

103^D CONGRESS
2^D SESSION

H. R. 4664

To amend the Tariff Act of 1930 to provide relief from antidumping and countervailing duty orders in cases of short supply.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1994

Mr. HUTTO (for himself and Mr. PETERSON of Florida) introduced the following bill; which was read twice and referred to the Committee on Ways and Means

A BILL

To amend the Tariff Act of 1930 to provide relief from antidumping and countervailing duty orders in cases of short supply.

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. EXCEPTIONS FOR SHORT-SUPPLY SITUATIONS.**

4 (a) IN GENERAL.—Chapter 1 of subtitle C of title VII
5 of the Tariff Act of 1930 (19 U.S.C. 1675) is amended
6 by adding at the end the following new section:

7 **“SEC. 752. EXCEPTIONS FOR SHORT-SUPPLY SITUATIONS.**

8 “(a) IN GENERAL.—

1 “(1) PETITION.—If a short-supply petition is
2 filed under this section and the administering au-
3 thority determines that a short-supply situation ex-
4 ists with respect to a particular product which is
5 within the same class or kind as merchandise that
6 is the subject of an order or finding described in
7 paragraph (2), the administering authority shall sus-
8 pend the order or finding and shall authorize the im-
9 portation of additional quantities of the product free
10 of duties, estimated duty deposits, reporting require-
11 ments, or other restrictions, unless the administering
12 authority determines that such imports will erode
13 the pricing structure of the domestic merchandise
14 that is comparable to the class or kind of merchan-
15 dise subject to an order or finding.

16 “(2) ORDER OR FINDING.—An order or finding
17 described in this paragraph is—

18 “(A) an antidumping order issued under
19 section 736,

20 “(B) a finding issued under the Antidump-
21 ing Act, 1921, or

22 “(C) a countervailing duty order issued
23 under section 706 or 303.

24 “(b) FACTORS.—In determining whether a short-sup-
25 ply situation exists in the United States with respect to

1 a product, the administering authority shall consider all
2 relevant factors, including—

3 “(1) if there is domestic production of the prod-
4 uct with respect to which the short-supply petition
5 has been filed;

6 “(2) to the extent information is available, the
7 recent levels of capacity utilization of domestic facili-
8 ties producing the product;

9 “(3) the quantity of the product requested in
10 the short-supply petition and the ability of domestic
11 producers to supply the product in such quantity;

12 “(4) the reasonableness of the specifications re-
13 quested by the purchaser or end-user of the product;
14 and

15 “(5) the time the product can be delivered to
16 the purchaser or end-user.

17 “(c) PROCEDURES.—

18 “(1) PETITIONS.—An interested party may file
19 with the administering authority a petition request-
20 ing a determination under this section at any time
21 an order or finding described in subsection (a)(2) is
22 in effect. The petition shall be in such form and con-
23 tain such information as the administering authority
24 requires.

1 “(2) PUBLICATION.—If the administering au-
2 thority finds that a petition filed under paragraph
3 (1) contains adequate information, the administering
4 authority shall promptly publish in the Federal Reg-
5 ister a notice that a determination under this section
6 is under consideration.

7 “(3) COMMENT.—The administering authority
8 shall provide opportunity for comment by interested
9 parties regarding issues raised in the petition.

10 “(4) CERTIFICATION.—The petitioner and any
11 interested party submitting information shall certify
12 that the information contained in the petition (or
13 submission, as the case may be) is accurate and
14 complete to the best of the petitioner’s or party’s
15 knowledge.

16 “(5) CONSULTATIONS.—In making a deter-
17 mination under this section, the administering au-
18 thority shall consult with domestic users of the prod-
19 uct.

20 “(d) DETERMINATION.—

21 “(1) IN GENERAL.—In any case in which the
22 administering authority finds that a short-supply pe-
23 tition contains adequate information, the administer-
24 ing authority shall determine, not later than the day
25 specified in paragraph (2)—

1 “(A) if a short-supply situation exists in
2 the United States with respect to the product;
3 and

4 “(B) if the determination under subpara-
5 graph (A) is affirmative, the quantity of the
6 product, if any, that may be imported into the
7 United States without regard to the antidump-
8 ing or countervailing duty order that would oth-
9 erwise apply. In making the determination
10 under this subparagraph, the administering au-
11 thority may consider whether allowing particu-
12 lar quantities of the product to be imported
13 without regard to the antidumping or counter-
14 vailing duty order will erode the pricing struc-
15 ture of the domestic merchandise that is com-
16 parable to the class or kind of merchandise sub-
17 ject to an order or finding.

18 “(2) TIME LIMIT FOR MAKING SHORT-SUPPLY
19 DETERMINATION.—The administering authority
20 shall make a determination described in paragraph
21 (1) not later than—

22 “(A) the 15th day after the date the peti-
23 tion is filed if—

24 “(i) the administering authority au-
25 thorized the importation of additional

1 quantities of the product during each of
2 the 2 years preceding the date the petition
3 is filed, or

4 “(ii) the administering authority
5 finds, on the basis of available information
6 (without regard to whether such informa-
7 tion is available as part of the petition
8 under review), that the product is not pro-
9 duced in the United States; or

10 “(B) the 30th day after the date the peti-
11 tion is filed if clause (i) or (ii) of subparagraph
12 (A) does not apply, except that if a petition
13 under this section is received more than 30
14 days before the issuance of an antidumping or
15 countervailing duty order with respect to the
16 product, the administering authority may make
17 a short-supply determination at the time and as
18 part of such order.

19 “(3) REBUTTABLE PRESUMPTION.—If a peti-
20 tion is filed under this section, there shall be a re-
21 buttable presumption that the short-supply situation
22 alleged in the petition exists.

23 “(4) SHORT-SUPPLY ALLOWANCE UPON FAIL-
24 URE OF A DOMESTIC PRODUCER TO SUPPLY.—If the
25 administering authority determines that a short-sup-

1 ply situation does not exist because a producer in
2 the United States states that it is willing and able
3 to supply the product in the quantity requested at
4 the specifications, price, and delivery date requested,
5 and the producer fails to supply the product as
6 promised, the administering authority shall, within 3
7 days of being notified of the failure, grant a short-
8 supply allowance for the quantity the domestic pro-
9 ducer failed to supply.

10 “(e) NOTICE.—The administering authority shall
11 publish in the Federal Register notice of each determina-
12 tion made under this section and the reasons therefore.

13 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-
14 poses of this section:

15 “(1) INTERESTED PARTY.—The term ‘inter-
16 ested party’ means—

17 “(A) a United States producer or
18 consumer of the product;

19 “(B) a United States importer or distribu-
20 tor of the product; and

21 “(C) a foreign exporter or producer who
22 will supply the product to a United States pro-
23 ducer, consumer, importer, or distributor.

24 “(2) PRODUCT.—The term ‘product’ means the
25 product for which a short-supply allowance is re-

1 requested, or material which possesses the same phys-
2 ical characteristics and performance standards and
3 which can be used for the same application without
4 imposing any significant alteration costs for the
5 consumer.

6 “(3) REASONABLE SPECIFICATIONS.—The term
7 ‘reasonable specifications’ means specifications that
8 are developed in the ordinary course of business.
9 The administering authority shall apply a rebuttable
10 presumption that specifications are reasonable when-
11 ever such specifications have been in use either—

12 “(A) prior to the filing of an antidumping
13 or countervailing duty petition; or

14 “(B) more than two years.

15 “(4) ERODE THE PRICING STRUCTURE.—The
16 term ‘erode the pricing structure’ means United
17 States prices for the domestic merchandise com-
18 parable to the class or kind of merchandise subject
19 to an order or finding will be suppressed by reason
20 of the importation of specified quantities of the
21 product pursuant to a short supply allowance. The
22 Secretary shall apply a rebuttable presumption that
23 the imported product will not erode the pricing
24 structure of the comparable domestic merchandise
25 whenever—

1 “(A) no United States producers have pro-
2 duced a product meeting the reasonable speci-
3 fications within the last six months, nor have
4 any United States producers either qualified to
5 supply products meeting such specifications (if
6 such qualification is normally required) or
7 signed contracts that would require the delivery
8 of such products within the next six months; or

9 “(B) domestic consumption of the product
10 exceeds domestic production by more than fifty
11 percent, and the quantity of product covered by
12 a short supply determination is less than half of
13 the difference between domestic consumption
14 and domestic production.

15 In considering whether a short-supply determination
16 would erode the pricing structure, the administering
17 authority shall consider, among other factors—

18 (A) the quantity of short supply relief ap-
19 proved within the applicable class or kind of
20 merchandise; and

21 (B) the interchangeability between prod-
22 ucts subject to short-supply determinations and
23 other products within the applicable class or
24 kind of merchandise.

1 “(5) SHORT-SUPPLY ALLOWANCE.—The term
2 ‘short-supply allowance’ means an authorization by
3 the administering authority to permit importation
4 into the United States, including a foreign trade
5 zone, of a quantity of product free of duties imposed
6 pursuant to an antidumping or countervailing duty
7 order issued under this title.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
9 for title VII of the Tariff Act of 1930 is amended by in-
10 serting after the item relating to section 751 the following
11 new item:

“Sec. 752. Exceptions for short-supply situations.”.

