

89TH CONGRESS
1ST SESSION

H. R. 9195

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1965

Mr. FOGARTY introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Antidumping Act, 1921.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 201 of the Antidumping Act, 1921 (19 U.S.C.
4 160), is amended to read as follows:

5 “DUMPING INVESTIGATION

6 “SEC. 201. (a) Whenever the Secretary determines in
7 accordance with the procedure prescribed in section 212 that
8 foreign merchandise of a class or kind has been sold at any
9 time after the date six months preceding the date of com-
10 plaint, or is likely to be, sold at less than fair value, he shall
11 so advise the Commission. Whenever the Secretary, from

1 invoices or other papers or from information presented to
2 him, is advised by a complaint or complaints filed simultane-
3 ously that such sales have been made, or are likely to be
4 made, of merchandise from more than one foreign source or
5 country, and if such sales have in fact been made, or are
6 likely to be made, he shall so advise the Commission, but
7 not until his investigation as to all such foreign sources or
8 countries is complete. The Commission shall determine
9 within three months thereafter whether a domestic industry
10 or labor in the United States has been, is being, or is likely
11 to be, materially injured (or, in the case of any industry, is
12 prevented from being established) by reason of the sale at
13 less than fair value of merchandise from one or more foreign
14 sources or countries.

15 “(b) Material injury to a domestic industry shall be
16 established, and the Commission shall make an affirmative
17 determination, when it finds that the foreign merchandise
18 determined to have been sold at less than fair value and
19 supplied to any competitive market area—

20 “(1) has amounted to 5 per centum or more (in
21 units sold or in gross receipts from the sales under con-
22 sideration) of domestic merchandise of the same class
23 or kind sold by the domestic industry and supplied to
24 the same competitive market area, during any three of
25 the months from six months before the initiation of the

1 investigation by the Secretary to the conclusion of the
2 Commission's investigation, unless clear and convincing
3 evidence is presented that, had such sales of foreign mer-
4 chandise not been made, the domestic industry would not
5 have increased its sales during the three months in-
6 volved; or

7 " (2) has been a contributing cause of a decline in
8 the prices at which 50 per centum or more (in units sold
9 or in gross receipts from the sales under consideration)
10 of domestic merchandise of the same class or kind sup-
11 plied to the competitive market area has been sold by the
12 domestic industry, during any month from six months
13 before the initiation of the investigation by the Secre-
14 tary to the conclusion of the Commission's investigation;
15 or

16 " (3) has been a contributing cause of a decline
17 amounting to 5 per centum or more (in man-hours
18 worked or in wages paid) of direct labor employed by a
19 domestic industry in producing merchandise of the same
20 class or kind supplied to a competitive market area, dur-
21 ing any three of the months from six months before the
22 initiation of the investigation by the Secretary to the
23 conclusion of the Commission's investigation, compared
24 with the average monthly level of such employment dur-

1 ing the year ending on the date the Secretary's investiga-
2 tion began; or

3 “(4) has been a contributing cause of any anti-
4 competitive effects in any competitive market area.

5 “(c) The Commission shall render an affirmative de-
6 termination of likelihood of injury when it finds a reasonable
7 likelihood that an injury cognizable under subsection (b) of
8 this section will occur by reason of sales of foreign merchan-
9 dise at less than fair value.

10 “(d) The Commission shall make the determinations
11 required by this section without regard to whether foreign
12 merchandise was sold with predatory intent or at prices
13 equivalent to or higher than prices of foreign merchandise
14 of the same class or kind. The Commission, after proceed-
15 ing and hearing under the provisions of section 212, shall
16 notify the Secretary of its determination, and, if that determi-
17 nation is in the affirmative, the Secretary shall make public
18 a notice of his determination and the determination of the
19 Commission. For the purposes of this section, the Commis-
20 sion shall be deemed to have made an affirmative determina-
21 tion if the Commissioners of the Commission voting are
22 evenly divided as to whether its determination should be in
23 the affirmative or in the negative. The Secretary's dumping
24 finding shall include a description of the class or kind of

1 merchandise to which it applies in such detail as he shall
2 deem necessary for the guidance of customs officers.

3 “(e) Whenever, in the case of any imported merchan-
4 dise of a class or kind as to which the Secretary has not
5 published a dumping finding, the Secretary has reason to
6 believe or suspect, from the invoice or other papers or from
7 information presented to him, that such merchandise has
8 been, or is likely to be, sold at less than fair value, he shall
9 forthwith publish notice of that fact in the Federal Register
10 and shall authorize, under such regulations as he may pre-
11 scribe, the withholding of appraisement reports upon such
12 class or kind of merchandise entered, or withdrawn from
13 warehouse, for consumption, not more than one hundred and
14 twenty days before the question of dumping has been raised
15 by or presented to him until the further order of the Secre-
16 tary, or until the Secretary has published a dumping finding
17 relating to such merchandise.

18 “(f) For the purposes of this section—

19 “(1) The term ‘at less than fair value’ means that
20 either the purchase price or the exporter’s sales price of
21 foreign merchandise, as defined in sections 203 and 204,
22 is less than its foreign market value (or, in the absence
23 of such value, less than its constructed value), as defined
24 in section 205 and 206.

1 “(2) The term ‘domestic industry’ means domestic
2 vendors who supply directly or indirectly to the competi-
3 tive market area merchandise which is of the same class
4 or kind as foreign merchandise sold at less than fair
5 value and supplied to the same competitive market area.

6 “(3) The term ‘competitive market area’ means
7 any geographical area of the United States to which the
8 foreign merchandise determined to have been sold at
9 less than fair value has been supplied in competition
10 with domestic merchandise of the same class or kind.

11 “(4) Domestic merchandise which is reasonably
12 interchangeable in use with a class or kind of foreign
13 merchandise shall be deemed to be ‘of the same class or
14 kind’ as such foreign merchandise. Two or more units
15 of foreign merchandise shall be deemed to be ‘of a class
16 or kind’ whenever reasonably interchangeable in use with
17 one another.”

18 SEC. 2. Section 202 of the Antidumping Act, 1921 (19
19 U.S.C. 161), is amended to read as follows:

20 “SPECIAL DUMPING DUTY

21 “SEC. 202. (a) In the case of all imported merchan-
22 dised, whether dutiable or free of duty, of a class or kind as to
23 which the Secretary has published a dumping finding as
24 provided for in section 201, if either the purchase price or
25 the exporter’s sales price is less than the foreign market

1 value (or, in the absence of such value, than the constructed
2 value) there shall be levied, collected, and paid, in addition
3 to any other duties imposed thereon by law, a special dump-
4 ing duty in an amount equal to such difference. If both the
5 purchase price and the exporter's sales price are less than the
6 foreign market value (or, in the absence of such value, than
7 the constructed value), such special dumping duty shall be
8 an amount equal to the greater difference. This subsection
9 shall apply to imported merchandise entered, or withdrawn
10 from warehouse, for consumption, not more than one hun-
11 dred and twenty days prior to the receipt of a complaint by
12 the Secretary, and as to which no appraisement report has
13 been made before such dumping finding has been published.

14 “(b) In determining the foreign market value for the
15 purposes of this title, if it is established to the satisfaction
16 of the Secretary that the amount of any difference between
17 the purchase price and the foreign market value (or that the
18 fact that the purchase price is the same as the foreign market
19 value) is wholly or partly due to—

20 “(1) differences in the cost of manufacture, sale, or
21 delivery resulting from the fact that the wholesale quan-
22 tities, in which such or similar merchandise is sold or,
23 in the absence of sales, offered for sale for exportation
24 to the United States in the ordinary course of trade, are
25 less or are greater than the wholesale quantities in which

1 such or similar merchandise is sold or, in the absence of
2 sales, offered for sale in the principal markets of the
3 country of exportation in the ordinary course of trade for
4 home consumption (or, if not so sold or offered for sale
5 for home consumption, then for exportation to countries
6 other than the United States), except that no allowance
7 shall be made for such differences unless they were
8 actually considered and taken into account by the vendor
9 in establishing his price,

10 “(2) other differences in circumstances of sale
11 affecting the cost of doing business, to the extent that
12 such differences were actually considered and taken into
13 account by the vendor in establishing his price, or

14 “(3) the fact that merchandise described in sub-
15 division (C), (D), (E), or (F) of section 213 (3) is
16 used in determining foreign market value,
17 then due allowance shall be made therefor.

18 “(c) In determining the foreign market value for the
19 purposes of this title, if it is established to the satisfaction of
20 the Secretary that the amount of any difference between the
21 exporter's sales price and the foreign market value (or that
22 the fact that the exporter's sales price is the same as the
23 foreign market value) is wholly or partly due to—

24 “(1) differences in the cost of manufacture, sale,
25 or delivery resulting from the fact that the wholesale

1 quantities in which such or similar merchandise is sold
2 or, in the absence of sales, offered for sale in the prin-
3 cipal markets of the United States in the ordinary course
4 of trade, are less or are greater than the wholesale quan-
5 tities in which such or similar merchandise is sold or, in
6 the absence of sales, offered for sale in the principal
7 markets of the country of exportation in the ordinary
8 course of trade for home consumption (or, if not so sold
9 or offered for sale for home consumption, then for ex-
10 portation to countries other than the United States),
11 except that no allowance shall be made for such differ-
12 ences unless they were actually considered and taken into
13 account by the vendor in establishing his price,

14 “(2) other differences in circumstances of sale
15 affecting the cost of doing business, to the extent that
16 such differences were actually considered and taken into
17 account by the vendor in establishing his price, or

18 “(3) the fact that merchandise described in subdi-
19 vision (C), (D), (E), or (F) of section 213 (3) is
20 used in determining foreign market value,
21 then due allowance shall be made therefor.”

22 SEC. 3. Section 204 of the Antidumping Act, 1921 (19
23 U.S.C. 163), is amended by inserting “and profits” im-
24 mediately after “(2) the amount of the commissions”, and

1 by striking out "and (4)" and inserting in lieu thereof
2 "(4) an amount equal to the expenses and profits of the
3 exporter in the foreign country (unless (A) the exporter
4 is the foreign manufacturer or is owned or controlled by the
5 foreign manufacturer, or (B) the foreign market value in-
6 cludes such expenses and profits), and (5)".

7 SEC. 4. Section 205 of the Antidumping Act, 1921 (19
8 U.S.C. 164), is amended to read as follows:

9 "FOREIGN MARKET VALUE

10 "SEC. 205. (a) For the purposes of this title, the foreign
11 market value of imported merchandise shall be the price,
12 at the time of exportation of such merchandise to the United
13 States, at which such or similar merchandise is sold or, in
14 the absence of sales, offered for sale, in the usual wholesale
15 quantities (as defined in section 213) and in the ordinary
16 course of trade—

17 "(1) in the principal markets of, and for home
18 consumption in, the country from which exported, so
19 long as at least 15 per centum of the total sales (ex-
20 cluding sales to the United States) of such or similar
21 merchandise by any vendor who supplies any of those
22 markets are sales for home consumption in that country,
23 or

24 "(2) if paragraph (1) is inapplicable, in the prin-

1 cipal markets of that country (other than the United
2 States and the country of export) which is, for any
3 vendor in the country of export whose sales are under
4 consideration, the largest consumer of such or similar
5 merchandise sold by that vendor,

6 plus, when not included in such price, the cost of all con-
7 tainers and coverings and all other costs, charges, and ex-
8 penses incident to placing the merchandise in condition
9 packed ready for shipment to the United States, except that
10 in the case of merchandise purchased or agreed to be pur-
11 chased by the person by whom or for whose account the
12 merchandise is imported, prior to the time of exportation,
13 the foreign market value shall be ascertained as of the date
14 of such purchase or agreement to purchase. The price at
15 which such or similar merchandise is sold or offered for
16 sale shall be deemed to be seller's list or published price in
17 the absence of conclusive evidence that the merchandise
18 was actually sold or offered for sale in the usual wholesale
19 quantities and in the ordinary course of trade at a different
20 price. In the ascertainment of foreign market value for the
21 purposes of this title no pretended sale or offer for sale,
22 and no sale or offer for sale intended to establish a fictitious
23 market, shall be taken into account. If such or similar
24 merchandise is sold or, in the absence of sales, offered for

1 sale through a sales agency or other organization related
2 to the seller in any of the respects described in section 207,
3 the prices at which such or similar merchandise is sold or,
4 in the absence of sales, offered for sale by such sales agency
5 or other organization may be used in determining the foreign
6 market value.

7 “(b) If any of the imported merchandise is manufac-
8 tured or produced in a country or area in which, in the
9 opinion of the Secretary, the method of establishing prices is
10 not realistically related to cost or profit factors, the Secretary
11 shall determine the foreign market value in any manner he
12 deems appropriate, such as by reference to (1) the price at
13 which such merchandise is sold or offered for sale for ex-
14 portation to countries other than the United States from such
15 country or area, (2) the foreign market value of mer-
16 chandise of the relevant class or kind in appropriate non-
17 Communist countries, and (3) the constructed value of mer-
18 chandise of the relevant class or kind in appropriate non-
19 Communist countries.”

20 SEC. 5. Sections 208 and 209 of the Antidumping Act,
21 1921 (19 U.S.C. 167, 168), are amended by striking out
22 “finding” each place it appears in each such section and
23 inserting in each such place “dumping finding”.

24 SEC. 6. The Antidumping Act, 1921, is amended by
25 redesignating sections 212 and 213 as sections 213 and 214,

1 respectively, and by inserting after section 211 the following
2 new section:

3 "PROCEDURE

4 "SEC. 212. (a) INITIATION AND CONTINUANCE OF
5 ANTIDUMPING PROCEEDING.—

6 " (1) INITIATION OF PROCEEDING.—An antidump-
7 ing proceeding shall be initiated by the Secretary at the
8 earliest practicable time after receiving a complaint.
9 The Secretary shall consolidate in a single antidumping
10 proceeding all complaints received together regarding
11 the same class or kind of merchandise regardless of the
12 number of importers, exporters, foreign manufacturers,
13 and countries involved. The Secretary shall make rea-
14 sonable effort to give notice of the initiation of an anti-
15 dumping proceeding to all known interested parties and
16 shall publish such notice in the Federal Register. The
17 notice shall identify the date and nature of the complaint.

18 " (2) DISCONTINUANCE OF PROCEEDING.—The
19 Secretary may not discontinue an antidumping proceed-
20 ing unless (A) he is satisfied that promptly after the
21 initiation of the proceeding, the dumping (if any) of
22 imported merchandise of the class or kind under investi-
23 gation has been terminated by revisions in price or by
24 cessation of sales of such merchandise to the United

1 States, (B) he has received bona fide assurances from
2 the exporter that dumping will not be resumed, and (C)
3 he concludes that the quantities of merchandise in-
4 volved in the sales of imported merchandise under
5 investigation are insignificant.

6 “(b) DISMISSAL DECISION.—The Secretary may de-
7 cide within fifteen days after receiving a complaint that there
8 is no evidence to support it supplied by the complaint and
9 no evidence to support it available to the Secretary from
10 customs forms or other sources, and that any differential
11 between the prices at which the imported merchandise and
12 domestic merchandise of the relevant class or kind are offered
13 for sale in the United States cannot reasonably be attributed
14 in whole or in part to the possibility that either the purchase
15 price or the exporter’s sales price of a class or kind of foreign
16 merchandise has been, is, or is likely to be, less than the for-
17 eign market value (or, in the absence of such value, than
18 the constructed value). If the Secretary so decides he shall
19 forthwith notify the complainant of his dismissal decision,
20 together with the reasons therefor and such of the supporting
21 information of the character required by subsection (c) of
22 this section as is available to the Secretary, without initiating
23 an antidumping proceeding or publishing any document in
24 the Federal Register. For purposes of subsection (j) of
25 this section such decision shall be considered a negative

1 dumping determination, published as of the date the com-
2 plainant is notified.

3 “(c) PROPOSED DUMPING DETERMINATION.—The
4 Secretary shall obtain sufficient information to enable him to
5 prepare for each antidumping proceeding at the earliest
6 practicable time a proposed affirmative or negative dumping
7 determination which he shall publish in the Federal Register
8 and make reasonable effort to send to all known interested
9 parties. Where complaints have been consolidated in a
10 single antidumping proceeding, the Secretary may prepare
11 and publish a proposed negative dumping determination as
12 to a country or countries prior to the preparation and publi-
13 cation of any proposed affirmative dumping determination in
14 such consolidated antidumping proceeding. Each proposed
15 affirmative or negative dumping determination shall indicate
16 the specific data (such as manufacturers, dates, prices, dis-
17 counts, quantities, home consumption, cost of containers,
18 taxes, duties and commissions, as well as delivery, selling,
19 advertising, technical service, and other expenses, but not
20 including confidential costs used in ascertaining constructed
21 value in the absence of foreign market value or costs of manu-
22 facture used pursuant to sections 202 (b) (1) and 202 (c)
23 (1)) used by the Secretary and his computations and reason-
24 ing in arriving at and applying the concepts used in this
25 title (such as foreign market value, such or similar merchan-

1. dise, purchase price, exporter's sales price, and constructed
2. value). If, in a particular antidumping proceeding, the dis-
3. closure of some of the detailed information required by this
4. subsection would, in the judgment of the Secretary, impede
5. his obtaining similar information in the future, he may so
6. declare in his proposed negative or affirmative dumping de-
7. termination and omit that information. If the Secretary does
8. withhold such information, however, he shall prepare for
9. the use of the complainant a supplementary statement of the
10. information required by this subsection which has been so
11. withheld, and the reasons for so withholding. The informa-
12. tion in such supplementary statements shall not be published
13. or otherwise be made public by the complainant, subject to
14. such sanctions as may be established by the Secretary by
15. regulation, but may be considered by a reviewing court as
16. if otherwise a part of the record.

17. “(d) ANTIDUMPING HEARING.—The Secretary shall
18. accord an antidumping hearing by permitting any interested
19. party to communicate in writing with the Secretary regard-
20. ing a proposed affirmative or negative dumping determina-
21. tion within thirty days after its publication in the Federal
22. Register. This communication may include such matters as
23. factual or legal argument, additional factual information in
24. the form of affidavits or other documents, and requests for
25. informal conferences or an oral antidumping hearing. The

1 Secretary may call for an oral antidumping hearing on his
2 own motion, or on the request of any interested party. Any
3 denial of a request for an oral antidumping hearing shall be
4 in writing with reasons. Notice of an oral antidumping hear-
5 ing, or denial of a request for one, shall be given to all known
6 interested parties and shall be published in the Federal
7 Register. Notice of an oral antidumping hearing shall state
8 the time and place of such hearing, and summarize or refer to
9 the Federal Register publications of the notice of the initia-
10 tion of the antidumping proceeding, and the proposed affirm-
11 ative or negative dumping determination. All interested
12 parties will be accorded at an oral antidumping hearing the
13 rights to counsel, to present evidence, and to conduct such
14 cross-examination as may be required for a full and fair dis-
15 closure of the facts. A transcript shall be made of all oral
16 antidumping hearings, and the Secretary may prescribe such
17 regulations as he deems necessary for their fair and orderly
18 conduct. The record in an antidumping hearing shall consist
19 of the notice of initiation of an antidumping proceeding, the
20 proposed affirmative or negative dumping determination, any
21 written communications between interested parties and the
22 Secretary regarding the proposed affirmative or negative de-
23 termination (unless the Secretary has made a judgment
24 regarding a given document, or part thereof, under the
25 standard of subsection (c) of this section, which shall then

1 be made available only to interested parties and a reviewing
2 court), the transcript of any oral antidumping hearing, the
3 affirmative or negative dumping determination, and any other
4 relevant documents the Secretary chooses to include on his
5 own motion or the request of any interested party after having
6 heard the parties to be affected.

7 “(e) DUMPING DETERMINATION.—The Secretary shall
8 prepare an affirmative or negative dumping determination and
9 shall publish it in the Federal Register. The Secretary shall
10 make reasonable effort to send copies to all known interested
11 parties. The contents of the affirmative or negative dump-
12 ing determination shall comply with the standards for a pro-
13 posed dumping determination contained in subsection (c)
14 of this section. In addition, it shall contain the Secretary’s
15 reply to any new facts or arguments advanced during the
16 antidumping hearing pursuant to subsection (d) of this
17 section. The Secretary shall make his affirmative or nega-
18 tive dumping determination at the earliest practicable time
19 after receiving a complaint or complaints, but in no event
20 more than six months after such date, unless, within the said
21 six months, he shall have submitted a report to the chairman
22 of the Committee on Ways and Means of the House of Repre-
23 sentatives and to the chairman of the Committee on Finance
24 of the Senate stating the reasons why a longer period is re-

1 quired within which to reach such dumping determination
2 and the estimated extent of such longer period.

3 “(f) FAILURE OR REFUSAL TO FURNISH REQUESTED
4 INFORMATION.—Whenever in any antidumping proceeding
5 the Secretary decides that an importer, exporter, or foreign
6 manufacturer has failed or refused to furnish information
7 which the Secretary has requested and deems necessary to
8 make his proposed dumping determination pursuant to sub-
9 section (c), the Secretary shall resolve all doubts relating
10 to such information against the person failing or refusing to
11 furnish it, and shall base his proposed dumping determination
12 upon information from other sources, including, but not
13 limited to, the complainant.

14 “(g) INJURY PROCEEDING.—An injury proceeding
15 shall be initiated by the Commission at the earliest practicable
16 time after receiving an affirmative dumping determination
17 from the Secretary. The Commission shall make reasonable
18 effort to give notice of the initiation of an injury proceeding
19 to all known interested parties, and shall publish such notice
20 in the Federal Register.

21 “(h) INJURY HEARING.—The Commission shall accord
22 an injury hearing by permitting any interested party to
23 communicate in writing with the Commission regarding an
24 injury proceeding. This communication may include such

1 matters as factual or legal argument, factual information in
2 the form of affidavits or other documents, and requests for
3 informal conferences or an oral injury hearing. The Com-
4 mission may call for an oral injury hearing on its own mo-
5 tion, or on the request of any interested party. Any denial
6 of a request for such oral injury hearing shall be in writing
7 with reasons. Notice of an oral injury hearing, or denial of
8 a request or requests for one, shall be given to all known
9 interested parties and shall be published in the Federal
10 Register. Notice of an oral injury hearing shall state the
11 time and place of such hearing, and refer to the Federal
12 Register publication of the notice of the initiation of the
13 injury proceeding. All interested parties will be accorded
14 at an oral injury hearing the rights to counsel, to present
15 evidence, and to conduct such cross-examination as may be
16 required for a full and fair disclosure of the facts. A tran-
17 script shall be made of all oral injury hearings, and the Com-
18 mission may prescribe such regulations as it deems necessary
19 for their fair and orderly conduct. The record in any injury
20 hearing shall consist of the notice of initiation of the injury
21 proceeding, the transcript of any oral injury hearing, the
22 injury determination, and any other relevant written com-
23 munications or documents the Commission chooses to include
24 on the request of an interested party or its own motion after
25 having heard the parties to be affected.

1 “(i) INJURY DETERMINATION.—The Commission shall
2 obtain sufficient information to enable it to prepare an in-
3 jury determination for each injury proceeding, shall publish
4 its injury determination in the Federal Register, and shall
5 give notice thereof to the Secretary. The Commission shall
6 make reasonable effort to send copies to all known interested
7 parties. Each injury determination shall fully indicate the
8 specific data used by the Commission, and its computations
9 and reasoning in arriving at and applying the concepts used
10 in this title. If, in a particular injury proceeding, the dis-
11 closure of some of the detailed information required by this
12 subsection would, in the judgment of the Commission, im-
13 pede its obtaining similar information in the future, it may so
14 declare in its injury determination and omit that information.
15 If the Commission does withhold such information, however,
16 it shall prepare for the use of any interested party a supple-
17 mentary statement of the information required by this sub-
18 section which has been so withheld, and the reasons for so
19 withholding. Such supplementary statements shall not be
20 published or otherwise be made public by any interested
21 party, subject to such sanctions as may be established by the
22 Commission by regulation, but may be considered by a re-
23 viewing court as if otherwise a part of the record. The Com-
24 mission shall render its injury determination within three
25 months after receiving an affirmative dumping determination.

1 “(j) JUDICIAL REVIEW.—Any interested party shall
2 be entitled to seek judicial review in the United States Court
3 of Customs and Patent Appeals of (1) any negative dump-
4 ing determination, within thirty days after its publication in
5 the Federal Register, and (2) any affirmative dumping de-
6 termination and injury determination, or any dumping find-
7 ing, within thirty days after the publication of the Commis-
8 sion determination or dumping finding. Such judicial re-
9 view shall be on the records made in the antidumping hear-
10 ing and Commission hearing, shall be in accordance with
11 section 10(e) of the Administrative Procedure Act (5
12 U.S.C. 1009 (e)), and shall be independent of that provided
13 in section 516 of the Tariff Act of 1930 (19 U.S.C. 1516) .
14 Any reviewing court may, in its discretion, order the con-
15 tinued withholding of appraisement reports as to the mer-
16 chandise in question, pending the outcome of its appeal.
17 The United States Court of Customs and Patent Appeals
18 shall establish rules of procedure necessary to effectuate
19 this subsection.”

20 SEC. 7. The section of the Antidumping Act, 1921,
21 redesignated as section 213 by section 6 of this Act is
22 amended—

23 (1) by adding at the end of paragraph (4) the
24 following new sentence: “In determining what is the
25 usual wholesale quantity, the Secretary shall exclude

1 from his determination (A) all sales at a quantity dis-
2 count which was not freely available to all purchasers at
3 the time the sales in question were made; (B) all trans-
4 actions between persons who are related to one another
5 in any of the ways described in section 207; and (C) all
6 transactions pursuant to any agreement or arrangement
7 for exclusive dealing, such as, but not limited to, an
8 exclusive distributorship or an exclusive requirements
9 contract.”, and

10 (2) by adding at the end thereof the following new
11 paragraphs:

12 “(5) The term ‘Secretary’ means the Secretary of the
13 Treasury or any person to whom authority under this title
14 has been delegated.

15 “(6) The term ‘antidumping proceeding’ means the
16 inquiry by the Secretary pursuant to this title to decide
17 upon an affirmative or negative determination.

18 “(7) The term ‘complaint’ means a communication to
19 the Secretary from any customs officer or other person set-
20 ting forth reasons why an antidumping proceeding should be
21 initiated or a withholding order entered, along with such
22 supporting information as the Secretary may by regula-
23 tion require and as is reasonably available to the complainant.

24 “(8) The term ‘complainant’ means any person or per-

1 sons outside the customs service who files a complaint with
2 the Secretary.

3 “(9) The term ‘withholding order’ means the order
4 entered by the Secretary pursuant to section 201 (e) author-
5 izing the withholding of appraisement reports.

6 “(10) The term ‘dismissal decision’ means the decision
7 of the Secretary to dismiss a complaint pursuant to section
8 212 (b).

9 “(11) The term ‘affirmative dumping determination’
10 means a determination by the Secretary of the Treasury pur-
11 suant to section 201 (d).

12 “(12) The term ‘negative dumping determination’
13 means a decision by the Secretary not to render an affirma-
14 tive dumping determination.

15 “(13) The term ‘Commission’ means the United States
16 Tariff Commission.

17 “(14) The term ‘injury proceeding’ means the inquiry
18 by the Commission to decide upon an injury determination.

19 “(15) The term ‘injury determination’ means a deter-
20 mination by the Commission pursuant to section 201, whether
21 such determination is in the affirmative or in the negative.

22 “(16) The term ‘dumping finding’ means the notice
23 published by the Secretary pursuant to section 201 (d) of
24 his affirmative dumping determination, and the injury de-
25 termination of the Commission.”

1 SEC. 8. Section 406 of the Act of May 27, 1921 (19
2 U.S.C. 172), is amended by inserting "Puerto Rico and"
3 immediately after "The term 'United States' includes".

4 SEC. 9. The antidumping regulations of the Treasury
5 Department in effect on the date of the enactment of this
6 Act are ratified and approved, except insofar as they are
7 inconsistent with the provisions of this Act.

8 SEC. 10. (a) Subject to the provisions of subsections
9 (b) and (c) of this section, the amendments made by this
10 Act shall apply with respect to all merchandise as to which
11 no appraisement report has been made on or before the
12 date of the enactment of this Act.

13 (b) The amendments made by this Act shall not apply
14 in the case of any article if—

15 (1) before the date of the enactment of this Act
16 the Secretary of the Treasury or his delegate has made
17 public a finding of dumping with respect to a class or
18 kind of merchandise which includes such article, and

19 (2) such finding of dumping is in effect with re-
20 spect to such article on the date it is entered, or with-
21 drawn from warehouse, for consumption;

22 except that in the case of any such article exported from
23 the country of exportation on or after the date of the enact-
24 ment of this Act, the special dumping duty applicable to such

1 article shall be computed under section 202 (a) of the Anti-
2 dumping Act, 1921, as amended by this Act.

3 (c) If the question of dumping with respect to any
4 class or kind of foreign merchandise has been raised by or
5 presented to the Secretary of the Treasury or his delegate
6 before the date of the enactment of this Act and either such
7 question is pending on such date before the Secretary of the
8 Treasury or his delegate, or the question of injury by rea-
9 son of the importation of such merchandise into the United
10 States is pending on such date before the United States Tariff
11 Commission, then in applying the Antidumping Act, 1921,
12 as amended by this Act—

13 (1) if such question of dumping is pending before
14 the Secretary of the Treasury or his delegate on such
15 date, the Secretary of the Treasury or his delegate shall
16 make his affirmative or negative dumping determination
17 at the earliest practicable time, but in no event more
18 than six months after such date, or

19 (2) if such question of injury is pending before the
20 United States Tariff Commission on such date, the Com-
21 mission shall be treated as having received the affirma-
22 tive determination of the Secretary of the Treasury or
23 his delegate on such date.

89TH CONGRESS
1ST SESSION

H. R. 9195

A BILL

To amend the Antidumping Act, 1921.

By Mr. FOGARTY

JUNE 17, 1985

Referred to the Committee on Ways and Means