H. R. 11

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

Mr. Cárdenas introduced the following bill; which was referred to the Committee on __________________________

A BILL

To amend section 337 of 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. PURPOSE.

The purpose of this Act is to ensure that the resources of the United States International Trade Commis-
tion are focused on protecting genuine domestic industries, to restore confidence with the trading partners of the United States that the Commission will not be a duplicative forum for enforcing intellectual property rights when United States district courts are already available, and to safeguard the public health and welfare and the United States economy (including competitive conditions).

SEC. 3. 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) the 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—

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

(B) by adding at the end the following:

“(4)(A) The Commission shall identify, at the beginning of an investigation, whether the investigation presents a dispositive issue appropriate for an expedited fact finding and an abbreviated hearing limited to that issue, and shall direct the assigned administrative law judge to rule on such issue early in the investigation. The Commis-
tion, in its notice of instituting the investigation, shall set out specific timeframes for such expedited fact finding and hearing.

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

“(C) Any initial determination by the assigned administrative law judge under subparagraph (A) or (B) shall stay the investigation pending Commission action.”.

(3) Subsection (c) is amended—

(A) by striking the first sentence and inserting the following: “(1) 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 inves-
tigation, in whole or in part, without making such
a determination; or

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

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

“(2) Each determination”;

(C) by inserting after “the Federal Circuit
for review in accordance with chapter 7 of title
5, United States Code.” the following: “In addi-
tion, any person adversely affected by a ruling
of the Commission under subsection (b)(4) may
appeal such ruling, within 60 days after all ad-
ministrative remedies are exhausted, to the
United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5, United States Code. In the event that the Commission’s ruling is appealed under this subsection and upon motion by the adversely affected party, the Commission shall stay all further proceedings in the investigation until all appeals are final.”;

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

(E) by inserting “by the complainant and its licensees” after “the production of like or directly competitive articles”.

(4) Subsection (d)(1) is amended by striking the first sentence and inserting the following: “If the Commission determines, as a result of an investigation under this section, that there is a violation of this section and that exclusion of the articles concerned would be in the interest of the public, after considering the nature of the articles concerned and the effect of such exclusion upon the public health
and welfare, the United States economy (including competitive conditions), the production of like or directly competitive articles by the complainant and its licensees, United States consumers, and any other relevant considerations, the Commission shall direct that the articles concerned that are imported by any person violating the provision of this section be excluded from entry into the United States.”.

(5) Subsection (e)(1) is amended by striking the first sentence and inserting the following: “If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section and that exclusion of the articles concerned would be in the interest of the public, the Commission may direct that the articles concerned that are imported by any person with respect to whom there is reason to believe that such person is violating this section be excluded from entry into the United States, after considering the nature of the articles concerned and the effect of such exclusion upon the public health and welfare, the United States economy (including competitive conditions), the production of like or directly competitive articles by the complainant and its
licensees, United States consumers, and any other relevant considerations.”.

(6) Subsection (f)(1) is amended by striking the first sentence and inserting the following: “In addition to, or in lieu of, taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, after considering the nature of the articles concerned and the effect of such exclusion upon the public health and welfare, the United States economy (including competitive conditions), the production of like or directly competitive articles by the complainant and its licensee, United States consumers, and any other relevant considerations.”.

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

“the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person, after considering the nature of the articles concerned and the effect of such exclusion upon
the public health and welfare, the United States economy
ingoing competitive conditions), the production of like
or directly competitive articles by the complainant and its
licensees, United States consumers, and any other relevant
considerations.”.

(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.