

114TH CONGRESS
1ST SESSION

S. 891

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

MARCH 26, 2015

Mr. BROWN (for himself, Mr. GRAHAM, Mr. FRANKEN, and Mrs. McCASKILL) introduced the following bill; which was read twice and referred to the Committee on Finance

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.

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 “Leveling the Playing
5 Field Act”.

1 **SEC. 2. CONSEQUENCES OF FAILURE TO COOPERATE WITH**
2 **A REQUEST FOR INFORMATION IN A PRO-**
3 **CEEDING.**

4 Section 776 of the Tariff Act of 1930 (19 U.S.C.
5 1677e) is amended—

6 (1) in subsection (b)—

7 (A) by redesignating paragraphs (1)
8 through (4) as subparagraphs (A) through (D),
9 respectively, and by moving such subpara-
10 graphs, as so redesignated, 2 ems to the right;

11 (B) by striking “ADVERSE INFERENCES.—
12 If” and inserting the following: “ADVERSE IN-
13 FERENCES.—

14 “(1) IN GENERAL.—If”;

15 (C) by striking “under this title, may use”
16 and inserting the following: “under this title—
17 “(A) may use”; and

18 (D) by striking “facts otherwise available.
19 Such adverse inference may include” and in-
20 serting the following: “facts otherwise available;
21 and

22 “(B) is not required to determine, or make
23 any adjustments to, a countervailable subsidy
24 rate or weighted average dumping margin based
25 on any assumptions about information the in-
26 terested party would have provided if the inter-

1 ested party had complied with the request for
2 information.

3 “(2) POTENTIAL SOURCES OF INFORMATION
4 FOR ADVERSE INFERENCES.—An adverse inference
5 under paragraph (1)(A) may include”; and

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

7 “(d) JUDICIAL REVIEW.—Notwithstanding any other
8 provision of law, any determination made by the admin-
9 istering authority or the Commission in selecting the facts
10 otherwise available or using an inference that is adverse
11 to the interests of a party under subsection (b)(1)(A) shall
12 not be subject to judicial review.”.

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

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

18 “(iii) IMPACT ON AFFECTED DOMES-
19 TIC INDUSTRY.—

20 “(I) IN GENERAL.—In examining
21 the impact required to be considered
22 under subparagraph (B)(i)(III), the
23 Commission shall evaluate all relevant
24 economic factors that have a bearing

1 on the state of the industry in the
2 United States, including—

3 “(aa) actual and potential
4 decline in output, sales, market
5 share, gross profits, operating
6 profits, net profits, ability to
7 service debt, productivity, return
8 on investments, return on assets,
9 and utilization of capacity,

10 “(bb) factors affecting do-
11 mestic prices,

12 “(cc) actual and potential
13 negative effects on cash flow, in-
14 ventories, employment, wages,
15 growth, ability to raise capital,
16 and investment,

17 “(dd) actual and potential
18 negative effects on the existing
19 development and production ef-
20 forts of the domestic industry, in-
21 cluding efforts to develop a deriv-
22 ative or more advanced version of
23 the domestic like product, and

1 “(ee) in a proceeding under
2 subtitle B, the magnitude of the
3 margin of dumping.

4 “(II) EVALUATION OF ECONOMIC
5 FACTORS IN CONTEXT.—

6 “(aa) IN GENERAL.—The
7 Commission shall evaluate all rel-
8 evant economic factors described
9 in subclause (I) within the con-
10 text of the business cycle and
11 conditions of competition that are
12 distinct to the affected industry.

13 “(bb) INDUSTRY PERFORM-
14 ANCE.—The fact that the per-
15 formance of the affected industry
16 has improved during the period
17 of investigation shall not preclude
18 a finding of material injury or
19 threat of material injury.

20 “(III) EFFECT OF RECESSION.—

21 In the case of an investigation initi-
22 ated by petition, if the National Bu-
23 reau of Economic Research or another
24 government agency responsible for
25 business cycle evaluation declares that

1 a recession began at any time during
 2 the 3-year period preceding the date
 3 on which the petition was filed, the
 4 Commission may, if timely requested
 5 by an interested party, extend its nor-
 6 mal period of investigation as the
 7 Commission considers appropriate.”.

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

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

13 (1) by striking clause (iii);

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

15 and

16 (3) by adding at the end the following:

17 “(iv) BONA FIDE UNITED STATES
 18 SALES.—

19 “(I) ELIGIBILITY FOR INDI-
 20 VIDUAL MARGIN OR RATE.—An ex-
 21 porter or producer may be eligible for
 22 an individual weighted average dump-
 23 ing margin or individual counter-
 24 vailing duty rate established in a re-

1 view conducted under clause (i) only if
2 that exporter or producer—

3 “(aa) is not affiliated with
4 an exporter or producer who ex-
5 ported subject merchandise dur-
6 ing the period covered by the re-
7 view or exported subject mer-
8 chandise to the United States
9 during any period, and

10 “(bb) demonstrates that
11 sales of subject merchandise by
12 that exporter or producer in the
13 United States, or for exportation
14 to the United States, during the
15 period covered by the review that
16 are relied upon as the basis for
17 requesting the review and the
18 calculation of an individual
19 dumping margin or individual
20 countervailing duty rate, are—

21 “(AA) bona fide, and

22 “(BB) sold to a person
23 that is not affiliated with
24 that exporter or producer.

1 “(II) ELEMENTS OF BONA FIDE
2 DETERMINATION.—In determining
3 whether sales in the United States by
4 an exporter or producer are bona fide
5 for purposes of subclause (I)(aa), the
6 administering authority shall consider,
7 depending on the circumstances sur-
8 rounding such sales—

9 “(aa) the prices of such
10 sales,

11 “(bb) whether such sales
12 were made in commercial quan-
13 tities,

14 “(cc) the timing of such
15 sales,

16 “(dd) the expenses arising
17 from such sales,

18 “(ee) whether the subject
19 merchandise involved in such
20 sales was resold in the United
21 States at a profit,

22 “(ff) whether such sales
23 were made on an arms-length
24 basis, and

1 “(gg) any other factor the
 2 administering authority considers
 3 to be relevant with respect to
 4 whether such sales are, or are
 5 not, likely to be typical of sales
 6 the exporter or producer will
 7 make after completion of the re-
 8 view.”.

9 **SEC. 5. REQUIREMENT OF PROVISION BY IMPORTER OF**
 10 **CERTIFICATION BY IMPORTER OR OTHER**
 11 **PARTY.**

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

15 **“SEC. 784. REQUIREMENT FOR CERTIFICATION BY IM-**
 16 **PORTER OR OTHER PARTY.**

17 “(a) REQUIREMENT.—

18 “(1) IN GENERAL.—For imports of merchan-
 19 dise into the customs territory of the United States,
 20 the administering authority may require an im-
 21 porter—

22 “(A) to provide a certification described in
 23 paragraph (2) physically or by electronic means
 24 at the time of entry or with the entry summary,
 25 or

1 “(B) to otherwise demonstrate compliance
2 with the requirements for a certification de-
3 scribed in paragraph (2).

4 “(2) CERTIFICATION DESCRIBED.—A certifi-
5 cation described in this paragraph is a certification
6 by the importer of the merchandise or another party,
7 as required by the administering authority, such as
8 a certification that the merchandise is not subject to
9 an antidumping or countervailing duty under this
10 title.

11 “(3) AVAILABLE UPON REQUEST.—If a certifi-
12 cation required under paragraph (1) is required to
13 be maintained by the importer or another party, as
14 determined by the administering authority in con-
15 sultation with the Commissioner responsible for U.S.
16 Customs and Border Protection (in this section re-
17 ferred to as the ‘Commissioner’), the Commissioner
18 or administering authority may require that the im-
19 porter or other party make the certification available
20 to the Commissioner or administering authority
21 upon request.

22 “(b) PENALTIES.—

23 “(1) AUTHORITY TO COLLECT CASH DEPOSITS
24 AND TO ASSESS DUTIES.—If the administering au-
25 thority requires an importer or other party to pro-

1 vide a certification described in paragraph (2) of
2 subsection (a) for merchandise imported into the
3 customs territory of the United States pursuant to
4 paragraph (1) of that subsection, and the importer
5 or other party does not provide that certification or
6 that certification contains any false, misleading, or
7 fraudulent statement or representation or any mate-
8 rial omission, the administering authority shall in-
9 struct the Commissioner—

10 “(A) to suspend liquidation of the entry;

11 “(B) to require that the importer or other
12 party post a cash deposit at an amount equal
13 to the antidumping duty or countervailing duty
14 applicable to the merchandise; and

15 “(C) to assess the rate of duty determined
16 under paragraph (2) upon liquidation or reliqui-
17 dation of the entry.

18 “(2) OTHER PENALTIES.—If the administering
19 authority requires an importer or other party to pro-
20 vide a certification described in paragraph (2) of
21 subsection (a) for merchandise imported into the
22 customs territory of the United States pursuant to
23 paragraph (1) of that subsection, and the importer
24 or other party does not provide that certification or
25 that certification contains any false, misleading, or

1 fraudulent statement or representation or any mate-
 2 rial omission, the importer of the merchandise may
 3 be subject to a penalty pursuant to section 592 of
 4 this Act, section 1001 of title 18, United States
 5 Code, or any other applicable provision of law.”.

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

“Sec. 784. Requirement for certification by importer or other party.”.

9 **SEC. 6. REDUCTION IN BURDEN ON DEPARTMENT OF COM-**
 10 **MERCE BY REDUCING THE NUMBER OF VOL-**
 11 **UNTARY RESPONDENTS.**

12 Section 782(a) of the Tariff Act of 1930 (19 U.S.C.
 13 1677m(a)) is amended—

14 (1) in paragraph (1), by redesignating subpara-
 15 graphs (A) and (B) as clauses (i) and (ii), respec-
 16 tively, and by moving such clauses, as so redesign-
 17 ated, 2 ems to the right;

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

22 (3) by striking “INVESTIGATIONS AND RE-
 23 VIEWS.—In” and inserting the following: “INVES-
 24 TIGATIONS AND REVIEWS.—

25 “(1) IN GENERAL.—In”;

1 (4) in paragraph (1), as designated by para-
2 graph (3), by amending subparagraph (B), as redes-
3 ignated by paragraph (2), to read as follows:

4 “(B) the number of exporters or producers
5 subject to the investigation or review is not so
6 large that any additional individual examination
7 of such exporters or producers would be unduly
8 burdensome to the administering authority and
9 inhibit the timely completion of the investiga-
10 tion or review.”; and

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

12 “(2) DETERMINATION OF UNDULY BURDEN-
13 SOME.—In determining if an individual examination
14 under paragraph (1)(B) would be unduly burden-
15 some, the administering authority may consider the
16 following:

17 “(A) The complexity of the issues or infor-
18 mation presented in the proceeding, including
19 questionnaires and any responses thereto.

20 “(B) Any prior experience of the admin-
21 istering authority in the same or similar pro-
22 ceeding.

23 “(C) The total number of investigations
24 under subtitle A or B, reviews under section
25 751, and other proceedings being conducted by

1 the administering authority as of the date of
2 the determination.

3 “(D) Such other factors relating to the
4 timely completion of each such investigation
5 and review as the administering authority con-
6 siders appropriate.”.

7 **SEC. 7. CLARIFICATION OF DISCRETION OF SECRETARY OF**
8 **COMMERCE TO DISREGARD CERTAIN PRICE**
9 **OR COST VALUES IN CALCULATION OF NOR-**
10 **MAL VALUE.**

11 Section 773(c) of the Tariff Act of 1930 (19 U.S.C.
12 1677b(c)) is amended by adding at the end the following:

13 “(5) DISCRETION TO DISREGARD CERTAIN
14 PRICE OR COST VALUES.—

15 “(A) IN GENERAL.—In valuing the factors
16 of production under paragraph (1) for the sub-
17 ject merchandise, the administering authority
18 may disregard price or cost values if the admin-
19 istering authority has reason to believe or sus-
20 pect that an input for the subject merchandise
21 is subsidized or dumped.

22 “(B) PRIOR INVESTIGATIONS.—

23 “(i) IN GENERAL.—The administering
24 authority has reason to believe or suspect
25 under subparagraph (A) that an input for

1 the subject merchandise is subsidized or
 2 dumped if an investigation has found
 3 broadly available export subsidies or spe-
 4 cific instances of dumping or subsidies
 5 with respect to that input from a country
 6 or customs territory.

7 “(ii) FURTHER INVESTIGATION.—If
 8 the administering authority makes a find-
 9 ing described in clause (i), the admin-
 10 istering authority is not required to con-
 11 duct further investigation with respect to
 12 that input for purposes of this para-
 13 graph.”.

14 **SEC. 8. CLARIFICATION OF FACTORS FOR DETERMINING**
 15 **WHETHER A COUNTRY IS A NONMARKET**
 16 **ECONOMY COUNTRY.**

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

19 (1) in clause (v), by striking “and” at the end;

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

21 and

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

23 “(vi) the extent to which the govern-
 24 ment of the foreign country enforces and
 25 administers its laws, legal and administra-

1 tive procedures, and other policies in an
2 open and transparent manner that affords
3 all parties, whether foreign or domestic,
4 due process and equal and non-discrimina-
5 tory treatment under those laws, proce-
6 dures, and policies, and”.

7 **SEC. 9. APPLICATION TO CANADA AND MEXICO.**

8 Pursuant to article 1902 of the North American Free
9 Trade Agreement and section 408 of the North American
10 Free Trade Agreement Implementation Act (19 U.S.C.
11 3438), the amendments made by this Act shall apply with
12 respect to goods from Canada and Mexico.

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