I. 1. Proposed Diversion Amendments

(1) DIVERSIONARY INPUT DUMPING.

(a) IN GENERAL. — Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by adding at the end thereof the following new paragraph:

"(18) DIVERSIONARY INPUT DUMPING. --

"(A) IN GENERAL. — Diversionary input dumping occurs when any material or component which —

"(i) is incorporated into the merchandise under investigation, and

"(ii) is the subject of —

"(II) an agreement, arrangement, or understanding containing quantitative limitations, restrictions, or other terms relating to the importation into the United States of such material or
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"(i) is incorporated into the merchandise under investigation, and

"(ii) is the subject of --

"(II) an agreement, arrangement, or understanding containing quantitative limitations, restrictions, or other terms relating to the importation into the United States of such material or
component which was entered into or undertaken by
the United States and any foreign country
or foreign customs union after an affirmative preliminary determination was made
under section 733(b),
is purchased by the manufacturer or producer of
such merchandise at a price that is less than
the foreign market value of such material or
component determined under section 773(e)(4)(B).".

(b) INVESTIGATION OF DIVERSIONARY INPUT DUMPING. --

(1) Section 732 of the Tariff Act of 1930 (19
U.S.C. 1673a) is amended by adding at the end thereof
the following new subsection:

"(e) INVESTIGATION OF DIVERSIONARY INPUT DUMPING. --
The administering authority shall investigate whether
diversionary input dumping is occurring whenever --

"(1) the administering authority has reasonable
grounds to believe or suspect that diversionary input
dumping is occurring;
"(2) a material or component described in clause (ii) of section 771(18)(A) is routinely used as a major material or component in manufacturing or producing the merchandise under investigation, and

"(3) official government statistics or other reliable, generally accepted trade statistics indicate that subsequent to the issuance of an antidumping duty order under section 736 or the entry into force of an international agreement or arrangement relating to the importation into the United States of the material or component, the following changes have occurred, as measured by quantity or market share:

"(A) shipments to the United States of the material or component have decreased absolutely or the rate of increase of such shipments has decreased, and

"(B) shipments to the United States of the merchandise under investigation have increased."
(2) Subsection (b) of section 733 of the Tariff Act of 1930 (19 U.S.C. 1673b(b)) is amended by adding at the end thereof the following new paragraph:

"(3) DIVERSIONARY INPUT DUMPING. — If, before making a preliminary determination under paragraph (1) or (2), the administering authority determines that there is reason to believe or suspect that diversionary input dumping is occurring, the period of time within which a preliminary determination must be made under paragraph (1) or (2) shall be extended to 190 days (240 days in cases declared extraordinarily complicated under subsection (c)) after the date on which the petition is filed under section 732(b) or the date on which the investigation is initiated under section 732(a).

(3) Subsection (a) of section 735 of the Tariff Act of 1930 (19 U.S.C. 1673d(a)) is amended by adding at the end thereof the following new paragraph:

"(4) DIVERSIONARY INPUT DUMPING. — If, after making a preliminary determination under section 733(b), the administering authority determines that there is reason to believe or
suspect that diversionary input dumping is occurring, the period of time within which a final determination must be made under paragraph (1) shall be extended to 105 days (165 days in paragraph (2) applies) after the date on which the preliminary determination was made under section 733(b)."

(c) DETERMINATION OF FOREIGN MARKET VALUE. --

(1) Subsection (a) of section 773 of the Tariff Act of 1930 (19 U.S.C. 1677b(a)) is amended by adding at the end thereof the following:

"(5) DIVERSIONARY INPUT DUMPING. — Notwithstanding paragraph (1), if the administering authority determines that diversionary input dumping is occurring with respect to the merchandise under investigation, the foreign market value of such merchandise shall be the constructed value of such merchandise determined under subsection (e)."

"(2) Subsection (e) of section 773 of the Tariff Act of 1930 (19 U.S.C. 1677b(e)) is amended by adding at the end thereof the following new paragraph:
"(4) DIVERSIONARY INPUT DUMPING. --

"(A) IN GENERAL. -- If the administering authority determines that diversionary input dumping is occurring, the cost of the material or component involved in the diversionary input dumping that is otherwise calculated under paragraph (1)(A) shall be increased by an amount equal to the excess of --

"(i) the foreign market value of the material or component determined under subparagraph (B), over

"(ii) the price at which the manufacturer or producer of the merchandise under investigation purchased the material or component.

"(B) DETERMINATION OF FOREIGN MARKET VALUE OF MATERIALS AND COMPONENTS. -- For purposes of this paragraph, the foreign market value of any material or component involved in diversionary input dumping shall be determined by the administering authority on the basis of the best available evidence, including (but not limited to) --
"(i) any information obtained in the investigation under subtitle B of the merchandise in which such material or component is incorporated.

"(ii) the foreign market value of the material or component used in determining the amount of any antidumping duty that is being imposed under subtitle B with respect to such material or component, or

"(iii) any information gathered in any previous investigation of such material or component under subtitle B.

(2) Downstream Monitoring

DOWNSTREAM PRODUCT MONITORING.

Subtitle D of title VII of the Tariff Act of 1930 (19 U.S.C. 1677 et seq.) is amended by adding at the end thereof the following:

"(a) DEFINITIONS.—For purposes of this section—

"(1) The term 'component part' means an import-
“(A) during the 5-year period before the date
on which a petition is filed under subsection (b)
has been subject to—

“(i) an order issued under this title im-
posing a countervailing duty or antidumping
duty of 15 percent ad valorem or higher, or

“(ii) an agreement entered into under
section 704 or 734 after a preliminary af-
firmative determination under section 703(b)
or 733(b)(1) was made involving an estimat-
ed net subsidy or net dumping margin of 15
percent ad valorem or higher; and

“(B) because of its inherent characteristics is
routinely used as a major part, component, assem-
bly, subassembly, or material in other manufac-
tured articles.

“(2) The term ‘downstream product’ means any
imported manufactured article into which is incorporat-
ed any component part.

“(b) PETITION REQUESTING MONITORING.—

“(1) IN GENERAL.—A domestic producer of an
article that is like a component part or a downstream
product may petition the administering authority to
designate a downstream product for monitoring under
subsection (c). The petition shall specify—

"(A) the downstream product;

"(B) the component product incorporated
into such downstream product; and

"(C) reasons for suspecting the likely diver-
sion, as a result of the imposition of antidumping
or countervailing duties, of exports of the compo-
nent part to the United States into increased pro-
duction and exportation to the United States of
such downstream product.

"(2) ACTION ON PETITIONS.—Within 14 days
after receiving a petition, the administering authority
shall determine whether there is a reasonable likeli-
hood that imports into the United States of the down-
stream product will increase as an indirect result of
any diversion with respect to component parts. In
making such a determination, the administering author-
ity may, if appropriate, take into account such factors
as—

"(A) the value of the component part in rela-
tion to the value of the downstream product;

"(B) the extent to which the component part
has been substantially transformed as a result of
its incorporation into the downstream product;
and

(C) the relationship between the producers
of component parts and producers of downstream
products.

(3) PUBLICATION OF DETERMINATION.—The
administering authority shall publish notice of each de-
termination under paragraph (2) in the Federal
Register.

(4) DETERMINATIONS NOT SUBJECT TO JUDI-
CIAL REVIEW.—A determination by the administering
authority under paragraph (2) is not subject to judicial
review.

(c) ITC MONITORING.—

(1) NOTICE TO ITC.—The administering author-
ity shall immediately inform the Commission of an af-
firmative determination under subsection (b)(2) regard-
ing a downstream product.

(2) MONITORING.—The Commission shall imme-
diately commence the monitoring of the levels of trade
in downstream products regarding which notice is re-
ceived under paragraph (1). If the Commission finds
that imports from any country of a downstream prod-
uct being monitored increased during any calendar
quarter by 5 percent or more over the preceding quar-
The Commission shall analyze that increase in the context of overall economic conditions in that product sector.

"(3) REPORTS.—The Commission shall make quarterly reports to the administering authority regarding the monitoring and analyses undertaken under paragraph (2). The Commission shall make the reports available to the public.

"(d) ACTION ON BASIS OF MONITORING REPORTS.—The administering authority shall review the information in the reports prepared by the Commission under subsection (c) and—

"(1) consider the information in determining whether to initiate an investigation under section 702(a) or 732(a) regarding any downstream product; and

"(2) request the Commission to cease monitoring any downstream product if the information indicates that imports into the United States are not increasing and there is no reasonable likelihood of diversion with respect to component parts.”.

(b) The table of contents for title VII of the Tariff Act of 1930 is amended by adding at the end thereof the following:

"Sec. 780. Downstream product monitoring.".
(3) **Upstream Subsidies**

6 UPSTREAM SUBSIDIES.

7 Subsection (a) of section 771A of the Tariff Act of 1930 (19 U.S.C. 1677-1(a)) is amended by inserting “or is paid or bestowed under the authority of any statute, regulation, policy, or practice of the customs union or any of its members” after “provided by the customs union” in the second sentence.

(4) **Multi-Tiered Pricing of Raw Materials**

Section 773 of the Tariff Act of 1930 (19 U.S.C. 1677b) is amended by adding the following new subsection:

"(h) Multi-tiered pricing by supplier. — If, in the course of an investigation under subtitle B of this title, the administering authority discovers that an input product that has a significant effect on the cost of manufacturing or producing the merchandise, is sold to the manufacturer or producer of the merchandise which is the subject of the investigation at a price that is lower if the merchandise is destined for export sale (the "export market raw material") than if the merchandise is destined for home market sale (the "home market raw material"), then the foreign market value shall be increased by the amount by which the price of the home market raw material exceeds the price of the export market raw material, less the amount by which the foreign market value before this addition exceeded the United States price. No adjustment shall be made under this subsection if the difference between the foreign market value and the United States price is greater than the difference between the price of the home market raw material and the price of the export market raw material."
I. 2. Proposed Amendments on Injury Determinations

A. Factors for Consideration

Section 771(7)(B) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(B)) is amended by deleting ", among other factors".

B. Cumulation

Paragraph (7) of section 771(7) of the Tariff Act of 1930 (19 U.S.C. 1677(7)) is amended—

(1) by amending clause (iv) of subparagraph (C) to read as follows:

"(iv) CUMULATION.—For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products if such imports compete with like products of the domestic industry, in the United States market, and if such imports—

"(I) are subject to any investigation under section 303, 701, or 731;

"(II) are subject to any final order or suspension agreement resulting from an investigation under section 303, 701, or 731; or

"(III) were entered before any quantitative restraint was imposed on
the importation of such products, if such restraint was the basis on which a petition filed under section 303, 701, or 731 was withdrawn after the administering authority made an affirmative preliminary determination on the petition.

Subclause (II) applies only if the order or agreement, came into effect within the 12-month period ending on the date the investigation with respect to which this clause is being applied is initiated.

(3) by adding at the end of paragraph (F) the following new clauses:

“(iii) Cumulation.—To the extent practicable, for purposes of clause (i), (III) and (IV), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products if such imports compete with like products of the domestic industry, in the United States market; and are subject to—
“(I) any investigation under section 303, 701, or 731;

“(II) any suspension agreement involving a quantitative restraint resulting from an investigation under section 303, 701, or 731;

“(III) any quantitative restraint, if such restraint was the basis on which a petition filed under section 303, 701, or 731 was withdrawn after the administering authority made an affirmative preliminary or final determination on the petition.
I. 3. Private Damages Amendments

(1) Private Right of Action for Dumping

Section 801 of the Revenue Act of 1916 (15 U.S.C. 72) is amended —

(a) by adding the following new paragraph after the first paragraph:

"In any action filed pursuant to this section, (a) a person shall be deemed to be assisting in importing if such person is the producer, manufacturer or exporter of the articles and if such person knew or had reason to know that the article was being imported or sold within the United States, (b) the term "such articles" in the phrase "actual market value or wholesale price of such articles" shall be defined according to the definition of "such or similar merchandise" contained in title VII of the Tariff Act of 1930, and (c) the importation or assistance in importation of an article shall be deemed to have been done with the intent of injuring an industry in the United States if the person importing or assisting in such importation knew or had reason to know that the article was being imported or sold within the United States at a price substantially less than the actual market value or wholesale price of such articles as defined in the first paragraph of this section."

(b) by deleting the second paragraph (now third paragraph) beginning with the words "Any person who violates . . . . ."

(c) by deleting the word "threefold" between the words "recover" and "the" in the third paragraph (now fourth paragraph) of that section.

(d) by adding at the end thereof the following new paragraph:

"All process may be served in the district in which the defendant resides or has an agent, or wherever it may be found."
(2) Private Right of Action for Customs Violations

Part V of title III of the Tariff Act of 1930 (19 U.S.C. 1581 eq seq.) is amended by inserting immediately after section 592 thereof the following new section:

"SEC. 592A. PRIVATE ENFORCEMENT ACTION.

"(a) Any interested party who shall be injured in his business or property by reason of any entry of merchandise into the commerce of the United States by means of any act of fraud or gross negligence that is prohibited under section 592(a) may bring a civil action against any person committing, or conspiring to commit, or knowingly participating, directly or indirectly, in the commitment of, such act in the district court of the District of Columbia or in the Court of International Trade, without respect to the amount in controversy.

"(b) Upon proof by an interested party that he has been injured by any such entry, such interested party shall--

"(1) recover damages, or in the case of fraud, treble damages, for the injuries sustained by him,

"(2) be granted such equitable relief as may be appropriate, which may include an injunction against further importation into the United States of the articles or products in question, as appropriate, and
"(3) recover the costs of suit, including reasonable attorney's fees.

"(c) For purposes of this section--

"(1) The term 'interested party' means--

"(A) a manufacturer, producer, or wholesaler in the United States of a like or competing product, and

"(B) a trade or business association a substantial portion of whose members manufacture, produce, or wholesale a like product or a competing product in the United States.

"(2) The term 'like product' means a product which is substantially identical or, if no product is substantially identical, most similar in characteristics and uses, to merchandise imported into the United States in violation of section 592(a).

"(3) The term 'competing product' means a product which competes with, or is a substitute for, merchandise imported into the United States in violation of section 592(a).

"(4) The term 'damages' shall include, but is not limited to any loss of profits attributable to (A) profits on sales lost because of the illegally
entered merchandise, and (B) the reduction in prices for the like or competing product attributable to the illegally entered merchandise.

"(5) In case of lost sales, profits shall be equal to the difference between the net revenues that would have been realized on those sales and the costs that would have been incurred on such sales and were not otherwise incurred. In the case of a reduction in prices, profits shall be equal to the difference between revenues actually realized and revenues that, but for the reduction in prices, would have been realized.

"(6) The amount of lost sales shall be deemed to be equal to the volume of the illegally imported merchandise unless the person or persons against whom a civil action is commenced under this section should prove a different amount.

"(d) The United States may intervene in any action, suit or proceeding under this section as of right. The United States shall have all the rights of a party."
I. 4. Subsidies Code Commitments

LIMITATIONS ON ACCEPTANCE OF COUNTRY
UNDER THE AGREEMENT.

Section 701 of the Tariff Act of 1930 (19 U.S.C. 1671) is amended—

(1) by inserting "which meets the requirements of subsection (c) and" after "means of country" in subsection (b),

(2) by redesignating subsection (c) as subsection (f), and

(3) by inserting after subsection (b) the following new subsections:

"(c) ADDITIONAL REQUIREMENTS.—A country meets the requirements of this subsection if such country has made a commitment to—

"(1) eliminate its export subsidies—

"(A) in the case of countries that are not least developed countries, within 1 year, and

"(B) in the case of least developed countries—

"(i) within 1 year on those products in which such country is competitive, and

...
"(ii) within 5 years on all other products, and

"(2) not increase, extend, or add export subsidies.

"(d) Provisional Application.—The United States shall expressly reserve the right to terminate "country under the Agreement" status if a country fails to honor any term of an agreement described in subsection (b) or (c).

"(e) Review of Compliance; Termination of Status.—

"(1) Review.—The administering authority shall review the current status of, and compliance with, the agreements described in subsection (b) or (c) at least once during each 12-month period following the date on which the agreement becomes effective.

"(2) Publication of Determinations.—The administering authority shall determine whether each foreign country has honored each term of the agreements described in subsection (b) or (c) that such country entered into and shall publish such determinations in the Federal Register by no later than the date that is 45 days after the anniversary of the effective date of the agreement."
"(3) Termination of status; suspension of liquidation.—

"(A) In general.—If the administering authority, in consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, determines that a foreign country has failed to honor any term of an agreement described in subsection (b) or (c) that such country entered into—

"(i) such country shall cease to be treated as a country under the Agreement for purposes of this Act on and after the day that is 90 days after the date on which such determination is published in the Federal Register, and

"(ii) the administering authority shall—

"(I) order the suspension of liquidation of all entries, and withdrawals from warehouse, for consumption after such day of all merchandise of such country that has, at any time, been the subject of an affirmative determination under section 705(a), and

...
“(II) initiate investigations under section 303 with respect to such merchandise on such day.

“(B) NEGATIVE PRELIMINARY DETERMINATION.—If the preliminary determination of the administering authority described in section 703(b) in an investigation conducted under section 303 is negative, the administering authority shall terminate on the day of such preliminary determination any suspension of liquidation ordered under subparagraph (A)(ii)(I) with respect to the merchandise that is involved in such investigation.”.
I. 5. Definition of Domestic Subsidy

DEFINITION OF DOMESTIC SUBSIDY.

Section 771(5)(B) of the Tariff Act of 1930 (19 U.S.C. 1677(5)(B)) is amended—

(1) by striking out clauses (i) and (ii) and inserting the following new clause:

"(i) The provision of capital, loans, loan guarantees, goods, or services at preferential rates or on terms inconsistent with commercial considerations."

(2) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

Subsection (a) of Section 303 of the Tariff Act of 1930 is amended by inserting "including state-controlled economy countries," after "any country," in paragraph (1).

Subsection (b) of Section 701 of the Tariff Act of 1930 is amended by striking "a country-" and inserting "any country, including nonmarket economy countries-" in lieu thereof.
I. 7. Miscellaneous Amendments

(1) Allowable Dumping Margin Adjustments

UNITED STATES PRICE.

(a) Paragraph (1) of section 772(e) of the Tariff Act of 1930 (19 U.S.C. 1677a) is amended by inserting "or reasonable profits incurred in," after "commissions for".

(b) Subsection (c) of section 772 of the Tariff Act of 1930 (19 U.S.C. 1677a(c)) is amended to read as follows:

"(c) EXPORTER'S SALES PRICE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term "exporter's sales price" means the price at which merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, as adjusted under subsections (d) and (e) of this section.

"(2) RELATED PARTIES.—If—

"(A) merchandise is appraised under section 402(b)(2)(B), and

"(B) the transaction value of the merchandise, as determined under section 402(b) and reduced by any appropriate deduction under subsection (d), is less than the exporter's sales price otherwise computed under this section,
the exporter's sales price shall be the transaction value of the merchandise, as determined under section 402(b) and reduced by any appropriate deductions under subsection (d).”.

(c) Paragraph (4) of section 773(a) of the Tariff Act of 1930 (19 U.S.C. 1677b(a)(4)) is amended by inserting after “shall be made therefor” the following: “, except that in no event shall the administering authority deduct indirect selling expenses from foreign market value in order to offset expenses deducted from exporter's sales price under section 772(e).”.

(2) **Government Payment of Offsetting Duties**

**Application of Countervailing and Anti-Dumping Duties to Governmental Importations.**—

Section 771 of the Tariff Act of 1930 (19 U.S.C. 1677) is amended by adding at the end thereof the following new paragraph:

“(19) **Application to Governmental Importations.**—Merchandise imported by, or for the use of,
an agency of the United States Government is not exempt from the imposition of countervailing duties or antidumping duties under this title. Any such duties shall be taken into account in awarding procurement contracts."

(3) Products Where Price Is the Predominant Market Factor

Paragraph (7) of section 771(7) of the Tariff Act of 1930 (19 U.S.C. 1677(7)) is amended by adding at the end thereof the following:

"(G) SPECIAL RULES FOR FUNGIBLE PRODUCTS.—

"(i) IN GENERAL.—The Commission shall not determine that there is no material injury, or no threat of material injury, to United States producers of a fungible product by reason of imports (or sales or offers of sale for importation) of that fungible product on the basis of evidence that—

"(I) sales or offers of sale of the imported merchandise were not the first sales or offers at a reduced price in the relevant market;
“(II) price declines of similar magnitude occurred in other comparable markets (including submarkets or localities) where there is a relationship between the prices in such markets and the prices in the import impacted market;

“(III) United States producers also import the merchandise under investigation; or

“(IV) United States producers of the product are profitable.

“(ii) DEFINITION.—For the purposes of this clause, the term ‘fungible product’ means merchandise sold by weight or volume without significant product differentiation in such merchandise whether produced by foreign or domestic producers.”.
Reimbursement of Costs

Title VII is further amended by adding at the end thereof the following new section:

"Sec. 780. REIMBURSEMENT OF COSTS TO SUCCESSFUL PETITIONERS.

Upon application by any petitioner in an investigation that results in the issuance of a countervailing duty order under section 706 of this title, an antidumping duty order under section 303 or section 736 of this title, or a suspension agreement under section 706 or 734 of this title, the administering authority shall pay to such petitioner an amount equal to the reasonable costs and expenses, including expenses of counsel, to such petitioner of preparing and filing the petition that resulted in such investigation and of participating in such investigation. The administering authority may require appropriate documentary evidence with respect to such costs and expenses as a condition of reimbursement. Payments by the administering authority under this section shall be made, to the extent funds shall be available therein, out of an account established by the administering authority and into which the Secretary of the Treasury shall remit all amounts received subsequent to the effective date of this section by the United States Customs Service in payment of countervailing duties or antidumping duties under this title."