

116TH CONGRESS  
1ST SESSION

# S. 287

To amend the Trade Expansion Act of 1962 to impose limitations on the authority of the President to adjust imports that are determined to threaten to impair national security, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2019

Mr. TOOMEY (for himself, Mr. WARNER, Mr. SASSE, Ms. HASSAN, Mr. MORAN, Mr. ALEXANDER, Mr. JOHNSON, Mr. KING, Mr. SCHATZ, Mrs. SHAHEEN, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Trade Expansion Act of 1962 to impose limitations on the authority of the President to adjust imports that are determined to threaten to impair national security, 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 “Bicameral Congres-  
5 sional Trade Authority Act of 2019”.

1 **SEC. 2. LIMITATIONS ON AUTHORITY OF PRESIDENT TO AD-**  
2 **JUST IMPORTS DETERMINED TO THREATEN**  
3 **TO IMPAIR NATIONAL SECURITY.**

4 (a) LIMITATION ON ARTICLES FOR WHICH ACTION  
5 MAY BE TAKEN.—Section 232 of the Trade Expansion  
6 Act of 1962 (19 U.S.C. 1862) is amended—

7 (1) by striking “an article” each place it ap-  
8 pears and inserting “a covered article”;

9 (2) by striking “any article” each place it ap-  
10 pears and inserting “any covered article”;

11 (3) by striking “the article” each place it ap-  
12 pears and inserting “the covered article”;

13 (4) in the first subsection (d), by striking “In  
14 the administration” and all that follow through “na-  
15 tional security.”; and

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

17 “(i) DEFINITIONS.—In this section:

18 “(1) COVERED ARTICLE.—The term ‘covered  
19 article’ means an article related to the development,  
20 maintenance, or protection of military equipment,  
21 energy resources, or critical infrastructure essential  
22 to national security.

23 “(2) NATIONAL SECURITY.—The term ‘national  
24 security’—

25 “(A) means the protection of the United  
26 States from foreign aggression; and

1           “(B) does not otherwise include the protec-  
2           tion of the general welfare of the United  
3           States.”.

4           (b) RESPONSIBILITY OF SECRETARY OF DEFENSE  
5           FOR INVESTIGATIONS.—Section 232(b) of the Trade Ex-  
6           pansion Act of 1962 (19 U.S.C. 1862(b)) is amended—

7           (1) in paragraph (1)—

8                   (A) in subparagraph (A), by striking “the  
9                   Secretary of Commerce (hereafter in the section  
10                   referred to as the ‘Secretary’)” and inserting  
11                   “the Secretary of Defense”; and

12                   (B) in subparagraph (B)—

13                           (i) by striking “The Secretary” and  
14                           inserting “The Secretary of Defense”; and

15                           (ii) by striking “the Secretary of De-  
16                           fense” and inserting “the Secretary of  
17                           Commerce”;

18           (2) in paragraph (2)—

19                   (A) in subparagraph (A)—

20                           (i) in the matter preceding clause (i),  
21                           by striking “the Secretary” and inserting  
22                           “the Secretary of Defense”; and

23                           (ii) in clause (i), by striking “the Sec-  
24                           retary of Defense” and inserting “the Sec-  
25                           retary of Commerce”; and

1 (B) by amending subparagraph (B) to read  
2 as follows:

3 “(B) Upon the request of the Secretary of Defense,  
4 the Secretary of Commerce shall provide to the Secretary  
5 of Defense an assessment of the quantity of imports of  
6 any covered article that is the subject of an investigation  
7 conducted under this subsection and the circumstances  
8 under which the covered article is imported.”;

9 (3) in paragraph (3)—

10 (A) in subparagraph (A)—

11 (i) in the first sentence, by striking  
12 “the Secretary shall submit” and all that  
13 follows through “recommendations of the  
14 Secretary” and inserting “the Secretary of  
15 Defense and the Secretary of Commerce  
16 shall jointly submit to the President a re-  
17 port on the findings of the investigation  
18 and, based on such findings, the rec-  
19 ommendations of the Secretary of Com-  
20 merce”; and

21 (ii) in the second sentence, by striking  
22 “Secretary finds” and all that follows  
23 through “Secretary shall” and inserting  
24 “Secretaries find that the covered article is  
25 being imported into the United States in

1           such quantities or under such cir-  
2           cumstances as to be a substantial cause of  
3           a threat to impair the national security,  
4           the Secretaries shall”; and

5           (B) in subparagraph (B), by striking “by  
6           the Secretary”; and

7           (4) in paragraph (4), by striking “Secretary”  
8           and inserting “Secretary of Defense”.

9           (c) DETERMINATIONS OF PRESIDENT.—Section  
10          232(c) of the Trade Expansion Act of 1962 (19 U.S.C.  
11          1862(c)) is amended—

12           (1) in paragraph (1)—

13           (A) by striking subparagraph (B);

14           (B) in the matter preceding clause (i)—

15           (i) by striking “(A) Within” and in-  
16           serting “Within”; and

17           (ii) by striking “in which the Sec-  
18           retary” and inserting “that”;

19           (C) by redesignating clauses (i) and (ii) as  
20           subparagraphs (A) and (B), respectively;

21           (D) in subparagraph (A), as redesignated  
22           by subparagraph (C), by striking “of the Sec-  
23           retary”; and

1 (E) by amending subparagraph (B), as re-  
2 designated by subparagraph (C), to read as fol-  
3 lows:

4 “(B) if the President concurs, submit to Con-  
5 gress, not later than 15 days after making that de-  
6 termination, a proposal regarding the nature and  
7 duration of the action that, in the judgment of the  
8 President, should be taken to adjust the imports of  
9 the covered article and its derivatives so that such  
10 imports will not be a substantial cause of a threat  
11 to impair the national security.”; and

12 (2) by striking paragraphs (2) and (3) and in-  
13 serting the following:

14 “(2) The President shall submit to Congress for re-  
15 view under subsection (f) a report describing the action  
16 proposed to be taken under paragraph (1) and specifying  
17 the reasons for such proposal. Such report shall be in-  
18 cluded in the report published under subsection (e).”.

19 (d) CONGRESSIONAL APPROVAL OF PRESIDENTIAL  
20 ADJUSTMENT OF IMPORTS.—Section 232(f) of the Trade  
21 Expansion Act of 1962 (19 U.S.C. 1862(f)) is amended  
22 to read as follows:

23 “(f) CONGRESSIONAL APPROVAL OF PRESIDENTIAL  
24 ADJUSTMENT OF IMPORTS; JOINT RESOLUTION OF AP-  
25 PROVAL.—

1           “(1) IN GENERAL.—An action to adjust imports  
2 proposed by the President in a report submitted to  
3 Congress under subsection (c)(2) shall have force  
4 and effect only if, during the period of 60 calendar  
5 days beginning on the date on which the report is  
6 submitted, a joint resolution of approval is enacted  
7 pursuant to paragraph (2).

8           “(2) JOINT RESOLUTIONS OF APPROVAL.—

9           “(A) JOINT RESOLUTION OF APPROVAL  
10 DEFINED.—In this subsection, the term ‘joint  
11 resolution of approval’ means only a joint reso-  
12 lution of either House of Congress—

13           “(i) the title of which is as follows: ‘A  
14 joint resolution approving the proposal of  
15 the President to take an action relating to  
16 the adjustment of imports entering into  
17 the United States in such quantities or  
18 under such circumstances as to threaten or  
19 impair the national security.’; and

20           “(ii) the sole matter after the resolv-  
21 ing clause of which is the following: ‘Con-  
22 gress approves of the proposal of the Presi-  
23 dent relating to the adjustment of imports  
24 to protect the national security as de-  
25 scribed in the report submitted to Con-

1           gress under section 232(c)(2) of the Trade  
2           Expansion Act of 1962 (19 U.S.C.  
3           1862(c)(2)) on \_\_\_\_\_ relating to  
4           \_\_\_\_\_.’, with the first blank space  
5           being filled with the appropriate date and  
6           the second blank space being filled with a  
7           short description of the proposed action.

8           “(B) INTRODUCTION.—During the period  
9           of 60 calendar days provided for under para-  
10          graph (1), a joint resolution of approval may be  
11          introduced in either House by any Member.

12          “(C) CONSIDERATION IN HOUSE OF REP-  
13          RESENTATIVES.—

14               “(i) COMMITTEE REFERRAL.—A joint  
15               resolution of approval introduced in the  
16               House of Representatives shall be referred  
17               to the Committee on Ways and Means.

18               “(ii) REPORTING AND DISCHARGE.—  
19               If the Committee on Ways and Means has  
20               not reported the joint resolution of ap-  
21               proval within 10 calendar days after the  
22               date of referral, the Committee shall be  
23               discharged from further consideration of  
24               the joint resolution.



1           “(iii) PROCEEDING TO CONSIDER-  
2            ATION.—Beginning on the third legislative  
3            day after the Committee on Ways and  
4            Means reports the joint resolution of ap-  
5            proval to the House or has been discharged  
6            from further consideration thereof, it shall  
7            be in order to move to proceed to consider  
8            the joint resolution in the House. All  
9            points of order against the motion are  
10           waived. Such a motion shall not be in  
11           order after the House has disposed of a  
12           motion to proceed on the joint resolution.  
13           The previous question shall be considered  
14           as ordered on the motion to its adoption  
15           without intervening motion. The motion  
16           shall not be debatable. A motion to recon-  
17           sider the vote by which the motion is dis-  
18           posed of shall not be in order.

19           “(iv) FLOOR CONSIDERATION.—The  
20           joint resolution of approval shall be consid-  
21           ered as read. All points of order against  
22           the joint resolution and against its consid-  
23           eration are waived. The previous question  
24           shall be considered as ordered on the joint  
25           resolution to final passage without inter-

1           vening motion except 2 hours of debate  
2           equally divided and controlled by the spon-  
3           sor of the joint resolution (or a designee)  
4           and an opponent. A motion to reconsider  
5           the vote on passage of the joint resolution  
6           shall not be in order.

7           “(D) CONSIDERATION IN THE SENATE.—

8           “(i) COMMITTEE REFERRAL.—A joint  
9           resolution of approval introduced in the  
10          Senate shall be referred to the Committee  
11          on Finance.

12          “(ii) REPORTING AND DISCHARGE.—  
13          If the Committee on Finance has not re-  
14          ported the joint resolution of approval  
15          within 10 calendar days after the date of  
16          referral of the joint resolution, the Com-  
17          mittee shall be discharged from further  
18          consideration of the joint resolution and  
19          the joint resolution shall be placed on the  
20          appropriate calendar.

21          “(iii) PROCEEDING TO CONSIDER-  
22          ATION.—Notwithstanding Rule XXII of  
23          the Standing Rules of the Senate, it is in  
24          order at any time after the Committee on  
25          Finance reports a joint resolution of ap-

1 proval or has been discharged from consid-  
2 eration of such a joint resolution to move  
3 to proceed to the consideration of the joint  
4 resolution. The motion to proceed is not  
5 debatable. The motion is not subject to a  
6 motion to postpone. A motion to reconsider  
7 the vote by which the motion is agreed to  
8 or disagreed to shall not be in order.

9 “(iv) RULINGS OF THE CHAIR ON  
10 PROCEDURE.—Appeals from the decisions  
11 of the Chair relating to the application of  
12 the rules of the Senate to the procedure re-  
13 lating to a joint resolution of approval  
14 shall be decided by the Senate without de-  
15 bate.

16 “(E) TREATMENT OF HOUSE JOINT RESO-  
17 LUTION IN SENATE.—

18 “(i) COMMITTEE REFERRAL.—Except  
19 as provided in clause (ii), a joint resolution  
20 of approval that has passed the House of  
21 Representatives shall, when received in the  
22 Senate, be referred to the Committee on  
23 Finance for consideration in accordance  
24 with subparagraph (D).

1           “(ii) CONSIDERATION OF HOUSE RES-  
2           OLUTION.—If a joint resolution of approval  
3           was introduced in the Senate before receipt  
4           of a joint resolution of approval that has  
5           passed the House of Representatives—

6                   “(I) the joint resolution from the  
7                   House of Representatives shall, when  
8                   received in the Senate, be placed on  
9                   the calendar; and

10                   “(II) the procedures in the Sen-  
11                   ate with respect to a joint resolution  
12                   of approval introduced in the Senate  
13                   shall be the same as if no joint resolu-  
14                   tion of approval had been received  
15                   from the House of Representatives,  
16                   except that the vote on passage in the  
17                   Senate shall be on the joint resolution  
18                   that passed the House of Representa-  
19                   tives.

20                   “(iii) HOUSE RESOLUTION RECEIVED  
21                   AFTER PASSAGE BY SENATE.—If the Sen-  
22                   ate passes a joint resolution of approval  
23                   before receiving a joint resolution of ap-  
24                   proval from the House of Representatives,  
25                   the joint resolution of the Senate shall be

1 held at the desk pending receipt of the  
2 joint resolution from the House of Rep-  
3 resentatives. Upon receipt of the joint reso-  
4 lution of approval from the House of Rep-  
5 resentatives, such joint resolution shall be  
6 deemed to be read twice, considered, read  
7 the third time, and passed.

8 “(iv) CONSIDERATION OF HOUSE RES-  
9 OLUTION IF NO RESOLUTION INTRODUCED  
10 IN SENATE.—If the Senate receives a joint  
11 resolution of approval from the House of  
12 Representatives, and no joint resolution of  
13 approval has been introduced in the Sen-  
14 ate, the procedures described in subpara-  
15 graph (D) shall apply to consideration of  
16 the joint resolution of the House.

17 “(F) RULES OF HOUSE OF REPRESENTA-  
18 TIVES AND SENATE.—This paragraph is en-  
19 acted by Congress—

20 “(i) as an exercise of the rulemaking  
21 power of the Senate and the House of Rep-  
22 resentatives, respectively, and as such is  
23 deemed a part of the rules of each House,  
24 respectively, and supersedes other rules

1           only to the extent that it is inconsistent  
2           with such rules; and

3                   “(ii) with full recognition of the con-  
4           stitutional right of either House to change  
5           the rules (so far as relating to the proce-  
6           dure of that House) at any time, in the  
7           same manner, and to the same extent as in  
8           the case of any other rule of that House.”.

9           (e) EXCLUSION PROCESS; REPORT.—Section 232 of  
10 the Trade Expansion Act of 1962 (19 U.S.C. 1862) is  
11 amended by inserting after subsection (f) the following:

12           “(g) ADMINISTRATION OF EXCLUSION PROCESS.—

13                   “(1) IN GENERAL.—The United States Inter-  
14           national Trade Commission shall administer a proc-  
15           ess for granting requests for the exclusion of covered  
16           articles from any actions, including actions to im-  
17           pose duties or quotas, taken by the President under  
18           subsection (c).

19                   “(2) REQUIREMENTS.—In administering the  
20           process required by paragraph (1), the International  
21           Trade Commission shall—

22                           “(A) consider, when determining whether  
23           to grant an exclusion with respect to a covered  
24           article, if the covered article is produced in the  
25           United States and is of sufficient quality, avail-

1           able in sufficient quantities, and available on a  
2           reasonable timeframe;

3                   “(B) ensure that an exclusion granted with  
4           respect to a covered article is available to any  
5           person that imports the covered article; and

6                   “(C) not disclose business proprietary in-  
7           formation.

8                   “(3) PUBLICATION OF PROCEDURES.—The  
9           International Trade Commission shall publish in the  
10          Federal Register and make available on a publicly  
11          available internet website of the Commission a de-  
12          scription of the procedures to be followed by a per-  
13          son requesting an exclusion under paragraph (1)  
14          with respect to a covered article.

15                  “(h) REPORT BY INTERNATIONAL TRADE COMMIS-  
16          SION.—Not later than 18 months after the President  
17          takes action under subsection (c) to adjust imports of a  
18          covered article, the International Trade Commission shall  
19          submit to Congress a report assessing the effects of the  
20          action on—

21                          “(1) the industry to which the covered article  
22           relates; and

23                          “(2) the overall economy of the United States.”.

1 (f) CONFORMING AMENDMENTS.—Section 232 of the  
2 Trade Expansion Act of 1962 (19 U.S.C. 1862), as  
3 amended by this section, is further amended—

4 (1) in the first subsection (d), by striking “the  
5 Secretary and the President” each place it appears  
6 and inserting “the Secretary of Defense, the Sec-  
7 retary of Commerce, and the President”;

8 (2) by redesignating the second subsection (d)  
9 as subsection (e); and

10 (3) in paragraph (1) of subsection (e), as redesi-  
11 gnated by paragraph (2), by striking “the Sec-  
12 retary” and inserting “the Secretary of Defense”.

13 (g) EFFECTIVE DATE.—Except as provided by sub-  
14 section (h), the amendments made by this section shall  
15 apply with respect to any proposed action under section  
16 232(c) of the Trade Expansion Act of 1962 (19 U.S.C.  
17 1862(c)) on or after the date that is 4 years before the  
18 date of the enactment of this Act.

19 (h) TRANSITION RULES.—

20 (1) APPROVAL PROCESS FOR ACTIONS TAKE BE-  
21 FORE DATE OF ENACTMENT.—

22 (A) IN GENERAL.—If, during the period  
23 specified in paragraph (2), the President makes  
24 a determination described in subsection (c) of  
25 section 232 of the Trade Expansion Act of



1 1962, as in effect on the day before the date of  
2 the enactment of this Act, to take action with  
3 respect to an article—

4 (i) not later than 15 days after such  
5 date of enactment, the President shall re-  
6 submit to Congress the report required  
7 under that section with respect to the ac-  
8 tion; and

9 (ii) the action shall have force and ef-  
10 fect after the day that is 75 days after  
11 such date of enactment only if, during the  
12 period of 60 calendar days beginning on  
13 the date on which the report is resubmitted  
14 under clause (i), a joint resolution of ap-  
15 proval is enacted pursuant to subsection  
16 (f)(2) of the Trade Expansion Act of 1962,  
17 as amended by this section, with respect to  
18 the action.

19 (B) NONAPPLICABILITY OF DEFINI-  
20 TIONS.—Subparagraph (A) shall apply with re-  
21 spect to an action without regard to whether  
22 the article to which the action relates is a cov-  
23 ered article (as defined in subsection (i) of sec-  
24 tion 232 of the Trade Expansion Act of 1962,  
25 as added by this section).

1           (2) PERIOD SPECIFIED.—The period specified  
2           in this paragraph is the period beginning on the date  
3           that is 4 years before the date of the enactment of  
4           this Act and ending on the day before such date of  
5           enactment.

6           (3) ADMINISTRATION OF EXCLUSION PROC-  
7           ESS.—In the case of an action with respect to which  
8           a resolution of approval is enacted as required by  
9           paragraph (1)(A)(ii), the Secretary of Commerce  
10          shall continue to administer the process established  
11          before the date of the enactment of this Act for  
12          granting requests for the exclusion of articles from  
13          the action.

14          (4) INTERNATIONAL TRADE COMMISSION RE-  
15          PORT.—Not later than 180 days after the date of  
16          the enactment of this Act, the United States Inter-  
17          national Trade Commission shall submit to Congress  
18          a report described in subsection (h) of section 232  
19          of the Trade Expansion Act of 1962, as added by  
20          this section, relating to each action taken under sub-  
21          section (c) of section 232 of the Trade Expansion  
22          Act of 1962, as in effect on the day before such date  
23          of enactment, during the period specified in para-  
24          graph (2).

1           (5) TERMINATION OF ACTIONS NOT AP-  
2           PROVED.—

3           (A) IN GENERAL.—An action described in  
4           subparagraph (B) shall terminate on the day  
5           that is 75 days after the date of the enactment  
6           of this Act.

7           (B) ACTION DESCRIBED.—An action de-  
8           scribed in this subparagraph is an action with  
9           respect to which—

10           (i) the President made a determina-  
11           tion described in subsection (c) of section  
12           232 of the Trade Expansion Act of 1962,  
13           as in effect on the day before the date of  
14           the enactment of this Act, during the pe-  
15           riod specified in paragraph (2); and

16           (ii) a joint resolution of approval is  
17           not enacted as required by paragraph  
18           (1)(A)(ii).

19           (C) MODIFICATION OF DUTY RATE  
20           AMOUNTS.—

21           (i) IN GENERAL.—Any rate of duty  
22           modified under section 232(c) of the Trade  
23           Expansion Act of 1962, as in effect on the  
24           day before the date of the enactment of  
25           this Act, pursuant to an action described

1 in subparagraph (B) shall, on the day that  
2 is 75 days after the date of the enactment  
3 of this Act, revert to the rate of duty in ef-  
4 fect before such modification.

5 (ii) RETROACTIVE APPLICATION FOR  
6 CERTAIN LIQUIDATIONS AND RELIQUIDA-  
7 TIONS.—

8 (I) IN GENERAL.—Subject to  
9 subclause (II), an entry of an article  
10 shall be liquidated or reliquidated as  
11 though such entry occurred on the  
12 date that is 75 days after the date of  
13 the enactment of this Act if—

14 (aa) the rate of duty appli-  
15 cable to the article was modified  
16 pursuant to an action described  
17 in subparagraph (B); and

18 (bb) a lower rate of duty  
19 would be applicable due to the  
20 application of clause (i).

21 (II) REQUESTS.—A liquidation  
22 or reliquidation may be made under  
23 subclause (I) with respect to an entry  
24 only if a request therefor is filed with  
25 U.S. Customs and Border Protection

1 not later than 255 days after the date  
2 of the enactment of this Act that con-  
3 tains sufficient information to enable  
4 U.S. Customs and Border Protec-  
5 tion—

6 (aa) to locate the entry; or

7 (bb) to reconstruct the entry

8 if it cannot be located.

9 (III) PAYMENT OF AMOUNTS

10 OWED.—Any amounts owed by the  
11 United States pursuant to the liquida-  
12 tion or reliquidation of an entry of an  
13 article under subclause (I) shall be  
14 paid, without interest, not later than  
15 90 days after the date of the liquida-  
16 tion or reliquidation (as the case may  
17 be).

18 (iii) ENTRY DEFINED.—In this para-  
19 graph, the terms “entry” includes a with-  
20 drawal from warehouse for consumption.

○