

107TH CONGRESS
1ST SESSION

H. R. 2770

To amend United States trade laws to provide more fairness to U.S. industry.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. KOLBE (for himself, Mr. MORAN of Virginia, and Mr. RAMSTAD) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend United States trade laws to provide more fairness to U.S. industry.

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 “Transparency and
5 Fairness Trade Act of 2001”.

1 **TITLE I—AMENDMENTS TO**
2 **TITLE VII OF THE TARIFF ACT**
3 **OF 1930**

4 **SEC. 101. FULL PARTICIPATION OF INDUSTRIAL USERS.**

5 (a) Chapter 1 of subtitle C of title VII of the Tariff
6 Act of 1930, section 771(9), is amended by inserting after
7 subparagraph (G) the following:

8 “(H) industrial users of the subject mer-
9 chandise or domestic like product or an associa-
10 tion a majority of whose members are industrial
11 users of the subject merchandise or domestic
12 like product.”

13 (b) Section 771 of the Tariff Act of 1930, as amend-
14 ed (19 U.S.C. § 1677), is amended by adding the following
15 new paragraph:

16 “(38) INDUSTRIAL USERS.—The term ‘indus-
17 trial users’ includes companies that consume the
18 subject merchandise or domestic like product in a
19 trade or business, or purchase and sell the subject
20 merchandise or the domestic like product at whole-
21 sale or retail.”

1 **SEC. 102. TEMPORARY EXCEPTION TO ANTIDUMPING OR**
2 **COUNTERVAILING DUTY ORDER OR FINDING.**

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

6 **“SEC. 753. TEMPORARY EXCEPTION TO ANTIDUMPING OR**
7 **COUNTERVAILING DUTY ORDER OR FINDING.**

8 “(a) IN GENERAL.—

9 “(1) APPLICATION.—If an application for relief
10 is filed under this section and the administering au-
11 thority determines that a lack of domestic avail-
12 ability exists with respect to a particular product
13 which is within the class or kind of merchandise that
14 is the subject of an investigation, an order under
15 this title or section 303, a finding under the Anti-
16 dumping Act, 1921, or a suspension agreement, the
17 administering authority shall not apply the order or
18 finding with respect to such particular product for
19 a specified quantity or for a period of not longer
20 than one year.

21 “(2) LACK OF DOMESTIC AVAILABILITY.—A
22 ‘lack of domestic availability’ exists whenever—

23 “(A) if the investigation, order, finding or
24 suspension agreement resulted from a petition,
25 a significant majority of the persons who filed
26 the petition on which the investigation, order,

1 finding or suspension agreement is based, sup-
2 port approval of the relief requested, unless one
3 or more of the companies filing an objection
4 agree to supply the particular product in the
5 amount requested within the time needed; or

6 “(B) there is no current domestic produc-
7 tion of the product, unless the administering
8 authority determines that this lack of current
9 domestic production of the particular product
10 was caused by unfairly traded subject merchan-
11 dise; or

12 “(C) the domestic industry is not currently
13 able to provide the product in sufficient and
14 reasonably available commercial quantities of a
15 satisfactory quality,

16 unless the administering authority, after consulta-
17 tion with the Commission pursuant to subsection
18 (b)(4), determines that applying an allowance with
19 respect to the particular subject product will signifi-
20 cantly depress prices in the industry.

21 “(3) FACTORS.—Where a significant majority
22 of the persons who filed the petition on which the in-
23 vestigation, order, finding or suspension agreement
24 is based support approval of the proposed relief, the
25 administering authority shall grant the relief re-

1 requested, unless one or more of the companies filing
2 an objection agree to supply the particular product
3 in the amount requested and within the time speci-
4 fied. Where a significant majority of the persons
5 who filed the petition on which the investigation,
6 order, finding or suspension agreement is based have
7 not supported approval of the requested relief, the
8 administering authority may nevertheless approve
9 the relief if the administering authority determines
10 that there is lack of domestic availability in the
11 United States with respect to a product. In reaching
12 this determination, the administering authority shall
13 consider all relevant factors, including—

14 “(A) whether there is current domestic
15 production of the particular product with re-
16 spect to which the temporary duty exception ap-
17 plication has been filed;

18 “(B) to the extent information is available,
19 the recent levels of capacity utilization of do-
20 mestic facilities producing the particular prod-
21 uct;

22 “(C) the quantity of the particular product
23 requested in the request for relief and the abil-
24 ity of domestic producers to supply the product
25 in such quantity;

1 “(D) the reasonableness of the specifica-
2 tions and quantity requested by the purchaser
3 or end-user of the product; and

4 “(E) the time required to deliver the par-
5 ticular product to the purchaser or end-user
6 and the time in which the purchaser or end
7 user requires the particular product.

8 The administering authority shall take into account
9 any advice provided by the Commission under sub-
10 section (b)(4) of this section before making a deter-
11 mination under this subparagraph.

12 “(b) PROCEDURE.—

13 “(1) APPLICATION REQUIREMENTS.—A pro-
14 ceeding under this section shall be initiated when-
15 ever a potentially affected party files an application
16 with the administering authority which alleges the
17 elements necessary for the temporary exception from
18 provisions of an antidumping or countervailing duty
19 order, finding or suspension agreement provided by
20 this section and which is accompanied by informa-
21 tion reasonably available to the applicant supporting
22 those allegations. These elements shall include the
23 following:

1 “(A) the quantity of the product or the
2 time-period requested in the application for re-
3 lief under this section;

4 “(B) a detailed description of the product
5 that defines the requested scope of the applica-
6 tion, including technical characteristics and
7 uses of the merchandise, and its current U.S.
8 tariff classification number;

9 “(C) if applicable, written consents from a
10 significant majority of petitioners to the action
11 on which the order or finding or suspension
12 agreement is based; and

13 “(D) if written consents, as described in
14 subsection (C) are not provided, then applicants
15 must provide the following—

16 (i) a description of all technical speci-
17 fications, as well as an indication of how
18 long such specifications have been in ef-
19 fect;

20 (ii) description and documentation of
21 all reasonable efforts that applicants have
22 made to purchase the product from domes-
23 tic sources; and

24 4 (iii) to the extent information is
25 available, the recent levels of capacity utili-

1 zation of domestic facilities producing the
2 product.

3 “(2) VIEWS OF PETITIONERS.—The admin-
4 istering authority may not order the temporary ex-
5 ception from provisions of an antidumping or coun-
6 tervailing duty investigation, order, finding or sus-
7 pension agreement under paragraph (1) unless the
8 administering authority has first contacted each
9 available petitioner in the action on which the inves-
10 tigation, order, finding or suspension agreement is
11 based. Where petitioners do not consent, petitioners
12 must state the reasons for their objection in writing
13 or the administering authority shall not consider
14 their objection under this section.

15 “(3) OPPORTUNITY TO COMMENT.—The admin-
16 istering authority shall provide an opportunity for
17 potentially affected parties to comment on the appli-
18 cation for temporary exception before making a de-
19 termination on the request, including the basis for
20 any objection filed by the petitioners.

21 “(4) COMMISSION ADVICE.—Where the admin-
22 istering authority preliminarily determines that relief
23 may be appropriate under subsection (a)(2)(C) of
24 this section, the administering authority shall notify
25 the Commission of the proposed temporary relief.

1 After receiving such notice, Commission may request
2 consultations with the administering authority re-
3 garding the temporary exception. Upon the request
4 of the Commission, the administering authority shall
5 consult with the Commission and any such consulta-
6 tion shall be completed within 15 days after the date
7 of the request. If, after consultation, the Commis-
8 sion believes that a significant injury issue is pre-
9 sented by the proposed temporary exception to the
10 application of the order or finding, the Commission
11 may provide written advice to the administering au-
12 thority as to whether the proposed exception will sig-
13 nificantly depress prices in the industry. If the Com-
14 mission decides to provide such written advice, it
15 shall promptly notify the administering authority of
16 its intention to do so and must provide such advice
17 within 30 days after the date of notification under
18 this paragraph.

19 “(5) EXTENSION OF ALLOWANCE.—An allow-
20 ance granted pursuant to this section may be ex-
21 tended for additional quantities or for additional pe-
22 riods of not more than one year each, based on a re-
23 quest for extension filed by a potentially affected
24 party. The administering authority shall provide an

1 opportunity for potentially affected parties to com-
2 ment on any request for extension.

3 “(6) REINSTATEMENT OF DUTIES.—An allow-
4 ance granted under this section may be revoked at
5 any time, after opportunity for potentially affected
6 parties to comment on the revocation, if the admin-
7 istering authority determines that there is insuffi-
8 cient basis for continuing the exception.

9 “(c) DETERMINATION.—

10 “(1) IN GENERAL.—In any case in which the
11 administering authority finds that a petition pursu-
12 ant to this section contains adequate information,
13 the administering authority shall determine, not
14 later than the day specified in paragraph (2)—

15 “(A) if there is a lack of domestic avail-
16 ability in the United States with respect to the
17 product; and

18 “(B) if the determination under subpara-
19 graph (A) is affirmative, the quantity of the
20 product, if any, that may be imported into the
21 United States without regard to the anti-
22 dumping or countervailing duty order that
23 would otherwise apply, or the relevant time-pe-
24 riod during which application of the order or
25 finding may be interrupted.

1 “(2) TIME LIMIT FOR MAKING TEMPORARY
2 DUTY SUSPENSION DETERMINATION.—The admin-
3 istering authority shall make a determination de-
4 scribed in paragraph (1) not later than—

5 “(A) the 30th day after the date the peti-
6 tion is filed if—

7 “(i) a significant majority of the peti-
8 tioners to the action on which the inves-
9 tigation, order, finding or suspension
10 agreement is based consent to the action;
11 or

12 “(ii) the administering authority has
13 previously authorized relief and there has
14 been no evidence that the basis on which
15 relief was provided has changed; or

16 “(B) the 75th day after the date the peti-
17 tion is filed if the Commission decides to pro-
18 vide written advice pursuant to subsection
19 (b)(4); or

20 “(C) the 60th day after the date the peti-
21 tion is filed if subparagraphs (A) & (B) do not
22 apply, except that where two or more temporary
23 duty exception application have been filed by
24 different parties on the same product, the dead-
25 line for issuing a temporary duty exception de-

1 termination will be the latest deadline for all of
2 the petitions, to allow the administering author-
3 ity to consolidate the actions.

4 “(3) ALLOWANCE UPON FAILURE OF A DOMES-
5 TIC PRODUCER TO SUPPLY.—If the administering
6 authority determines that there is no lack of domes-
7 tic availability because a producer in the United
8 States certifies that it is willing and able to supply
9 the product in the quantity requested at the speci-
10 fications, and delivery date requested, and the pro-
11 ducer fails to supply the product as promised, the
12 administering authority shall, within 3 days of being
13 notified of the failure, grant an allowance for the
14 quantity the domestic producer failed to supply.

15 “(d) NOTICE.—The administering authority shall
16 publish in the Federal Register notice of each determina-
17 tion made under this section and the reasons therefor.

18 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
19 poses of this section—

20 “(1) POTENTIALLY AFFECTED PARTY.—The
21 term ‘potentially affected party’ means—

22 “(A) any person who filed a petition pursu-
23 ant to which the order or finding was issued;

24 “(B) a producer or consumer of the prod-
25 uct in the United States; and

1 “(C) a United States importer of the prod-
2 uct or a distributor of the product in the
3 United States.

4 “(2) PRODUCT.—The term ‘product’ means the
5 product for which an allowance is requested under
6 this section, or material which possesses the same
7 physical characteristics and performance standards
8 and which can be used for the same application
9 without imposing any significant alteration costs for
10 the consumer.

11 “(3) SIGNIFICANT MAJORITY.—The term ‘sig-
12 nificant majority’ means that of the petitioners to
13 the original action on which the investigation, order,
14 finding or suspension agreement was based, those
15 supporting the application account for more than
16 75% of production of the domestic like product by
17 those petitioners who have expressed an opinion on
18 the proposed action. In determining petitioners’ sup-
19 port, the administering authority shall disregard the
20 position of petitioners who oppose the application
21 where they have failed to provide reasons for their
22 opposition.

23 “(4) REASONABLE SPECIFICATIONS.—The term
24 ‘reasonable specifications’ means specifications that
25 are developed in the ordinary course of business.

1 The administering authority shall apply a rebuttable
2 presumption that specifications are reasonable when-
3 ever such specifications have been in use—

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

6 “(B) more than two years prior to the re-
7 quest for relief,

8 “(5) NO CURRENT DOMESTIC PRODUCTION.—
9 The term ‘no current domestic production’ means—

10 “(A) that no U.S. producers have produced
11 a product meeting the reasonable specifications
12 within the last six months, or

13 “(B) no U.S. producers have either quali-
14 fied to supply products meeting such specifica-
15 tions (if such qualification is normally required)
16 or signed contracts that would require the deliv-
17 ery of such products within the next six
18 months.

19 “(6) CAUSED BY UNFAIRLY TRADED SUBJECT
20 MERCHANDISE.—The administering authority will
21 presume that unfairly traded subject merchandise
22 has not caused the lack of current domestic produc-
23 tion where—

24 “(A) the domestic industry has never pro-
25 duced the product;

1 “(B) the domestic industry ceased to
2 produce the product more than six months after
3 the product became liable for antidumping or
4 countervailing duties pursuant to 19 U.S.C.
5 §§ 1671b(d) or 1673b(d); or

6 “(C) the product has been subject to anti-
7 dumping or countervailing duty orders for one
8 or more years and the domestic industry has
9 not produced the product during the duration
10 of these orders.

11 “(7) ALLOWANCE.—The term ‘allowance’
12 means an authorization by the administering author-
13 ity to permit importation into the United States, in-
14 cluding a foreign trade zone, of a quantity of prod-
15 uct free of duties imposed pursuant to an anti-
16 dumping or countervailing duty order issued under
17 this title.”

18 (b) Section 516A of the Tariff Act of 1930, as
19 amended, is amended as follows:

20 (1) Section 516A(a)(2)(A)(i)(I) is amended to
21 read as follows:

22 “notice of any determination de-
23 scribed in clause (ii), (iii), (iv), (v),
24 (viii) or (ix) of subparagraph (B),”

1 which is the subject of an investigation under this
2 section or a trade or business association a majority
3 of the members of which are producers, exporters, or
4 importers of such article;

5 “(2) The government of a country in which
6 such article is produced or manufactured;

7 “(3) A manufacturer, producer, or wholesaler in
8 the United States of a like or directly competitive
9 article;

10 “(4) A certified union or recognized union or
11 group of workers which is engaged in the manufac-
12 ture, production, or wholesale of a like or directly
13 competitive article in the United States;

14 “(5) A trade or business association a majority
15 of whose members manufacture, produce, or whole-
16 sale a like or directly competitive article in the
17 United States;

18 “(6) An association, a majority of whose mem-
19 bers is composed of interested parties described in
20 subparagraphs (3), (4), or (5) of this section with
21 respect to a like or directly competitive article; and

22 “(7) Industrial users of an article which is the
23 subject of an investigation under this section or a
24 like or directly competitive article in the United
25 States; or an association a majority of whose mem-

1 bers are industrial users of such article. The term
2 ‘industrial users’ includes companies that consume
3 the subject merchandise or a like or directly com-
4 petitive article in the United States in a trade or
5 business, or purchase and sell the subject merchan-
6 dise or a like or directly competitive article in the
7 United States at wholesale or retail.”

○