

103^D CONGRESS
1ST SESSION

H. R. 2528

To provide equity and fairness to United States industries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1993

Mr. REGULA (for himself, Mr. MURTHA, Mr. VISCLOSKY, and Mrs. BENTLEY) introduced the following bill; which was referred jointly to the Committees on Ways and Means and the Judiciary

A BILL

To provide equity and fairness to United States 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Trade Equity and Fairness Act of 1993”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short Title; Table of Contents.

TITLE I—COUNTERVAILING AND ANTIDUMPING DUTY
AMENDMENTS

Sec. 101. Final payment of antidumping and countervailing duties.

Sec. 102. Administration review of determinations.

Sec. 103. Post-initiation events and relevance to material injury determination.

Sec. 104. Determination of material injury.

- Sec. 105. Publication of certain cash deposits and duties collected.
- Sec. 106. Threat of injury standard.
- Sec. 107. Actual and potential declines in material injury determination.
- Sec. 108. Investigation of sales at less than cost of production.
- Sec. 109. Cumulation.
- Sec. 110. Dual pricing.
- Sec. 111. Clarification of adjustment to foreign market value.
- Sec. 112. Interest on post findings.
- Sec. 113. Compensation awards.
- Sec. 114. Diversionary input dumping.
- Sec. 115. Upstream subsidies.
- Sec. 116. Exportation from an intermediate country.
- Sec. 117. Access to countervailing and antidumping duty collections data.
- Sec. 118. Study for simplifying countervailing and antidumping duty actions.
- Sec. 119. Special rule—relative United States content.
- Sec. 120. Reimbursement of antidumping duties.
- Sec. 121. Determination of United States price.
- Sec. 122. Reliquidation of certain entries.
- Sec. 123. Administrative reviews.
- Sec. 124. Use of protective order information.
- Sec. 125. Further manufactured goods.
- Sec. 126. Use of constructed value.
- Sec. 127. Patent equity and banned substances.
- Sec. 128. Circumvention timelines and procedural requirements.

TITLE II—MARKET ACCESS PROVISIONS

- Sec. 201. Access to Japanese market by motor vehicles and motor vehicle parts.
- Sec. 202. Extension of “Super 301” authority.

TITLE III—INTERNATIONAL TRADE NEGOTIATIONS

- Sec. 301. Principal trade negotiation objectives and dispute settlement.
- Sec. 302. Global structural excess capacity.
- Sec. 303. Application of amendments to Mexico and Canada.
- Sec. 304. International trade agreements on antidumping and trade distorting subsidies.

TITLE IV—OTHER MISCELLANEOUS AMENDMENTS

- Sec. 401. Restraint of U.S. trade or commerce.
- Sec. 402. Authority to impose tariffs on countries refusing costs of joint defense assistance.
- Sec. 403. Amendment on section 337 of the Tariff Act of 1930.
- Sec. 404. Amendment of title 28, United States Code.
- Sec. 405. International protection of patent rights.
- Sec. 406. Cooperative productivity.
- Sec. 407. Unfair methods of competition.
- Sec. 408. Correction of inverted tariff.
- Sec. 409. Horticultural study.
- Sec. 410. Home appliances.

TITLE V—PRIVATE RIGHT OF ACTION FOR RELIEF FROM CERTAIN FORMS OF ANTICOMPETITIVE PRICING PRACTICES

- Sec. 501. Private right of action for relief from injurious industrial cross-subsidization and persistent sales below full cost of production.

TITLE VI—FOREIGN CAPITAL AND SECURITIES MARKETS

Sec. 601. Foreign capital and securities markets study.

1 TITLE I—COUNTERVAILING AND ANTIDUMPING
2 DUTY AMENDMENTS

3 **SEC. 101. FINAL PAYMENT OF ANTIDUMPING AND COUN-**
4 **TERVAILING DUTIES.**

5 (a) Section 736 of the Tariff Act of 1930 (19 U.S.C.
6 1673e) is amended by adding at the end thereof the fol-
7 lowing new subsection:

8 “(d) FINAL PAYMENT OF DUTY.—

9 “(1) ASSESSMENT AND COLLECTION RE-
10 QUIRED.—Pursuant to the administering authority’s
11 direction, the United States Customs Service shall
12 assess and collect the antidumping duty determined
13 for each entry of the merchandise from the first pur-
14 chaser in the United States that is independent of
15 the exporter, manufacturer, and producer, and per-
16 sons defined as the exporter in section 771(13).

17 “(2) PROHIBITION AGAINST ABSORPTION OR
18 REIMBURSEMENT.—

19 “(A) IN GENERAL.—Neither the exporter,
20 manufacturer, and producer, and persons de-
21 fined as the exporter in section 771(13) nor any
22 other person may absorb or reimburse directly
23 or indirectly to the first unrelated purchaser in

1 the United States the antidumping duty deter-
2 mined for the merchandise.

3 “(B) CERTIFICATION.—Upon collection of
4 the antidumping duty, the administering au-
5 thority through the United States Customs
6 Service shall obtain from the first unrelated
7 purchaser in the United States and the ex-
8 porter, manufacturer, and producer, including
9 any person deemed an exporter under section
10 771(13), written certification as to whether or
11 not absorption or direct or indirect reimburse-
12 ment of the antidumping duty determined has
13 occurred or will be effected in the future. Fail-
14 ure to file such certification will be construed as
15 conclusive indication of unlawful final payment
16 of the antidumping duty determined by a per-
17 son other than the first unrelated purchaser in
18 the United States.

19 “(C) INVESTIGATION.—The administering
20 authority with the assistance of the United
21 States Customs Service shall investigate when-
22 ever reasonable grounds are present to believe
23 or suspect that absorption or direct or indirect
24 reimbursement of the antidumping duty deter-
25 mined has taken place.

1 “(D) ENFORCEMENT.—If absorption or di-
2 rect or indirect reimbursement of the antidump-
3 ing duty determined is established, then, in ad-
4 dition to any civil and criminal penalties that
5 may be appropriate, the administering authority
6 shall have the United States Customs Service
7 assess and collect from the first unrelated pur-
8 chaser in the United States the amount of the
9 antidumping duty determined that is found to
10 have been absorbed or reimbursed together with
11 interest. Notwithstanding any other provision of
12 law, such reliquidation will be carried out with
13 respect to each entry as often as absorption or
14 reimbursement is confirmed for that entry.
15 Final payment of the antidumping duty
16 determined by any person other than the first
17 unrelated purchaser in the United States shall
18 not be returned.”.

19 (b) Section 706 of the Tariff Act of 1930 (19 U.S.C.
20 1671e) is amended by adding at the end thereof the fol-
21 lowing new subsection:

22 “(c) FINAL PAYMENT OF DUTY.—

23 “(1) ASSESSMENT AND COLLECTION RE-
24 QUIRED.—Pursuant to the administering authority’s
25 direction, the United States Customs Service shall

1 assess and collect the countervailing duty determined
2 for each entry of the merchandise from the first pur-
3 chaser in the United States that is independent of
4 the exporter, manufacturer, and producer, and per-
5 sons defined as the exporter in section 771(13).

6 “(2) PROHIBITION AGAINST ABSORPTION OR
7 REIMBURSEMENT.—

8 “(A) IN GENERAL.—Neither the exporter,
9 manufacturer, and producer, and persons de-
10 fined as the exporter in section 771(13) nor any
11 other person may absorb or reimburse directly
12 or indirectly to the first unrelated purchaser in
13 the United States the countervailing duty deter-
14 mined for the merchandise.

15 “(B) CERTIFICATION.—Upon collection of
16 the countervailing duty, the administering au-
17 thority through the United States Customs
18 Service shall obtain from the first unrelated
19 purchaser in the United States and the ex-
20 porter, manufacturer, and producer, including
21 any person deemed an exporter under section
22 771(13), written certification as to whether or
23 not absorption or direct or indirect reimburse-
24 ment of the countervailing duty determined has
25 occurred or will be effected in the future. Fail-

1 ure to file such certification will be construed as
2 a presumption of unlawful final payment of the
3 countervailing duty determined by a person
4 other than the first unrelated purchaser in the
5 United States.

6 “(C) INVESTIGATION.—The administering
7 authority with the assistance of the United
8 States Customs Service shall investigate when-
9 ever reasonable grounds are present to believe
10 or suspect that absorption or direct or indirect
11 reimbursement of the countervailing duty deter-
12 mined has taken place.

13 “(D) ENFORCEMENT.—If absorption or di-
14 rect or indirect reimbursement of the counter-
15 vailing duty determined is established, then, in
16 addition to any civil and criminal penalties that
17 may be appropriate, the administering authority
18 shall have the United States Customs Service
19 assess and collect from the first unrelated pur-
20 chaser in the United States the amount of the
21 countervailing duty determined that is found to
22 have been absorbed or reimbursed together with
23 interest. Notwithstanding any other provision of
24 law, such reliquidation will be carried out with
25 respect to each entry as often as absorption or

1 reimbursement is confirmed for that entry.
2 Final payment of the countervailing duty deter-
3 mined by any person other than the first unre-
4 lated purchaser in the United States shall not
5 be returned.”.

6 **SEC. 102. ADMINISTRATIVE REVIEW OF DETERMINATIONS.**

7 Section 751 of the Tariff Act of 1930 (19 U.S.C.
8 1675) is amended by adding at the end thereof the follow-
9 ing new paragraph—

10 “(g) ANNUAL REPORT TO THE HOUSE WAYS AND
11 MEANS COMMITTEE AND SENATE FINANCE COMMIT-
12 TEE.—By the close of February each year, the administer-
13 ing authority shall report to the House Ways and Means
14 Committee and the Senate Finance Committee the num-
15 ber of administrative reviews commenced in the prior cal-
16 endar year, the number of reviews completed during the
17 calendar year within eighteen months of initiation, the
18 number of reviews completed during the calendar year in
19 longer than eighteen months after initiation, and for each
20 review that remains incomplete at the end of the calendar
21 year more than eighteen months after initiation, an esti-
22 mated schedule for completion (including dates for pre-
23 liminary and final determinations).”.

1 **SEC. 103. POST-INITIATION EVENTS AND RELEVANCE TO**
2 **MATERIAL INJURY DETERMINATION.**

3 Section 771(7)(C) of the Tariff Act of 1930 (19
4 U.S.C. 1677(7)(C)) is amended by adding at the end
5 thereof the following: “Except as specified in subpara-
6 graph (7)(C)(i), in evaluating volume and price effects
7 pursuant to this subparagraph, the Commission may in
8 its discretion disregard developments after the filing of the
9 petition.”.

10 **SEC. 104. DETERMINATION OF MATERIAL INJURY.**

11 (a) VOLUME OF IMPORTS.—Section 771(7)(C)(i) of
12 the Tariff Act of 1930 (19 U.S.C. 1677(7)(C)(i)) is
13 amended by adding at the end thereof the following new
14 sentence: “An inference shall not be made that there is
15 no material injury, if the volume of imports has decreased
16 after the initiation of an investigation under section 702
17 or 732.”.

18 (b) PRICE COMPETITION.—Section 771(7)(C)(ii) of
19 such Act (19 U.S.C. 1677(7)(C)(ii)) is amended by insert-
20 ing immediately after subclause (II) the following flush
21 sentence: “For purposes of this clause, the Commission
22 shall compare the price at which imported merchandise is
23 sold to the ultimate consumer with the price at which like
24 products of the United States are sold to the ultimate
25 consumer.”.

1 **SEC. 105. PUBLICATION OF CERTAIN CASH DEPOSITS AND**
2 **DUTIES COLLECTED.**

3 Section 487 is added to the Tariff Act of 1930, as
4 amended (19 U.S.C. 1487):

5 **“SEC. 487. ANNUAL REPORT OF SELECTED DUTIES.**

6 “(a) For merchandise subject to antidumping find-
7 ings or orders or countervailing duty orders as those terms
8 are defined in section 303 or title VII of the Tariff Act
9 of 1930, as amended, the Secretary of the Treasury shall
10 report not less frequently than once a year:

11 “(1) the quantity, declared value, and anti-
12 dumping and/or countervailing duty cash deposits by
13 investigation number and review period (as those
14 terms are defined by the administering authority (19
15 U.S.C. 1677(1))) for merchandise that remains un-
16 liquidated;

17 “(2) the quantity, declared value, and anti-
18 dumping and/or countervailing duties collected by in-
19 vestigation number and review period (as those
20 terms are defined by the administering authority (19
21 U.S.C. 1677(1))) for merchandise that has been liq-
22 uidated since the last report was issued; and

23 “(3) the quantity and declared value of any en-
24 tries that the Secretary has determined were liq-
25 uidated without the assessment of antidumping and/
26 or countervailing duties without a finding by the ad-

1 ministering authority that such merchandise was not
2 liable for antidumping and/or countervailing duties;
3 the Secretary shall include in his report a summary
4 of allegations of non-payment and what steps, if any,
5 were taken to determine the magnitude of any pre-
6 mature liquidations.”.

7 **SEC. 106. THREAT OF INJURY STANDARD.**

8 (a) Section 771(7)(F)(i) of the Tariff Act of 1930
9 (19 U.S.C. 1677(7)(F)(i)) is amended by adding at the
10 end thereof the following—

11 “(XI) the actual and potential decline
12 in order backlog of the domestic industry.

13 “(XII) for purposes of subsection (F)
14 the Commission shall give consideration to
15 monthly or quarterly trend information
16 through the month of the filing of the peti-
17 tion. Post-initiation changes in trends
18 should not result in a negative determina-
19 tion where trends to the time of filing
20 would support an affirmative determina-
21 tion.”.

22 **SEC. 107. ACTUAL AND POTENTIAL DECLINES IN MATERIAL**
23 **INJURY DETERMINATION.**

24 (a) Section 771(7)(C) of the Tariff Act of 1930, as
25 amended (19 U.S.C. 1677(7)(C)), is amended by adding

1 at the end thereof the following: “For the purposes of this
2 subsection, the term ‘potential decline’ means the decline
3 that can be reasonably deduced by comparing actual per-
4 formance to the performance (e.g., output, sales, etc.) that
5 could have been but for the economic factors (including
6 unfairly traded imports) which have a bearing on the state
7 of the industry). The term ‘potential negative effects’
8 means the adverse effects that can be reasonably deduced
9 by comparing actual performance to the performance that
10 could have been expected but for the economic factors (in-
11 cluding unfairly traded imports) which have a bearing on
12 the state of the industry. Where ‘actual declines’ or ‘actual
13 negative effects’ are sufficient to warrant an affirmative
14 determination, the Commission need not evaluate ‘poten-
15 tial declines’ or ‘potential effects’ under subsection (iii)
16 (I), (III) and (IV).”.

17 **SEC. 108. INVESTIGATION OF SALES AT LESS THAN COST**
18 **OF PRODUCTION.**

19 (a) Section 773(b) of the Tariff Act of 1930 (19
20 U.S.C. 1677b(b)) is amended:

21 (1) by inserting “for all producers or exporter
22 being investigated or reviewed” after the phrase “at
23 less than the cost of producing the merchandise”
24 each time it appears in paragraph (b); and

1 (2) by inserting “by any foreign producer or ex-
2 porter” after “have been made” in subparagraph
3 (b)(1).

4 **SEC. 109. CUMULATION.**

5 (a) CUMULATION.—Section 771(7)(C)(iv) of the Tar-
6 iff Act of 1930 (19 U.S.C. 1677 (7)(C)(iv)) is amended
7 by adding at the end thereof the following new subclause:

8 “(III) LOOK-BACK.—For purposes of
9 clauses (i) and (ii) and subparagraph (F),
10 if a petition is filed under this title with re-
11 spect to a product or like product which
12 was the basis of a final affirmative deter-
13 mination during the 3 years preceding the
14 filing of such petition, the Commission
15 shall consider as part of its investigation of
16 the new petition the previous injurious
17 dumping or subsidization as an important
18 factor in determining the industry’s vulner-
19 ability to continued or renewed material in-
20 jury.”.

21 (b) CONCENTRATION OF IMPORTS.—Section
22 771(4)(C) of such Act (19 U.S.C. 1677(4)(C)) is amended
23 by adding at the end thereof the following new sentence:
24 “Concentration of subsidized or dumped imports exists
25 with respect to a market, if the percentage of subsidized

1 or dumped imports to consumption of imports and domes-
2 tically produced like products in such market is clearly
3 higher than the percentage is in the rest of the United
4 States.”.

5 **SEC. 110. DUAL PRICING.**

6 Section 773(a)(4) of the Tariff Act of 1930 (19
7 U.S.C. 1677b(a)(4)) is amended by adding at the end the
8 following new sentence: “No allowance shall be made to
9 account for differences in input costs that are based on
10 whether the end product made from the input is sold in
11 the home market or exported.”.

12 **SEC. 111. CLARIFICATION OF ADJUSTMENTS TO FOREIGN**
13 **MARKET VALUE.**

14 (a) Section 773(a) of the Tariff Act of 1930, as
15 amended (19 U.S.C. 1677b(a)), is amended by inserting
16 at the end of paragraph (a) the following: “No adjustment
17 shall be made to foreign market value because of adjust-
18 ments made to United States price pursuant to section
19 1677a (d) or (e) of title 19, United States Code.”.

20 **SEC. 112. INTEREST ON POST FINDINGS.**

21 (a) Section 737 of the Tariff Act of 1930, as amend-
22 ed (19 U.S.C. 1677g), is amended by changing subpara-
23 graph “(b)” to read “(c)” and inserting a new subpara-
24 graph (b)—

1 “(b) SPECIAL RULE FOR INTEREST ON POST FIND-
2 ING ENTRIES.—For antidumping findings made under the
3 Antidumping Act, 1921, all entries made after the date
4 of the finding which were entered under bond and remain
5 unliquidated as of the date of enactment of this legislation
6 shall be assessed interest from the date of entry to the
7 date of liquidation, the bond being treated as a zero
8 cash deposit for purposes of determining over or
9 underpayment.”.

10 **SEC. 113. COMPENSATION AWARDS.**

11 Section 736 of the Tariff Act of 1930 (19 U.S.C.
12 1673e) is amended by adding at the end thereof the fol-
13 lowing new section:

14 **“SEC. 736A. COMPENSATION AWARDS.**

15 “(a) DEFINITIONS.—For the purposes of this section:

16 “(1) the term ‘affected domestic producer’
17 means any manufacturer or producer within the do-
18 mestic industry with respect to which an affirmative
19 injury determination was made in connection with
20 an antidumping order;

21 “(2) the term ‘antidumping order’ means an
22 antidumping duty order published under section 736
23 of the Tariff Act of 1930;

24 “(3) the term ‘Commission’ means the United
25 States International Trade Commission;

1 “(4) the term ‘dumped merchandise’ means
2 merchandise with respect to which an antidumping
3 duty is imposed under an antidumping order; and

4 “(5) the term ‘dumping period’ means the pe-
5 riod of time during which foreign merchandise sub-
6 ject to an antidumping order was sold, or offered for
7 sale, in the United States at less than fair value and
8 applied by the Commission for purposes of making
9 a determination under section 735(b) of the Tariff
10 Act of 1930 with respect to the domestic industry
11 that produced a like or directly competitive product.

12 “(b) APPLICATION PROCESS.—The Commission shall
13 prescribe procedures governing when and the form and
14 manner in which affected domestic producers may apply
15 to the Commission for compensation under this section.

16 “(c) DETERMINATION OF COMPENSATION.—

17 “(1) Upon receiving a timely application under
18 subsection (b), the Commission shall determine if
19 the applicant—

20 “(A) is an affected domestic producer, and

21 “(B) suffered any degree of economic in-
22 jury during the dumping period as a result of
23 the sale, or offer for sale, in the United States
24 of the dumped merchandise.

1 This determination shall be completed by the 90th
2 calendar day from receipt of the application under
3 subsection (b).

4 “(2) If the Commission makes an affirmative
5 determination under paragraphs (1) (A) and (B), it
6 shall, within sixty calendar days from such deter-
7 mination—

8 “(A) determine the monetary value of the
9 economic injury that was suffered by the appli-
10 cant; and

11 “(B) issue to the applicant a compensation
12 award stating the amount of money which is
13 payable to the applicant from the appropriate
14 special compensation account established under
15 subsection (d).

16 Compensation award payable under this section shall
17 be provided to the affected domestic producers only
18 so long as monies are available within the appro-
19 priate special compensation account.

20 “(d) SPECIAL COMPENSATION ACCOUNTS.—

21 “(1) On the date an antidumping duty order
22 takes effect, the Secretary of the Treasury (hereafter
23 referred to as the Secretary in this section) shall es-
24 tablish in the Treasury of the United States a spe-
25 cial compensation account with respect to the order.

1 “(2) The Secretary shall deposit into a special
2 compensation account one-half of all antidumping
3 duties that are collected under the antidumping
4 order with respect to which the account was estab-
5 lished.

6 “(3) The monies in a special compensation ac-
7 count shall be available for payment of compensation
8 awards issued under subsection (c)(2) in conjunction
9 with the antidumping order with respect to which
10 the account was established.

11 “(4) The Secretary shall by regulation prescribe
12 the time and manner in which payment of com-
13 pensation awards from special compensation ac-
14 counts will be made. Additional compensation pay-
15 ments can be made in future years if additional anti-
16 dumping duties are deposited in the account.

17 “(5) After a period of seven years from the date
18 the special compensation account is established, the
19 Secretary shall terminate the account and upon ter-
20 mination of said account all antidumping duties col-
21 lected under the antidumping order with respect to
22 which the account was established shall be deposited
23 into the general fund of the Treasury as miscellane-
24 ous receipts.”.

1 **SEC. 114. DIVERSIONARY INPUT DUMPING.**

2 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
3 iff Act of 1930 (19 U.S.C. 167 et seq.) is amended by
4 inserting after section 771B the following new section:

5 **“SEC. 771C. DIVERSIONARY INPUT DUMPING.**

6 “For purposes of this title, diversionary input dump-
7 ing occurs when—

8 “(1) a producer or manufacturer incorporates
9 into merchandise under investigation a component or
10 a material which is the subject of—

11 “(A) an antidumping duty order issued
12 under section 736, or

13 “(B) an international arrangement or
14 agreement described in section 734, if such ar-
15 rangement or agreement was entered into after
16 an affirmative preliminary determination was
17 made under section 733(b), and

18 “(2) the producer or manufacturer under inves-
19 tigation purchased the material or component at a
20 price which is less than the foreign market value
21 (determined under section 773(e)).”.

22 (b) FOREIGN VALUE.—

23 (1) IN GENERAL.—Paragraph (2) of section
24 773(a) of such act (19 U.S.C. 1677b(A)(2)) is
25 amended by inserting “(or, if the administering au-
26 thority finds there is a reasonable basis to believe

1 that diversionary input dumping is occurring which
2 has a significant effect on the cost of producing the
3 merchandise under investigation)” after “paragraph
4 (1)(A)”.

5 (2) SPECIAL RULE FOR DIVERSIONARY INPUT
6 DUMPING.—Section 773(e) of such Act (19 U.S.C.
7 1677b(e)) is amended by adding at the end thereof
8 the following new paragraph:

9 “(5) DIVERSIONARY INPUT DUMPING.—If the
10 administering authority determines that diversionary
11 input dumping is occurring and has a significant ef-
12 fect on the cost of producing the merchandise under
13 investigation, the administering authority shall, in
14 calculating the cost of the material or component
15 under paragraph (1)(A), include the amount of the
16 diversionary input dumping determined to exist with
17 respect to such material or component. For purposes
18 of the preceding sentence, the amount of the diver-
19 sionary input dumping is the difference, if any, by
20 which

21 “(A) the foreign market value of the input
22 material or component involved, as calculated
23 under this title, exceeds

24 “(B) the purchase price of the input mate-
25 rial or component paid by the producer or man-

1 manufacturer of the merchandise under investiga-
2 tion.”.

3 (c) PROCEDURES OF INITIATING AN ANTIDUMPING
4 INVESTIGATION.—Section 732(a) of such Act (19 U.S.C.
5 1673a(A)) is amended by adding at the end thereof the
6 following new paragraph:

7 “(3) CASES INVOLVING DIVERSIONARY INPUT
8 DUMPING.—The administering authority shall inves-
9 tigate whether diversionary input dumping is occur-
10 ring whenever the administering authority has rea-
11 sonable grounds to believe or suspect that—

12 “(A) diversionary input dumping (as de-
13 fined in section 771(c)) is occurring,

14 “(B) such diversionary input dumping has
15 a significant effect on the cost of producing the
16 merchandise under investigation, and

17 “(C) official government or other reliable,
18 generally accepted trade statistics indicate that
19 subsequent to the imposition of an antidumping
20 duty order or entry into force of an inter-
21 national agreement relating to imports into the
22 United States of the material or component in
23 question, shipments to the United States of the
24 merchandise under investigation have increased
25 (either in quantity or market share).”.

1 (d) TIMETABLE FOR PRELIMINARY DETERMINATION
2 BY ADMINISTERING AUTHORITY.—Section 733(b)(1) of
3 such Act (19 U.S.C. 1673b(b)(1)) is amended by adding
4 at the end thereof the following new subparagraph:

5 “(D) IF DIVERSIONARY INPUT DUMPING
6 INVOLVED.—If, as part of a petition filed under
7 section 732(b), or an investigation commenced
8 under section 732(a), the administering author-
9 ity has reasonable grounds to believe or suspect
10 that diversionary input dumping is occurring,
11 the administering authority may treat the inves-
12 tigation as an extraordinarily complicated case
13 under subsection (c) and may extend the period
14 of time for making a preliminary determination
15 accordingly.”.

16 (e) CLERICAL AMENDMENT.—The table of contents
17 for subtitle VII of the Tariff Act of 1930 is amended by
18 inserting after the item relating to section 771B the fol-
19 lowing new item:

“Sec. 771C. Diversionary input dumping.”.

20 **SEC. 115. UPSTREAM SUBSIDIES.**

21 (a) DEFINITION.—Section 771(A) of the Tariff Act
22 of 1930 is amended in its last sentence by inserting after
23 “subsidy is provided” the words “or authorized”.

1 (b) DETERMINATION OF COMPETITIVE BENEFIT IN
2 UPSTREAM SUBSIDIES.—Section 771A(b)(1) of the Tariff
3 Act of 1930 (19 U.S.C. 1677–1(b)(1)) is amended:

4 (1) by striking “Except” and inserting “(A)
5 Except,”

6 (2) by striking “another seller” and inserting
7 “an unsubsidized seller in” subparagraph (A), as re-
8 designated by paragraph (1), and

9 (3) by adding at the end thereof the following
10 new paragraph—

11 “(B) For purposes of subparagraph (A),
12 determination of the price the manufacturer or
13 producer would otherwise pay for the product in
14 obtaining it from an unsubsidized seller shall be
15 based on the following factors in the order in
16 which such factors are listed:

17 “(i) the price paid by the manufac-
18 turer or producer to an unsubsidized seller
19 located in the same country as the seller of
20 the input product,

21 “(ii) the price paid by the manufac-
22 turer or producer to an unsubsidized seller
23 located in a country other than the country
24 of the input product,

1 “(iii) the price paid (including any de-
2 livery fees) to an unsubsidized producer lo-
3 cated in the same country as the seller of
4 the input products, or

5 “(iv) the price (including delivery
6 fees) paid to an unsubsidized producer lo-
7 cated in a country other than the country
8 of the seller of the input product.”.

9 **SEC. 116. EXPORTATION FROM AN INTERMEDIATE COUN-**
10 **TRY.**

11 (a) Section 773(b) of the Tariff Act of 1930 (19
12 U.S.C. 1677b) is amended by adding at the end thereof:
13 “In situations described under subsection (f), allegations
14 of sales below cost shall be evaluated against the cost of
15 production of the actual manufacturer plus all charges as-
16 sessed or costs incurred by other parties, including the
17 reseller.”.

18 (b) Section 773(c) of the Tariff Act of 1930 (19
19 U.S.C. 1677b(c)) is amended by adding at the end thereof
20 the following new paragraph:

21 “(5) INTERMEDIATE COUNTRY REALES.—Not-
22 withstanding anything to the contrary in subsection
23 (f), if the merchandise under investigation is—

24 “(A) produced in a nonmarket economy
25 country;

1 “(B) resold by a reseller in an intermediate
2 country; and

3 “(C) resold by such reseller at prices that
4 represent less than the cost of producing the
5 merchandise in question (including costs of pro-
6 duction for the nonmarket economy country de-
7 termined pursuant to this subsection);

8 than the administering authority shall determine the
9 foreign market value of the merchandise on the basis
10 of the value of the factors of production utilized in
11 producing the merchandise in the country of produc-
12 tion as determined pursuant to this subsection, to
13 which shall be added an amount for general ex-
14 penses and profit of the producer and reseller, plus
15 the cost of containers, covering, and other expenses,
16 as required by subsection (e).”.

17 **SEC. 117. AUTHORITY TO EXAMINE CUSTOMS VALUATION.**

18 (a) Subsection (b)(1) of section 777 of the Tariff Act
19 of 1930 is amended by adding:

20 (1) “either” after “Customs Service who is”;
21 and

22 (2) “or is reviewing the propriety of the cus-
23 toms valuation on which customs duties were cal-
24 culated for a deduction from United States Price
25 (19 U.S.C. 1677a) pursuant to a request from the

1 administering authority” after “fraud under this
2 title”.

3 (b) Section 772 of the Tariff Act of 1930 (19 U.S.C.
4 1677a) is amended by adding a new subsection at the end
5 thereof:

6 “(f) REFERRAL TO CUSTOMS.—The administering
7 authority shall refer to Customs for expedited consider-
8 ation claims that the import duties required to be de-
9 ducted from United States under subsection (d)(2)(A) are
10 understated by reason of possible understatement of cus-
11 toms valuation. Where Customs determines that customs
12 valuation on the merchandise in question is undervalued,
13 the administering authority shall deduct the import duties
14 identified by customs as properly owed for purposes of
15 making its final determination.”.

16 **SEC. 118. STUDY FOR SIMPLIFYING INITIATION OF COUN-**
17 **TERVAILING AND ANTIDUMPING DUTY AC-**
18 **TIONS.**

19 Not later than 180 days after the date of the enact-
20 ment of this Act, the Secretary of Commerce and the
21 International Trade Commission shall transmit to the
22 Congress a study, including recommendations, regarding
23 the modification of standards applicable to the initiation
24 of countervailing and antidumping duty action in order to
25 make petitioning for such initiations less costly and more

1 accessible for domestic petitioners. In conducting such
2 study, the Secretary and the Commission shall give due
3 consideration to the obligations of the United States under
4 international trade agreements.

5 **SEC. 119. SPECIAL RULE—RELATIVE UNITED STATES CON-**
6 **TENT.**

7 Section 732(b) of the Tariff Act of 1930, as amended
8 (19 U.S.C. 1673a(b)), is amended by adding the following
9 new subsection at the end thereof:

10 “(3) SPECIAL RULE—RELATIVE UNITED
11 STATES CONTENT.—

12 “(A) In special circumstances described in
13 subsection (b)(3)(B), in determining whether
14 the petition is filed on behalf of a domestic in-
15 dustry, account shall be taken of the relative
16 United States content of:

17 “(i) the imported merchandise which
18 is the subject of the petition; and

19 “(ii) the like product produced in the
20 United States by the petitioner and other
21 United States producers supporting the
22 petition.

23 “(B) Whenever the cost of materials and
24 the direct cost of processing or assembling the
25 merchandise which is the subject of the petition

1 is to a significant degree of United States ori-
2 gin (at least 2 percent of the cost of manufac-
3 ture) and roughly approximates or exceeds the
4 United States content of the product of the pe-
5 titioner at the time of the filing of the petition,
6 the administering authority shall determine
7 whether the petition is filed on behalf of a do-
8 mestic industry by measuring the value of Unit-
9 ed States content (excluding GS & A but in-
10 cluding research and development costs) for
11 both domestic production or assembly and the
12 imported product and by disregarding the provi-
13 sions of section 1677(4)(B) of title 19, United
14 States Code.”.

15 **SEC. 120. REIMBURSEMENT OF ANTIDUMPING DUTIES.**

16 Section 772(d)(2) of the Tariff Act of 1930, as
17 amended (19 U.S.C. 1677a(d)(2)) is amended by adding
18 a new subparagraph at the end thereof—

19 “(C) the amount of any antidumping duty
20 which the producer, exporter, or reseller;

21 “(i) pays or will pay, directly or indi-
22 rectly, on behalf of the importer, whether
23 related or unrelated; or

24 “(ii) reimburses to the importer,
25 whether related or unrelated, either before

1 or after assessment, and either directly or
2 indirectly through any means, including
3 but not limited to transferring merchandise
4 to a related importer at prices below cost
5 of production plus normal profit. For pur-
6 poses of this subsection, nothing in the
7 definition of ‘exporter’ in section 1677(13)
8 of title 19, United States Code shall pre-
9 clude application of this provision to ‘ex-
10 porter’s sales price’ calculations. Further,
11 transfer prices between related parties at
12 less than cost of production plus normal
13 profit are presumed to constitute indirect
14 reimbursement absent an affirmative show-
15 ing by the importer to the contrary.”.

16 **SEC. 121. DETERMINATION OF UNITED STATES PRICE.**

17 Section 772(e)(1) of the Tariff Act of 1930 (19
18 U.S.C. 1677a(e)(1)) is amended by inserting “and reason-
19 able profits from selling in the United States” after the
20 phrase “under consideration”.

21 **SEC. 122. RELIQUIDATION OF CERTAIN ENTRIES.**

22 (a) Section 500 of the Tariff Act of 1930 (19 U.S.C.
23 1500) is amended by adding the following new subsection:
24 “(f) reliquidate any entries that should have been
25 subject to an antidumping or countervailing duty order or

1 finding but which were erroneously liquidated either by ac-
2 tion of the foreign producer, exporter or importer or by
3 action of the Customs Service.”.

4 (b) Section 516A of the Tariff Act of 1930 (19
5 U.S.C. 516A) is amended by adding at the end thereof
6 the following new section:

7 **“SEC. 516B. REQUEST FOR ACCOUNTING.**

8 “(a) REQUEST FOR ACCOUNTING.—The Secretary
9 shall, upon written request by an interested party who
10 supported the petition, provide access to the record of
11 identified importers under a protective order drawn in con-
12 formity to the provisions of section 777 of this Act, as
13 to all entry papers on entries made during the twelve
14 months prior to the request or as to all documents con-
15 nected with liquidations made during the twelve months
16 prior to the request.

17 “(b) DEFINITION.—As used in this section, the term
18 ‘interested party who supported a petition’ shall refer to
19 companies, workers or associations referred to in section
20 771(9) (C), (D) or (E) who were a petitioner or filed a
21 letter in support of the petition with the administering au-
22 thority and submitted written views during the course of
23 the original investigation. The terms ‘Secretary’ and ‘ad-
24 ministering authority’ have the same meanings as pro-

1 vided in section 516A(f) (1) and (4) of this Act (19 U.S.C.
2 1516a(f) (1) and (4)).

3 “(c) REFERRAL TO THE SECRETARY OR ADMIN-
4 ISTERING AUTHORITY.—

5 “(1) If an interested party who supported a pe-
6 tition discovers information in the entry papers or
7 the liquidation documents that raise questions as to
8 the proper administration of the antidumping or
9 countervailing duty finding or order, such informa-
10 tion shall be notified to the Secretary.

11 “(2) The Secretary shall have such information
12 reviewed expeditiously and corrective action, if war-
13 ranted, taken, including pursuant to section 500(f)
14 of this Act. If the information notified pertains to
15 incorrect assessment instructions from the admin-
16 istering authority or to coverage of particular prod-
17 ucts under outstanding antidumping or countervail-
18 ing duty fines or orders, the Secretary shall transmit
19 such information to the administering authority for
20 expedited resolution of coverage. The results of all
21 such reviews shall be communicated in writing to the
22 interested party who supported a petition.

23 “(d) CIVIL ACTION.—Within thirty days of receipt of
24 the written communication, the interested party who sup-
25 ported a petition may commence a civil action in the

1 United States Court of International Trade for a review
2 of the determination made by the Secretary or administer-
3 ing authority.

4 “(e) RECORD FOR REVIEW.—The documents notified
5 to the Secretary, such documents from the original inves-
6 tigation as the parties may designate and documents per-
7 taining to liquidation instructions from the administering
8 authority and final determinations by the administering
9 authority relevant to liquidation amounts shall constitute
10 the record for review.

11 “(f) STANDARD OF REVIEW.—Whether the chal-
12 lenged determination is supported by substantial evidence
13 or is otherwise in accordance with law.

14 “(g) RECOVERY OF COSTS.—Where the determina-
15 tion of the Secretary or the administering authority is re-
16 versed or modified, the interested party who supported the
17 petition may recover reasonable attorney fees for the court
18 litigation.”.

19 **SEC. 123. ADMINISTRATIVE REVIEWS.**

20 Section 751(a)(2) of the Tariff Act of 1930 (19
21 U.S.C. 1675(a)(2)) is amended by adding at the end
22 thereof the following new subsection:

23 “(3) REQUESTS FOR REVIEWS BY DOMESTIC
24 PRODUCERS.—The administering authority shall
25 conduct a review of any foreign producer identified

1 by a domestic interested party within the meaning of
2 sections 1677(9) (C)–(G) of title 19, United States
3 Code or, where the domestic interested party does
4 not know the identity of individual foreign produc-
5 ers, the foreign producers supplying identified im-
6 porters or purchaser of the imported product.”.

7 **SEC. 124. USE OF PROTECTIVE ORDER INFORMATION.**

8 Section 777(c)(1)(A) of the Tariff Act of 1930 (19
9 U.S.C. 1677f(c)(1)(A)) is amended by adding to the end
10 thereof the following: “Information released under protec-
11 tive order during an investigation or administrative review
12 by the administering authority may be maintained under
13 protective order during the pendency of the proceeding for
14 the purpose of identifying potential factual discrepancies
15 between periods investigated or to allege relevant issues
16 in subsequent administrative reviews including the exist-
17 ence of a fictitious market (19 U.S.C. 167b(a)(5)) or sales
18 below cost of production (19 U.S.C. 1677b(b))”.

19 **SEC. 125. FURTHER MANUFACTURED GOODS.**

20 Section 772(e)(3) of the Tariff Act of 1930 (19
21 U.S.C. 1677a(e)(3)) is amended by adding at the end
22 thereof the following: “In deducting profits from assembly
23 or manufacture, profits may be allocated between value
24 added in the United States and parts or products imported
25 as long as the profits attributable to the United States

1 value added is not below the level earned by unrelated
2 manufacturers in the United States for the same class of
3 merchandise. Notwithstanding the provisions of this sub-
4 paragraph, if the transfer price of the product or (where
5 more than one product or item subject to investigation or
6 review) products is less than 1 percent of the resale value
7 of the assembled or further manufactured product, United
8 States prices shall be based on transfer price without re-
9 gard to the adjustments identified in subparagraph (3).”.

10 **SEC. 126. USE OF CONSTRUCTED VALUE.**

11 Section 772(a)(2) of the Tariff Act of 1930 (19
12 U.S.C. 1677b(a)(2)) is amended by adding at the end
13 thereof the following sentence: “Absent a finding of a ficti-
14 tious market under subparagraph (a)(1) or (a)(5) or com-
15 pliance with the provisions of subsection (b), constructed
16 value shall not be used to determine foreign market value
17 where the home market or third country markets account
18 for at least 10 percent by volume of exports to the United
19 States.”.

20 **SEC. 127. PATENT EQUITY AND BANNED SUBSTANCES.**

21 (a) Section 337(a)(1)(B) of the Tariff Act of 1930
22 (19 U.S.C. 1337(a)(1)(B)) is amended by—

- 23 (1) striking “or” at the end of subparagraph
24 (B)(i);

1 (2) striking the period at the end of subpara-
2 graph (B)(ii) and inserting “;” in lieu thereof; and

3 (3) adding the following at the end thereof:

4 “(iii) have been grown, made, produced,
5 processed, or mined pursuant to a valid patent
6 or patents where patent royalties paid are lower
7 than those paid by agricultural, horticultural, or
8 manufacturing operations in the United States;
9 or

10 “(iv) have been grown or treated with pes-
11 ticides or other substances banned for use in
12 the United States.”.

13 **SEC. 128. CIRCUMVENTION TIMELINES AND PROCEDURAL**
14 **REQUIREMENTS.**

15 (a) CIRCUMVENTION TIMELINES AND PROCEDURAL
16 REQUIREMENTS.—Section 781(a) of the Tariff Act of
17 1930 (19 U.S.C. 1677j(a)) is amended by adding at the
18 end thereof the following:

19 “(3) CIRCUMVENTION TIMELINES AND PROCE-
20 DURAL REQUIREMENTS.—

21 “(A) Upon the filing of a petition contain-
22 ing allegations of circumvention of antidumping
23 and countervailing duty orders, the administer-
24 ing authority will determine within 20 days
25 whether to initiate an investigation.

1 “(B) Within 180 days of the initiation of
2 an investigation, the administering authorities
3 will make a preliminary affirmative or negative
4 determination.

5 “(C) The administering authority will give
6 the parties the opportunity to file briefs and
7 participate in a hearing after the preliminary
8 determination.

9 “(D) The administering authority will
10 issue a final determination within 75 days after
11 the preliminary determination.

12 “(E) The administering authority will give
13 interested parties the opportunity to obtain con-
14 fidential information under the administering
15 authority’s administrative protective order pro-
16 cedures.”.

17 TITLE II—MARKET ACCESS PROVISIONS

18 **SEC. 201. ACCESS TO JAPANESE MARKET BY UNITED** 19 **STATES MOTOR VEHICLES AND MOTOR VEHI-** 20 **CLE PARTS.**

21 (a) INITIATION OF “SECTION 301” INVESTIGA-
22 TION.—Within 60 days after the enactment of this Act,
23 the United States Trade Representative shall initiate an
24 investigation under section 302(b)(1) of the Trade Act of
25 1974 (19 U.S.C. 2412(b)(1)) regarding all those acts,

1 policies, and practices of Japan, including, but not limited
2 to—

3 (1) the acts, policies, and practices utilized in
4 the Japanese automotive distribution system;

5 (2) the existence of anticompetitive activities by
6 or among private firms or groups of firms, including
7 so-called families of companies or Keiretsus; such
8 practice may include, inter alia, pricing below cost to
9 keep U.S. parts suppliers from obtaining contracts;

10 (3) exclusionary business practices; and

11 (4) testing requirements and other government
12 regulations;

13 that affect the access to the Japanese market of motor
14 vehicles and motor vehicle parts produced by manufactur-
15 ers, other than those that are Japanese owned or con-
16 trolled, that are located in the United States (hereafter
17 in this section referred to as “United States manufactur-
18 ers”).

19 (b) TRADE AGREEMENT NEGOTIATIONS.—During
20 the period of the investigation required under subsection
21 (a), the United States Trade Representative shall enter
22 into negotiations with the Government of Japan for the
23 purpose of concluding a trade agreement that—

24 (1) eliminates or modifies those aspects of the
25 acts, policies, and practices referred to in subsection

1 (a) that act as barriers to the Japanese market for
2 exports of motor vehicle and motor vehicle parts pro-
3 duced by United States manufacturers;

4 (2) provides for the prompt implementation and
5 enforcement by the Government of Japan of its com-
6 mitments under the Structural Impediments Initia-
7 tive (SII), the Market-Oriented Sector Specific
8 (MOSS) agreements, the Market-Oriented Coopera-
9 tion Plan (MOCP), and the Action Plan announced
10 at the Tokyo Summit in January 1992 with respect
11 to trade in, and the purchase of, motor vehicles and
12 motor vehicle parts;

13 (3) establishes longer term goals for the pur-
14 chase by Japanese motor vehicle parts and acces-
15 sories from United States manufacturers through
16 immediate parts sourcing arrangements and “de-
17 sign-in” projects aimed at new model development;

18 (4) establishes procedures for the exchange of
19 information between the appropriate agencies of the
20 United States and Japanese Governments that will
21 permit the accurate assessment of the bilateral trade
22 in motor vehicle parts, particularly with respect to
23 the extent of the purchase of motor vehicle parts
24 produced by United States manufacturers—

1 (A) for use by Japanese sources in the
2 Japanese market; and

3 (B) for use in the United States market by
4 manufacturers of motor vehicles, which are
5 Japanese owned or controlled and located with-
6 in the United States; and

7 (5) establishes such private sector or govern-
8 ment-sponsored review boards to resolve expedi-
9 tiously challenges to purchasing decisions by Japa-
10 nese motor vehicle manufacturers as to compliance
11 with identified specifications or competitiveness on
12 price or other terms.

13 The United States Trade Representative should seek the
14 support of other interested foreign governments in obtain-
15 ing a trade agreement under this subsection.

16 (c) REPORT IF NEGOTIATIONS UNSUCCESSFUL.—If
17 the negotiation undertaken pursuant to subsection (b) are
18 not successful, the United States Trade Representative
19 shall submit to the Congress a report that—

20 (1) states in detail the reasons why the negotia-
21 tions were not successful; and

22 (2) sets forth those actions that will be taken,
23 or will be proposed for congressional consideration,
24 to achieve the objectives sought in the negotiations.

1 Such report shall be submitted no later than the date by
2 which the determinations under section 304 of the Trade
3 Act of 1974 are required with respect to the investigation
4 initiated under subsection (a).

5 **SEC. 202. EXTENSION OF “SUPER 301” AUTHORITY.**

6 Section 310(a)(1) of the Trade Act of 1974 (19
7 U.S.C. 2420(a)(1) is amended by striking out “calendar
8 year 1989, and also the date in calendar year 1990,” and
9 inserting “each of calendar years 1994, 1995, 1996, 1997,
10 and 1998”.

11 TITLE III—INTERNATIONAL TRADE

12 NEGOTIATIONS

13 **SEC. 301. PRINCIPAL TRADE NEGOTIATING OBJECTIVES OF**
14 **THE UNITED STATES CONCERNING DISPUTE**
15 **SETTLEMENT MECHANISMS WITH RESPECT**
16 **TO UNITED STATES COUNTERVAILING DUTY**
17 **AND ANTIDUMPING ACTIONS.**

18 Section 1101(b)(1) of the Omnibus Trade and Com-
19 petitiveness Act of 1988 (19 U.S.C. 2901(b)(1)) is amend-
20 ed—

21 (1) by striking “The principal” and inserting
22 “(A) Subject to subparagraph (B), the principal”;

23 (2) by redesignating subparagraphs (A) and
24 (B) as clauses (A) (i) and (ii), respectively; and

1 (3) by adding at the end the following new sub-
2 paragraph:

3 “(B) With respect to review of countervailing
4 duty and antidumping duty actions taken by a sig-
5 natory to the General Agreement on Tariffs and
6 Trade (GATT) under its national laws, the dispute
7 settlement mechanisms and procedures described in
8 subparagraph (A) shall not allow—

9 “(i) the review of issues that were not
10 properly presented to the investigating authori-
11 ties for resolution during the administrative
12 proceeding conducted under such laws;

13 “(ii) the review of issues before the conclu-
14 sion of the administrative proceeding conducted
15 under such laws;

16 “(iii) the conducting of an independent de
17 novo investigation of the circumstances leading
18 to such actions; and

19 “(iv) where a signatory to the GATT pro-
20 vides for the administrative or judicial review,
21 by an independent body, of factual issues with
22 respect to countervailing duty and antidumping
23 actions, the extension of the review beyond
24 whether the laws and regulations of that signa-
25 tory, and the interpretation of such laws and

1 regulations by that signatory, are consistent
2 with the General Agreement on Tariffs and
3 Trade.

4 In reaching the principal negotiation objectives de-
5 scribed in subparagraph (A), all necessary actions
6 shall be taken to promote strong and effective limi-
7 tations on the scope of and standards applicable to
8 any review of countervailing duty or antidumping
9 duty actions under the dispute settlement mecha-
10 nisms and procedures described in such subpara-
11 graph.”.

12 **SEC. 302. GLOBAL STRUCTURAL EXCESS CAPACITY.**

13 Section 1101(b) (19 U.S.C. 2901(b)) is amended by
14 adding a new subsection at the end thereof:

15 “(17) GLOBAL STRUCTURAL EXCESS CAPAC-
16 ITY.—The principal negotiating objective of the
17 United States regarding situations of global struc-
18 tural excess capacity is to negotiate multilateral
19 rules to permit rapid realignment of capacity to de-
20 mand.”.

21 **SEC. 303. APPLICATION OF AMENDMENTS TO MEXICO AND**
22 **CANADA.**

23 The amendments made by this Act apply with respect
24 to goods imported into the United States from Mexico and
25 Canada.

1 **SEC. 304. INTERNATIONAL TRADE AGREEMENTS ON ANTI-**
2 **DUMPING AND TRADE DISTORTING SUB-**
3 **SIDIES.**

4 (a) Section 1101(b) of the Omnibus Trade and Com-
5 petitiveness Act of 1988 (19 U.S.C. 2901(b)) is amended
6 by adding at the end thereof the following:

7 “(18) ANTIDUMPING.—The President shall not
8 enter into any international trade agreement on
9 antidumping requiring changes in United States
10 antidumping laws which would reduce the effective-
11 ness of such laws as a remedy against injurious
12 dumped imports.

13 “(19) TRADE DISTORTING SUBSIDIES.—The
14 United States Government shall not, as a matter of
15 official policy, condone or legitimize the use by for-
16 eign governments of trade distorting subsidies, in-
17 cluding development subsidies, that cause material
18 injury to industries in the United States.”.

19 (b) It is the sense of the Congress that the President
20 review carefully the provisions on antidumping contained
21 in the Draft Final Act Embodying the Results of the Uru-
22 guay Round of Multilateral Trade Negotiations proposed
23 by the Director-General of the General Agreement on Tar-
24 iffs and Trade on December 21, 1991, and to seek those
25 changes in such provisions that are necessary to maintain
26 and to strengthen the effectiveness of United States anti-

1 dumping laws, including, but not limited to, changes pro-
2 posed by the United States in December 1992 and any
3 changes needed to clarify the continuing right to cumulate
4 and cross-cumulate imports under investigation.

5 TITLE IV—OTHER MISCELLANEOUS
6 AMENDMENTS

7 **SEC. 401. RESTRAINT OF U.S. TRADE OR COMMERCE.**

8 Section 402 of the Foreign Trade Antitrust Improve-
9 ment Act of 1982, as amended (15 U.S.C. 6a), is amended
10 by adding at the end thereof the following: “Sections 1
11 to 7 of this title shall apply to export trade or export com-
12 merce with a foreign nation, whether or not there is direct
13 harm to consumers by reducing output or raising prices,
14 if such conduct restrains U.S. export trade or export com-
15 merce with said foreign nation, or any other foreign na-
16 tion.”.

17 **SEC. 402. AUTHORITY TO IMPOSE TARIFFS ON COUNTRIES**
18 **REFUSING COSTS OF JOINT DEFENSE ASSIST-**
19 **ANCE.**

20 Section 310 of the Trade Act of 1974 (19 U.S.C.
21 2420) is amended by adding to the end thereof the follow-
22 ing new section:

1 **“SEC. 310A. AUTHORITY TO IMPOSE TARIFFS ON COUN-**
2 **TRIES REFUSING COSTS OF JOINT DEFENSE**
3 **ASSISTANCE.**

4 “(a) IN GENERAL.—The President shall have the au-
5 thority to impose a system of tariff surcharges on articles
6 imported into the United States, that are the growth or
7 product of any country provided defense assistance by the
8 United States, so as to offset in whole or in part the cost
9 of such assistance, if such country:

10 “(1) has refused and is able to contribute in an
11 equal, or proportional, share for the payment of its
12 defense assistance;

13 “(2) is party to an agreement with the Govern-
14 ment of the United States providing for such defense
15 assistance; and

16 “(3) has been determined to be a country to
17 which action may be taken against under Section
18 301 of the Trade Act of 1974 (19 U.S.C. 2411) and
19 such determination has occurred within four cal-
20 endar years from the date in which the President
21 initiates action under this paragraph.

22 The President may proclaim the imposition of such a sys-
23 tem for such period of time as he deems appropriate.

24 “(b) SYSTEM OF SURCHARGES.—A system of tariff
25 surcharges imposed under the authority of paragraph (a)
26 shall:

1 “(1) be designed so as to recover, during the
2 period in which it is in effect, the cost of defense as-
3 sistance, as determined by the Secretary of Defense,
4 provided with respect to any country meeting the re-
5 quirements of paragraph (a); and

6 “(2) provide, as nearly as practicable, for pro-
7 portionally uniform surcharge increases (including,
8 but not limited to, the imposition of a surcharge on
9 articles that would, but for this Act, be duty-free) on
10 all articles that are the growth or product of such
11 countries.

12 “(c) COLLECTION.—The Secretary of the Treasury
13 shall take such action as may be necessary or appropriate
14 to collect all surcharges imposed under any system of tar-
15 iff surcharges proclaimed under the authority of para-
16 graph (a).

17 “(d) DEFINITION.—For the purposes of this section,
18 the term ‘defense assistance’ means all costs of stationing
19 United States military personnel, equipment, and weapons
20 systems in a particular country or geographic area for the
21 defense of that country or that country’s interest, includ-
22 ing, but not limited to, the costs of provisioning, housing
23 and other personnel support; necessary related improve-
24 ments to lands and structures; fuel for, and the mainte-

1 nance of, such equipment and weapons systems; and any
2 related activity of service.”.

3 **SEC. 403. AMENDMENT OF SECTION 337 OF THE TARIFF ACT**
4 **OF 1930.**

5 (a) Section 337(b) of the Tariff Act of 1930 is
6 amended—

7 (1) by striking “; TIME LIMITS” in the head-
8 ing;

9 (2) in paragraph (1), by striking “The Commis-
10 sion shall conclude any such investigation” and all
11 that follows through the end period and inserting
12 the following: “The Commission shall conclude any
13 such investigation and make its determination under
14 this section at the earliest practicable time after the
15 date of publication of notice of such investigation.
16 To promote expeditious adjudication, the Commis-
17 sion shall, within 30 days of the initiation of an in-
18 vestigation, establish a target date for its final deter-
19 mination.”; and

20 (3) by striking the fifth sentence in paragraph
21 (3).

22 (b) DETERMINATION; REVIEW.—Section 337(c) of
23 such Act is amended—

1 (1) by striking “a settlement agreement” in the
2 first sentence and inserting “an agreement between
3 the parties”;

4 (2) by striking “subsection (d) or (e)” in the
5 second sentence and inserting “subsection (d), (e),
6 or (f) (and each declaration under subsection (o))”;
7 and

8 (3) by striking “(f), or (g)” in the fourth sen-
9 tence and inserting “(f), (g), or (o)”.

10 (c) EXCLUSION OF ARTICLES FROM ENTRY.—Sec-
11 tion 337(d) of such Act is amended by inserting after the
12 first sentence the following new sentence: “No article shall
13 be excluded from entry where the Commission determines
14 that the owner, importer, or consignee of the article has
15 established a sufficient counterclaim directly related to the
16 unfair methods or acts determined by the Commission to
17 exist.”.

18 (d) ENTRY UNDER BOND.—Section 337(e) of such
19 Act is amended—

20 (1) in the last sentence of paragraph (1), by
21 striking “determined by the Commission” and all
22 that follows through the end period and inserting:
23 “prescribed by the Secretary in an amount deter-
24 mined by the Commission to be sufficient to protect
25 the complainant from any injury. If the Commission

1 later determines that the respondent has violated the
2 provisions of this section, the bond may be forfeited
3 to the complainant.”;

4 (2) by adding at the end of paragraph (2), the
5 following new sentence: “If the Commission later de-
6 termines that the respondent has not violated the
7 provisions of this section, the bond may be forfeited
8 to the respondent.”; and

9 (3) by adding at the end thereof the following
10 new paragraph:

11 “(4) The Commission may prescribe the terms
12 and conditions under which bonds may be forfeited
13 under paragraphs (1) and (2).”.

14 (e) CEASE AND DESIST ORDERS.—Section 337(f)(1)
15 of such Act is amended—

16 (1) by inserting after the first sentence the fol-
17 lowing new sentence: “A permanent cease and desist
18 order shall not be issued if the Commission deter-
19 mines that the owner, importer, or consignees of the
20 article has established a sufficient counterclaim di-
21 rectly related to the unfair methods or acts deter-
22 mined by the Commission to exist.”; and

23 (2) by adding at the end thereof the following:
24 “If a temporary cease and desist order is issued in
25 addition to, or, in lieu of, an exclusion order under

1 subsection (e), the Commission may require the com-
2 plainant to post a bond as a prerequisite to the issu-
3 ance of an order under this subsection. If the Com-
4 mission later determines that the respondent has not
5 violated the provisions of this section, the bond may
6 be forfeited to the respondent. The Commission may
7 prescribe the terms and conditions under which
8 bonds may be forfeited under this paragraph.”.

9 (f) CONDITIONS APPLICABLE FOR GENERAL EXCLU-
10 SION ORDERS.—Section 337(g) of such Act is amended
11 by adding at the end thereof the following new paragraph:

12 “(3) The authority of the Commission to issue
13 an exclusion from entry of articles shall be limited
14 to persons determined by the Commission to be vio-
15 lating this section unless the Commission determines
16 that—

17 “(A) A general exclusion from entry of ar-
18 ticles is necessary to prevent circumvention of
19 an exclusion from entry limited to such persons;
20 or

21 “(B) there is a pattern of violation of this
22 section and it is difficult to identify the persons
23 responsible.”.

24 (g) ENTRY UNDER BOND AFTER REFERRAL TO
25 PRESIDENT.—Section 337(j)(3) of such Act is amended

1 by striking “shall be entitled to entry under bond” and
2 all that follows through the end period and inserting
3 “shall, until such determination becomes final, be entitled
4 to entry under bond prescribed by the Secretary in an
5 amount determined by the Commission to be sufficient to
6 protect the complainant from injury. If the determination
7 becomes final, the bond may be forfeited to the complain-
8 ant. The Commission may prescribe the terms and condi-
9 tions under which bonds may be forfeited under this para-
10 graph.”.

11 (h) DECLARATORY RELIEF.—Section 337 of such
12 Act is amended by adding at the end thereof the following
13 new subsection:

14 “(o) COMPLAINT FOR DECLARATORY RELIEF BY
15 OWNER, IMPORTER, OR CONSIGNEE.—In a case of actual
16 controversy as to the existence of unfair methods of com-
17 petition and unfair acts described in subsection (a), upon
18 the filing of a complaint for declaratory relief under oath
19 by the owner, importer, or consignee of an imported article
20 (or part thereof), the Commission may declare the rights
21 and other legal relations of the parties, whether or not
22 further relief is or could be sought. A declaration made
23 under this subsection shall have the force and effect of
24 a final determination of the Commission and shall be
25 reviewable as such. In the case of unfair acts involving

1 the validity of patents as described in subsection
2 (a)(1)(B), such a declaration shall be only for the purpose
3 of determining whether there is a violation of this section
4 and shall not have the effect of claim or issue preclusion.”.

5 (i) EFFECTIVE DATE.—The amendments made by
6 this section apply to complaints filed and investigations
7 initiated under section 337 of the Tariff Act of 1930 (19
8 U.S.C. 1337) after the date of the enactment of this Act.

9 **SEC. 404. AMENDMENT OF TITLE 28, UNITED STATES CODE.**

10 (a) IN GENERAL.—Chapter 111 of title 28, United
11 States Code, is amended by adding at the end thereof the
12 following new section:

13 **“§ 1659. Stay of certain actions pending disposition of**
14 **related proceeding before the United**
15 **States International Trade Commission**

16 “(a) STAY.—In a civil action involving parties that
17 are also parties to a proceeding before the United States
18 International Trade Commission pursuant to section 337
19 of the Tariff Act of 1930 (19 U.S.C. 1337), at the request
20 of a party that is a respondent in the proceeding before
21 the Commission (other than a respondent to a counter-
22 claim in a proceeding for declaratory relief), a district
23 court shall stay, until the determination of the Commis-
24 sion becomes final, proceedings in the civil action with re-

1 spect to any claim that involves the same issues involved
2 in the proceeding before the Commission.

3 “(b) USE OF COMMISSION RECORD.—After dissolu-
4 tion of a stay under subsection (a), portions of the record
5 of the proceeding before the United States International
6 Trade Commission that bear on issues in a civil action
7 shall be admissible in the civil action, subject to such pro-
8 tective order as the district court determines necessary
9 and to the extent permitted under the Federal Rules of
10 Evidence and the Federal Rules of Civil Procedure.”.

11 (b) CLERICAL AMENDMENT.—The chapter analysis
12 for chapter 111 of title 23, United States Code, is amend-
13 ed by adding at the end of the following new item:

“1659. Stay of certain actions pending disposition of related proceedings before
the United States Internal Trade Commission.”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section apply to complaints filed and investigations
16 initiated under section 337 of the Tariff Act of 1930 (19
17 U.S.C. 1337) after the date of the enactment of this Act.

18 **SEC. 405. INTERNATIONAL PROTECTION OF PATENT**
19 **RIGHTS.**

20 (a) Section 182 of the Trade Act of 1974 (19 U.S.C.
21 2242) is amended—

22 (1) in subsection (a)(1)—

23 (A) by striking “or” at the end of subpara-
24 graph (A),

1 (B) by striking “and” at the end of sub-
2 paragraph (B) and inserting “or”, and

3 (C) by inserting after subparagraph (B)
4 the following new subparagraph:

5 “(C) deny adequate substantive standards,
6 and”;

7 (2) in subsection (b)(1)(A)—

8 (A) by striking “or” at the end of clause
9 (i),

10 (B) by inserting “or” at the end of clause
11 (ii), and

12 (C) by inserting after clause (ii) the follow-
13 ing new clause:

14 “(iii) deny adequate substantive
15 standards,”;

16 (3) by adding at the end of subsection (d), the
17 following new paragraph:

18 “(4) A foreign country denies adequate sub-
19 stantive standards if the country enforces or permits
20 procedures under its patent approval system that re-
21 sult in, among other practices—

22 “(A) patent applications being subject to
23 pre-grant opposition,

24 “(B) extended deferral (beyond 3 years) of
25 patent examination,

1 “(C) an inordinately long period of time
2 for patent application approval,

3 “(D) an inordinately short patent term
4 measured either from the date of grant or from
5 the date of filing,

6 “(E) an inordinate delay in obtaining judi-
7 cial review or unavailability of judicial review
8 for patent applications that are denied, or

9 “(F) unnecessarily narrow interpretations
10 of patent claims by the authorities which deter-
11 mine patent validity and infringement.”; and

12 (4) by adding at the end of subsection (e) the
13 following new sentence: “Such publication shall in-
14 clude information with respect to any act, policy, or
15 practice identified under subsection (a) and informa-
16 tion with respect to any action taken (or the reasons
17 for not taking action) to eliminate such act, policy,
18 or practice.”.

19 **SEC. 406. COOPERATIVE PRODUCTIVITY.**

20 (a) **TERMINOLOGY.**—The National Cooperative Re-
21 search Act of 1984 (15 U.S.C. 4301, et seq.) is amended
22 by striking the term “joint research and development ven-
23 ture” each place it appears and inserting in lieu thereof
24 “joint research, development, or production venture”;

1 (b) DEFINITION.—Section 2(a)(6) of the National
2 Cooperative Research Act of 1984 (15 U.S.C. 4301(a)(6))
3 is amended—

4 (1) in subparagraph (D) by striking “or”,

5 (2) in subparagraph (E)—

6 (A) by striking “(E)” and inserting “(F)”,

7 and

8 (B) by striking “and (D)” and inserting

9 “(D), and (E)”;

10 (3) by inserting after subparagraph (D) the fol-
11 lowing:

12 “(E) the production of any product, proc-
13 ess, or service in a jointly owned or operated fa-
14 cility, or”; and

15 (4) in the matter following subparagraph (F),
16 as so redesignated, by inserting “development, or
17 production,” after “the conducting of research,”.

18 (c) EXCLUSIONS.—Section 2(b) of the National Co-
19 operative Research Act of 1984 (15 U.S.C. 4301(b)) is
20 amended—

21 (1) in paragraph (1) by striking “conduct the
22 research and development that is” and inserting
23 “carry out”;

24 (2) in paragraph (2)—

1 (A) by striking “or marketing” the first
2 place it appears and inserting “, marketing, or
3 distribution”;

4 (B) by striking “or marketing of” and in-
5 serting “, marketing, or distribution of any
6 product, process, service, or”;

7 (C) by striking “such as patents and trade
8 secrets,”; and

9 (D) by inserting “(including patents and
10 trade secrets)” after “proprietary information”;
11 and

12 (3) in paragraph (3) by striking “other research
13 and development activities” and inserting “any other
14 joint research, development, or production venture
15 activity”.

16 (d) RULE OF REASON STANDARD.—Section 3 of the
17 National Cooperative Research Act of 1984 (15 U.S.C.
18 4302) is amended by adding at the end the following: “For
19 the purpose of determining a properly defined, relevant
20 market, the worldwide capacity of suppliers to provide a
21 product, process, or service shall be considered.”.

22 (e) TECHNICAL AMENDMENTS.—

23 (1) Section 3 of the National Cooperative Re-
24 search Act of 1984 (15 U.S.C. 4302) is amended by
25 striking “research and development markets” and

1 inserting in lieu thereof “research, development, or
2 product markets”; and

3 (2) Section 6 of the National Cooperative Re-
4 search Act of 1984 (15 U.S.C. 4305) is amended—

5 (A) in the heading by striking “Research
6 and Developments”, and

7 (B) in subsection (a) by inserting “(or,
8 with respect to a venture involving the produc-
9 tion of any product, process, of service, not
10 later than 90 days after the effective date of
11 the Cooperative Productivity and Competitive-
12 ness Act of 1991)”, after “Act”.

13 **SEC. 407. UNFAIR METHODS OF COMPETITION.**

14 Section 45(a) of title 15 of the United States Code
15 is amended by adding at the end thereof the following new
16 paragraph:

17 “(4) It shall be an unfair method of competition
18 for a wholesaler or retailer to sell product by tele-
19 phone, facsimile or means where the purchaser does
20 not see the article(s) to be purchased without identi-
21 fying the country of origin of the article being of-
22 fered and, if the product is of foreign origin, indicat-
23 ing whether a domestic article is also available.”.

1 **SEC. 408. CORRECTION OF INVERTED TARIFF.**

2 (a) NONALLOY IRON AND STEEL PIPES AND
3 TUBES.—

4 (1) The superior article description for sub-
5 headings 7306.30.30 and 7306.30.50 of the Har-
6 monized Tariff Schedule of the United States (19
7 U.S.C. 3007) is amended to read as follows: “Hav-
8 ing a wall thickness of 1.65 mm or more, not galva-
9 nized:”.

10 (2) Subheadings 7306.30.30 and 7306.30.50
11 are redesignated as subheadings 7306.30.35 and
12 7306.30.55, respectively.

13 (3) Subheadings 7306.10.10, 7306.20.60,
14 7306.30.55 (as redesignated by subparagraph (2)),
15 and 7306.90.10 are each amended—

16 (A) by striking “1.9%” in column 1 Gen-
17 eral and inserting “4.9%”; and

18 (B) by striking “5.5%” in column 2 and
19 inserting “20%”.

20 (4) Subheadings 7306.20.20 and 7306.60.10
21 are each amended—

22 (A) by striking “0.5%” in column 1 Gen-
23 eral and inserting “4.9%”; and

24 (B) by striking “1%” in column 2 and in-
25 serting “20%”.

1 (5) Chapter 73 is amended by inserting in nu-
 2 merical order the following new subheading having
 3 the same degree of indentation as the superior text
 4 for subheading 7306.30.35 and 7306.30.55 (as re-
 5 designated by subparagraph (2)):

| | | | | | |
|------------|---|------|------------------------------|-------|----|
| 7306.30.60 | Having a wall thickness of 1.65 mm or more, galvanized | 6.5% | Free (C, E, IL) 1.1% (CA) | 21.5% | .. |
|------------|---|------|------------------------------|-------|----|

6 (b) ALLOY IRON AND STEEL PIPES AND TUBES.—

7 (1) Subheadings 7306.50.50 and 7306.90.50
 8 are each amended—

9 (A) by striking “4.9%” in column 1 Gen-
 10 eral and inserting “9.5%”; and

11 (B) by striking “10%” in column 2 and in-
 12 serting “28%”.

13 (c) STAINLESS STEEL PIPES AND TUBES.—

14 (1) Subheading 7306.40.10 is amended by
 15 striking “7.6%” in column 1 General and inserting
 16 “10.1%”.

17 (2) Subheading 7306.40.50 is amended—

18 (A) by striking “5%” in column 1 General
 19 and inserting “10.1%”; and

20 (B) by striking “11%” in column 2 and in-
 21 serting “29%”.

22 (d) NEGOTIATING AUTHORITY.—In the event that a
 23 claim for compensation under any provision of the General
 24 Agreement on Tariffs and Trade or any other trade agree-

1 ment to which the United States is a party is made by
2 any Contracting Party to that agreement as a result of
3 the amendments made by this section, the United States
4 Trade Representative is authorized to negotiate such rea-
5 sonable compensation as may be appropriate.

6 (e) APPLICABILITY OF STAGED RATE REDUCTIONS
7 UNDER THE UNITED STATES-CANADA FREE-TRADE
8 AGREEMENT.—

9 (1) Any staged reduction under the United
10 States-Canada Free-Trade Agreement of special
11 rates of duty for Canada set forth in subheading
12 7306.30.30 applies to the corresponding special rate
13 of duty set forth in subheading 7306.30.35.

14 (2) Any staged reduction under the United
15 States-Canada Free-Trade Agreement of special
16 rates of duty for Canada set forth in subheading
17 7306.30.50 applies to the corresponding special rate
18 of duty set forth in subheading 7306.30.55.

19 (3) Any staged reduction under this United
20 States-Canada Free-Trade Agreement of special
21 rates of duty for Canada set forth in subheading
22 7306.30.55 (as redesignated by subsection (a)(2))
23 also applies to the corresponding special rate of duty
24 set forth in subheading 7306.30.60.

1 (f) EFFECTIVE DATE.—Except as provided in Sec-
2 tion 7, the amendments made by Sections 2, 3 and 4, shall
3 apply with respect to goods entered, or withdrawn from
4 warehouse for consumption, beginning on—

5 (1) the date on which the President enters into
6 a multilateral trade agreement negotiated through
7 the Uruguay Round under the General Agreement
8 on Tariffs and Trade, or

9 (2) January 1, 1994.

10 (g) WAIVER.—In the event that—

11 (1) negotiations on market access and tariffs in
12 the General Agreement on Tariffs and Trade provide
13 for a tariff rate elimination schedule on steel prod-
14 ucts that will remove the tariff rate inversion on cer-
15 tain pipe and tube products; and

16 (2) the President or the United States Trade
17 Representative certifies in writing to the committee
18 on Ways and Means of the House of Representatives
19 and the Committee on Finance of the Senate that
20 such schedule will eliminate such tariff inversion; the
21 provisions of this section shall not take effect.

22 **SEC. 409. HORTICULTURAL STUDY.**

23 (a) The United States Trade Representatives to-
24 gether with the Secretary of Agriculture, Secretary of
25 Labor, and Secretary of Transportation shall prepare a

1 report on the horticultural industry on the following issues
2 to be submitted to the Congress within 6 months of enact-
3 ment:

4 (1) nature of patent protection, enforcement
5 mechanisms and royalty collection procedures of hor-
6 ticultural products and identified rates of royalty
7 payments for the ten largest import sources and six
8 largest export markets at the eight digit HTS level
9 for HTS 0601, 0602, and 0603 as well as the roy-
10 alty payment rates for United States growers of the
11 like products;

12 (2) whether pesticides banned from use on hor-
13 ticultural products grown in the United States are
14 used in growing or treating horticultural products
15 imported into the United States under Chapter 6 of
16 the HTS;

17 (3) how worker rights in the countries con-
18 stituting the major foreign suppliers of horticultural
19 products to the United States compare to those re-
20 quired under United States law; and

21 (4) the extent to which air fares between the
22 major supplier countries and the United States, Eu-
23 rope and Japan influence the direction of flower
24 shipments from Central and South American coun-
25 tries.

1 **SEC. 410. HOME APPLIANCES.**

2 (a) With respect to the following items in the Har-
3 monized Tariff Schedule of the United States.

4 7321.11.30—stoves or ranges (other than port-
5 able).

6 8418.10.00, 8418.21.00, 8418.22.00,
7 8418.29.00—refrigerators and combined refrigerator
8 freezers.

9 8450.11.00, 8450.19.00, 8450.20.00—house-
10 hold or laundry washing machines.

11 8451.21.00, 8451.29.00—drying machines.

12 (b) The tariff rate on imports from Mexico of such
13 products shall permanently be the Most Favored Nation
14 Rate as provided for each item in Schedule 1 of the cur-
15 rent Harmonized Tariff Schedule of the United States, not
16 withstanding any temporary duty status on any such item
17 that is applicable or may be applicable under the United
18 States Generalized System of Preferences.

19 (c) Notwithstanding the reference in Annex 302.2,
20 paragraph 2, of the proposed North American Free Trade
21 Agreement to “the rate of duty in effect on July 1, 1991,
22 including rates under the United States Generalized Sys-
23 tem of Preferences,” the Schedule of the United States
24 attached to Annex 302.2 shall omit reference to “G” for
25 those HTS items and the staging code for those items

1 shall be changed to “C” as as to conform with the counter-
2 part Mexican and Canadian staging codes.

3 **SEC. 411. CONCENTRATION OF IMPORTS.**

4 Section 771(4)(C) of the Tariff Act of 1930 (19
5 U.S.C. 1677(4)(C)) is amended by adding at the end
6 thereof the following new sentence: “Concentration of sub-
7 sidized or dumped imports exists with respect to a market,
8 if the percentage of subsidized or dumped imports to con-
9 sumption of imports and domestically produced like prod-
10 ucts in such market is clearly higher than the percentage
11 is in the rest of the United States.”.

12 TITLE V—PRIVATE ACTIONS FOR RELIEF FROM
13 CERTAIN FORMS OF ANTICOMPETITIVE
14 PRICING PRACTICES

15 **SEC. 501. PRIVATE RIGHT OF ACTION FOR RELIEF FROM**
16 **INJURIOUS INDUSTRIAL CROSS-SUBSIDIZA-**
17 **TION AND PERSISTENT SALES BELOW FULL**
18 **COST OF PRODUCTION.**

19 (a) Section 1(a) of the Clayton Act (15 U.S.C. 12)
20 is amended by inserting “Section 901 of the Act of Sep-
21 tember 8, 1916, entitled ‘An Act to raise revenue, and for
22 other purposes’ (39 Stat. 98; 15 U.S.C. 2);” after nineteen
23 hundred and thirteen;

24 (b) Section 901 of the Act of September 8, 1916 (39
25 Stat. 798; 15 U.S.C. 72) is amended to read as follows:

1 **“SEC. 901.**

2 “(a) PROHIBITION.—No person shall sell for export
3 to the United States or sell within the United States a
4 product at a price which does not permit the recovery of
5 all costs (fixed and variable) involved in developing, pro-
6 ducing and selling the product within a reasonable period
7 of time where such pricing practices cause material injury
8 to another producer or manufacturer the majority of sales
9 occur in the United States.

10 “(b) REASONABLE PERIOD OF TIME.—A determina-
11 tion on reasonable period of time will be based on the facts
12 peculiar to the product in question. However, where sales
13 are below all costs on average for more than one-third of
14 the projected life cycle of the product or for 24 months
15 there shall be a rebuttable presumption that such costs
16 do not permit the recovery of all costs within a reasonable
17 period.

18 “(c) CIVIL ACTION.—An interested party whose busi-
19 ness or property is materially injured by reason of impor-
20 tations or sales in violation of this section may bring a
21 civil action in any court of the United States having juris-
22 diction over the parties.

23 “(d) JURISDICTION OVER FOREIGN PRODUCERS OR
24 EXPORTERS.—A foreign manufacturer, producer, or ex-
25 porter which sells products, or for which products are sold
26 by another party in the United States, shall be treated

1 as having appointed the District Director of the United
2 States Customs Service of the Department of the Treas-
3 ury for any port through which the product is commonly
4 imported as a true and lawful agent of the manufacturer,
5 producer, or exporter, upon whom may be served all lawful
6 process in any action brought under subsection (c) against
7 the manufacturer, producer, or exporter.

8 “(e) DEFENSES.—It shall be a defense to an action
9 for a defendant if the defendant was not gaining market
10 share from the plaintiff in the United States and was sell-
11 ing its product at or above the plaintiff’s prices.

12 “(f) RELIEF.—In an action brought under subsection
13 (c), the court, if it finds for plaintiff, shall—

14 “(1) grant damages for the injuries sustained;

15 “(2) permit recovery of costs of the action, in-
16 cluding reasonable attorney’s fees;

17 “(3) if the court determines that the infliction
18 of injury was intentional, award treble damages; and

19 “(4) order a prospective revision of prices or
20 grant such equitable relief as may be appropriate.

21 “(g) STANDARD OF PROOF.—The standard of proof
22 in an action brought under subsection (c) is a preponder-
23 ance of the evidence.

24 “(h) LIMITATION.—An action under subsection (b)
25 shall be commenced not later than 2 years after the date

1 on which the cause of action accrued. For purposes of this
2 section, the cause of action accrues throughout the period
3 during which sales below full costs are occurring.

4 “(i) INTERVENTION BY THE UNITED STATES.—The
5 court shall permit the United States to intervene in any
6 action brought under subsection (c) as a matter of right.
7 The United States shall have all the rights of a party to
8 such action.”.

9 TITLE VI—FOREIGN CAPITAL AND SECURITIES
10 MARKETS

11 **SEC. 601. FOREIGN CAPITAL AND SECURITIES MARKETS**

12 **STUDY.**

13 (a) IN GENERAL.—The Secretary of the Treasury
14 (hereafter referred to as the “Secretary”) shall conduct
15 a study of the capital and securities markets of Japan.
16 Not later than 1 year after the date of the enactment of
17 this Act, the Secretary shall submit a report to the Con-
18 gress on the structure, operation, practice, and regulation
19 of Japan’s capital securities markets, and their implica-
20 tions for the United States.

21 (b) CONSULTATIONS.—The Secretary shall consult
22 with the Chairman of the Securities and Exchange Com-
23 mission, the United States Trade Representative, and
24 such other agencies or persons as the Secretary may deem
25 necessary to complete the study and report required under

1 this Act. The Secretary shall also consult with representa-
2 tives from the domestic capital and securities markets.
3 The Secretary may consult with agencies of the Govern-
4 ment of Japan, Japanese exchanges, and such other Japa-
5 nese persons or organizations as the Secretary may deem
6 appropriate.

7 (c) DEFINITION.—For purposes of this Act the term
8 “security” has the same meaning as in section 3(a)(10)
9 of the Securities Exchange Act of 1934 (15 U.S.C.
10 78c(a)(10)).

○

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