

114TH CONGRESS  
2D SESSION

# H. R. 4829

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2016

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

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## 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-  
10 tries, to restore confidence with the trading partners of

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

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

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

9 (1) Subsection (a) is amended—

10 (A) in paragraph (3)—

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

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

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

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

23 (B) by redesignating paragraph (4) as  
24 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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