

August 14, 2020

The Honorable Suzan Delbene  
U.S. Representative  
2303 Rayburn House Office Bldg.  
Washington, DC 20515

The Honorable David Schweikert  
U.S. Representative  
1526 Longworth House Office Bldg.  
Washington, DC 20515

Dear Reps. Delbene and Schweikert:

We write today to thank you for introducing the Advancing America's Interests Act, which will provide much-needed targeted reforms to the International Trade Commission's ("ITC") authority to adjudicate intellectual property disputes under Section 337. The ITC has an important role in regulating international trade to protect the U.S. economy from unfair foreign competition. Over time, unfortunately, patent licensing entities have leveraged the ITC's unique remedy, the exclusion order, to extract large settlements to the detriment of U.S. industries, the U.S. economy, and U.S. consumers. That is why we are unified in support of your bill.

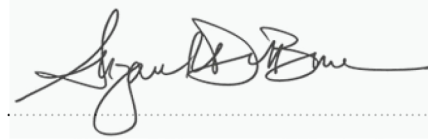
The companies that have signed this letter collectively employ hundreds of thousands of Americans in good-paying, highly-skilled fields, from research & development to manufacturing. Yet each of us and our employees have been targeted by Section 337 investigations, often brought by patent licensing entities which produce no goods or services and employ few to no U.S. workers. To be clear, the signatories below respect intellectual property rights, as evidenced by their own substantial patent portfolios. However, we cannot remain silent while the ITC's ability to exclude products from the U.S. is being used to extract settlements from genuine domestic industries on terms that could never be obtained in U.S. District Courts.

You have crafted strong legislation that will protect America's interests by modernizing the ITC process to curb its abuse while also protecting legitimate concerns. Your legislation takes a narrow approach to clarify some key terms, such as what qualifies as a "domestic industry," and updates critical public interest factors. In so doing, you have will have ensured that the ITC protects America's industrial, economic, and consumer interests and that these important considerations will be paramount.

We are grateful for your leadership on this key issue.

Sincerely,

Amazon.com, Inc.  
Cisco Systems, Inc.  
Dell Technologies, Inc.  
Ford Motor Company  
Hewlett Packard Enterprise Company  
Intel Corporation  
Juniper Networks, Inc.  
Lenovo Group Limited  
Motorola Mobility LLC  
Samsung Electronics America, Inc.  
Verizon Communications, Inc.  
Volkswagen Group of America, Inc.



(Original Signature of Member)

116TH CONGRESS  
1ST SESSION

# H. R. \_\_\_\_\_

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

Ms. DELBENE introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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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 “Advancing America’s  
5 Interests 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-

1 sion are focused on protecting genuine domestic industries  
2 and to safeguard the public health and welfare and the  
3 United States economy (including competitive conditions).

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

5 (a) IN GENERAL.—Section 337 of the Tariff Act of  
6 1930 (19 U.S.C. 1337) is amended as follows:

7 (1) Subsection (a) is amended—

8 (A) in paragraph (3)—

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

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

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

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

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

23 (C) by inserting after paragraph (3) the  
24 following:

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

6           (2) Subsection (b) is amended—

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

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

16           “(4)(A) The Commission shall identify, at the begin-  
17 ning of an investigation, whether the investigation pre-  
18 sents a dispositive issue appropriate for an expedited fact  
19 finding and an abbreviated hearing limited to that issue,  
20 and shall direct the assigned administrative law judge to  
21 issue an initial determination on such issue not later than  
22 100 days after the investigation is instituted.

23           “(B) Any initial determination by the assigned ad-  
24 ministrative law judge under subparagraph (A) shall stay  
25 the investigation pending Commission action.”.

1           (3) Subsection (c) is amended—

2                   (A) by striking the first sentence and in-  
3                   serting the following: “(1) The Commission  
4                   shall determine, with respect to each investiga-  
5                   tion conducted by it under this section, whether  
6                   or not there is a violation of this section, except  
7                   that the Commission—

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

14                   “(B) may determine during the course of the  
15                   investigation that the exclusion of articles under in-  
16                   vestigation would not be in the interest of the public,  
17                   after considering the nature of the articles concerned  
18                   and the effect of such exclusion upon the public  
19                   health and welfare, the United States economy (in-  
20                   cluding competitive conditions), the production of  
21                   like or directly competitive articles by the complain-  
22                   ant and its licensees, and United States consumers,  
23                   and terminate any such investigation, in whole or in  
24                   part, without making any further determination.”;

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

4 “(2) Each determination”;

5 (C) by striking “its findings on the public  
6 health and welfare, competitive conditions in  
7 the United States economy,” and inserting “its  
8 findings on the public health and welfare, the  
9 United States economy (including competitive  
10 conditions),”; and

11 (D) by inserting “by the complainant and  
12 its licensees” after “the production of like or di-  
13 rectly competitive articles in the United  
14 States”.

15 (4) Subsection (d)(1) is amended by striking  
16 the first sentence and inserting the following: “(1)  
17 If the Commission determines, as a result of an in-  
18 vestigation under this section, that there is both (A)  
19 a violation of this section and (B) exclusion of the  
20 articles concerned is in the interest of the public,  
21 after considering the nature of the articles concerned  
22 and the effect of such exclusion upon the public  
23 health and welfare, the United States economy (in-  
24 cluding competitive conditions), the production of  
25 like or directly competitive articles in the United

1 States by complainant and its licensees, and United  
2 States consumers, then the Commission shall direct  
3 that the articles concerned that are imported by any  
4 person violating the provisions of this section be ex-  
5 cluded from entry into the United States.”

6 (5) Subsection (e)(1) is amended by striking  
7 the first sentence and inserting the following: “If,  
8 during the course of an investigation under this sec-  
9 tion, the Commission determines that there is reason  
10 to believe that there is a violation of this section and  
11 that exclusion of the articles concerned would be in  
12 the interest of the public, the Commission may di-  
13 rect that the articles concerned that are imported by  
14 any person with respect to whom there is reason to  
15 believe that such person is violating this section be  
16 excluded from entry into the United States, after  
17 considering the nature of the articles concerned and  
18 the effect of such exclusion upon the public health  
19 and welfare, the United States economy (including  
20 competitive conditions), the production of like or di-  
21 rectly competitive articles in the United States by  
22 the complainant and its licensees, and United States  
23 consumers.”.

24 (6) Subsection (f)(1) is amended by striking the  
25 first sentence and inserting the following: “In addi-

1       tion to, or in lieu of, taking action under subsection  
2       (d) or (e), the Commission may issue and cause to  
3       be served on any person violating this section, or be-  
4       lieved to be violating this section, as the case may  
5       be, an order directing such person to cease and de-  
6       sist from engaging in the unfair methods or acts in-  
7       volved, after considering the nature of the articles  
8       concerned and the effect of such order upon the pub-  
9       lic health and welfare, the United States economy  
10      (including competitive conditions), the production of  
11      like or directly competitive articles in the United  
12      States by complainant and its licensees and United  
13      States consumers.”.

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

17      “the Commission shall presume the facts alleged in the  
18      complaint to be true and shall, upon request, issue an ex-  
19      clusion from entry or a cease and desist order, or both,  
20      limited to that person, after considering the nature of the  
21      articles concerned and the effect of such exclusion or order  
22      upon the public health and welfare, the United States  
23      economy (including competitive conditions), the produc-  
24      tion of like or directly competitive articles in the United



1 States by the complainant and its licensees and United  
2 States consumers.”.

3 (b) EFFECTIVE DATE.—The amendments made by  
4 subsection (a) shall apply to complaints filed under section  
5 337 of the Tariff Act of 1930 on or after the date of the  
6 enactment of this Act.