

103D CONGRESS
1ST SESSION

S. 502

To amend the Tariff Act of 1930 to improve the antidumping and countervailing duty provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4 (legislative day, MARCH 3), 1993

Mr. ROCKEFELLER (for himself and Mr. WOFFORD) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Tariff Act of 1930 to improve the antidumping and countervailing duty provisions, 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. STANDARD FOR INITIATING PETITION.**

4 (a) COUNTERVAILING DUTIES.—

5 (1) PETITION REQUIREMENTS.—The first sen-
6 tence of section 702(b)(1) of the Tariff Act of 1930
7 (19 U.S.C. 1671a(b)(1)) is amended by striking
8 “which alleges” and all that follows through
9 “allegations” and inserting “which contains a short
10 and plain statement of the elements necessary for

1 the imposition of the duty imposed by section 701(a)
2 and adequate information to give notice of the fac-
3 tual basis for the petitioner's allegations''.

4 (2) PETITION DETERMINATION.—Paragraph
5 (1) of section 702(c) of such Act (19 U.S.C.
6 1671a(c)(1)) is amended by striking “contains infor-
7 mation” and all that follows through “allegations”
8 and inserting “contains a short and plain statement
9 of the elements necessary for the imposition of the
10 duty imposed by section 701(a) and adequate infor-
11 mation to give notice of the factual basis for the pe-
12 titioner's allegations”.

13 (b) ANTIDUMPING DUTIES.—

14 (1) PETITION REQUIREMENTS.—The first sen-
15 tence of section 732(b)(1) of such Act (19 U.S.C.
16 1673a(b)(1)) is amended by striking “which alleges”
17 and all that follows through “allegations” and in-
18 serting “which contains a short and plain statement
19 of the elements necessary for the imposition of the
20 duty imposed by section 731 and adequate informa-
21 tion to give notice of the factual basis for the peti-
22 tioner's allegations”.

23 (2) PETITION DETERMINATION.—Paragraph
24 (1) of section 732(c) of such Act (19 U.S.C.
25 1673a(c)(1)) is amended by striking “contains infor-

1 mation” and all that follows through “allegations”
 2 and inserting “contains a short and plain statement
 3 of the elements necessary for the imposition of the
 4 duty imposed by section 731 and adequate informa-
 5 tion to give notice of the factual basis for the peti-
 6 tioner’s allegations”.

7 **SEC. 2. DETERMINATION OF MATERIAL INJURY.**

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

15 (b) PRICE COMPETITION.—Section 771(7)(C)(ii) of
 16 such Act (19 U.S.C. 1677(7)(C)(ii)) is amended by insert-
 17 ing immediately after subclause (II) the following flush
 18 sentence:

19 “For purposes of this clause, the Commis-
 20 sion shall compare the price at which im-
 21 ported merchandise is sold to the ultimate
 22 consumer with the price at which like
 23 products of the United States are sold to
 24 the ultimate consumer.”.

1 (c) CUMULATION.—Section 771(7)(C)(iv) of such Act
2 (19 U.S.C. 1677(7)(C)(iv)) is amended by adding at the
3 end thereof the following new subclause:

4 “(III) LOOK-BACK.—For pur-
5 poses of clauses (i) and (ii) and sub-
6 paragraph (F), if a petition is filed
7 under this title with respect to a prod-
8 uct or like product which was the
9 basis of a final affirmative determina-
10 tion during the 3 years preceding the
11 filing of such petition, the Commission
12 shall consider as part of its investiga-
13 tion of the new petition the previous
14 injurious dumping or subsidization as
15 an important factor in determining
16 the industry’s vulnerability to material
17 injury.”.

18 (d) NEGLIGENCE.—Section 771(7)(C) of such Act
19 (19 U.S.C. 1677(7)(C)) is amended by adding at the end
20 thereof the following new clause:

21 “(vi) TREATMENT OF NEGLIGIBLE IM-
22 PORTS IN SUBSEQUENT INVESTIGA-
23 TIONS.—Notwithstanding clause (v), in the
24 case of a petition filed under this title with
25 respect to the importation of merchandise

1 which was the subject of a final affirmative
2 determination during the 3 years preceding
3 the filing of such petition, importation of
4 merchandise otherwise considered neg-
5 ligible shall not be considered negligible
6 and shall be treated as having an adverse
7 impact on the domestic industry, if the
8 pattern, volume, price, import penetration,
9 and other factors of such imports, when
10 considered as part of the current investiga-
11 tion, would result in an affirmative deter-
12 mination.”.

13 (e) CONCENTRATION OF IMPORTS.—Section
14 771(4)(C) of such Act (19 U.S.C. 1677(4)(C)) is amended
15 by adding at the end thereof the following new sentence:
16 “Concentration of subsidized or dumped imports exists
17 with respect to a market, if the percentage of subsidized
18 or dumped imports to consumption of imports and domes-
19 tically produced like products in such market is clearly
20 higher than the percentage is in the rest of the United
21 States.”.

22 **SEC. 3. EFFECT OF SUSPENSION AGREEMENTS ON FINAL**
23 **DETERMINATION.**

24 Section 734(j) of the Tariff Act of 1930 (19 U.S.C.
25 1673c(j)) is amended—

1 (1) by striking “In making a final determina-
2 tion” and inserting:

3 “(1) IN GENERAL.—In making a final deter-
4 mination”, and

5 (2) by adding at the end thereof the following
6 new paragraph:

7 “(2) OTHER FACTORS.—In a case in which a
8 suspension of investigation has been terminated
9 under subsection (i)(1) or an investigation has been
10 continued under subsection (g), in making a final
11 determination—

12 “(A) the Commission shall not consider as
13 a factor supporting a negative determination
14 any decrease in imports subject to such inves-
15 tigation or any improvement in the condition of
16 the domestic industry which occurred after the
17 suspension agreement became effective, and

18 “(B) the administering authority shall not
19 consider as a factor supporting a negative de-
20 termination any decrease in foreign market
21 value of imports subject to such investigation or
22 any increase in United States prices which oc-
23 curred after the suspension agreement became
24 effective.”.

1 **SEC. 4. DETERMINATION OF SUBSIDY.**

2 (a) LOANS BY INTERNATIONAL DEVELOPMENT
3 BANKS.—Section 771(5)(A)(ii)(I) of the Tariff Act of
4 1930 (19 U.S.C. 1677(5)(A)(ii)(I)) is amended by insert-
5 ing “(including loans or loan guarantees by an inter-
6 national development bank)” after “loan guarantees”.

7 (b) CAPITAL AND LOANS TO EXPAND PRODUC-
8 TION.—Section 771(5)(A) of such Act (19 U.S.C.
9 1677(5)(A)) is amended by adding at the end thereof the
10 following new clause:

11 “(iii) The provision of capital, loans,
12 or loan guarantees by a government for the
13 expansion of production or improvements
14 in existing production, if one-third or more
15 of the output from such production can
16 reasonably be expected to be exported.”.

17 **SEC. 5. PREVENTION OF CIRCUMVENTION OR DIVERSION**
18 **OF ANTIDUMPING AND COUNTERVAILING**
19 **DUTY ORDERS.**

20 (a) MERCHANDISE COMPLETED OR ASSEMBLED IN
21 THE UNITED STATES.—Section 781(a) of the Tariff Act
22 of 1930 (19 U.S.C. 1677j(a)) is amended to read as fol-
23 lows:

24 “(a) MERCHANDISE COMPLETED OR ASSEMBLED IN
25 THE UNITED STATES.—

1 “(1) IN GENERAL.— In determining whether
2 imported parts or components are circumventing an
3 antidumping or countervailing duty order or finding
4 and whether to include such parts or components in
5 that order or finding, the administering authority
6 shall consider—

7 “(A) the pattern of trade,

8 “(B) the value and sources of supply of
9 parts or components historically used in comple-
10 tion or assembly of the merchandise subject to
11 an antidumping or countervailing duty order,

12 “(C) whether the manufacturer or exporter
13 of the parts or components is related to the per-
14 son who assembles or completes the merchan-
15 dise sold in the United States from the parts or
16 components produced in the foreign country
17 with respect to which the order or finding de-
18 scribed in paragraph (2) applies, and

19 “(D) whether imports into the United
20 States of the parts or components produced in
21 such foreign country have increased after the
22 issuance of such order or finding.

23 “(2) MERCHANDISE THAT MAY BE INCLUDED
24 IN ORDER OR FINDING.—If—

1 “(A) merchandise sold in the United
2 States is of the same class or kind as any other
3 merchandise that is the subject of—

4 “(i) an antidumping duty order issued
5 under section 736,

6 “(ii) a finding issued under the Anti-
7 dumping Act, 1921, or

8 “(iii) a countervailing duty order is-
9 sued under section 706 or 303,

10 “(B)(i) such merchandise sold in the Unit-
11 ed States is completed or assembled in the
12 United States from parts or components sup-
13 plied by the exporter or producer with respect
14 to which such order or finding applies, from
15 suppliers that have historically supplied the
16 parts or components to that exporter or pro-
17 ducer, or from any party in the exporting coun-
18 try supplying parts or components on behalf of
19 such an exporter or producer, and

20 “(ii) the value of the imported parts and
21 components referred to in clause (i), whether
22 considered individually or collectively, is signifi-
23 cant in relation to the total value of all parts
24 and components used in the assembly or com-
25 pletion operation, excluding packing, of the im-

1 ported merchandise covered by the order or
2 finding, or

3 “(C) consideration of the factors set forth
4 in paragraph (1) otherwise establishes a pattern
5 of circumvention with the effect of evading an
6 antidumping or countervailing duty order or
7 finding,

8 the administering authority, after taking into ac-
9 count any advice provided by the Commission under
10 subsection (e), may include within the scope of such
11 order or finding the imported parts or components
12 referred to in subparagraph (B) that are used in the
13 completion or assembly of the merchandise in the
14 United States at any time such order or finding is
15 in effect.”.

16 (b) MERCHANDISE COMPLETED OR ASSEMBLED IN
17 OTHER FOREIGN COUNTRIES.—Section 781(b) of the
18 Tariff Act of 1930 (19 U.S.C. 1677j(b)) is amended to
19 read as follows:

20 “(b) MERCHANDISE COMPLETED OR ASSEMBLED IN
21 OTHER FOREIGN COUNTRIES.—

22 “(1) IN GENERAL.—In determining whether
23 merchandise completed or assembled in a foreign
24 country is circumventing an antidumping or counter-
25 vailing duty order or finding and whether to include

1 such merchandise in that order or finding, the ad-
2 ministering authority shall consider—

3 “(A) the pattern of trade,

4 “(B) the value and sources of supply of
5 parts or components historically used in comple-
6 tion or assembly of the merchandise subject to
7 an antidumping or countervailing duty order,

8 “(C) whether the manufacturer or exporter
9 of the merchandise described in paragraph
10 (2)(B) is related to the person who uses the
11 merchandise described in paragraph (2)(B) to
12 assemble or complete in the foreign country the
13 merchandise that is subsequently imported into
14 the United States, and

15 “(D) whether imports into the foreign
16 country of the merchandise described in para-
17 graph (2)(B) have increased after the issuance
18 of such order or finding.

19 “(2) MERCHANDISE THAT MAY BE INCLUDED
20 IN ORDER OR FINDING.—If—

21 “(A) merchandise imported into the United
22 States is either of the same class or kind or in-
23 corporates an essential component that is of the
24 same class or kind as merchandise produced in
25 a foreign country that is the subject of—

1 “(i) an antidumping duty order issued
2 under section 736,

3 “(ii) a finding issued under the Anti-
4 dumping Act, 1921, or

5 “(iii) a countervailing duty order is-
6 sued under section 706 or section 303; and

7 “(B)(i)(I) before importation into the
8 United States, such imported merchandise is
9 completed or assembled in another foreign
10 country from merchandise which is subject to
11 such order or finding, is produced in the foreign
12 country with respect to which such order or
13 finding applies, or is supplied by the exporter or
14 producer with respect to which such order or
15 finding applies or by suppliers that have histori-
16 cally supplied the parts or components to that
17 exporter or producer, and

18 “(II) the merchandise referred to in
19 subclause (I) which is used in the assembly or
20 completion of the imported merchandise has a
21 value that is significant in relation to the total
22 value of all parts or components used in the as-
23 sembly or completion operation, excluding pack-
24 ing, or

1 “(ii) consideration of the factors set forth
2 in paragraph (1) otherwise establishes a pattern
3 of circumvention with the effect of evading a
4 countervailing or antidumping duty order or
5 finding, and

6 “(C) the administering authority deter-
7 mines that action is appropriate under this
8 paragraph to prevent evasion of such order or
9 finding,

10 the administering authority, after taking into ac-
11 count any advice provided by the Commission under
12 subsection (e), may include such imported merchan-
13 dise within the scope of such order or finding at any
14 time such order or finding is in effect.”.

15 (c) CONSTRUCTION PROVISION.—Section 781 of the
16 Tariff Act of 1930 (19 U.S.C. 1677j) is amended by add-
17 ing at the end the following new subsection:

18 “(f) CONSTRUCTION PROVISION.—Nothing in this
19 title shall be deemed to limit the authority of the admin-
20 istering authority to include provisions in any final order
21 issued pursuant to—

22 “(1) an antidumping duty order issued under
23 section 736,

24 “(2) a finding issued under the Antidumping
25 Act, 1921, or

1 “(3) a countervailing duty order issued under
2 section 706 or section 303,
3 the purpose of which is to prevent the evasion of any rem-
4 edy provided for in such finding or order or to otherwise
5 safeguard the integrity of such finding or order.”.

6 **SEC. 6. DETERMINATION OF COMPETITIVE BENEFIT IN UP-**
7 **STREAM SUBSIDIES.**

8 (a) IN GENERAL.—Section 771A(b)(1) of the Tariff
9 Act of 1930 (19 U.S.C. 1677–1(b)(1)) is amended—

10 (1) by striking “Except” and inserting “(A)
11 Except”,

12 (2) by striking “another seller” and inserting
13 “an unsubsidized seller” in subparagraph (A), as re-
14 designated by paragraph (1), and

15 (3) by adding at the end thereof the following
16 new subparagraph:

17 “(B) For purposes of subparagraph (A),
18 determination of the price the manufacturer or
19 producer would otherwise pay for the product in
20 obtaining it from an unsubsidized seller shall be
21 based on the following factors in the order in
22 which such factors are listed:

23 “(i) the price paid by the manufac-
24 turer or producer to an unsubsidized seller

1 located in the same country as the seller of
2 the input product,

3 “(ii) the price paid by the manufac-
4 turer or producer to an unsubsidized seller
5 located in a country other than the country
6 of the seller of the input product,

7 “(iii) information on prices (including
8 all delivery fees) from an unsubsidized sell-
9 er of the input product located in the same
10 country as the subsidized seller of the
11 input product, or

12 “(iv) information on prices (including
13 all delivery fees) from an unsubsidized sell-
14 er of the input product located in a coun-
15 try other than the country of the sub-
16 sidized seller of the input product.”.

17 (b) DEFINITION.—Section 771A(a) of the Tariff Act
18 of 1930 (19 U.S.C. 1677–1(a)) is amended by inserting
19 “or authorized” after “provided” in the last sentence.

20 **SEC. 7. DIVERSIONARY INPUT DUMPING.**

21 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
22 iff Act of 1930 (19 U.S.C. 1677 et seq.) is amended by
23 inserting after section 771B the following new section:

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

2 “For purposes of this title, diversionary input dump-
3 ing occurs when—

4 “(1) a producer or manufacturer incorporates
5 into merchandise under investigation a component or
6 a material which is the subject of—

7 “(A) an antidumping duty order issued
8 under section 736, or

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

14 “(2) the producer or manufacturer under inves-
15 tigation purchased the material or component at a
16 price which is less than the foreign market value
17 (determined under section 773(e)).”.

18 (b) FOREIGN VALUE.—

19 (1) IN GENERAL.—Paragraph (2) of section
20 773(a) of such Act (19 U.S.C. 1677b(a)(2)) is
21 amended by inserting “(or, if the administering au-
22 thority finds there is a reasonable basis to believe
23 that diversionary input dumping is occurring which
24 has a significant effect on the cost of producing the
25 merchandise under investigation)” after “paragraph
26 (1)(A)”.

1 (2) SPECIAL RULE FOR DIVERSIONARY INPUT
2 DUMPING.—Section 773(e) of such Act (19 U.S.C.
3 1677b(e)) is amended by adding at the end thereof
4 the following new paragraph:

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

17 “(A) the foreign market value of the input
18 material or component involved, as calculated
19 under this title, exceeds

20 “(B) the purchase price of the input mate-
21 rial or component paid by the producer or man-
22 ufacturer of the merchandise under investiga-
23 tion.”.

24 (c) PROCEDURES FOR INITIATING AN ANTIDUMPING
25 INVESTIGATION.—Section 732(a) of such Act (19 U.S.C.

1 1673a(a)) is amended by adding at the end thereof the
2 following new paragraph:

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

8 “(A) diversionary input dumping (as de-
9 fined in section 771C) is occurring,

10 “(B) such diversionary input dumping has
11 a significant effect on the cost of producing the
12 merchandise under investigation, and

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

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

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

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

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

16 **SEC. 8. MONITORING.**

17 (a) IN GENERAL.—Section 732(a)(2)(A)(i) of the
 18 Tariff Act of 1930 (19 U.S.C. 1673a(a)(2)(A)(i)) is
 19 amended by striking “more than one” and inserting “one
 20 or more”.

21 (b) DOWNSTREAM PRODUCT MONITORING.—Section
 22 780(a)(2)(B)(iii) of such Act (19 U.S.C.
 23 1677i(a)(2)(B)(iii)) is amended by striking “at least 2”
 24 and inserting “1 or more”.

1 **SEC. 9. APPLICATION OF AMENDMENTS TO CANADA.**

2 The amendments made by this Act apply with respect
3 to goods imported into the United States from Canada.

4 **SEC. 10. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Except as provided in subsections
6 (b) and (c), the amendments made by this Act shall take
7 effect on the date of the enactment of this Act.

8 (b) STANDARD FOR INITIATING PETITION; DETER-
9 MINATION OF INJURY.—The amendments made by section
10 1 (relating to the provisions of sections 702 and 732 of
11 the Tariff Act of 1930) and section 2 (relating to the pro-
12 visions of sections 771(7)(C) and 771(4)(C) of the Tariff
13 Act of 1930) apply with respect to investigations initiated
14 on or after the date of the enactment of this Act.

15 (c) PREVENTION OF CIRCUMVENTION.—The amend-
16 ments made by section 5 (relating to section 781 of the
17 Tariff Act of 1930) apply with respect to articles entered,
18 or withdrawn from warehouse for consumption, on or after
19 the date of the enactment of this Act.

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S 502 IS——2