

115TH CONGRESS
1ST SESSION

H. R. 2189

To amend section 337 of the Tariff Act of 1930 with respect to requirements for domestic industries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2017

Mr. CÁRDENAS (for himself, Mr. FARENTHOLD, Mr. SWALWELL of California, and Mr. ISSA) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend section 337 of the Tariff Act of 1930 with respect to requirements for domestic industries, 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 “Trade Protection Not
5 Troll Protection Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to ensure that the re-
8 sources of the United States International Trade Commis-
9 sion are focused on protecting genuine domestic indus-

1 tries, to restore confidence with the trading partners of
2 the United States that the Commission will not be a dupli-
3 cative forum for enforcing intellectual property rights
4 when United States district courts are already available,
5 and to safeguard the public health and welfare and the
6 United States economy (including competitive conditions).

7 **SEC. 3. UNFAIR PRACTICES IN IMPORT TRADE.**

8 (a) IN GENERAL.—Section 337 of the Tariff Act of
9 1930 (19 U.S.C. 1337) is amended as follows:

10 (1) Subsection (a) is amended—

11 (A) in paragraph (3)—

12 (i) by striking “or” at the end of sub-
13 paragraph (B);

14 (ii) in subparagraph (C), by striking
15 “engineering, research and development, or
16 licensing.” and inserting “engineering and
17 research and development; or”; and

18 (iii) by adding after subparagraph (C)
19 the following:

20 “(D) substantial investment in licensing activi-
21 ties that leads to the adoption and development of
22 articles that incorporate the patent, copyright, trade-
23 mark, mask work, or design.”;

24 (B) by redesignating paragraph (4) as
25 paragraph (5); and

1 (C) by inserting after paragraph (3) the
2 following:

3 “(4) For purposes of paragraph (3), the complainant
4 may not rely upon activities by its licensees unless the li-
5 cense leads to the adoption and development of articles
6 that incorporate the claimed patent, copyright, trademark,
7 mask work, or design for sale in the United States.”.

8 (2) Subsection (b) is amended—

9 (A) in paragraph (1), by inserting after
10 the first sentence the following: “For a com-
11 plaint under oath, a person may be relied upon
12 to qualify as an industry under subsection
13 (a)(2) only if the person joins the complaint
14 under oath, except that nothing in this sentence
15 shall be construed to compel such a person to
16 join the complaint.”; and

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

18 “(4)(A) The Commission shall identify, at the begin-
19 ning of an investigation, whether the investigation pre-
20 sents a dispositive issue appropriate for an expedited fact
21 finding and an abbreviated hearing limited to that issue,
22 and shall direct the assigned administrative law judge to
23 rule on such issue early in the investigation. The Commis-
24 sion, in its notice of instituting the investigation, shall set

1 out specific timeframes for such expedited fact finding and
2 hearing.

3 “(B) If the Commission identifies a domestic industry
4 as the dispositive issue in question, the Commission shall
5 direct the assigned administrative law judge to expedite
6 fact finding in the investigation on the domestic industry
7 requirement, including an early evidentiary hearing, and
8 to issue an initial determination on this matter within 100
9 days after the investigation is instituted.

10 “(C) Any initial determination by the assigned ad-
11 ministrative law judge under subparagraph (A) or (B)
12 shall stay the investigation pending Commission action.”.

13 (3) Subsection (c) is amended—

14 (A) by striking the first sentence and in-
15 serting the following: “(1) The Commission
16 shall determine, with respect to each investiga-
17 tion conducted by it under this section, whether
18 or not there is a violation of this section, except
19 that the Commission—

20 “(A) may, by issuing a consent order or on the
21 basis of an agreement between the private parties to
22 the investigation, including an agreement to present
23 the matter for arbitration, terminate any such inves-
24 tigation, in whole or in part, without making such
25 a determination; or

1 “(B) may determine during the course of the
2 investigation that the exclusion of the articles under
3 investigation would not be in the interest of the pub-
4 lic, after considering the nature of the articles con-
5 cerned and the effect of such exclusion upon the
6 public health and welfare, the United States econ-
7 omy (including competitive conditions), the produc-
8 tion of like or directly competitive articles by the
9 complainant and its licensees, United States con-
10 sumers, and any other relevant considerations, and
11 terminate any such investigation, in whole or in
12 part, without making any further determination.”;

13 (B) in the second sentence, by striking
14 “Each determination” and inserting the fol-
15 lowing:

16 “(2) Each determination”;

17 (C) by inserting after “the Federal Circuit
18 for review in accordance with chapter 7 of title
19 5, United States Code.” the following: “In addi-
20 tion, any person adversely affected by a ruling
21 of the Commission under subsection (b)(4) may
22 appeal such ruling, within 60 days after all ad-
23 ministrative remedies are exhausted, to the
24 United States Court of Appeals for the Federal
25 Circuit for review in accordance with chapter 7

1 of title 5, United States Code. In the event that
2 the Commission’s ruling is appealed under this
3 subsection and upon motion by the adversely af-
4 fected party, the Commission shall stay all fur-
5 ther proceedings in the investigation until all
6 appeals are final.”;

7 (D) by striking “its findings on the public
8 health and welfare, competitive conditions in
9 the United States economy,” and inserting “its
10 findings on the public health and welfare, the
11 United States economy (including competitive
12 conditions),”; and

13 (E) by inserting “by the complainant and
14 its licensees” after “the production of like or di-
15 rectly competitive articles”.

16 (4) Subsection (d)(1) is amended by striking
17 the first sentence and inserting the following: “If the
18 Commission determines, as a result of an investiga-
19 tion under this section, that there is a violation of
20 this section and that exclusion of the articles con-
21 cerned would be in the interest of the public, after
22 considering the nature of the articles concerned and
23 the effect of such exclusion upon the public health
24 and welfare, the United States economy (including
25 competitive conditions), the production of like or di-

1 rectly competitive articles by the complainant and its
2 licensees, United States consumers, and any other
3 relevant considerations, the Commission shall direct
4 that the articles concerned that are imported by any
5 person violating the provision of this section be ex-
6 cluded from entry into the United States.”.

7 (5) Subsection (e)(1) is amended by striking
8 the first sentence and inserting the following: “If,
9 during the course of an investigation under this sec-
10 tion, the Commission determines that there is reason
11 to believe that there is a violation of this section and
12 that exclusion of the articles concerned would be in
13 the interest of the public, the Commission may di-
14 rect that the articles concerned that are imported by
15 any person with respect to whom there is reason to
16 believe that such person is violating this section be
17 excluded from entry into the United States, after
18 considering the nature of the articles concerned and
19 the effect of such exclusion upon the public health
20 and welfare, the United States economy (including
21 competitive conditions), the production of like or di-
22 rectly competitive articles by the complainant and its
23 licensees, United States consumers, and any other
24 relevant considerations.”.

1 (6) Subsection (f)(1) is amended by striking the
2 first sentence and inserting the following: “In addi-
3 tion to, or in lieu of, taking action under subsection
4 (d) or (e), the Commission may issue and cause to
5 be served on any person violating this section, or be-
6 lieved to be violating this section, as the case may
7 be, an order directing such person to cease and de-
8 sist from engaging in the unfair methods or acts in-
9 volved, after considering the nature of the articles
10 concerned and the effect of such exclusion upon the
11 public health and welfare, the United States econ-
12 omy (including competitive conditions), the produc-
13 tion of like or directly competitive articles by the
14 complainant and its licensee, United States con-
15 sumers, and any other relevant considerations.”.

16 (7) Subsection (g)(1) is amended by amending
17 the matter following subparagraph (E) to read as
18 follows:

19 “the Commission shall presume the facts alleged in the
20 complaint to be true and shall, upon request, issue an ex-
21 clusion from entry or a cease and desist order, or both,
22 limited to that person, after considering the nature of the
23 articles concerned and the effect of such exclusion upon
24 the public health and welfare, the United States economy
25 (including competitive conditions), the production of like

1 or directly competitive articles by the complainant and its
2 licensees, United States consumers, and any other relevant
3 considerations.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 subsection (a) shall apply to complaints filed under section
6 337 of the Tariff Act of 1930 on or after the date of the
7 enactment of this Act.

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