

111TH CONGRESS
2D SESSION

S. 3080

To provide for judicial determination of injury in certain cases involving dumped and subsidized merchandise imported into the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2010

Mr. SPECTER (for himself, Mr. CASEY, and Mr. BROWN of Ohio) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for judicial determination of injury in certain cases involving dumped and subsidized merchandise imported into the United States, 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 “Unfair Foreign Com-
5 petition Act of 2010”.

6 **SEC. 2. JUDICIAL DETERMINATION OF INJURY.**

7 (a) IN GENERAL.—Title VII of the Tariff Act of
8 1930 (19 U.S.C. 1671 et seq.) is amended by adding at
9 the end the following new subtitle:

**“Subtitle E—Judicial
Determination of Injury**

“SEC. 791. CIVIL ACTION.

“(a) INJURY DETERMINATION.—Notwithstanding any other provision of this title, in an antidumping or countervailing duty investigation initiated under section 702 or 732, a petitioning party, may, not later than 30 days after the date an investigation is initiated under such sections, elect to bring a civil action in a United States district court, for a determination that—

“(1) an industry in the United States—

“(A) is materially injured, or

“(B) is threatened with material injury, or

“(2) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise subject to the investigation, and that imports of the subject merchandise are not negligible.

“(b) FIVE-YEAR REVIEWS.—Not later than 30 days after a 5-year review of an antidumping or countervailing duty order is initiated under section 751(c), a party, who was a petitioning party in the initial investigation that resulted in the antidumping or countervailing duty order, may bring a civil action in a United States district court

1 for a determination of whether revocation of the anti-
 2 dumping or countervailing duty order or termination of
 3 the investigation suspended under section 704 or 734
 4 would likely lead to continuation or recurrence of material
 5 injury based on the standards set forth in section 752.

6 “(c) EFFECT OF ELECTION; RELIEF.—

7 “(1) EFFECT OF ELECTION.—

8 “(A) IN GENERAL.—An election under
 9 subsection (a) or (b) of this section shall be for
 10 a determination by the district court in lieu of
 11 a determination by the Commission under sec-
 12 tion 703(a), section 733(a), section 705(b), sec-
 13 tion 735(b), or chapter 1 of subtitle C, as the
 14 case may be.

15 “(B) COMMISSION TO COMPILE RECORD.—

16 If an election is made under this subtitle, the
 17 Commission shall conduct an investigation and
 18 compile evidence with respect to the petition in
 19 the same manner and to the same extent under
 20 this title as if an election had not been made.
 21 Any information compiled by the Commission
 22 shall be made available to the parties to the
 23 proceeding and furnished to the district court in
 24 a timely manner.

“(C) NOTIFICATION BY THE ADMIN-
 ISTERING AUTHORITY AND COMMISSION.—If an
 election is made under this subtitle, any notifi-
 cation the administering authority is required
 to provide the Commission under this title shall
 be provided to the district court and any notifi-
 cation the Commission is required to provide
 the administering authority shall be provided to
 the district court.

“(2) RELIEF.—

“(A) IN GENERAL.—In an action brought
 under subsection (a) or (b), the district court
 shall apply the same standards and make the
 same determinations and findings, that would
 be made by the Commission under this title if
 an election had not been made.

“(B) FINDINGS AND CONCLUSIONS.—The
 court shall issue findings of fact and conclu-
 sions of law and any order issued by the court
 shall have the same effect as a determination of
 the Commission under this title.

“(3) SPECIAL RULES.—The following rules
 shall apply to actions initiated under subsection (a)
 or (b):

1 “(A) APPEAL.—An order issued by a
2 United States district court under this title
3 shall be appealable to a United States Court of
4 Appeals.

5 “(B) ORDER NOT STAYED.—An order
6 issued under this section shall not be stayed
7 pending appeal to a United States Court of Ap-
8 peals.

9 “(C) PRECEDENTIAL EFFECT OF DECISIONS OF THE INTERNATIONAL TRADE COMMISSION.—The decisions of the Commission in
10 other investigations initiated under this title
11 shall not be binding on the court.
12

13 “(D) HEARINGS.—The court shall provide
14 a petitioning party and any interested party an
15 opportunity to file briefs and argue orally to the
16 court based on the information compiled by the
17 Commission.
18

19 “(E) ATTENDANCE BY DEFENDANT.—
20 There shall be no obligation on any defendant
21 interested party to attend a meeting or hearing,
22 and failure to do so shall not be prejudicial to
23 that party’s case.

24 “(F) DEFAULT JUDGMENTS.—The failure
25 of an interested party, described in subpara-

1 graph (A) or (B) of section 771(9), to intervene
 2 in an action initiated under this section or oth-
 3 erwise to participate in the proceedings shall
 4 not result in judgment by default.

5 “(G) VENUE.—A civil action under this
 6 section may be brought in a judicial district
 7 where a manufacturing facility, sales office, or
 8 administrative headquarters of any plaintiff
 9 who is a petitioning party is located.

10 “(d) SERVICE OF PROCESS.—Within 5 days of filing
 11 an action under subsection (a) or (b), the filing party shall
 12 notify all known interested parties described in subpara-
 13 graphs (A) and (B) of section 771(9). Such notice shall
 14 include—

15 “(1) a copy of the complaint; and

16 “(2) notice that the party is entitled to partici-
 17 pate in the proceedings pursuant to subsection (e) of
 18 this section.

19 “(e) INTERVENTION AS OF RIGHT.—Any interested
 20 party described in subparagraphs (A) and (B) of section
 21 771(9) shall be entitled to intervene in an action initiated
 22 under this section.

23 “(f) PRELIMINARY RELIEF.—

24 “(1) IN GENERAL.—In an action brought under
 25 subsection (a), the court shall, upon motion, issue a

1 preliminary order that contains a determination of
2 whether there is a reasonable indication that an in-
3 dustry in the United States is materially injured, or
4 is threatened with material injury, or the establish-
5 ment of an industry in the United States is materi-
6 ally retarded, by reason of imports of the subject
7 merchandise and that imports of the subject mer-
8 chandise are not negligible. The order shall include
9 a description of the essential facts under consider-
10 ation which form the basis of the decision.

11 “(2) EFFECT OF ORDER.—An order making an
12 affirmative determination under paragraph (1) shall
13 have the same effect as an affirmative preliminary
14 determination by the Commission under section
15 703(a) or 733(a).

16 “(3) TIMING.—The court shall make a prelimi-
17 nary determination under this subsection within 45
18 days after a complaint has been filed.

19 “(g) EXPEDITED ACTION.—

20 “(1) IN GENERAL.—An action brought under
21 subsection (a) or (b) shall be advanced on the docket
22 and expedited in every way practicable.

23 “(2) FINAL DETERMINATION IN SUBSECTION
24 (a) CASES.—The court shall make a final determina-

tion regarding material injury in an action filed
under subsection (a) before the later of—

“(A) the 120th day after the date on which
the administering authority makes an affirma-
tive preliminary determination under section
703(b) or 733(b); or

“(B) the 45th day after the day on which
the administering authority makes an affirma-
tive final determination under section 705(a) or
735(a).

“(3) FINAL DETERMINATION IN FIVE-YEAR RE-
VIEWS.—The court shall make a final determination
regarding the likelihood of continuation or recur-
rence of material injury under subsection (b) before
the later of—

“(A) the 360th day after the date on which
the review is initiated under section 751(c)(2);
or

“(B) the 120th day after the date on
which the final determination of the admin-
istering authority is published.

“(4) EXTRAORDINARILY COMPLICATED
CASES.—If the court concludes that a case is ex-
traordinarily complicated, as defined in section
703(c) or 733(c), the court may extend the time

1 under paragraphs (2) or (3) by an additional 30
2 days.

3 “(h) PROTECTION OF CONFIDENTIAL INFORMA-
4 TION.—The court shall make arrangements to protect the
5 confidentiality of information designated as proprietary by
6 an interested party pursuant to a judicial protective
7 order.”.

8 (b) CHANGED CIRCUMSTANCES REVIEWS.—Section
9 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) is
10 amended by adding at the end the following:

11 “(5) CERTAIN CASES TO BE FILED IN UNITED
12 STATES DISTRICT COURT.—If the injury determina-
13 tion at issue was initially made by a United States
14 district court, the court shall retain jurisdiction over
15 the injury determination for purposes of this section.
16 Any party seeking revocation of an order or termi-
17 nation of a suspended investigation shall seek review
18 in the district court that made the original injury
19 determination under section 791.”.

20 (c) CLERICAL AMENDMENT.—The table of contents
21 for title VII of the Tariff Act of 1930 is amended by in-
22 serting after the item relating to section 783 the following:

“Subtitle E—Judicial Determination of Injury

“Sec. 791. Civil action.”.

23 (d) CONFORMING AMENDMENT.—Section 516A of
24 the Tariff Act of 1930 (19 U.S.C. 1516a) is amended by

1 striking “Within 30 days” and inserting “Except in the
2 case where an interested party makes an election under
3 subtitle E of title VII for a judicial determination of in-
4 jury, within 30 days”.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section apply to—

7 (1) countervailing duty investigations initiated
8 under section 702 of the Tariff Act of 1930 (19
9 U.S.C. 1671a) on or after the date of the enactment
10 of this Act;

11 (2) antidumping duty investigations initiated
12 under section 732 of the Tariff Act of 1930 (19
13 U.S.C. 1673a) on or after the date of the enactment
14 of this Act; and

15 (3) reviews initiated under section 751 of the
16 Tariff Act of 1930 (19 U.S.C. 1675) on or after the
17 date of the enactment of this Act.

18 **SEC. 3. APPLICATION TO CANADA AND MEXICO.**

19 Pursuant to article 1902 of the North American Free
20 Trade Agreement and section 408 of the North American
21 Free Trade Agreement Implementation Act, the amend-
22 ments made by this Act shall apply with respect to goods
23 from Canada and Mexico.

1 **SEC. 4. NOTIFICATION TO WORLD TRADE ORGANIZATION.**

2 Not later than 30 days after the date of the enact-
3 ment of this Act, pursuant to the Agreement on Imple-
4 mentation of Article VI of the General Agreement on Tar-
5 iffs and Trade 1994 and the Agreement on Subsidies and
6 Countervailing Measures, the Secretary of State shall no-
7 tify the appropriate officials of the World Trade Organiza-
8 tion of the amendments made by this Act and that the
9 United States district courts shall be treated as competent
10 authorities for purposes of injury determinations under
11 title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et
12 seq.).

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