the goods to
3 be entered;

4 (K) whether the goods are being entered
5 for consumption or for entry into a bonded
6 warehouse or foreign trade zone;

7 (L) a certification that the information
8 furnished in the certificate application is cor-
9 rect; and

10 (M) any other information the Secretary of
11 Commerce determines to be necessary and ap-
12 propriate.

13 (2) ENTRY INTO CUSTOMS TERRITORY.—In the
14 case of merchandise classified under chapter 72 or
15 73 of the Harmonized Tariff Schedule of the United
16 States that is initially entered into a bonded ware-
17 house or foreign trade zone, a steel import notifica-
18 tion certificate shall be required before the merchan-
19 dise is entered into the customs territory of the
20 United States.

21 (3) ISSUANCE OF STEEL IMPORT NOTIFICATION
22 CERTIFICATE.—The Secretary of Commerce shall
23 issue a steel import notification certificate to any
24 person who files an application that meets the re-
25 quirements of this section. Such certificate shall be

1 valid for a period of 30 days from the date of
2 issuance.

3 (c) STATISTICAL INFORMATION.—

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

7 (2) INFORMATION DESCRIBED.—Information
8 described in this paragraph means information ob-
9 tained from steel import notification certificate ap-
10 plications concerning steel imported into the United
11 States and includes with respect to such imports the
12 Harmonized Tariff Schedule of the United States
13 classification (to the tenth digit), the country of ori-
14 gin, the port of entry, quantity, value of steel im-
15 ported, and whether the imports are entered for con-
16 sumption or are entered into a bonded warehouse or
17 foreign trade zone. Such information shall also be
18 compiled in aggregate form and made publicly avail-
19 able by the Secretary of Commerce on a weekly basis
20 by public posting through an Internet website. The
21 information provided under this section shall be in
22 addition to any information otherwise required by
23 law.

24 (d) FEES.—The Secretary of Commerce may pre-
25 scribe reasonable fees and charges to defray the costs of

1 carrying out the provisions of this section, including a fee
2 for issuing a certificate under this section.

3 (e) SINGLE PRODUCER AND EXPORTER COUN-
4 TRIES.—Notwithstanding any other provision of law, the
5 Secretary of Commerce shall make publicly available all
6 information required to be released pursuant to subsection
7 (c), including information obtained regarding imports
8 from a foreign producer or exporter that is the only pro-
9 ducer or exporter of goods subject to this section from a
10 foreign country.

11 (f) REGULATIONS.—The Secretary of Commerce may
12 prescribe such rules and regulations relating to the steel
13 import notification and monitoring program as may be
14 necessary to carry the provisions of this section.

15 **SEC. 302. AMENDMENTS TO SECTION 332 OF THE TARIFF**

16 **ACT OF 1930.**

17 Section 332 of the Tariff Act of 1930 (19 U.S.C.
18 1332) is amended by adding at the end the following:

19 “(h)(1) Any entity, including a trade association,
20 firm, certified or recognized union, or group of workers,
21 which is representative of a domestic industry that pro-
22 duces an article that is like or directly competitive with
23 an imported article, may file a request with the President
24 pursuant to paragraph (2) for the monitoring of imports
25 of such article under subsection (g).

1 “(2) If the request filed under paragraph (1) alleges
2 that an article is being imported into the United States
3 in such increased quantities as to cause serious injury, or
4 threat thereof, to a domestic industry, the President, with-
5 in 45 days after receiving the request, shall determine if
6 monitoring is appropriate.

7 “(3) If the determination under paragraph (2) is af-
8 firmative, the President shall request, under subsection
9 (g), the Commission to monitor and investigate the im-
10 ports concerned for a period not to exceed 2 years.”.

11 **SEC. 303. EARLY RELEASE OF IMPORT DATA.**

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

20 **TITLE IV—MISCELLANEOUS**
21 **PROVISIONS**

22 **SEC. 401. TREATMENT OF CERTAIN STEEL IMPORTS.**

23 (a) IN GENERAL.—Any product described in sub-
24 section (b) that is manufactured in a country other than
25 a country described in subsection (c) and that is melted

1 and poured in a country that is described in subsection
2 (c) may, for purposes of any bilateral agreement or ar-
3 rangement relating to such product (including any terms
4 related to such agreement or arrangement), be treated as
5 if it were a product of the country described in subsection
6 (c) in which it was melted and poured.

7 (b) **PRODUCT DESCRIBED.**—A product described in
8 this subsection means a product that is classified under
9 chapter 72 or 73 of the Harmonized Tariff Schedule of
10 the United States.

11 (c) **COUNTRY DESCRIBED.**—A country described in
12 this subsection means a country that is a party to a bilat-
13 eral agreement or a quantitative restriction arrangement
14 relating to a product described in subsection (b).

15 **SEC. 402. CONSTRUCTION.**

16 The amendments made by this Act shall not be con-
17 strued to create any inference with respect to the interpre-
18 tation of the provisions of law amended by this Act as
19 such provisions were in effect before the enactment of this
20 Act.

21 **SEC. 403. APPLICATION TO GOODS FROM CANADA AND**
22 **MEXICO.**

23 Pursuant to section 1902 of the North American
24 Free Trade Agreement and section 408 of the North
25 American Free Trade Agreement Implementation Act, the

- 1 amendments made by this Act shall apply to goods from
- 2 Canada and Mexico.

