

114TH CONGRESS
1ST SESSION

H. R. 2523

To make improvements to the antidumping and countervailing duty laws.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2015

Mr. BOST (for himself, Mr. RODNEY DAVIS of Illinois, Mr. CRAWFORD, Mr. MURPHY of Pennsylvania, Mr. VISCLOSKEY, Ms. SEWELL of Alabama, Mr. ROTHFUS, Mr. ROKITA, Mr. RYAN of Ohio, Mr. GIBBS, Mr. SHIMKUS, Mr. JOHNSON of Ohio, Mr. NOLAN, Ms. KAPTUR, Mr. RENACCI, Mr. ROUZER, Mr. BYRNE, Mr. FLORES, Mr. BARLETTA, Mr. HUDSON, Mr. GENE GREEN of Texas, Mr. PITTENGER, and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To make improvements to the antidumping and
countervailing duty laws.

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 “American Trade En-
5 forcement Effectiveness Act”.

1 **SEC. 2. CONSEQUENCES OF FAILURE TO COOPERATE WITH**
2 **A REQUEST FOR INFORMATION IN A PRO-**
3 **CEEDING.**

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”; and

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) POTENTIAL SOURCES OF INFORMATION
4 FOR ADVERSE INFERENCES.—An adverse inference
5 under paragraph (1)(A) may include”;

6 (2) in subsection (c)—

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

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), when the”; and

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

14 “(2) EXCEPTION.—The administrative author-
15 ity and the Commission shall not be required to cor-
16 roborate any dumping margin or countervailing duty
17 applied in a separate segment of the same pro-
18 ceeding.”; and

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

20 “(d) SUBSIDY RATES AND DUMPING MARGINS IN
21 ADVERSE INFERENCE DETERMINATIONS.—

22 “(1) IN GENERAL.—If the administering au-
23 thority uses an inference that is adverse to the inter-
24 ests of a party under subsection (b)(1)(A) in select-

1 ing among the facts otherwise available, the admin-
2 istering authority may—

3 “(A) in the case of a countervailing duty
4 proceeding—

5 “(i) use a countervailable subsidy rate
6 applied for the same or similar program in
7 a countervailing duty proceeding involving
8 the same country, or

9 “(ii) if there is no same or similar
10 program, use a countervailable subsidy
11 rate for a subsidy program from a pro-
12 ceeding that the administering authority
13 considers reasonable to use, and

14 “(B) in the case of an antidumping duty
15 proceeding, use any dumping margin from any
16 segment of the proceeding under the applicable
17 antidumping order.

18 “(2) DISCRETION TO APPLY HIGHEST RATE.—

19 In carrying out paragraph (1), the administering au-
20 thority may apply any of the countervailable subsidy
21 rates or dumping margins specified under that para-
22 graph, including the highest such rate or margin,
23 based on the evaluation by the administering author-
24 ity of the situation that resulted in the admin-

1 istering authority using an adverse inference in se-
2 lecting among the facts otherwise available.

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

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

15 “(B) to demonstrate that the countervaila-
16 ble subsidy rate or dumping margin used by the
17 administering authority reflects an alleged com-
18 mercial reality of the interested party.”.

19 **SEC. 3. DEFINITION OF MATERIAL INJURY.**

20 (a) EFFECT OF PROFITABILITY OF DOMESTIC IN-
21 DUSTRIES.—Section 771(7) of the Tariff Act of 1930 (19
22 U.S.C. 1677(7)) is amended by adding at the end the fol-
23 lowing:

24 “(J) EFFECT OF PROFITABILITY.—The
25 Commission shall not determine that there is no

1 material injury or threat of material injury to
2 an industry in the United States merely be-
3 cause that industry is profitable or because the
4 performance of that industry has recently im-
5 proved.”.

6 (b) EVALUATION OF IMPACT ON DOMESTIC INDUS-
7 TRY IN DETERMINATION OF MATERIAL INJURY.—Sub-
8 clause (I) of section 771(7)(C)(iii) of the Tariff Act of
9 1930 (19 U.S.C. 1677(7)(C)(iii)) is amended to read as
10 follows:

11 “(I) actual and potential decline
12 in output, sales, market share, gross
13 profits, operating profits, net profits,
14 ability to service debt, productivity,
15 return on investments, return on as-
16 sets, and utilization of capacity,”.

17 (c) CAPTIVE PRODUCTION.—Section 771(7)(C)(iv) of
18 the Tariff Act of 1930 (19 U.S.C. 1677(7)(C)(iv)) is
19 amended—

20 (1) in subclause (I), by striking the comma and
21 inserting “, and”;

22 (2) in subclause (II), by striking “, and” and
23 inserting a comma; and

24 (3) by striking subclause (III).

1 **SEC. 4. PARTICULAR MARKET SITUATION.**

2 (a) DEFINITION OF ORDINARY COURSE OF TRADE.—

3 Section 771(15) of the Tariff Act of 1930 (19 U.S.C.
4 1677(15)) is amended by adding at the end the following:

5 “(C) Situations in which the administering
6 authority determines that the particular market
7 situation prevents a proper comparison with the
8 export price or constructed export price.”.

9 (b) DEFINITION OF NORMAL VALUE.—Section
10 773(a)(1)(B)(ii)(III) of the Tariff Act of 1930 (19 U.S.C.
11 1677b(a)(1)(B)(ii)(III)) is amended by striking “in such
12 other country.”.

13 (c) DEFINITION OF CONSTRUCTED VALUE.—Section
14 773(e) of the Tariff Act of 1930 (19 U.S.C. 1677b(e))
15 is amended—

16 (1) in paragraph (1), by striking “business”
17 and inserting “trade”; and

18 (2) by striking the flush text at the end and in-
19 serting the following:

20 “For purposes of paragraph (1), if a particular market
21 situation exists such that the cost of materials and fab-
22 rication or other processing of any kind does not accu-
23 rately reflect the cost of production in the ordinary course
24 of trade, the administering authority may use another cal-
25 culation methodology under this subtitle or any other cal-
26 culation methodology. For purposes of paragraph (1), the

1 cost of materials shall be determined without regard to
 2 any internal tax in the exporting country imposed on such
 3 materials or their disposition that is remitted or refunded
 4 upon exportation of the subject merchandise produced
 5 from such materials.”.

6 **SEC. 5. DISTORTION OF PRICES OR COSTS.**

7 (a) INVESTIGATION OF BELOW-COST SALES.—Sec-
 8 tion 773(b)(2) of the Tariff Act of 1930 (19 U.S.C.
 9 1677b(b)(2)) is amended by striking subparagraph (A)
 10 and inserting the following:

11 “(A) REASONABLE GROUNDS TO BELIEVE
 12 OR SUSPECT.—

13 “(i) REVIEW.—In a review conducted
 14 under section 751 involving a specific ex-
 15 porter, there are reasonable grounds to be-
 16 lieve or suspect that sales of the foreign
 17 like product have been made at prices that
 18 are less than the cost of production of the
 19 product if the administering authority dis-
 20 regarded some or all of the exporter’s sales
 21 pursuant to paragraph (1) in the investiga-
 22 tion or, if a review has been completed, in
 23 the most recently completed review.

24 “(ii) REQUESTS FOR INFORMATION.—
 25 In an investigation initiated under section

1 732 or a review conducted under section
2 751, the administering authority shall re-
3 quest information necessary to calculate
4 the constructed value and cost of produc-
5 tion under subsections (e) and (f) to deter-
6 mine whether there are reasonable grounds
7 to believe or suspect that sales of the for-
8 eign like product have been made at prices
9 that represent less than the cost of produc-
10 tion of the product.”.

11 (b) PRICES AND COSTS IN NONMARKET ECONO-
12 MIES.—Section 773(c) of the Tariff Act of 1930 (19
13 U.S.C. 1677b(c)) is amended by adding at the end the
14 following:

15 “(5) DISCRETION TO DISREGARD CERTAIN
16 PRICE OR COST VALUES.—In valuing the factors of
17 production under paragraph (1) for the subject mer-
18 chandise, the administering authority may disregard
19 price or cost values without further investigation if
20 the administering authority has determined that
21 broadly available export subsidies existed or par-
22 ticular instances of subsidization occurred with re-
23 spect to those price or cost values or if those price
24 or cost values were subject to an antidumping
25 order.”.

1 **SEC. 6. REDUCTION IN BURDEN ON DEPARTMENT OF COM-**
2 **MERCE BY REDUCING THE NUMBER OF VOL-**
3 **UNTARY RESPONDENTS.**

4 Section 782(a) of the Tariff Act of 1930 (19 U.S.C.
5 1677m(a)) is amended—

6 (1) in paragraph (1), by redesignating subpara-
7 graphs (A) and (B) as clauses (i) and (ii), respec-
8 tively, and by moving such clauses, as so redesign-
9 nated, 2 ems to the right;

10 (2) by redesignating paragraphs (1) and (2) as
11 subparagraphs (A) and (B), respectively, and by
12 moving such subparagraphs, as so redesignated, 2
13 ems to the right;

14 (3) by striking “INVESTIGATIONS AND RE-
15 VIEWS.—In” and inserting the following: “INVES-
16 TIGATIONS AND REVIEWS.—

17 “(1) IN GENERAL.—In”;

18 (4) in paragraph (1), as designated by para-
19 graph (3), by amending subparagraph (B), as redes-
20 ignated by paragraph (2), to read as follows:

21 “(B) the number of exporters or producers
22 subject to the investigation or review is not so
23 large that any additional individual examination
24 of such exporters or producers would be unduly
25 burdensome to the administering authority and

1 inhibit the timely completion of the investiga-
2 tion or review.”; and

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

4 “(2) DETERMINATION OF UNDULY BURDEN-
5 SOME.—In determining if an individual examination
6 under paragraph (1)(B) would be unduly burden-
7 some, the administering authority may consider the
8 following:

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

12 “(B) Any prior experience of the admin-
13 istering authority in the same or similar pro-
14 ceeding.

15 “(C) The total number of investigations
16 under subtitle A or B and reviews under section
17 751 being conducted by the administering au-
18 thority as of the date of the determination.

19 “(D) Such other factors relating to the
20 timely completion of each such investigation
21 and review as the administering authority con-
22 siders appropriate.”.

23 **SEC. 7. APPLICATION TO CANADA AND MEXICO.**

24 Pursuant to article 1902 of the North American Free
25 Trade Agreement and section 408 of the North American

1 Free Trade Agreement Implementation Act (19 U.S.C.
2 3438), the amendments made by this Act shall apply with
3 respect to goods from Canada and Mexico.

