H. R. 4763

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

IN THE HOUSE OF REPRESENTATIVES

MAY 29, 2014

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Trade Protection Not Troll Protection Act”.

SEC. 2. UNFAIR PRACTICES IN IMPORT TRADE.

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

(1) Subsection (a) is amended—

(A) in paragraph (3)—
(i) by striking “or” at the end of subparagraph (B);

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

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

“(D) substantial investment in licensing activities that leads to the adoption and development of articles that incorporate the patent, copyright, trademark, mask work, or design.”;

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

(C) by inserting after paragraph (3) and following:

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

(2) Subsection (b) is amended by adding at the end the following:

“(4)(A) Whenever a complaint relies, in whole or in part, on activity falling under subparagraph
(C) or (D) of subsection (a)(3) in order to meet the legal standard set forth in subsection (a)(3), the Commission may not initiate an investigation until the Commission has first conducted a preliminary investigation of whether it is likely that an industry in the United States exists or is in the process of being established within the meaning of subsection (a)(2).

“(B) In the preliminary investigation under subparagraph (A), the complainant’s case shall be limited to the assertions and evidence set forth in the complaint, and confidential business information contained in the complaint that may be disclosed under protective order, and the Commission shall accept additional facts, evidence, and argument from named respondents and the public.

“(C) The Commission shall render its determination in the preliminary investigation under this paragraph not later than 45 days after the filing of the complaint. If the Commission finds that it is not likely that an industry in the United States exists or is in the process of being established, the Commission may not initiate an investigation of the matter alleged in the complaint.”.

(3) Subsection (e) is amended—
(A) by striking the first sentence and inserting the following: “The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section, except that the Commission—

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

“(B)(i) may determine during the course of the investigation that the articles under investigation should not be excluded from entry based upon consideration of the public interest, including the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, United States consumers, whether protected articles in the United States will be protected by an exclusion order, and whether the complainant or its licensees can meet market demand for protected articles; and
“(ii) upon a finding under clause (i) that the articles should not be excluded, shall terminate the investigation, in whole or in part, without making any further determination.”;

(B) in the second sentence, by striking “Each determination” and inserting the following:

“(2) Each determination”; and

(C) in the third sentence, by striking “equitable defenses” and inserting “equitable defenses, including equitable defenses and principles applied to any remedy considered in United States district courts,”.

(4) Subsection (d)(1) is amended—

(A) by striking “considering the effect of such exclusion upon the public health and welfare,” and inserting “considering equitable defenses and principles and the effect of such exclusion upon the public interest, including the public health and welfare,”; and

(B) by striking “and United States consumers,” and inserting “United States consumers, whether protected articles in the United States will be protected by an exclusion order, and whether the complainant or its li-
licensees can meet market demand for protected articles.”.

(5) Subsection (e)(1) is amended—

(A) by striking “considering the effect of such exclusion upon the public health and welfare,” and inserting “considering equitable defenses and principles and the effect of such exclusion upon the public interest, including the public health and welfare,”; and

(B) by striking “and United States consumers,” and inserting “United States consumers, whether protected articles in the United States will be protected by an exclusion order, and whether the complainant or its licensees can meet market demand for protected articles.”.

(6) Subsection (f)(1) is amended—

(A) by striking “considering the effect of such exclusion upon the public health and welfare,” and inserting “considering equitable defenses and principles and the effect of such exclusion upon the public interest, including the public health and welfare,”; and

(B) by striking “and United States consumers,” and inserting “United States con-
sumers, whether protected articles in the United States will be protected by an exclusion order, and whether the complainant or its licensees can meet market demand for protected articles.”.

(7) Subsection (g)(1) is amended, in the matter following subparagraph (E)—

(A) by striking “considering the effect of such exclusion upon the public health and welfare,” and inserting “considering equitable defenses and principles and the effect of such exclusion upon the public interest, including the public health and welfare,”; and

(B) by striking “and United States consumers,” and inserting “United States consumers, whether protected articles in the United States will be protected by an exclusion order, and whether the complainant or its licensees can meet market demand for protected articles.”.

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