

106TH CONGRESS  
1ST SESSION

# S. 1741

To amend United States trade laws to address more effectively import crises.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 15, 1999

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

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## A BILL

To amend United States trade laws to address more effectively import crises.

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 “Fair Trade Law En-  
5 hancement Act of 1999”.

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

3 **SEC. 101. CAUSATION STANDARD.**

4           (a) CHANGE IN CAUSATION STANDARD.—(1) Section  
5 201(a) of the Trade Act of 1974 (19 U.S.C. 2251(a)) is  
6 amended by striking “substantial”.

7           (2) Section 202 of the Trade Act of 1974 (19 U.S.C.  
8 2252) is amended—

9               (A) in subsection (b)(1)(A), by striking “sub-  
10 substantial”;

11              (B) by amending subsection (b)(1)(B) to read  
12 as follows:

13              “(B) Imports are a cause of serious injury, or  
14 the threat thereof, when a causal link can be estab-  
15 lished between imports and the domestic industry’s  
16 injury.”;

17              (C) in subsection (c)(1)(C), by striking “sub-  
18 stantial cause” and inserting “the causal link”;

19              (D) in subsection (c)(3), by striking “substan-  
20 tial”; and

21              (E) in subsection (d)(2)(A)(i), by striking “sub-  
22 stantial”.

23           (b) CONFORMING AMENDMENT.—Section 264(c) of  
24 the Trade Act of 1974 (19 U.S.C. 2354(c)) is amended  
25 by striking “substantial”.

1 **SEC. 102. CAPTIVE PRODUCTION.**

2 Section 202(c)(4) of the Trade Act of 1974 (19  
3 U.S.C. 2252(c)(4)) is amended—

4 (1) by striking “and” at the end of subpara-  
5 graph (B);

6 (2) by striking the period at the end of sub-  
7 paragraph (C) and inserting “; and”; and

8 (3) by adding after subparagraph (C) the fol-  
9 lowing:

10 “(D) shall, in cases in which domestic pro-  
11 ducers transfer internally, including to related  
12 parties, significant production of the like or di-  
13 rectly competitive article for the production of  
14 a downstream article and sell significant pro-  
15 duction of the like or directly competitive article  
16 in the merchant market, focus on the merchant  
17 market when determining the domestic indus-  
18 try’s market share and other relevant factors.

19 For purposes of this section, a party is related to  
20 another party if the first party controls, is controlled  
21 by, or is under common control with, that other  
22 party.”.

23 **SEC. 103. PRESUMPTION OF THREAT AND OF CRITICAL CIR-**  
24 **CUMSTANCES.**

25 Section 202 of the Trade Act of 1974 (19 U.S.C.  
26 2252) is amended—

1           (1) in subsection (c)(1), by inserting at the end  
2 the following flush sentences:

3           “Notwithstanding subparagraph (B), if the Commis-  
4 sion finds that, at any time during the 12-month pe-  
5 riod preceding the initiation of an investigation,  
6 there has been a rapid decline in domestic prices for  
7 the like or directly competitive article and a rapid  
8 increase in imports of the imported article, the Com-  
9 mission shall apply a rebuttable presumption that  
10 the domestic industry is threatened with serious in-  
11 jury by reason of such imports. For purposes of the  
12 preceding sentence, the term ‘rapid’ means a change  
13 of 10 percent or more from one calendar quarter to  
14 the next, and the price decline and the increase in  
15 imports need not be contemporaneous. In any case  
16 in which this presumption does not apply, or in  
17 which it applies but is rebutted, the Commission  
18 shall conduct a threat of serious injury analysis as  
19 if no such presumption applied.”; and

20           (2) in subsection (d)(2)(A), by adding at the  
21 end the following flush sentences:

22           “If the Commission finds that, at any time during  
23 the 12-month period preceding the initiation of an  
24 investigation, there has been a rapid decline in do-  
25 mestic prices for the like or directly competitive arti-

1 cle and a rapid increase in imports of the imported  
2 article, the Commission shall apply a rebuttable pre-  
3 sumption that the criteria in clauses (i) and (ii) are  
4 met. For purposes of this paragraph, the term  
5 ‘rapid’ means a change of 10 percent or more from  
6 one calendar quarter to the next, and the price de-  
7 cline and the increase in imports need not be con-  
8 temporaneous. In any case in which this presump-  
9 tion does not apply, or in which it applies but is re-  
10 butted, the Commission shall conduct a critical cir-  
11 cumstances analysis as if no such presumption ap-  
12 plied.”.

13 **SEC. 104. INJURY FACTORS.**

14 Section 202(c)(1)(A) of the Trade Act of 1974 (19  
15 U.S.C. 2252(c)(1)(A)) is amended to read as follows:

16 “(A) with respect to serious injury—

17 “(i) the rate and amount of the in-  
18 crease in imports of the product concerned  
19 in absolute and relative terms;

20 “(ii) the share of the domestic market  
21 taken by increased imports;

22 “(iii) changes in the level of sales;

23 “(iv) production;

24 “(v) productivity;

25 “(vi) capacity utilization;

1 “(vii) profits and losses; and

2 “(viii) employment;”.

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

6 **SEC. 201. CAPTIVE PRODUCTION.**

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

9 “(iv) CAPTIVE PRODUCTION.—If do-  
 10 mestic producers transfer internally, in-  
 11 cluding to affiliated persons as defined in  
 12 section 771(33), significant production of  
 13 the domestic like product for the produc-  
 14 tion of a downstream article and sell sig-  
 15 nificant production of the domestic like  
 16 product in the merchant market, then the  
 17 Commission, in determining market share  
 18 and the factors affecting financial perform-  
 19 ance set forth in clause (iii), shall focus on  
 20 the merchant market.”.

21 **SEC. 202. CUMULATION.**

22 Section 771(7)(G)(i) of the Tariff Act of 1930 (19  
 23 U.S.C. 1677(7)(G)(i)) is amended to read as follows:

24 “(i) IN GENERAL.—For purposes of  
 25 clauses (i) and (ii) of subparagraph (C),

1 and subject to clause (ii), the Commission  
2 shall cumulatively assess the volume and  
3 effect of imports of the subject merchan-  
4 dise from all countries subject to petitions  
5 filed under section 702(b) or 732(b), or  
6 subject to investigations initiated under  
7 702(a) or 732(a), if such petitions were  
8 filed, or such investigations were initiated,  
9 within 90 days before the date on which  
10 the Commission is required to make its  
11 final injury determination, and if such im-  
12 ports compete with each other and with  
13 the domestic like products in the United  
14 States market.”.

15 **SEC. 203. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND**  
16 **INJURY.**

17 Section 771(7)(C) of the Tariff act of 1930 (19  
18 U.S.C. 1677(7)(C)), as amended by section 201, is amend-  
19 ed by adding at the end the following new clause:

20 “(v) IMPORTS; BASIS FOR AFFIRMA-  
21 TIVE DETERMINATION.—The Commission  
22 shall not weigh against other factors the  
23 injury caused by imports found by the ad-  
24 ministering authority to be dumped or pro-  
25 vided a countervailable subsidy. Rather, if

1 the imports are a contributing cause of in-  
2 jury to the domestic industry, the Commis-  
3 sion shall make an affirmative determina-  
4 tion, unless the injury caused by the im-  
5 ports is inconsequential, immaterial, or un-  
6 important.”.

7 **SEC. 204. PRESUMPTION OF THREAT OF MATERIAL INJURY.**

8 Section 771(7)(F) of the Tariff Act of 1930 (19  
9 U.S.C. 1677(7)(F)) is amended by redesignating clause  
10 (iii) as clause (iv) and inserting after clause (ii) the fol-  
11 lowing new clause:

12 “(iii) PRESUMPTION OF THREAT OF  
13 MATERIAL INJURY.—Notwithstanding  
14 clauses (i) and (ii), if the Commission  
15 finds that, at any time during the 12-  
16 month period preceding the initiation of an  
17 investigation, there has been a rapid de-  
18 cline in domestic prices for the domestic  
19 like product and a rapid increase in im-  
20 ports of the subject merchandise, the Com-  
21 mission shall apply a rebuttable presump-  
22 tion that the domestic industry is threat-  
23 ened with material injury by reason of  
24 such imports. For purposes of this clause,  
25 the term ‘rapid’ means a change of 10 per-

1 cent or more from one calendar quarter to  
2 the next, and the price decline and the in-  
3 crease in imports need not be contempora-  
4 neous. In any case in which this presump-  
5 tion does not apply, or in which it applies  
6 but is rebutted, the Commission shall con-  
7 duct a threat of injury analysis as if no  
8 such presumption applied.”.

9 **SEC. 205. PRESUMPTION OF CRITICAL CIRCUMSTANCES.**

10 (a) INITIAL FINDING BY COMMISSION.—

11 (1) COUNTERAVAILABLE SUBSIDY.—Section  
12 703(a) of the Tariff Act of 1930 (19 U.S.C.  
13 1671b(a)) is amended by adding at the end the fol-  
14 lowing:

15 “(3) DETERMINATION OF RAPID DECLINE.—  
16 Any preliminary determination by the Commission  
17 under this subsection shall include a determination  
18 of whether at any time during the 12-month period  
19 preceding the initiation of the investigation there has  
20 been a rapid decline in domestic prices for the do-  
21 mestic like product. For purposes of this paragraph,  
22 the term ‘rapid’ means a change of 10 percent or  
23 more from one calendar quarter to the next.”.

1           (2) DUMPING.—Section 733(a) of the Tariff  
2 Act of 1930 (19 U.S.C. 1673b(a)) is amended by  
3 adding at the end the following:

4           “(3) DETERMINATION OF RAPID DECLINE.—  
5 Any preliminary determination by the Commission  
6 under this subsection shall include a determination  
7 of whether at any time during the 12-month period  
8 preceding the initiation of the investigation there has  
9 been a rapid decline in domestic prices for the do-  
10 mestic like product. For purposes of this paragraph,  
11 the term ‘rapid’ means a change of 10 percent or  
12 more from one calendar quarter to the next.”.

13 (b) COUNTERVAILING DUTY CASES.—

14           (1) PRELIMINARY DETERMINATIONS BY ADMIN-  
15 ISTERING AUTHORITY.—Section 703(e) of the Tariff  
16 Act of 1930 (19 U.S.C. 1671b(e)) is amended by re-  
17 designating paragraph (2) as paragraph (3) and in-  
18 serting after paragraph (1) the following:

19           “(2) PRESUMPTION OF CRITICAL CIR-  
20 CUMSTANCES.—Notwithstanding paragraph (1), if  
21 the Commission has found under subsection (a)(3) a  
22 rapid decline in domestic prices during a 12-month  
23 period and the administering authority finds that a  
24 rapid increase in imports of the subject merchandise  
25 occurred during the same 12-month period, the ad-

1 ministering authority shall apply a rebuttable pre-  
2 sumption that critical circumstances exist with re-  
3 spect to such imports. For purposes of this para-  
4 graph, the term ‘rapid’ means a change of 10 per-  
5 cent or more from one calendar quarter to the next,  
6 and the price decline and the increase in imports  
7 need not be contemporaneous. In any case in which  
8 this presumption does not apply, or in which it ap-  
9 plies but is rebutted, the administering authority  
10 shall conduct a critical circumstances analysis as if  
11 no such presumption applied.”.

12 (2) FINAL DETERMINATIONS BY ADMIN-  
13 ISTERING AUTHORITY.—Section 705(a) of the Tariff  
14 Act of 1930 (19 U.S.C. 1671d(a)) is amended by re-  
15 designating paragraph (3) as paragraph (4) and in-  
16 serting after paragraph (2) the following new para-  
17 graph:

18 “(3) CRITICAL CIRCUMSTANCES DETERMINA-  
19 TIONS; SPECIAL RULE.—Notwithstanding paragraph  
20 (2), if the Commission has found under section  
21 703(a)(3) a rapid decline in domestic prices during  
22 a 12-month period, and the administering authority  
23 finds that a rapid increase in imports of the subject  
24 merchandise occurred during the same 12-month pe-  
25 riod, the administering authority shall apply a rebut-

1 table presumption that critical circumstances exist  
2 with respect to such imports. For purposes of this  
3 paragraph, the term ‘rapid’ means a change of 10  
4 percent or more from one calendar quarter to the  
5 next, and the price decline and the increase in im-  
6 ports need not be contemporaneous. In any case in  
7 which this presumption does not apply, or in which  
8 it applies but is rebutted, the administering author-  
9 ity shall conduct a critical circumstances analysis as  
10 if no such presumption applied.”.

11 (3) FINAL DETERMINATIONS BY COMMISSION.—  
12 Section 705(b)(4)(A) of the Tariff Act of 1930 (19  
13 U.S.C. 1671d(b)(4)(A)) is amended by inserting  
14 after clause (ii) the following new clause:

15 “(iii) PRESUMPTION THAT STANDARD  
16 FOR RETROACTIVE APPLICATION IS MET.—  
17 Notwithstanding clause (ii), if the Commis-  
18 sion determines that, at any time during  
19 the 12-month period since the initiation of  
20 the investigation, there has been a rapid  
21 decline in domestic prices for the domestic  
22 like product and a rapid increase in im-  
23 ports of the subject merchandise, the Com-  
24 mission shall apply a rebuttable presump-  
25 tion that the imports subject to the affirm-

1           ative determination under subsection (a)(2)  
2           are likely to undermine seriously the reme-  
3           dial effect of the countervailing duty order  
4           to be issued under section 706. For pur-  
5           poses of this clause, the term ‘rapid’ means  
6           a change of 10 percent or more from one  
7           calendar quarter to the next, and the price  
8           decline and the increase in imports need  
9           not be contemporaneous. In any case in  
10          which this presumption does not apply, or  
11          in which it applies but is rebutted, the  
12          Commission shall conduct a critical cir-  
13          cumstances analysis as if no such pre-  
14          sumption applied.”.

15          (c) ANTIDUMPING CASES.—

16               (1) PRELIMINARY DETERMINATIONS BY ADMIN-  
17               ISTERING AUTHORITY.—Section 733(e) of the Tariff  
18               Act of 1930 (19 U.S.C. 1673b(e)) is amended by re-  
19               designating paragraph (2) as paragraph (3) and in-  
20               serting after paragraph (1) the following new para-  
21               graph:

22                   “(2) PRESUMPTION OF CRITICAL CIR-  
23                   CUMSTANCES.—Notwithstanding paragraph (1), if  
24                   the Commission has found under subsection (a)(3) a  
25                   rapid decline in domestic prices during a 12-month

1 period and the administering authority finds that a  
2 rapid increase in imports of the subject merchandise  
3 occurred during the same 12-month period, the ad-  
4 ministering authority shall apply a rebuttable pre-  
5 sumption that critical circumstances exist with re-  
6 spect to such imports. For purposes of this para-  
7 graph, the term ‘rapid’ means a change of 10 per-  
8 cent or more from one calendar quarter to the next,  
9 and the price decline and the increase in imports  
10 need not be contemporaneous. In any case in which  
11 this presumption does not apply, or in which it ap-  
12 plies but is rebutted, the administering authority  
13 shall conduct a critical circumstances analysis as if  
14 no such presumption applied.”.

15 (2) FINAL DETERMINATIONS BY ADMIN-  
16 ISTERING AUTHORITY.—Section 735(a) of the Tariff  
17 Act of 1930 (19 U.S.C. 1673d(a)) is amended by re-  
18 designating paragraph (4) as paragraph (5) and in-  
19 sserting after paragraph (3) the following:

20 “(4) CRITICAL CIRCUMSTANCES DETERMINA-  
21 TIONS; SPECIAL RULE.—Notwithstanding paragraph  
22 (3), if the Commission has found under section  
23 733(a)(3) a rapid decline in domestic prices during  
24 a 12-month period, and the administering authority  
25 finds that a rapid increase in imports of the subject

1 merchandise occurred during the same 12-month pe-  
2 riod, the administering authority shall apply a rebut-  
3 table presumption that critical circumstances exist  
4 with respect to such imports. For purposes of this  
5 paragraph, the term ‘rapid’ means a change of 10  
6 percent or more from one calendar quarter to the  
7 next, and the price decline and the increase in im-  
8 ports need not be contemporaneous. In any case in  
9 which this presumption does not apply, or in which  
10 it applies but is rebutted, the administering author-  
11 ity shall conduct a critical circumstances analysis as  
12 if no such presumption applied.”.

13 (3) FINAL DETERMINATIONS BY COMMISSION.—  
14 Section 735(b)(4)(A) of the Tariff Act of 1930 (19  
15 U.S.C. 1673d(b)(4)(A)) is amended by adding after  
16 clause (ii) the following:

17 “(iii) PRESUMPTION THAT STANDARD  
18 FOR RETROACTIVE APPLICATION IS MET.—  
19 Notwithstanding clause (ii), if the Commis-  
20 sion determines that, at any time during  
21 the 12-month period since the initiation of  
22 the investigation, there has been a rapid  
23 decline in domestic prices for the domestic  
24 like product and a rapid increase in im-  
25 ports of the subject merchandise, the Com-

1 mission shall apply a rebuttable presump-  
2 tion that the imports subject to the affirm-  
3 ative determination under subsection (a)(3)  
4 are likely to undermine seriously the reme-  
5 dial effect of the antidumping duty order  
6 to be issued under section 736. For pur-  
7 poses of this clause, the term ‘rapid’ means  
8 a change of 10 percent or more from one  
9 calendar quarter to the next, and the price  
10 decline and the increase in imports need  
11 not be contemporaneous. In any case in  
12 which this presumption does not apply, or  
13 in which it applies but is rebutted, the  
14 Commission shall conduct a critical cir-  
15 cumstances analysis as if no such pre-  
16 sumption applied.”.

17 **SEC. 206. PREVENTION OF CIRCUMVENTION.**

18 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.  
19 1677j(e)) is amended to read as follows:

20 “(c) MINOR ALTERATIONS OF MERCHANDISE.—The  
21 class or kind of merchandise subject to—

22 “(1) an investigation under this subtitle,

23 “(2) an antidumping duty order issued under  
24 section 736,

1           “(3) a finding issued under the Antidumping  
2           Act, 1921, or

3           “(4) a countervailing duty order issued under  
4           section 706 or section 303,

5 shall include articles whose form or appearance has been  
6 altered in minor respects by changes in production process  
7 (including raw agricultural products that have undergone  
8 minor processing), regardless of any change in tariff clas-  
9 sification and regardless of whether the merchandise de-  
10 scription used in the investigation, order, or finding would  
11 otherwise exclude the altered article.”.

12 **SEC. 207. DOMESTIC INDUSTRY SUPPORT FOR SUSPENSION**  
13 **AGREEMENTS.**

14           (a) COUNTERVAILING DUTY CASES.—Section 704(d)  
15 of the Tariff Act of 1930 (19 U.S.C. 1671e(d)(1)) is  
16 amended—

17           (1) in paragraph (1)—

18                   (A) by striking “and” at the end of sub-  
19                   paragraph (A);

20                   (B) by striking the period at the end of  
21                   subparagraph (B), and inserting “, and”; and

22                   (C) by inserting after subparagraph (B)  
23                   the following new subparagraph:

24                           “(C) the domestic producers or workers  
25                           who support the agreement account for more

1 than 50 percent of the production of the domes-  
2 tic like product produced by those expressing an  
3 opinion on the agreement.”; and

4 (2) by adding at the end the following new  
5 paragraph:

6 “(4) SPECIAL RULES RELATING TO DOMESTIC  
7 PRODUCER AND WORKER SUPPORT.—

8 “(A) DETERMINATION OF INDUSTRY SUP-  
9 PORT.—

10 “(i) CERTAIN POSITIONS DIS-  
11 REGARDED.—

12 “(I) PRODUCERS RELATED TO  
13 FOREIGN PRODUCERS.—In deter-  
14 mining industry support under para-  
15 graph (1)(C), the administering au-  
16 thority shall disregard the position of  
17 domestic producers who support the  
18 agreement, if such producers are re-  
19 lated to foreign producers, as defined  
20 in section 771(4)(B)(ii), unless such  
21 domestic producers demonstrate that  
22 their interests as domestic producers  
23 would be adversely affected if the  
24 agreement is not accepted.

1                   “(II) PRODUCERS WHO ARE IM-  
2                   PORTERS.—The administering author-  
3                   ity may disregard the position of do-  
4                   mestic producers of a domestic like  
5                   product who are importers of the sub-  
6                   ject merchandise.

7                   “(ii) SPECIAL RULE FOR REGIONAL  
8                   INDUSTRIES.—If the petition which led to  
9                   the proposed suspension agreement alleges  
10                  that the industry is a regional industry,  
11                  the administering authority shall determine  
12                  whether the agreement is supported by or  
13                  on behalf of the industry by applying para-  
14                  graph (1)(C) on the basis of production in  
15                  the region.

16                  “(B) NATIONAL SECURITY EXCEPTION.—  
17                  In any case in which the administering author-  
18                  ity determines that the domestic producers or  
19                  workers who support the agreement do not ac-  
20                  count for more than 50 percent of the produc-  
21                  tion of the domestic like product produced by  
22                  those expressing an opinion on the agreement,  
23                  the administering authority may accept the  
24                  agreement, notwithstanding the provisions of  
25                  paragraph (1)(C), if the President determines

1           and certifies to the administering authority that  
2           failure to accept the agreement would under-  
3           mine the national security interests of the  
4           United States or pose an extraordinary threat  
5           to the economy of the United States.”.

6           (b) ANTIDUMPING DUTY CASES.—Section 734(d) of  
7 the Tariff Act of 1930 (19 U.S.C. 1673c(d)) is amended—

8           (1) by redesignating paragraphs (1) and (2) as  
9           subparagraphs (A) and (B), respectively;

10           (2) by striking “The administering authority”  
11           and inserting:

12           “(1) IN GENERAL.—The administering author-  
13           ity”;

14           (3) by striking “and” at the end of subpara-  
15           graph (A), as redesignated;

16           (4) by striking the period at the end of sub-  
17           paragraph (B), as redesignated, and inserting “,  
18           and”;

19           (5) by inserting after subparagraph (B), as re-  
20           designated, the following new subparagraph:

21           “(C) the domestic producers or workers  
22           who support the agreement account for more  
23           than 50 percent of the production of the domes-  
24           tic like product produced by those expressing an  
25           opinion on the agreement.”; and

1           (6) by adding at the end the following new  
2 paragraph:

3           “(2) SPECIAL RULES RELATING TO DOMESTIC  
4 PRODUCER AND WORKER SUPPORT.—

5                   “(A) DETERMINATION OF INDUSTRY SUP-  
6 PORT.—

7                           “(i) CERTAIN POSITIONS DIS-  
8 REGARDED.—

9                                   “(I) PRODUCERS RELATED TO  
10 FOREIGN PRODUCERS.—In deter-  
11 mining domestic producer or worker  
12 support for purposes of paragraph  
13 (1)(C), the administering authority  
14 shall disregard the position of domes-  
15 tic producers who support the agree-  
16 ment, if such producers are related to  
17 foreign producers, as defined in sec-  
18 tion 771(4)(B)(ii), unless such domes-  
19 tic producers demonstrate that their  
20 interests as domestic producers would  
21 be adversely affected if the agreement  
22 is not accepted.

23                                   “(II) PRODUCERS WHO ARE IM-  
24 PORTERS.—The administering author-  
25 ity may disregard the position of do-

1                   mestic producers of a domestic like  
2                   product who are importers of the sub-  
3                   ject merchandise.

4                   “(ii) SPECIAL RULE FOR REGIONAL  
5                   INDUSTRIES.—If the petition which led to  
6                   the proposed suspension agreement alleges  
7                   the industry is a regional industry, the ad-  
8                   ministering authority shall determine  
9                   whether the agreement is supported by or  
10                  on behalf of the industry by applying para-  
11                  graph (1)(C) on the basis of production in  
12                  the region.

13                  “(B) NATIONAL SECURITY EXCEPTION.—  
14                  In any case in which the administering author-  
15                  ity determines that the domestic producers or  
16                  workers who support the agreement do not ac-  
17                  count for more than 50 percent of the produc-  
18                  tion of the domestic like product produced by  
19                  those expressing an opinion on the agreement,  
20                  the administering authority may accept the  
21                  agreement, notwithstanding the provisions of  
22                  paragraph (1)(C), if the President determines  
23                  and certifies to the administering authority that  
24                  failure to accept the agreement would under-  
25                  mine the national security interests of the

1 United States or pose an extraordinary threat  
2 to the economy of the United States.”.

3 **SEC. 208. IMPACT OF SAFEGUARD DETERMINATIONS ON 5-**  
4 **YEAR REVIEW DETERMINATIONS.**

5 Section 752(a) of the Tariff Act of 1930 (19 U.S.C.  
6 1675a(a)) is amended by adding at the end the following  
7 new paragraph:

8 “(9) IMPACT OF PRIOR SERIOUS INJURY DE-  
9 TERMINATIONS.—

10 “(A) AFFIRMATIVE SERIOUS INJURY DE-  
11 TERMINATIONS.—If the Commission has re-  
12 cently determined, under chapter 1 of title II of  
13 the Trade Act of 1974, that the domestic indus-  
14 try producing particular merchandise suffers  
15 from or is threatened with serious injury by  
16 reason of increased imports, the Commission  
17 shall apply a rebuttable presumption that mate-  
18 rial injury is ongoing for purposes of any 5-year  
19 review under section 751(c) involving the same  
20 merchandise. The Commission shall not treat  
21 the imposition of measures under chapter 1 of  
22 title II of the Trade Act of 1974 resulting from  
23 such an affirmative determination as reducing  
24 the likelihood of continuation or recurrence of  
25 material injury for purposes of the 5-year re-

1 view. For purposes of this subparagraph, the  
2 term ‘recently’ means within the 48-month pe-  
3 riod ending on the date on which the 5-year re-  
4 view is initiated.

5 “(B) NEGATIVE SERIOUS INJURY DETER-  
6 MINATIONS.—If the Commission has previously  
7 determined, under chapter 1 of title II of the  
8 Trade Act of 1974, that a domestic industry is  
9 not suffering from or threatened with serious  
10 injury by reason of increased imports, the Com-  
11 mission shall treat that determination as having  
12 no impact on the Commission’s determination  
13 in a subsequent 5-year review under section  
14 751(c) involving the same merchandise as to  
15 whether material injury is likely to continue or  
16 recur if an antidumping or countervailing duty  
17 order is lifted.”.

18 **SEC. 209. REIMBURSEMENT OF DUTIES.**

19 Section 772(d) of the Tariff Act of 1930 (19 U.S.C.  
20 1677a(d)) is amended—

21 (1) by striking “and” at the end of paragraph

22 (2);

23 (2) by striking the period at the end of para-  
24 graph (3) and inserting a semicolon; and

1           (3) by adding at the end the following new  
2 paragraphs:

3           “(4) if the importer is the producer or exporter,  
4 or the importer and the producer or exporter are af-  
5 filiated persons, an amount equal to the dumping  
6 margin calculated under section 771(35)(A), unless  
7 the producer or exporter is able to demonstrate that  
8 the importer was in no way reimbursed for any anti-  
9 dumping duties paid; and

10           “(5) if the importer is the producer or exporter,  
11 or the importer and the producer or exporter are af-  
12 filiated persons, an amount equal to the net  
13 countervailable subsidy calculated under section  
14 771(6), unless the producer or exporter is able to  
15 demonstrate that the importer was in no way reim-  
16 bursed for any antidumping duties paid.”.

17 **SEC. 210. TRANSACTIONS BETWEEN AFFILIATED PARTIES.**

18           Section 773(f) of the Tariff Act of 1930 (19 U.S.C.  
19 1677b(f)) is amended—

20           (1) in paragraph (2), by striking “A trans-  
21 action” and inserting “Regardless of whether the ad-  
22 ministering authority determines to treat affiliated  
23 persons as a single entity for other purposes, a  
24 transaction”; and

1           (2) in paragraph (3), by striking “If” and in-  
2           serting “Regardless of whether the administering  
3           authority determines to treat affiliated persons as a  
4           single entity for other purposes, if”.

5 **SEC. 211. PERISHABLE AGRICULTURAL PRODUCTS.**

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

19           (b) DETERMINATION OF INJURY.—Section  
20 771(7)(D) of the Tariff Act of 1930 (19 U.S.C.  
21 1677(7)(D)) is amended by adding at the end the fol-  
22 lowing new clauses:

23                           “(iii) In the case of an agricultural in-  
24                           dustry involving a perishable product with  
25                           a short shelf life, if a request for seasonal

1 evaluation has been made by the peti-  
2 tioners, the Commission shall consider the  
3 factors in subparagraph (C) on a seasonal  
4 basis during the period identified as rel-  
5 evant.

6 “(iv) In the case of agricultural prod-  
7 ucts, partially picked or unpicked crops  
8 and abandoned acreage may be considered  
9 in lieu of other measures of capacity and  
10 capacity utilization.

11 “(v) The impact of other factors, such  
12 as weather, on agricultural production and  
13 producers shall not be weighed against the  
14 contribution of the imported subject mer-  
15 chandise to the condition of the domestic  
16 industry.”.

17 **SEC. 212. FULL RECOGNITION OF SUBSIDY CONFERRED**  
18 **THROUGH PROVISION OF GOODS AND SERV-**  
19 **ICES AND PURCHASE OF GOODS.**

20 Section 771(5)(E) of the Tariff Act of 1930 (19  
21 U.S.C. 1677(5)(E)) is amended by adding at the end the  
22 following: “If transactions in the country which is the sub-  
23 ject of the investigation or review do not reflect market  
24 conditions due to government action associated with provi-  
25 sion of the goods or service or purchase of the goods, de-

1 termination of the adequacy of remuneration shall be  
2 through comparison with the most comparable market  
3 price elsewhere in the world.”.

4           **TITLE III—STEEL IMPORT**  
5                           **NOTIFICATION**

6   **SEC. 301. STEEL IMPORT NOTIFICATION AND MONITORING**  
7                           **PROGRAM.**

8           (a) **IN GENERAL.**—Not later than 30 days after the  
9 date of enactment of this Act, the Secretary of Commerce,  
10 in consultation with the Secretary of the Treasury, shall  
11 establish and implement a steel import notification and  
12 monitoring program. The program shall include a require-  
13 ment that any person importing a product classified under  
14 chapter 72 or 73 of the Harmonized Tariff Schedule of  
15 the United States obtain an import notification certificate  
16 before such products are entered into the United States.

17           (b) **STEEL IMPORT NOTIFICATION CERTIFICATES.**—

18                   (1) **IN GENERAL.**—In order to obtain a steel  
19 import notification certificate, an importer shall sub-  
20 mit to the Secretary of Commerce an application  
21 containing—

22                           (A) the importer’s name and address;

23                           (B) the name and address of the supplier  
24 of the goods to be imported;

1 (C) the name and address of the producer  
2 of the goods to be imported;

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

4 (E) the country from which the goods are  
5 to be imported;

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

8 (G) the expected date of entry of the goods  
9 into the United States;

10 (H) a description of the goods, including  
11 the classification of such goods under the Har-  
12 monized Tariff Schedule of the United States;

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

15 (J) the cost insurance freight (CIF) and  
16 free alongside ship (FAS) values of the goods to  
17 be entered;

18 (K) whether the goods are being entered  
19 for consumption or for entry into a bonded  
20 warehouse or foreign trade zone;

21 (L) a certification that the information  
22 furnished in the certificate application is cor-  
23 rect; and

1 (M) any other information the Secretary of  
2 Commerce determines to be necessary and ap-  
3 propriate.

4 (2) ENTRY INTO CUSTOMS TERRITORY.—In the  
5 case of merchandise classified under chapter 72 or  
6 73 of the Harmonized Tariff Schedule of the United  
7 States that is initially entered into a bonded ware-  
8 house or foreign trade zone, a steel import notifica-  
9 tion certificate shall be required before the merchan-  
10 dise is entered into the customs territory of the  
11 United States.

12 (3) ISSUANCE OF STEEL IMPORT NOTIFICATION  
13 CERTIFICATE.—The Secretary of Commerce shall  
14 issue a steel import notification certificate to any  
15 person who files an application that meets the re-  
16 quirements of this section. Such certificate shall be  
17 valid for a period of 30 days from the date of  
18 issuance.

19 (c) STATISTICAL INFORMATION.—

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

23 (2) INFORMATION DESCRIBED.—Information  
24 described in this paragraph means information ob-  
25 tained from steel import notification certificate ap-

1        plications concerning steel imported into the United  
2        States and includes with respect to such imports the  
3        Harmonized Tariff Schedule of the United States  
4        classification (to the tenth digit), the country of ori-  
5        gin, the port of entry, quantity, value of steel im-  
6        ported, and whether the imports are entered for con-  
7        sumption or are entered into a bonded warehouse or  
8        foreign trade zone. Such information shall also be  
9        compiled in aggregate form and made publicly avail-  
10       able by the Secretary of Commerce on a weekly basis  
11       by public posting through an Internet website. The  
12       information provided under this section shall be in  
13       addition to any information otherwise required by  
14       law.

15       (d) FEES.—The Secretary of Commerce may pre-  
16       scribe reasonable fees and charges to defray the costs of  
17       carrying out the provisions of this section, including a fee  
18       for issuing a certificate under this section.

19       (e) SINGLE PRODUCER AND EXPORTER COUN-  
20       TRIES.—Notwithstanding any other provision of law, the  
21       Secretary of Commerce shall make publicly available all  
22       information required to be released pursuant to subsection  
23       (c), including information obtained regarding imports  
24       from a foreign producer or exporter that is the only pro-

1 ducer or exporter of goods subject to this section from a  
2 foreign country.

3 (f) REGULATIONS.—The Secretary of Commerce may  
4 prescribe such rules and regulations relating to the steel  
5 import notification and monitoring program as may be  
6 necessary to carry out the provisions of this section.

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