

113TH CONGRESS
2D SESSION

S. _____

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

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

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 AN INVES-**
3 **TIGATION.**

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”;

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) ADVERSE INFERENCES.—An adverse infer-
4 ence under paragraph (1)(A) may include”;

5 (2) in subsection (c)—

6 (A) by striking “CORROBORATION OF SEC-
7 ONDARY INFORMATION.—When the” and in-
8 serting the following: “CORROBORATION OF
9 SECONDARY INFORMATION.—

10 “(1) IN GENERAL.—When the”; and

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

12 “(2) EXCEPTIONS.—

13 “(A) INFORMATION PROVIDED BY
14 PARTY.—If the administrative authority or the
15 Commission uses an inference that is adverse to
16 the interests of a party under subsection
17 (b)(1)(A), information provided by that party,
18 including any dumping margin or subsidy rate
19 calculated based on such information, shall not
20 be considered secondary information under this
21 subsection and shall not be subject to corrobo-
22 ration under paragraph (1), even if the infor-
23 mation was submitted by that party in a sepa-
24 rate proceeding under this title or a separate
25 segment of the same proceeding.

1 “(B) INFORMATION RELATING TO DUMP-
2 ING MARGINS AND SUBSIDY RATES.—If the ad-
3 ministering authority uses a countervailable
4 subsidy rate or dumping margin in accordance
5 with subsection (d)(1), the administering au-
6 thority is not required to corroborate informa-
7 tion relating to that rate or margin under para-
8 graph (1) if that rate or margin was calculated,
9 in whole or in part, using information—

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

13 “(ii) certified by that interested party
14 as accurate and complete to the best of
15 that interested party’s knowledge under
16 section 782(b).”; and

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

18 “(d) SUBSIDY RATES AND DUMPING MARGINS IN
19 ADVERSE INFERENCE DETERMINATIONS.—

20 “(1) IN GENERAL.—If the administering au-
21 thority uses an inference that is adverse to the inter-
22 ests of a party under subsection (b)(1)(A) in select-
23 ing among facts otherwise available, the admin-
24 istering authority may—

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

3 “(i) calculated with respect to a sub-
4 sidiy program involved in the proceeding
5 that is the same or similar to the subsidy
6 program for which a determination is to be
7 made under this section, or, in the absence
8 of such a program, any other subsidy pro-
9 gram involved in the proceeding,

10 “(ii) calculated in another counter-
11 vailing duty proceeding with respect to an-
12 other subsidy program implemented by the
13 country that is implementing the subsidy
14 program for which a determination is to be
15 made under this section unless the admin-
16 istering authority has evidence that export-
17 ers or producers of the subject merchan-
18 dise could not have used such other sub-
19 sidiy program, or

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

24 “(B) in the case of an antidumping duty
25 proceeding, use—

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

6 “(ii) an individual weighted average
7 dumping margin calculated with respect to
8 any exporter or producer involved in the
9 proceeding during the investigation or a re-
10 view,

11 “(iii) any dumping margin alleged in
12 a petition filed under section 732(b) that
13 was relied on by the administering author-
14 ity to initiate the antidumping duty inves-
15 tigation, or

16 “(iv) any dumping margin found in
17 another antidumping duty proceeding with
18 respect to a class or kind of merchandise
19 that is the same or similar to and from the
20 same country as subject merchandise in-
21 volved in the proceeding.

22 “(2) DISCRETION TO APPLY HIGHEST RATE.—
23 The administering authority has the discretion
24 under paragraph (1), in selecting from among facts
25 otherwise available, to apply any of the

1 countervailable subsidy rates or dumping margins
2 specified under that paragraph, including the high-
3 est such rate or margin.

4 “(3) NO OBLIGATION TO MAKE CERTAIN ESTI-
5 MATES OR ADDRESS CERTAIN CLAIMS.—If the ad-
6 ministering authority uses an adverse inference
7 under subsection (b)(1)(A) in selecting among facts
8 otherwise available, the administering authority is
9 not required, for purposes of subsection (c) or for
10 any other purpose—

11 “(A) to estimate what the countervailable
12 subsidy rate or dumping margin would have
13 been if the interested party found to have failed
14 to cooperate under subsection (b)(1) had co-
15 operated, or

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

20 “(4) RULE OF CONSTRUCTION.—Nothing in
21 this subsection shall be construed to limit the discre-
22 tion of the administering authority to use any other
23 countervailable subsidy rate or dumping margin not
24 specified in paragraph (1), subject to the corrobora-
25 tion requirements of subsection (c).”.

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

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

6 “(iii) IMPACT ON AFFECTED DOMES-
7 TIC INDUSTRY.—

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

15 “(aa) actual and potential
16 decline in output, sales, market
17 share, gross profits, operating
18 profits, net profits, ability to
19 service debt, productivity, return
20 on investments, return on assets,
21 and utilization of capacity,

22 “(bb) factors affecting do-
23 mestic prices,

24 “(cc) actual and potential
25 negative effects on cash flow, in-
26 ventories, employment, wages,

1 growth, ability to raise capital,
2 and investment,

3 “(dd) actual and potential
4 negative effects on the existing
5 development and production ef-
6 forts of the domestic industry, in-
7 cluding efforts to develop a deriv-
8 ative or more advanced version of
9 the domestic like product, and

10 “(ee) in a proceeding under
11 subtitle B, the magnitude of the
12 margin of dumping.

13 “(II) EVALUATION OF ECONOMIC
14 FACTORS IN CONTEXT.—

15 “(aa) IN GENERAL.—The
16 Commission shall evaluate all rel-
17 evant economic factors described
18 in subclause (I) within the con-
19 text of the business cycle and
20 conditions of competition that are
21 distinct to the affected industry.

22 “(bb) INDUSTRY PERFORM-
23 ANCE.—The fact that the per-
24 formance of the affected industry
25 has improved during the period

1 of investigation shall not preclude
2 a finding of material injury or
3 threat of material injury if the
4 improvement in performance has
5 been affected by imports of the
6 subject merchandise.

7 “(III) EFFECT OF RECESSION.—

8 In the case of an investigation initi-
9 ated by petition, if the National Bu-
10 reau of Economic Research or another
11 government agency responsible for
12 business cycle evaluation declares that
13 a recession began at any time during
14 the 3-year period preceding the date
15 on which the petition was filed, the
16 Commission may, if timely requested
17 by an interested party, extend its nor-
18 mal period of investigation to ensure
19 that the period begins at least 365
20 days before the beginning of the re-
21 cession to ensure that the condition of
22 the affected industry can be appro-
23 priately assessed in relation to the
24 business cycle.”.

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

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

6 (1) by striking clause (iii);

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

8 and

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

10 “(iv) BONA FIDE UNITED STATES
11 SALES.—

12 “(I) ELIGIBILITY FOR INDI-
13 VIDUAL MARGIN OR RATE.—An ex-
14 porter or producer is eligible for an
15 individual weighted average dumping
16 margin or individual countervailing
17 duty rate established in a review con-
18 ducted under clause (i) only if that
19 exporter or producer demonstrates
20 that all sales of subject merchandise
21 by that exporter or producer in the
22 United States or for exportation to
23 the United States during the period
24 covered by the review are—

25 “(aa) bona fide, and

1 “(bb) sold to a person that
2 is not affiliated with that ex-
3 porter or producer.

4 “(II) ELEMENTS OF BONA FIDE
5 DETERMINATION.—In determining
6 whether the sales of an exporter or
7 producer in the United States are
8 bona fide for purposes of subclause
9 (I)(aa), the administering authority
10 shall consider, depending on the cir-
11 cumstances surrounding such sales—

12 “(aa) the prices of such
13 sales,

14 “(bb) whether such sales
15 were made in commercial quan-
16 tities,

17 “(cc) the timing of such
18 sales,

19 “(dd) the expenses arising
20 from such sales,

21 “(ee) whether the subject
22 merchandise involved in such
23 sales was resold in the United
24 States at a profit,

1 “(ff) whether such sales
2 were made on an arms-length
3 basis, and

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

12 **SEC. 5. REQUIREMENT THAT CERTIFICATION BY IM-**
13 **PORTER AND EXPORTER ACCOMPANY CER-**
14 **TAIN MERCHANDISE UPON ENTRY.**

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

18 **“SEC. 784. REQUIREMENT THAT CERTIFICATION BY IM-**
19 **PORTER AND EXPORTER ACCOMPANY CER-**
20 **TAIN MERCHANDISE UPON ENTRY.**

21 “(a) REQUIREMENT.—

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

1 Customs and Border Protection (in this section re-
2 ferred to as the ‘Commissioner’) shall require the
3 merchandise to be accompanied by that certification
4 upon entry into the customs territory of the United
5 States.

6 “(2) CERTIFICATION DESCRIBED.—A certifi-
7 cation described in this paragraph is a certification,
8 as required by the administering authority, by the
9 importer or exporter of the merchandise that the
10 merchandise is not subject to a duty under this title
11 because the merchandise does not fall within the
12 scope of any antidumping or countervailing duty
13 order.

14 “(b) AUTHORITY TO ASSESS HIGHEST RATE OF
15 DUTY.—If a certification described in paragraph (2) of
16 subsection (a) is required to accompany the merchandise
17 upon entry into the customs territory of the United States
18 pursuant to paragraph (1) of that subsection, and that
19 certification does not accompany the merchandise or a cer-
20 tification that contains any materially false, fictitious, or
21 fraudulent statement or representation or any material
22 omission accompanies the merchandise, the merchandise
23 shall be liquidated or reliquidated at the highest rate of
24 antidumping or countervailing duty applicable to the mer-
25 chandise.

1 “(c) PENALTIES.—If a certification described in
2 paragraph (2) of subsection (a) is required to accompany
3 the merchandise upon entry into the customs territory of
4 the United States pursuant to paragraph (1) of that sub-
5 section, and that certification does not accompany the
6 merchandise or a certification that contains any materially
7 false, fictitious, or fraudulent statement or representation
8 or any material omission accompanies the merchandise,
9 the importer of the merchandise may be subject to a pen-
10 alty pursuant to section 592 of this Act, section 1001 of
11 title 18, United States Code, or any other applicable provi-
12 sion of law.”.

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

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

16 **SEC. 6. REDUCTION IN BURDEN ON DEPARTMENT OF COM-**
17 **MERCE BY REDUCING THE NUMBER OF VOL-**
18 **UNTARY RESPONDENTS.**

19 Section 782(a) of the Tariff Act of 1930 (19 U.S.C.
20 1677m(a)) is amended—

21 (1) in paragraph (1), by redesignating subpara-
22 graphs (A) and (B) as clauses (i) and (ii), respec-
23 tively, and by moving such clauses, as so redesign-
24 nated, 2 ems to the right;

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

5 (3) by striking “INVESTIGATIONS AND RE-
6 VIEWS.—In” and inserting the following: “INVES-
7 TIGATIONS AND REVIEWS.—

8 “(1) IN GENERAL.—In”;

9 (4) in paragraph (1), as designated by para-
10 graph (3), by amending subparagraph (B), as redesi-
11 gnated by paragraph (2), to read as follows:

12 “(B) the number of exporters or producers
13 subject to the investigation or review is not so
14 large that any additional individual examination
15 of such exporters or producers would be unduly
16 burdensome to the administering authority and
17 inhibit the timely completion of the investiga-
18 tion or review.”; and

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

20 “(2) DETERMINATION OF UNDULY BURDEN-
21 SOME.—In determining if an individual examination
22 under paragraph (1)(B) would be unduly burden-
23 some, the administering authority may consider the
24 following:

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

4 “(B) Any prior experience of the admin-
5 istering authority in the same or similar pro-
6 ceeding.

7 “(C) The total number of investigations
8 under subtitle A or B and reviews under section
9 751(a) being conducted by the administering
10 authority as of the date of the determination.

11 “(D) The availability of staff and other re-
12 sources considered necessary by the admin-
13 istering authority for the timely and accurate
14 completion of each such investigation and re-
15 view.

16 “(E) Such other factors relating to the
17 timely and accurate completion of each such in-
18 vestigation and review as the administering au-
19 thority considers appropriate.”.

20 **SEC. 7. CLARIFICATION OF DISCRETION OF SECRETARY OF**
21 **COMMERCE TO DISREGARD CERTAIN PRICE**
22 **OR COST VALUES IN CALCULATION OF NOR-**
23 **MAL VALUE.**

24 Section 773(c) of the Tariff Act of 1930 (19 U.S.C.
25 1677b(c)) is amended by adding at the end the following:

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

10 **SEC. 8. CLARIFICATION OF FACTORS FOR DETERMINING**
11 **WHETHER A COUNTRY IS A NONMARKET**
12 **ECONOMY COUNTRY.**

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

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

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

17 and

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

19 “(vi) the extent to which the govern-
20 ment of the foreign country enforces and
21 administers its laws, legal and administra-
22 tive procedures, and other policies in an
23 open and transparent manner that affords
24 all parties, whether foreign or domestic,
25 due process and equal and non-discrimina-

1 tory treatment under those laws, proce-
2 dures, and policies, and”.

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

4 Pursuant to article 1902 of the North American Free
5 Trade Agreement and section 408 of the North American
6 Free Trade Agreement Implementation Act (19 U.S.C.
7 3438), the amendments made by this Act shall apply with
8 respect to goods from Canada and Mexico.