113TH CONGRESS
2D SESSION

S. 2994

To amend the Tariff Act of 1930 to facilitate the administration and enforcement of antidumping and countervailing duty orders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2014

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Tariff Act of 1930 to facilitate the administration and enforcement of antidumping and countervailing duty orders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Leveling the Playing Field Act''.

SEC. 2. CONSEQUENCES OF FAILURE TO COOPERATE WITH A REQUEST FOR INFORMATION IN AN INVESTIGATION.

Section 776 of the Tariff Act of 1930 (19 U.S.C. 1677e) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and by moving such subparagraphs, as so redesignated, 2 ems to the right;

(B) by striking ‘‘ADVERSE INFERENCES.—If’’ and inserting the following: ‘‘ADVERSE INFERENCES.—

‘‘(1) IN GENERAL.—If’’;

(C) by striking ‘‘under this title, may use’’ and inserting the following: ‘‘under this title—

‘‘(A) may use’’; and

(D) by striking ‘‘facts otherwise available. Such adverse inference may include’’ and inserting the following: ‘‘facts otherwise available; and

‘‘(B) is not required to determine, or make any adjustments to, a countervailable subsidy rate or weighted average dumping margin based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

"(2) ADVERSE INFERENCES.—An adverse inference under paragraph (1)(A) may include";

(2) in subsection (c)—

(A) by striking "CORROBORATION OF SECONDARY INFORMATION.—When the" and inserting the following: "CORROBORATION OF SECONDARY INFORMATION.—

"(1) IN GENERAL.—When the"; and

(B) by adding at the end the following:

"(2) EXCEPTIONS.—

"(A) INFORMATION PROVIDED BY PARTY.—If the administrative authority or the Commission uses an inference that is adverse to the interests of a party under subsection (b)(1)(A), information provided by that party, including any dumping margin or subsidy rate calculated based on such information, shall not be considered secondary information under this subsection and shall not be subject to corroboration under paragraph (1), even if the information was submitted by that party in a separate proceeding under this title or a separate segment of the same proceeding.

"(B) INFORMATION RELATING TO DUMPING MARGINS AND SUBSIDY RATES.—If the administering authority uses a countervailable subsidy rate or dumping margin in accordance with subsection (d)(1), the administering authority is not required to corroborate information relating to that rate or margin under paragraph (1) if that rate or margin was calculated, in whole or in part, using information—

"(i) submitted by an interested party described in subparagraph (A) or (B) of section 771(9), and

"(ii) certified by that interested party as accurate and complete to the best of that interested party's knowledge under section 782(b)."; and

(3) by adding at the end the following:

"(d) SUBSIDY RATES AND DUMPING MARGINS IN ADVERSE INFERENCE DETERMINATIONS.—

"(1) IN GENERAL.—If the administering authority uses an inference that is adverse to the interests of a party under subsection (b)(1)(A) in selecting among facts otherwise available, the administering authority may—

"(A) in the case of a countervailing duty proceeding, use a subsidy rate—

"(i) calculated with respect to a subsidy program involved in the proceeding that is the same or similar to the subsidy program for which a determination is to be made under this section, or, in the absence of such a program, any other subsidy program involved in the proceeding,

"(ii) calculated in another countervailing duty proceeding with respect to another subsidy program implemented by the country that is implementing the subsidy program for which a determination is to be made under this section unless the administering authority has evidence that exporters or producers of the subject merchandise could not have used such other subsidy program, or

"(iii) alleged in a petition filed under section 702(b) that was relied on by the administering authority to initiate the countervailing duty investigation, and

"(B) in the case of an antidumping duty proceeding, use—

"(i) a dumping margin based on any individual sale of the subject merchandise calculated with respect to any exporter or producer involved in the proceeding during the investigation or review,

"(ii) an individual weighted average dumping margin calculated with respect to any exporter or producer involved in the proceeding during the investigation or a review,

"(iii) any dumping margin alleged in a petition filed under section 732(b) that was relied on by the administering authority to initiate the antidumping duty investigation, or

"(iv) any dumping margin found in another antidumping duty proceeding with respect to a class or kind of merchandise that is the same or similar to and from the same country as subject merchandise involved in the proceeding.

"(2) DISCRETION TO APPLY HIGHEST RATE.—The administering authority has the discretion under paragraph (1), in selecting from among facts otherwise available, to apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin.

"(3) NO OBLIGATION TO MAKE CERTAIN ESTIMATES OR ADDRESS CERTAIN CLAIMS.—If the administering authority uses an adverse inference under subsection (b)(1)(A) in selecting among facts otherwise available, the administering authority is not required, for purposes of subsection (c) or for any other purpose—

"(A) to estimate what the countervailable subsidy rate or dumping margin would have been if the interested party found to have failed to cooperate under subsection (b)(1) had cooperated, or

"(B) to demonstrate that the countervailable subsidy rate or dumping margin used by the administering authority reflects the commercial reality of the interested party.

"(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the discretion of the administering authority to use any other countervailable subsidy rate or dumping margin not specified in paragraph (1), subject to the corroboration requirements of subsection (c).".

SEC. 3. EVALUATION OF IMPACT ON DOMESTIC INDUSTRY IN DETERMINATION OF MATERIAL INJURY.

Section 771(7)(C) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(C)) is amended by striking clause (iii) and inserting the following:

"(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—

"(I) IN GENERAL.—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors that have a bearing on the state of the industry in the United States, including—

"(aa) actual and potential decline in output, sales, market share, gross profits, operating profits, net profits, ability to service debt, productivity, return on investments, return on assets, and utilization of capacity,

"(bb) factors affecting domestic prices,

"(cc) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment,

"(dd) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

"(ee) in a proceeding under subtitle B, the magnitude of the margin of dumping.

"(II) EVALUATION OF ECONOMIC FACTORS IN CONTEXT.—

"(aa) IN GENERAL.—The Commission shall evaluate all relevant economic factors described in subclause (I) within the context of the business cycle and conditions of competition that are distinct to the affected industry.

"(bb) INDUSTRY PERFORMANCE.—The fact that the performance of the affected industry has improved during the period of investigation shall not preclude a finding of material injury or threat of material injury if the improvement in performance has been affected by imports of the subject merchandise.

"(III) EFFECT OF RECESSION.—In the case of an investigation initiated by petition, if the National Bureau of Economic Research or another government agency responsible for business cycle evaluation declares that a recession began at any time during the 3-year period preceding the date on which the petition was filed, the Commission may, if timely requested by an interested party, extend its normal period of investigation to ensure that the period begins at least 365 days before the beginning of the recession to ensure that the condition of the affected industry can be appropriately assessed in relation to the business cycle.".

SEC. 4. DETERMINATION OF DUTIES FOR NEW EXPORTERS AND PRODUCERS BASED ON BONA FIDE UNITED STATES SALES.

Section 751(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)) is amended—

(1) by striking clause (iii);

(2) by redesignating clause (iv) as clause (iii); and

(3) by adding at the end the following:

"(iv) BONA FIDE UNITED STATES SALES.—

"(I) ELIGIBILITY FOR INDIVIDUAL MARGIN OR RATE.—An exporter or producer is eligible for an individual weighted average dumping margin or individual countervailing duty rate established in a review conducted under clause (i) only if that exporter or producer demonstrates that all sales of subject merchandise by that exporter or producer in the United States or for exportation to the United States during the period covered by the review are—

"(aa) bona fide, and

"(bb) sold to a person that is not affiliated with that exporter or producer.

"(II) ELEMENTS OF BONA FIDE DETERMINATION.—In determining whether the sales of an exporter or producer in the United States are bona fide for purposes of subclause (I)(aa), the administering authority shall consider, depending on the circumstances surrounding such sales—

"(aa) the prices of such sales,

"(bb) whether such sales were made in commercial quantities,

"(cc) the timing of such sales,

"(dd) the expenses arising from such sales,

"(ee) whether the subject merchandise involved in such sales was resold in the United States at a profit, "(ff) whether such sales were made on an arms-length basis, and

"(gg) any other factor the administering authority considers to be relevant with respect to whether such sales are, or are not, likely to be typical of sales the exporter or producer will make after completion of the review.".

SEC. 5. REQUIREMENT THAT CERTIFICATION BY IMPORTER AND EXPORTER ACCOMPANY CERTAIN MERCHANDISE UPON ENTRY.

(a) IN GENERAL.—Subtitle D of title VII of the Tariff Act of 1930 (19 U.S.C. 1677 et seq.) is amended by adding at the end the following:

"SEC. 784. REQUIREMENT THAT CERTIFICATION BY IMPORTER AND EXPORTER ACCOMPANY CERTAIN MERCHANDISE UPON ENTRY.

"(a) REQUIREMENT.—

"(1) IN GENERAL.—In any case in which the administering authority requires that a certification described in paragraph (2) accompany imports of merchandise, the Commissioner responsible for U.S.

Customs and Border Protection (in this section referred to as the 'Commissioner') shall require the merchandise to be accompanied by that certification upon entry into the customs territory of the United States.

"(2) CERTIFICATION DESCRIBED.—A certification described in this paragraph is a certification, as required by the administering authority, by the importer or exporter of the merchandise that the merchandise is not subject to a duty under this title because the merchandise does not fall within the scope of any antidumping or countervailing duty order.

"(b) AUTHORITY TO ASSESS HIGHEST RATE OF DUTY.—If a certification described in paragraph (2) of subsection (a) is required to accompany the merchandise upon entry into the customs territory of the United States pursuant to paragraph (1) of that subsection, and that certification does not accompany the merchandise or a certification that contains any materially false, fictitious, or fraudulent statement or representation or any material omission accompanies the merchandise, the merchandise shall be liquidated or reliquidated at the highest rate of antidumping or countervailing duty applicable to the merchandise.

"(c) PENALTIES.—If a certification described in paragraph (2) of subsection (a) is required to accompany the merchandise upon entry into the customs territory of the United States pursuant to paragraph (1) of that subsection, and that certification does not accompany the merchandise or a certification that contains any materially false, fictitious, or fraudulent statement or representation or any material omission accompanies the merchandise, the importer of the merchandise may be subject to a penalty pursuant to section 592 of this Act, section 1001 of title 18, United States Code, or any other applicable provision of law.".

(b) CLERICAL AMENDMENT.—The table of contents for title VII of the Tariff Act of 1930 is amended by inserting after the item relating to section 783 the following:

"Sec. 784. Requirement that certification by importer and exporter accompany certain merchandise upon entry.".

SEC. 6. REDUCTION IN BURDEN ON DEPARTMENT OF COMMERCE BY REDUCING THE NUMBER OF VOLUNTARY RESPONDENTS.

Section 782(a) of the Tariff Act of 1930 (19 U.S.C. 1677m(a)) is amended—

(1) in paragraph (1), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by moving such clauses, as so redesignated, 2 ems to the right;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and by moving such subparagraphs, as so redesignated, 2 ems to the right;

(3) by striking "INVESTIGATIONS AND REVIEWS.—In" and inserting the following: "INVESTIGATIONS AND REVIEWS.—

"(1) IN GENERAL.—In";

(4) in paragraph (1), as designated by paragraph (3), by amending subparagraph (B), as redesignated by paragraph (2), to read as follows:

"(B) the number of exporters or producers subject to the investigation or review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the investigation or review."; and

(5) by adding at the end the following:

"(2) DETERMINATION OF UNDULY BURDENSOME.—In determining if an individual examination under paragraph (1)(B) would be unduly burdensome, the administering authority may consider the following:

"(A) The complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto.

"(B) Any prior experience of the administering authority in the same or similar proceeding.

"(C) The total number of investigations under subtitle A or B and reviews under section 751(a) being conducted by the administering authority as of the date of the determination.

"(D) The availability of staff and other resources considered necessary by the administering authority for the timely and accurate completion of each such investigation and review.

"(E) Such other factors relating to the timely and accurate completion of each such investigation and review as the administering authority considers appropriate.".

SEC. 7. CLARIFICATION OF DISCRETION OF SECRETARY OF COMMERCE TO DISREGARD CERTAIN PRICE OR COST VALUES IN CALCULATION OF NORMAL VALUE.

Section 773(c) of the Tariff Act of 1930 (19 U.S.C. 1677b(c)) is amended by adding at the end the following:

"(5) DISCRETION TO DISREGARD CERTAIN PRICE OR COST VALUES.—In valuing the factors of production under paragraph (1) for the subject merchandise, the administering authority may disregard price or cost values if the administering authority has reason to believe or suspect that the subject merchandise is being subsidized or dumped, without investigating and determining that subsidization or dumping has occurred.".

SEC. 8. CLARIFICATION OF FACTORS FOR DETERMINING WHETHER A COUNTRY IS A NONMARKET ECONOMY COUNTRY.

Section 771(18)(B) of the Tariff Act of 1930 (19 U.S.C. 1677(18)(B)) is amended—

(1) in clause (v), by striking "and" at the end;

(2) by redesignating clause (vi) as clause (vii); and

(3) by inserting after clause (v) the following:

"(vi) the extent to which the government of the foreign country enforces and administers its laws, legal and administrative procedures, and other policies in an open and transparent manner that affords all parties, whether foreign or domestic, due process and equal and non-discriminatory treatment under those laws, procedures, and policies, and''.

SEC. 9. APPLICATION TO CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3438), the amendments made by this Act shall apply with respect to goods from Canada and Mexico.

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