

116TH CONGRESS
1ST SESSION

S. 2409

To authorize the President to take certain actions relating to reciprocal trade, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. GRAHAM (for himself and Mr. MANCHIN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To authorize the President to take certain actions relating
to reciprocal trade, 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 “United States Recip-
5 rocal Trade Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The United States maintains an open mar-
9 ket for goods, with relatively low tariffs, and has

1 long encouraged trading partners, both bilaterally
2 and in multilateral fora, to liberalize their markets.

3 (2) The United States is the largest importer of
4 goods in the world.

5 (3) Trading partners of the United States in
6 many instances impose significantly higher tariffs on
7 United States goods than the United States imposes
8 on the same or similar goods imported from those
9 same countries.

10 (4) Trading partners of the United States in
11 many instances impose significant nontariff barriers
12 that greatly undermine the value of negotiated tariff
13 concessions.

14 (5) The lack of reciprocity in tariff levels and
15 disproportionate use of nontariff barriers by trading
16 partners of the United States facilitates foreign im-
17 ports, discourages United States exports, and puts
18 producers, farmers, and workers in the United
19 States at a competitive disadvantage.

20 (6) The lack of reciprocity in tariff levels and
21 nontariff barriers contributes to the large and grow-
22 ing United States trade deficit in goods, which is a
23 drag on economic growth and undermines economic
24 prosperity.

1 (7) To date a number of trading partners of the
 2 United States have been unwilling, including in mul-
 3 tilateral negotiations, to reduce tariffs and eliminate
 4 nontariff barriers applied to United States exports.

5 (8) The United States should seek action by
 6 trading partners of the United States to lower tar-
 7 iffs and eliminate nontariff barriers, to promote effi-
 8 ciency in those markets and enhance opportunities
 9 for producers, farmers, and workers in the United
 10 States.

11 (9) The President should have a wide array of
 12 tools to open the markets of trading partners of the
 13 United States and encourage participation in nego-
 14 tiations to liberalize trade in goods on a fair and re-
 15 ciprocal basis, including the authority to adjust tar-
 16 iff rates to reciprocal levels.

17 **SEC. 3. AUTHORITY TO TAKE CERTAIN ACTIONS RELATING**
 18 **TO RECIPROCAL TRADE.**

19 (a) IN GENERAL.—The President may take one or
 20 more of the actions specified in subsection (b) if the Presi-
 21 dent determines that—

22 (1) the rate of duty imposed by a foreign coun-
 23 try with respect to a particular good, when imported
 24 from the United States, is significantly higher than
 25 the rate of duty imposed by the United States with

1 respect to that good, when imported from that coun-
2 try; or

3 (2) the nontariff barriers applied by a foreign
4 country with respect to a particular good, when im-
5 ported from the United States, impose significantly
6 higher burdens, alone or in combination with any
7 tariffs imposed by that country on that good, than
8 the burdens of the nontariff barriers applied by the
9 United States with respect to that good, alone or in
10 combination with any tariffs imposed by the United
11 States on that good, when imported from that coun-
12 try.

13 (b) ACTIONS SPECIFIED.—The actions specified in
14 this subsection are the following:

15 (1) To negotiate and seek to enter into an
16 agreement with the foreign country that commits the
17 country to reduce the rate of duty or reduce or
18 eliminate nontariff barriers with respect to the good
19 that is the subject of the determination under sub-
20 section (a).

21 (2) To impose a rate of duty on imports of the
22 good that is equal to—

23 (A) in the case of a determination de-
24 scribed in subsection (a)(1), the rate of duty

1 imposed by the foreign country with respect to
2 the good; or

3 (B) in the case of a determination de-
4 scribed in subsection (a)(2), the effective rate of
5 duty of the nontariff barriers applied by the
6 foreign country with respect to the good, alone
7 or in combination with any tariffs imposed by
8 that country on that good.

9 (c) FACTORS.—In taking an action specified in sub-
10 section (b), the President shall consider the following fac-
11 tors:

12 (1) The tariff classification of the good by the
13 United States and the tariff classification of the
14 good by the foreign country.

15 (2) The rate of duty applied by the United
16 States with respect to the good and the rate of duty
17 applied by the foreign country with respect to the
18 good.

19 (3) The physical characteristics of the good.

20 (4) The end uses and existence of a competitive
21 relationship between the good—

22 (A) as exported from the United States to
23 the foreign country; and

24 (B) as imported from the foreign country
25 to the United States.

1 (5) The level of exports of the good by the for-
2 eign country to the United States and to other coun-
3 tries.

4 (6) In the case of a determination described in
5 subsection (a)(1), the extent to which the rate of
6 duty applied by the foreign country with respect to
7 the good is impeding or distorting trade.

8 (7) In the case of a determination described in
9 subsection (a)(2)—

10 (A) the extent of the nontariff barriers ap-
11 plied by the foreign country with respect to the
12 good and the extent of the nontariff barriers
13 applied by the United States with respect to the
14 good;

15 (B) the extent to which the nontariff bar-
16 riers applied by the foreign country with respect
17 to the good, alone or in combination with any
18 tariffs imposed by that country on that good,
19 are impeding or distorting trade;

20 (C) the identified purpose of the nontariff
21 barriers applied by the foreign country with re-
22 spect to the good, if any, and the extent to
23 which the nontariff barriers are more restrictive
24 than necessary to meet that purpose; and

1 (D) the degree of transparency of the proc-
2 ess by which the foreign country adopted the
3 nontariff barriers.

4 (8) Such other factors as the President deter-
5 mines appropriate.

6 (d) ROLE OF USTR.—In the case of a determination
7 described in subsection (a)(2), the United States Trade
8 Representative, in consultation with the Secretary of the
9 Treasury, the Secretary of Commerce, and the heads of
10 other relevant Federal agencies, shall advise the President
11 in determining the effective rate of duty imposed by the
12 nontariff barriers applied by a foreign country with re-
13 spect to a good, alone or in combination with any tariffs
14 imposed by that country on that good.

15 (e) LOWER RATE OF DUTY.—The President may im-
16 pose a rate of duty on imports of a good from a foreign
17 country that is lower than the rate of duty described in
18 subsection (b)(2)(A) or lower than the effective rate of
19 duty described in subsection (b)(2)(B), as the case may
20 be, if the President determines that application of such
21 lower rate of duty is necessary and appropriate.

22 (f) HIGHER RATE OF DUTY.—If the President im-
23 poses a rate of duty on imports of a good from a foreign
24 country under subsection (b)(2) and the country further
25 increases its rate of duty on imports of the good from the

1 United States, the President may further increase the rate
2 of duty on imports of the good from the country to a rate
3 that is equal to the rate of duty applied by that country.

4 (g) TERMINATION.—The President shall terminate
5 the imposition of any increase in the rate of duty on im-
6 ports of a good from a foreign country under subsection
7 (b)(2) effective on the date on which the President deter-
8 mines that—

9 (1) the foreign country is no longer—

10 (A) imposing a rate of duty described in
11 subsection (a)(1) with respect to the good; or

12 (B) applying nontariff barriers described in
13 subsection (a)(2) with respect to the good; or

14 (2) continued imposition of the increased rate
15 of duty on imports of the good from the foreign
16 country is not in the economic or public interest of
17 the United States.

18 **SEC. 4. NOTICE, CONSULTATION, AND REPORT.**

19 (a) NEGOTIATIONS AND AGREEMENT.—Before tak-
20 ing any action under section 3(b)(1), the President shall
21 provide notice to and consult with the Committee on Fi-
22 nance of the Senate and the Committee on Ways and
23 Means of the House of Representatives regarding the pro-
24 posed action.

1 (b) IMPOSITION OF DUTY.—Before taking any action
2 under section 3(b)(2), the President shall—

3 (1) not less than 45 days before the date on
4 which imposition of an increased rate of duty on im-
5 ports of a good from a foreign country is to take ef-
6 fect, publish notice in the Federal Register of, and
7 allow for public comment on, the proposed imposi-
8 tion and level of such increased rate of duty; and

9 (2) seek advice regarding the proposed action
10 from the advisory committees established under sec-
11 tion 135 of the Trade Act of 1974 (19 U.S.C.
12 2155).

13 (c) ADDITIONAL NOTICE.—The President shall
14 promptly publish in the Federal Register notice of any ac-
15 tion taken pursuant to subsection (e), (f), or (g) of section
16 3.

17 (d) REPORT.—

18 (1) IN GENERAL.—Before entering into an
19 agreement with a foreign country under section
20 3(b)(1), the United States Trade Representative
21 shall submit to the appropriate congressional com-
22 mittees and leadership a report that describes—

23 (A) the implementation of the agreement,
24 including how it is consistent with and does not

1 materially differ from or otherwise affect Fed-
 2 eral or State laws;

3 (B) the impact of the agreement on the
 4 competitiveness of businesses in the United
 5 States; and

6 (C) the impact of the agreement on con-
 7 sumers in the United States.

8 (2) APPROPRIATE CONGRESSIONAL COMMIT-
 9 TEES AND LEADERSHIP.—In this subsection, the
 10 term “appropriate congressional committees and
 11 leadership” means—

12 (A) the Committee on Ways and Means of
 13 the House of Representatives and the Com-
 14 mittee on Finance of the Senate; and

15 (B) the Speaker of the House of Rep-
 16 resentatives, the minority leader of the House
 17 of Representatives, the majority leader of the
 18 Senate, and the minority leader of the Senate.

19 **SEC. 5. CONGRESSIONAL DISAPPROVAL OF PRESIDENTIAL**
 20 **IMPOSITION OF RATES OF DUTY ON IMPORTS**
 21 **OF GOODS FROM FOREIGN COUNTRIES.**

22 (a) IN GENERAL.—An action taken by the President
 23 under section 3(b)(2) to impose a rate of duty on imports
 24 of a good from a foreign country shall cease to have force

1 and effect upon the enactment of a disapproval resolution
2 relating to that action.

3 (b) DISAPPROVAL RESOLUTION.—

4 (1) DISAPPROVAL RESOLUTION.—For purposes
5 of this section, the term “disapproval resolution”
6 means only a joint resolution of either House of
7 Congress the matter after the resolving clause of
8 which is as follows: “That Congress disapproves the
9 action taken under section 3(b)(2) of the United
10 States Reciprocal Trade Act with respect to the im-
11 position of a rate of duty on imports of ____ from
12 ____ under such section 3(b)(2).”, the first blank
13 space being filled with a description of the good with
14 respect to which the duty is imposed under section
15 3(b)(2) and the second blank being filled with the
16 name of the foreign country from which the good is
17 imported into the United States.

18 (2) CONSIDERATION.—

19 (A) INTRODUCTION.—All disapproval reso-
20 lutions introduced in the House of Representa-
21 tives shall be referred to the Committee on
22 Ways and Means and all disapproval resolutions
23 introduced in the Senate shall be referred to the
24 Committee on Finance.

1 (B) AMENDMENTS PROHIBITED; MOTIONS
2 TO SUSPEND APPLICATION OF THIS SUBPARA-
3 GRAPH PROHIBITED.—No amendment to a dis-
4 approval resolution shall be in order in either
5 the House of Representatives or the Senate,
6 and no motion to suspend the application of
7 this subparagraph shall be in order in either
8 House nor shall it be in order in either House
9 for the Presiding Officer to entertain a request
10 to suspend the application of this subparagraph
11 by unanimous consent.

12 (C) FLOOR CONSIDERATION IN HOUSE OF
13 REPRESENTATIVES.—

14 (i) REPORTING AND DISCHARGE.—If
15 the Committee on Ways and Means has
16 not reported a disapproval resolution with-
17 in 10 legislative days after the date of re-
18 ferral, that committee shall be discharged
19 from further consideration thereof.

20 (ii) PROCEEDING TO CONSIDER-
21 ATION.—Beginning on the third legislative
22 day after the Committee on Ways and
23 Means reports a disapproval resolution to
24 the House or has been discharged from
25 further consideration thereof, it shall be in

1 order to move to proceed to consider the
2 disapproval resolution in the House. All
3 points of order against the motion are
4 waived. Such a motion shall not be in
5 order after the House has disposed of a
6 motion to proceed on the disapproval reso-
7 lution. The previous question shall be con-
8 sidered as ordered on the motion to its
9 adoption without intervening motion. The
10 motion shall not be debatable. A motion to
11 reconsider the vote by which the motion is
12 disposed of shall not be in order.

13 (iii) CONSIDERATION.—The dis-
14 approval resolution shall be considered as
15 read. All points of order against the dis-
16 approval resolution and against its consid-
17 eration are waived. The previous question
18 shall be considered as ordered on the dis-
19 approval resolution to final passage with-
20 out intervening motion except two hours of
21 debate equally divided and controlled by
22 the sponsor of the disapproval resolution
23 (or a designee) and an opponent. A motion
24 to reconsider the vote on passage of the

1 disapproval resolution shall not be in
2 order.

3 (D) FLOOR CONSIDERATION IN THE SEN-
4 ATE.—

5 (i) REPORTING AND DISCHARGE.—If
6 the Committee on Finance has not re-
7 ported a disapproval resolution within 10
8 session days after the date of referral of
9 such resolution, that committee shall be
10 discharged from further consideration of
11 such resolution and the disapproval resolu-
12 tion shall be placed on the appropriate cal-
13 endar.

14 (ii) PROCEEDING TO CONSIDER-
15 ATION.—Notwithstanding Rule XXII of
16 the Standing Rules of the Senate, it is in
17 order at any time after the Committee on
18 Finance reports a disapproval resolution to
19 the Senate or has been discharged from its
20 consideration (even though a previous mo-
21 tion to the same effect has been disagreed
22 to) to move to proceed to the consideration
23 of the disapproval resolution, and all points
24 of order against the disapproval resolution
25 (and against consideration of the dis-

1 approval resolution) are waived. The mo-
2 tion to proceed is not debatable. The mo-
3 tion is not subject to a motion to postpone.
4 A motion to reconsider the vote by which
5 the motion is agreed to or disagreed to
6 shall not be in order. If a motion to pro-
7 ceed to the consideration of the disapproval
8 resolution is agreed to, the disapproval res-
9 olution shall remain the unfinished busi-
10 ness until disposed of.

11 (iii) CONSIDERATION.—Debate on a
12 disapproval resolution, and on all debatable
13 motions and appeals in connection there-
14 with, shall be limited to not more than 10
15 hours, which shall be divided equally be-
16 tween the majority and minority leaders or
17 their designees. A motion to further limit
18 debate is in order and not debatable. An
19 amendment to, or a motion to postpone, or
20 a motion to proceed to the consideration of
21 other business, or a motion to recommit
22 the disapproval resolution is not in order.

23 (iv) VOTE ON PASSAGE.—The vote on
24 passage shall occur immediately following
25 the conclusion of the debate on the dis-

1 approval resolution and a single quorum
2 call at the conclusion of the debate, if re-
3 quested in accordance with the rules of the
4 Senate.

5 (v) RULINGS OF THE CHAIR ON PRO-
6 CEDURE.—Appeals from the decisions of
7 the Chair relating to the application of the
8 rules of the Senate, as the case may be, to
9 the procedure relating to a disapproval res-
10 olution shall be decided without debate.

11 (vi) CONSIDERATION OF VETO MES-
12 SAGES.—Debate in the Senate of any veto
13 message with respect to a disapproval reso-
14 lution, including all debatable motions and
15 appeals in connection with such dis-
16 approval resolution, shall be limited to 10
17 hours, to be equally divided between, and
18 controlled by, the majority leader and the
19 minority leader or their designees.

20 (E) MAJORITY REQUIRED FOR ADOP-
21 TION.—A disapproval resolution shall require
22 an affirmative vote of a majority of the Mem-
23 bers, duly chosen and sworn, for adoption.

24 (3) RULES RELATING TO SENATE AND HOUSE
25 OF REPRESENTATIVES.—

1 (A) COORDINATION WITH ACTION BY
2 OTHER HOUSE.—If, before the passage by one
3 House of a disapproval resolution of that
4 House, that House receives a disapproval reso-
5 lution from the other House, then the following
6 procedures shall apply:

7 (i) The disapproval resolution of the
8 other House shall not be referred to a com-
9 mittee.

10 (ii) With respect to a disapproval res-
11 olution of the House receiving the legisla-
12 tion—

13 (I) the procedure in that House
14 shall be the same as if no disapproval
15 resolution had been received from the
16 other House; but

17 (II) the vote on passage shall be
18 on the disapproval resolution of the
19 other House.

20 (B) TREATMENT OF A BILL OF OTHER
21 HOUSE.—If one House fails to introduce a dis-
22 approval resolution under this section, the dis-
23 approval resolution of the other House shall be
24 entitled to expedited floor procedures under this
25 section.

1 (C) TREATMENT OF COMPANION MEAS-
2 URES.—If, following passage of a disapproval
3 resolution in the Senate, the Senate then re-
4 ceives a companion measure from the House of
5 Representatives, the companion measure shall
6 not be debatable.

7 (c) RULEMAKING POWER.—This section is enacted
8 by Congress—

9 (1) as an exercise of the rulemaking power of
10 the Senate and the House of Representatives, re-
11 spectively, and as such is deemed a part of the rules
12 of each House, respectively, but applicable only with
13 respect to the procedures to be followed in that
14 House in the case of disapproval resolutions and
15 such procedures supersede other rules only to the ex-
16 tent that they are inconsistent with those rules; and

17 (2) with full recognition of the constitutional
18 right of either House to change the rules (so far as
19 relating to the procedure of that House) at any time,
20 in the same manner, and to the same extent as any
21 other rule of that House.

1 **SEC. 6. SUNSET OF PRESIDENTIAL IMPOSITION OF RATES**
2 **OF DUTY ON IMPORTS OF GOODS FROM FOR-**
3 **EIGN COUNTRIES.**

4 (a) IN GENERAL.—The authority of the President to
5 take an action under section 3(b)(2) to impose a rate of
6 duty on imports of a good from a foreign country—

7 (1) shall be effective for the period ending on
8 the date that is three years after the date of the en-
9 actment of this Act; and

10 (2) shall be extended for an additional period of
11 three years if—

12 (A) the President requests such extension
13 under subsection (b); and

14 (B) a disapproval resolution is not enacted
15 into law as provided for under subsection (c).

16 (b) REPORT TO CONGRESS.—If the President deter-
17 mines that the authority of the President to take an action
18 under section 3(b)(2) to impose a rate of duty on imports
19 of a good from a foreign country should be extended for
20 the additional period described in subsection (a)(2), the
21 President shall submit to Congress, not later than the date
22 that is 90 days before the end of the period described in
23 subsection (a)(1), a written report that contains a request
24 for such extension, together with a description of all ac-
25 tions taken under section 3(b)(2).

26 (c) DISAPPROVAL RESOLUTION.—

1 (1) DISAPPROVAL RESOLUTION.—For purposes
2 of this section, the term “disapproval resolution”
3 means only a joint resolution of either House of
4 Congress the matter after the resolving clause of
5 which is as follows: “That Congress disapproves the
6 request of the President for extension under section
7 6(a)(2)(A) of the United States Reciprocal Trade
8 Act of the authority of the President to take an ac-
9 tion under section 3(b)(2) of such Act to impose a
10 rate of duty on imports of a good from a foreign
11 country after the period ending on the date that is
12 three years after the date of the enactment of such
13 Act.”.

14 (2) CONSIDERATION.—

15 (A) IN GENERAL.—Except as provided in
16 subparagraph (B), the provisions of paragraphs
17 (2) and (3) of section 5(b) apply to consider-
18 ation of a disapproval resolution.

19 (B) LIMITATION ON CONSIDERATION.—It
20 is not in order for either House of Congress to
21 consider a disapproval resolution after the date
22 that is three years after the date of the enact-
23 ment of this Act.

24 (3) RULEMAKING POWER.—This subsection is
25 enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedures to be followed in that House in the case of disapproval resolutions and such procedures supersede other rules only to the extent that they are inconsistent with those rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(d) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—An action under section 3(b)(2) to impose a rate of duty on imports of a good from a foreign country that is taken before the end of the period described in subsection (a)(1) or the end of the period described in subsection (a)(2) shall remain in effect after the end of such respective period.

(2) ADDITIONAL AUTHORITIES.—The President may exercise the authorities of subsections (e), (f),

1 and (g) of section 3 with respect to an action de-
2 scribed in paragraph (1) after the end of the period
3 described in such paragraph that is applicable to
4 such action.

5 **SEC. 7. DEFINITIONS.**

6 In this Act:

7 (1) NONTARIFF BARRIER.—The term “nontariff
8 barrier” includes any government-imposed measure
9 or policy, other than a customs duty, that restricts,
10 prevents, or impedes international trade in goods, in-
11 cluding import policies, sanitary and phytosanitary
12 measures, technical barriers to trade, government
13 procurement, export subsidies, lack of intellectual
14 property protection, digital trade barriers, and gov-
15 ernment-tolerated anticompetitive conduct of state-
16 owned or private firms.

17 (2) RATE OF DUTY.—The term “rate of duty”
18 means the rate of customs duty applied on imports
19 of a good, but does not include an antidumping or
20 countervailing duty or a duty applied under a pref-
21 erential tariff arrangement.

○