

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.

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

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-

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

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

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

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

“(ii) REPORTING AND DISCHARGE.—
If the Committee on Ways and Means has
not reported the joint resolution of ap-
proval within 10 calendar days after the
date of referral, the Committee shall be
discharged from further consideration of
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 redes-
 11 igned 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.

○