

111TH CONGRESS
1ST SESSION

H. R. 499

To amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2009

Mr. DAVIS of Alabama (for himself and Ms. GINNY BROWN-WAITE of Florida) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries, 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 “Nonmarket Economy
5 Trade Remedy Act of 2009”.

1 **SEC. 2. APPLICATION OF COUNTERVAILING DUTIES TO**
2 **NONMARKET ECONOMIES AND STRENGTH-**
3 **ENING APPLICATION OF THE LAW.**

4 (a) **IN GENERAL.**—Section 701(a)(1) of the Tariff
5 Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by insert-
6 ing “(including a nonmarket economy country)” after
7 “country” each place it appears.

8 (b) **RECOGNITION OF COUNTERAVAILABLE SUBSIDIES**
9 **IN NONMARKET ECONOMY COUNTRIES.**—Section
10 771(5)(C) of the Tariff Act of 1930 (19 U.S.C.
11 1677(5)(E)) is amended to read as follows:

12 “(C) **OTHER FACTORS.**—(i) The deter-
13 mination of whether a subsidy exists shall be
14 made without regard to—

15 “(I) whether the recipient of the
16 subsidy is publicly or privately owned;

17 “(II) whether the subsidy is pro-
18 vided directly or indirectly on the
19 manufacture, production, or export of
20 merchandise; and

21 “(III)(aa) whether the country is
22 a nonmarket economy country, or

23 “(bb) the level of economic re-
24 forms in a country that is a non-
25 market economy country,
26 at the time the subsidy is provided.

1 “(ii) The administering authority is
2 not required to consider the effect of the
3 subsidy in determining whether a subsidy
4 exists under this paragraph.”.

5 (c) USE OF ALTERNATE METHODOLOGIES INVOLV-
6 ING CHINA.—Section 771(5)(E) of the Tariff Act of 1930
7 (19 U.S.C. 1677(5)(E)) is amended by adding at the end
8 the following: “If the administering authority encounters
9 special difficulties in identifying and calculating the
10 amount of a benefit under clauses (i) through (iv) with
11 respect to an investigation or review involving the People’s
12 Republic of China, irrespective of whether the admin-
13 istering authority determines that China is a nonmarket
14 economy country under paragraph (18) of this section, the
15 administering authority shall use methodologies to identify
16 and calculate the amount of the benefit that take into ac-
17 count the possibility that terms and conditions prevailing
18 in China may not always be available as appropriate
19 benchmarks. In applying such methodologies, where prac-
20 ticable, the administering authority should take into ac-
21 count and adjust terms and conditions prevailing in China
22 before using terms and conditions prevailing outside of
23 China. When the administering authority has determined
24 that China is a nonmarket economy country under para-
25 graph (18) of this section, the administering authority

1 shall presume that special difficulties exist in calculating
2 the amount of a benefit under clauses (i) through (iv) with
3 respect to an investigation or review involving China and
4 that it is not practicable to take into account and adjust
5 terms and conditions prevailing in China, and the admin-
6 istering authority shall use terms and conditions pre-
7 vailing outside of China.”.

8 (d) SUBSIDIES PROVIDED TO STATE-OWNED ENTER-
9 PRISES IN THE PEOPLE’S REPUBLIC OF CHINA.—Section
10 771(5A) of the Tariff Act of 1930 (19 U.S.C. 1677(5A))
11 is amended by adding at the end the following:

12 “For purposes of this paragraph, subsidies provided
13 to state-owned enterprises in the People’s Republic
14 of China shall be deemed to be specific if, inter alia,
15 state-owned enterprises are the predominant recipi-
16 ents of such subsidies or state-owned enterprises re-
17 ceive disproportionately large amounts of such sub-
18 sidies.”.

19 (e) ANTIDUMPING PROVISIONS NOT AFFECTED.—
20 The amendments made by this section shall not affect the
21 status of a country as a nonmarket economy country for
22 the purposes of any matter relating to antidumping duties
23 under subtitle B of title VII of the Tariff Act of 1930
24 (19 U.S.C. 1673 et seq.).

1 (f) RULE OF CONSTRUCTION.—The amendments
2 made by this section shall not be construed to affect the
3 interpretation of any provision of law as in effect on the
4 day before the date of the enactment of this Act with re-
5 spect to the application of countervailing duties to non-
6 market economy countries.

7 (g) EFFECTIVE DATE.—The amendments made by
8 this section apply to petitions filed under section 702 of
9 the Tariff Act of 1930 (19 U.S.C. 1671a) on or after Oc-
10 tober 1, 2006.

11 **SEC. 3. TREATMENT OF INDIVIDUAL BUSINESS ENTER-**
12 **PRISES IN NONMARKET ECONOMY COUN-**
13 **TRIES.**

14 Section 771(18) of the Tariff Act of 1930 (19 U.S.C.
15 1677(18)) is amended—

16 (1) by redesignating subparagraphs (D) and
17 (E) as subparagraph (E) and (F), respectively; and

18 (2) by inserting after subparagraph (C) the fol-
19 lowing:

20 “(D) TREATMENT OF INDIVIDUAL BUSI-
21 NESS ENTERPRISES.—The administering au-
22 thority shall not consider requests for market
23 economy treatment at the individual business
24 enterprise level in an antidumping proceeding

1 involving a foreign country determined to be a
2 nonmarket economy country.”.

3 **SEC. 4. REVOCATION OF NONMARKET ECONOMY COUNTRY**
4 **STATUS.**

5 (a) AMENDMENT OF DEFINITION OF “NONMARKET
6 ECONOMY COUNTRY”.—Section 771(18)(C)(i) of the Tar-
7 iff Act of 1930 (19 U.S.C. 1677(18)(C)(i)) is amended
8 to read as follows:

9 “(i) Any determination that a foreign
10 country is a nonmarket economy country
11 shall remain in effect until—

12 “(I) the administering authority
13 makes a final determination to revoke
14 the determination under subparagraph
15 (A); and

16 “(II) a joint resolution is enacted
17 into law pursuant to subsections (b)
18 through (i) of section 4 of the Non-
19 market Economy Trade Remedy Act
20 of 2009.”.

21 (b) NOTIFICATION BY PRESIDENT; JOINT RESOLU-
22 TION.—Whenever the administering authority makes a
23 final determination under section 771(18)(C)(i)(I) of the
24 Tariff Act of 1930 (19 U.S.C. 1677(18)(C)(i)(I)) to re-

1 voke the determination that a foreign country is a non-
2 market economy country—

3 (1) the President shall notify the Committee on
4 Finance of the Senate and the Committee on Ways
5 and Means of the House of Representatives of that
6 determination not later than 10 days after the publi-
7 cation of the administering authority’s final deter-
8 mination in the Federal Register;

9 (2) the President shall transmit to the Congress
10 a request that a joint resolution be introduced pur-
11 suant to this section; and

12 (3) a joint resolution shall be introduced in the
13 Congress pursuant to this section.

14 (c) DEFINITION.—For purposes of this section, the
15 term “joint resolution” means only a joint resolution of
16 the 2 Houses of the Congress, the matter after the resolv-
17 ing clause of which is as follows: “That the Congress ap-
18 proves the change of nonmarket economy status with re-
19 spect to the products of _____ transmitted by the
20 President to the Congress on _____.”, the first
21 blank space being filled in with the name of the country
22 with respect to which a determination has been made
23 under section 771(18)(C)(i) of the Tariff Act of 1930 (19
24 U.S.C. 1677(18)(C)(i)), and the second blank space being
25 filled with the date on which the President notified the

1 Committee on Finance of the Senate and the Committee
2 on Ways and Means of the House of Representatives
3 under subsection (b)(1).

4 (d) INTRODUCTION.—A joint resolution shall be in-
5 troduced (by request) in the House of Representatives by
6 the majority leader of the House, for himself, or by Mem-
7 bers of the House designated by the majority leader of
8 the House, and shall be introduced (by request) in the
9 Senate by the majority leader of the Senate, for himself,
10 or by Members of the Senate designated by the majority
11 leader of the Senate.

12 (e) AMENDMENTS PROHIBITED.—No amendment to
13 a joint resolution shall be in order in either the House
14 of Representatives or the Senate, and no motion to sus-
15 pend the application of this subsection shall be in order
16 in either House, nor shall it be in order in either House
17 for the presiding officer to entertain a request to suspend
18 the application of this subsection by unanimous consent.

19 (f) PERIOD FOR COMMITTEE AND FLOOR CONSIDER-
20 ATION.—

21 (1) IN GENERAL.—If the committee or commit-
22 tees of either House to which a joint resolution has
23 been referred have not reported the joint resolution
24 at the close of the 45th day after its introduction,
25 such committee or committees shall be automatically

1 discharged from further consideration of the joint
2 resolution and it shall be placed on the appropriate
3 calendar. A vote on final passage of the joint resolu-
4 tion shall be taken in each House on or before the
5 close of the 15th day after the joint resolution is re-
6 ported by the committee or committees of that
7 House to which it was referred, or after such com-
8 mittee or committees have been discharged from fur-
9 ther consideration of the joint resolution. If, prior to
10 the passage by one House of a joint resolution of
11 that House, that House receives the same joint reso-
12 lution from the other House, then—

13 (A) the procedure in that House shall be
14 the same as if no joint resolution had been re-
15 ceived from the other House, but

16 (B) the vote on final passage shall be on
17 the joint resolution of the other House.

18 (2) COMPUTATION OF DAYS.—For purposes of
19 paragraph (1), in computing a number of days in ei-
20 ther House, there shall be excluded any day on
21 which that House is not in session.

22 (g) FLOOR CONSIDERATION IN THE HOUSE.—

23 (1) MOTION PRIVILEGED.—A motion in the
24 House of Representatives to proceed to the consider-
25 ation of a joint resolution shall be highly privileged

1 and not debatable. An amendment to the motion
2 shall not be in order, nor shall it be in order to move
3 to reconsider the vote by which the motion is agreed
4 to or disagreed to.

5 (2) DEBATE LIMITED.—Debate in the House of
6 Representatives on a joint resolution shall be limited
7 to not more than 20 hours, which shall be divided
8 equally between those favoring and those opposing
9 the joint resolution. A motion further to limit debate
10 shall not be debatable. It shall not be in order to
11 move to recommit a joint resolution or to move to
12 reconsider the vote by which a joint resolution is
13 agreed to or disagreed to.

14 (3) MOTIONS TO POSTPONE.—Motions to post-
15 pone, made in the House of Representatives with re-
16 spect to the consideration of a joint resolution, and
17 motions to proceed to the consideration of other
18 business, shall be decided without debate.

19 (4) APPEALS.—All appeals from the decisions
20 of the Chair relating to the application of the Rules
21 of the House of Representatives to the procedure re-
22 lating to a joint resolution shall be decided without
23 debate.

24 (5) OTHER RULES.—Except to the extent spe-
25 cifically provided in the preceding provisions of this

1 subsection, consideration of a joint resolution shall
2 be governed by the Rules of the House of Represent-
3 atives applicable to other bills and resolutions in
4 similar circumstances.

5 (h) FLOOR CONSIDERATION IN THE SENATE.—

6 (1) MOTION PRIVILEGED.—A motion in the
7 Senate to proceed to the consideration of a joint res-
8 olution shall be privileged and not debatable. An
9 amendment to the motion shall not be in order, nor
10 shall it be in order to move to reconsider the vote
11 by which the motion is agreed to or disagreed to.

12 (2) DEBATE LIMITED.—Debate in the Senate
13 on a joint resolution, and all debatable motions and
14 appeals in connection therewith, shall be limited to
15 not more than 20 hours. The time shall be equally
16 divided between, and controlled by, the majority
17 leader and the minority leader or their designees.

18 (3) CONTROL OF DEBATE.—Debate in the Sen-
19 ate on any debatable motion or appeal in connection
20 with a joint resolution shall be limited to not more
21 than 1 hour, to be equally divided between, and con-
22 trolled by, the mover and the manager of the joint
23 resolution, except that in the event the manager of
24 the joint resolution is in favor of any such motion
25 or appeal, the time in opposition thereto shall be

1 controlled by the minority leader or his designee.
2 Such leaders, or either of them, may, from time
3 under their control on the passage of a joint resolu-
4 tion, allot additional time to any Senator during the
5 consideration of any debatable motion or appeal.

6 (4) OTHER MOTIONS.—A motion in the Senate
7 to further limit debate is not debatable. A motion to
8 recommit a joint resolution is not in order.

9 (i) RULES OF HOUSE OF REPRESENTATIVES AND
10 SENATE.—Subsections (c) through (h) are enacted by the
11 Congress—

12 (1) as an exercise of the rulemaking power of
13 the House of Representatives and the Senate, re-
14 spectively, and as such subsections (c) through (h)
15 are deemed a part of the rules of each House, re-
16 spectively, but applicable only with respect to the
17 procedure to be followed in that House in the case
18 of joint resolutions described in subsection (c), and
19 subsections (c) through (h) supersede other rules
20 only to the extent that they are inconsistent there-
21 with; and

22 (2) with full recognition of the constitutional
23 right of either House to change the rules (so far as
24 relating to the procedure of that House) at any time,

- 1 in the same manner and to the same extent as in
- 2 the case of any other rule of that House.

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