

TITLE V—IMPROVEMENTS TO ANTIDUMPING AND COUNTERVAILING DUTY LAWS

SEC. 501. SHORT TITLE.

This title may be cited as the “American Trade Enforcement Effectiveness Act”.

SEC. 502. CONSEQUENCES OF FAILURE TO COOPERATE WITH A REQUEST FOR INFORMATION IN A PROCEEDING.

Section 776 of the Tariff Act of 1930 ([19 U.S.C. 1677e](#)) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and by moving such subparagraphs, as so redesignated, 2 ems to the right;

(B) by striking “ADVERSE INFERENCES.—If” and inserting the following: “ADVERSE INFERENCES.—“(1) IN GENERAL.—If”;

(C) by striking “under this title, may use” and inserting the following: “under this title—

“(A) may use”; and

(D) by striking “facts otherwise available. Such adverse inference may include” and inserting the following: “facts otherwise available; and

“(B) is not required to determine, or make any adjustments to, a countervailable subsidy rate or weighted average dumping margin based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

“(2) POTENTIAL SOURCES OF INFORMATION FOR ADVERSE INFERENCES.—An adverse inference under paragraph (1)(A) may include”;

(2) in subsection (c)—

(A) by striking “CORROBORATION OF SECONDARY INFORMATION.—When the” and inserting the following: “CORROBORATION OF SECONDARY INFORMATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), when the”; and

(B) by adding at the end the following:

“(2) EXCEPTION.—The administrative authority and the Commission shall not be required to corroborate any dumping margin or countervailing duty applied in a separate segment of the same proceeding.”; and

(3) by adding at the end the following:

“(d) SUBSIDY RATES AND DUMPING MARGINS IN ADVERSE INFERENCE DETERMINATIONS.—

“(1) IN GENERAL.—If the administering authority uses an inference that is adverse to the interests of a party under subsection (b)(1)(A) in selecting among the facts otherwise available, the administering authority may—

“(A) in the case of a countervailing duty proceeding—

“(i) use a countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country, or

“(ii) if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, and

“(B) in the case of an antidumping duty proceeding, use any dumping margin from any segment of the proceeding under the applicable antidumping order.

“(2) DISCRETION TO APPLY HIGHEST RATE.—In carrying out paragraph (1), the administering authority may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.

“(3) NO OBLIGATION TO MAKE CERTAIN ESTIMATES OR ADDRESS CERTAIN CLAIMS.—If the administering authority uses an adverse inference under subsection (b)(1)(A) in selecting among the facts otherwise available, the administering authority is not required, for purposes of subsection (c) or for any other purpose—

“(A) to estimate what the countervailable subsidy rate or dumping margin would have been if the interested party found to have failed to cooperate under subsection (b)(1) had cooperated, or

“(B) to demonstrate that the countervailable subsidy rate or dumping margin used by the administering authority reflects an alleged commercial reality of the interested party.”.

SEC. 503. DEFINITION OF MATERIAL INJURY.

(a) EFFECT OF PROFITABILITY OF DOMESTIC INDUSTRIES.—Section 771(7) of the Tariff Act of 1930 ([19 U.S.C. 1677\(7\)](#)) is amended by adding at the end the following:

“(J) EFFECT OF PROFITABILITY.—*The Commission may not determine that there is no material injury or threat of material injury to an industry in the United States merely because that industry is profitable or because the performance of that industry has recently improved.*”.

(b) EVALUATION OF IMPACT ON DOMESTIC INDUSTRY IN DETERMINATION OF MATERIAL INJURY.—Subclause (I) of section 771(7)(C)(iii) of the Tariff Act of 1930 ([19 U.S.C. 1677\(7\)\(C\)\(iii\)](#)) is amended to read as follows:

“(I) *actual and potential decline in output, sales, market share, gross profits, operating profits, net profits, ability to service debt, productivity, return on investments, return on assets, and utilization of capacity,*”.

(c) CAPTIVE PRODUCTION.—Section 771(7)(C)(iv) of the Tariff Act of 1930 ([19 U.S.C. 1677\(7\)\(C\)\(iv\)](#)) is amended—

(1) in subclause (I), by striking the comma and inserting “, and”;

(2) in subclause (II), by striking “, and” and inserting a comma; and

(3) by striking subclause (III).

SEC. 504. PARTICULAR MARKET SITUATION.

(a) DEFINITION OF ORDINARY COURSE OF TRADE.—Section 771(15) of the Tariff Act of 1930 ([19 U.S.C. 1677\(15\)](#)) is amended by adding at the end the following:

“(C) *Situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price.*”.

(b) DEFINITION OF NORMAL VALUE.—Section 773(a)(1)(B)(ii)(III) of the Tariff Act of 1930 ([19 U.S.C. 1677b\(a\)\(1\)\(B\)\(ii\)\(III\)](#)) is amended by striking “in such other country.”.

(c) DEFINITION OF CONSTRUCTED VALUE.—Section 773(e) of the Tariff Act of 1930 ([19 U.S.C. 1677b\(e\)](#)) is amended—

(1) in paragraph (1), by striking “business” and inserting “trade”; and

(2) by striking the flush text at the end and inserting the following:

“*For purposes of paragraph (1), if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology. For purposes of paragraph (1), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition that is remitted or refunded upon exportation of the subject merchandise produced from such materials.*”.

SEC. 505. DISTORTION OF PRICES OR COSTS.

(a) *INVESTIGATION OF BELOW-COST SALES.*—Section 773(b)(2) of the Tariff Act of 1930 ([19 U.S.C. 1677b\(b\)\(2\)](#)) is amended by striking subparagraph (A) and inserting the following:

“(A) REASONABLE GROUNDS TO BELIEVE OR SUSPECT.—

“(i) REVIEW.—*In a review conducted under section 751 involving a specific exporter, there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that are less than the cost of production of the product if the administering authority disregarded some or all of the exporter’s sales pursuant to paragraph (1) in the investigation or, if a review has been completed, in the most recently completed review.*

“(ii) REQUESTS FOR INFORMATION.—*In an investigation initiated under section 732 or a review conducted under section 751, the administering authority shall request information necessary to calculate the constructed value and cost of production under subsections (e) and (f) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the cost of production of the product.”.*

(b) *PRICES AND COSTS IN NONMARKET ECONOMIES.*—Section 773(c) of the Tariff Act of 1930 ([19 U.S.C. 1677b\(c\)](#)) is amended by adding at the end the following:

“(5) *DISCRETION TO DISREGARD CERTAIN PRICE OR COST VALUES.*—*In valuing the factors of production under paragraph (1) for the subject merchandise, the administering authority may disregard price or cost values without further investigation if the administering authority has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those price or cost values or if those price or cost values were subject to an antidumping order.”.*

SEC. 506. REDUCTION IN BURDEN ON DEPARTMENT OF COMMERCE BY REDUCING THE NUMBER OF VOLUNTARY RESPONDENTS.

Section 782(a) of the Tariff Act of 1930 ([19 U.S.C. 1677m\(a\)](#)) is amended—

(1) in paragraph (1), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by moving such clauses, as so redesignated, 2 ems to the right;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and by moving such subparagraphs, as so redesignated, 2 ems to the right;

(3) by striking “*INVESTIGATIONS AND REVIEWS.*—*In*” and inserting the following: “*INVESTIGATIONS AND REVIEWS.*—

“(1) *IN GENERAL.*—*In*”;

(4) in paragraph (1), as designated by paragraph (3), by amending subparagraph (B), as redesignated by paragraph (2), to read as follows:

“(B) the number of exporters or producers subject to the investigation or review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the investigation or review.”; and

(5) by adding at the end the following:

“(2) DETERMINATION OF UNDULY BURDENSOME.—In determining if an individual examination under paragraph (1)(B) would be unduly burdensome, the administering authority may consider the following:

“(A) The complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto.

“(B) Any prior experience of the administering authority in the same or similar proceeding.

“(C) The total number of investigations under subtitle A or B and reviews under section 751 being conducted by the administering authority as of the date of the determination.

“(D) Such other factors relating to the timely completion of each such investigation and review as the administering authority considers appropriate.”.

SEC. 507. APPLICATION TO CANADA AND MEXICO.

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act ([19 U.S.C. 3438](#)), the amendments made by this title shall apply with respect to goods from Canada and Mexico.