

106TH CONGRESS  
1ST SESSION

# H. R. 1201

To provide for a private right of action in the case of injury from the importation of certain dumped and subsidized merchandise.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1999

Mr. REGULA introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide for a private right of action in the case of injury from the importation of certain dumped and subsidized merchandise.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Unfair Foreign Com-  
5       petition Act of 1999”.

1 **SEC. 2. PRIVATE ACTIONS FOR RELIEF FROM UNFAIR FOR-**  
2 **EIGN COMPETITION.**

3 (a) CLAYTON ACT.—Section 1(a) of the Clayton Act  
4 (15 U.S.C. 12) is amended by inserting “section 801 of  
5 the Act of September 8, 1916, entitled ‘An Act to raise  
6 revenue, and for other purposes’ (39 Stat. 798; 15 U.S.C.  
7 72);” after “nineteen hundred and thirteen;”.

8 (b) ACTION FOR DUMPING VIOLATIONS.—Section  
9 801 of the Act of September 8, 1916 (39 Stat. 798; 15  
10 U.S.C. 72) is amended to read as follows:

11 **“SEC. 801. IMPORTATION OR SALE OF ARTICLES AT LESS**  
12 **THAN FOREIGN MARKET VALUE OR CON-**  
13 **STRUCTED VALUE.**

14 “(a) PROHIBITION.—No person shall import into, or  
15 sell within, the United States an article manufactured or  
16 produced in a foreign country if—

17 “(1) the article is imported or sold within the  
18 United States at a United States price that is less  
19 than the foreign market value or constructed value  
20 of the article; and

21 “(2) the importation or sale—

22 “(A) causes or threatens to cause material  
23 injury to industry or labor in the United States;  
24 or

1                   “(B) prevents, in whole or in part, the es-  
2                   tablishment or modernization of any industry in  
3                   the United States.

4           “(b) CIVIL ACTION.—An interested party whose busi-  
5   ness or property is injured by reason of an importation  
6   or sale of an article in violation of this section may bring  
7   a civil action in the United States District Court for the  
8   District of Columbia or in the Court of International  
9   Trade against any person who—

10           “(1) manufactures, produces, or exports the ar-  
11   ticle; or

12           “(2) imports the article into the United States  
13   if the person is related to the manufacturer or ex-  
14   porter of the article.

15           “(c) RELIEF.—Upon an affirmative determination by  
16   the United States District Court or the Court of Inter-  
17   national Trade in an action brought under subsection (b),  
18   the court shall issue an order that includes a description  
19   of the subject article in such detail as the court deems  
20   necessary and shall—

21           “(1) direct the Customs Service to assess an  
22   antidumping duty on the article covered by the de-  
23   termination in accordance with section 736(a) of the  
24   Tariff Act of 1930 (19 U.S.C. 1673e); and

1           “(2) require the deposit of estimated anti-  
2       dumping duties pending liquidation of entries of the  
3       article at the same time as estimated normal cus-  
4       toms duties on that article are deposited.

5       “(d) STANDARD OF PROOF.—

6           “(1) PREPONDERANCE OF EVIDENCE.—The  
7       standard of proof in an action brought under sub-  
8       section (b) is a preponderance of the evidence.

9           “(2) SHIFT OF BURDEN OF PROOF.—Upon—

10           “(A) a prima facie showing of the elements  
11       set forth in subsection (a), or

12           “(B) affirmative final determinations ad-  
13       verse to the defendant that are made by the ad-  
14       ministering authority and the United States  
15       International Trade Commission under section  
16       735 of the Tariff Act of 1930 (19 U.S.C.  
17       1673d) relating to imports of the article in  
18       question for the country in which the manufac-  
19       turer of the article is located,

20       the burden of proof in an action brought under sub-  
21       section (b) shall be upon the defendant.

22       “(e) OTHER PARTIES.—

23           “(1) IN GENERAL.—Whenever, in an action  
24       brought under subsection (b), it appears to the court  
25       that justice requires that other parties be brought

1 before the court, the court may cause them to be  
2 summoned, without regard to where they reside, and  
3 the subpoenas to that end may be served and en-  
4 forced in any judicial district of the United States.

5 “(2) SERVICE ON DISTRICT DIRECTOR OF CUS-  
6 TOMS SERVICE.—A foreign manufacturer, producer,  
7 or exporter that sells articles, or for whom articles  
8 are sold by another party in the United States, shall  
9 be treated as having appointed the District Director  
10 of the United States Customs Service for the port  
11 through which the article that is the subject of the  
12 action is commonly imported as the true and lawful  
13 agent of the manufacturer, producer, or exporter,  
14 and all lawful process may be served on the District  
15 Director in any action brought under subsection (b)  
16 against the manufacturer, producer, or exporter.

17 “(f) LIMITATION.—

18 “(1) STATUTE OF LIMITATION.—An action  
19 under subsection (b) shall be commenced not later  
20 than 4 years after the date on which the cause of  
21 action accrues.

22 “(2) SUSPENSION.—The 4-year period provided  
23 for in paragraph (1) shall be suspended—

24 “(A) while there is pending an administra-  
25 tive proceeding under subtitle B of title VII of

1 the Tariff Act of 1930 (19 U.S.C. 1673 et seq.)  
2 relating to the article that is the subject of the  
3 action or an appeal of a final determination in  
4 such a proceeding; and

5 “(B) for 1 year thereafter.

6 “(g) NONCOMPLIANCE WITH COURT ORDER.—If a  
7 defendant in an action brought under subsection (b) fails  
8 to comply with any discovery order or other order or de-  
9 cree of the court, the court may—

10 “(1) enjoin the further importation into, or the  
11 sale or distribution within, the United States by the  
12 defendant of articles that are the same as, or similar  
13 to, the articles that are alleged in the action to have  
14 been sold or imported under the conditions described  
15 in subsection (a) until such time as the defendant  
16 complies with the order or decree; or

17 “(2) take any other action authorized by law or  
18 by the Federal Rules of Civil Procedure, including  
19 entering judgment for the plaintiff.

20 “(h) CONFIDENTIALITY AND PRIVILEGED STATUS.—

21 “(1) IN GENERAL.—Except as provided in para-  
22 graph (2), the confidential or privileged status ac-  
23 corded by law to any documents, evidence, com-  
24 ments, or information shall be maintained in any ac-  
25 tion brought under subsection (b).

1           “(2) EXCEPTION.—In an action brought under  
2       subsection (b) the court may—

3           “(A) examine, in camera, any confidential  
4       or privileged material;

5           “(B) accept depositions, documents, affida-  
6       vits, or other evidence under seal; and

7           “(C) disclose such material under such  
8       terms and conditions as the court may order.

9       “(i) EXPEDITION OF ACTION.—An action brought  
10   under subsection (b) shall be advanced on the docket and  
11   expedited in every way possible.

12       “(j) DEFINITIONS.—In this section, the terms  
13   ‘United States price’, ‘foreign market value’, ‘constructed  
14   value’, ‘subsidy’, ‘interested party’, and ‘material injury’,  
15   have the meanings given those terms under title VII of  
16   the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

17       “(k) INTERVENTION BY THE UNITED STATES.—The  
18   court shall permit the United States to intervene in any  
19   action brought under subsection (b) as a matter of right.  
20   The United States shall have all the rights of a party to  
21   such action.

22       “(l) NULLIFICATION OF ORDER.—An order by a  
23   court under this section may be set aside by the President  
24   pursuant to section 203 of the International Emergency  
25   Economic Powers Act (50 U.S.C. 1702).”.

1       (c) ACTION FOR SUBSIDIES VIOLATIONS.—Title VIII  
2 of the Act of September 8, 1916 (39 U.S.C. 798; 15  
3 U.S.C. 71 et seq.) is amended by adding at the end the  
4 following new section:

5       **“SEC. 807. IMPORTATION OR SALE OF SUBSIDIZED ARTI-**  
6                               **CLES.**

7       “(a) PROHIBITION.—No person shall import into, or  
8 sell within, the United States an article manufactured or  
9 produced in a foreign country if—

10               “(1) the foreign country, any person who is a  
11 citizen or national of the foreign country, or a cor-  
12 poration, association, or other organization orga-  
13 nized in the foreign country, is providing (directly or  
14 indirectly) a subsidy with respect to the manufac-  
15 ture, production, or exportation of the article; and

16               “(2) the importation or sale—

17                       “(A) causes or threatens to cause material  
18 injury to industry or labor in the United States;  
19 or

20                       “(B) prevents, in whole or in part, the es-  
21 tablishment or modernization of any industry in  
22 the United States.

23       “(b) CIVIL ACTION.—An interested party whose busi-  
24 ness or property is injured by reason of the importation  
25 or sale of an article in violation of this section may bring

1 a civil action in the United States District Court for the  
2 District of Columbia or in the Court of International  
3 Trade against any person who—

4 “(1) manufactures, produces, or exports the ar-  
5 ticle; or

6 “(2) imports the article into the United States  
7 if the person is related to the manufacturer, pro-  
8 ducer, or exporter of the article.

9 “(c) RELIEF.—Upon an affirmative determination by  
10 the United States District Court or the Court of Inter-  
11 national Trade in an action brought under subsection (b),  
12 the court shall issue an order that includes a description  
13 of the subject article in such detail as the court deems  
14 necessary and shall—

15 “(1) direct the Customs Service to assess a  
16 countervailing duty on the article covered by the de-  
17 termination in accordance with section 706(a) of the  
18 Tariff Act of 1930 (19 U.S.C. 1671e); and

19 “(2) require the deposit of estimated counter-  
20 vailing duties pending liquidation of entries of the  
21 article at the same time as estimated normal cus-  
22 toms duties on that article are deposited.

23 “(d) STANDARD OF PROOF.—

1           “(1) PREPONDERANCE OF EVIDENCE.—The  
2           standard of proof in an action filed under subsection  
3           (b) is a preponderance of the evidence.

4           “(2) SHIFT OF BURDEN OF PROOF.—Upon—  
5           “(A) a prima facie showing of the elements  
6           set forth in subsection (a), or

7           “(B) affirmative final determinations ad-  
8           verse to the defendant that are made by the ad-  
9           ministering authority and the United States  
10          International Trade Commission under section  
11          705 of the Tariff Act of 1930 (19 U.S.C.  
12          1671d) relating to imports of the article in  
13          question from the country in which the manu-  
14          facturer of the article is located,  
15          the burden of proof in an action brought under sub-  
16          section (b) shall be upon the defendant.

17          “(e) OTHER PARTIES.—

18          “(1) IN GENERAL.—Whenever, in an action  
19          brought under subsection (b), it appears to the court  
20          that justice requires that other parties be brought  
21          before the court, the court may cause them to be  
22          summoned, without regard to where they reside, and  
23          the subpoenas to that end may be served and en-  
24          forced in any judicial district of the United States.

1           “(2) SERVICE ON DISTRICT DIRECTOR OF CUS-  
2           TOMS SERVICE.—A foreign manufacturer, producer,  
3           or exporter that sells articles, or for which articles  
4           are sold by another party in the United States, shall  
5           be treated as having appointed the District Director  
6           of the United States Customs Service for the port  
7           through which the article that is the subject of the  
8           action is commonly imported as the true and lawful  
9           agent of the manufacturer, producer, or exporter,  
10          and all lawful process may be served on the District  
11          Director in any action brought under subsection (b)  
12          against the manufacturer, producer, or exporter.

13          “(f) LIMITATION.—

14                 “(1) STATUTE OF LIMITATIONS.—An action  
15                 under subsection (b) shall be commenced not later  
16                 than 4 years after the date on which the cause of  
17                 action accrues.

18                 “(2) SUSPENSION.—The 4-year period provided  
19                 for in paragraph (1) shall be suspended—

20                         “(A) while there is pending an administra-  
21                         tive proceeding under subtitle A of title VII of  
22                         the Tariff Act of 1930 (19 U.S.C. 1671 et seq.)  
23                         relating to the article that is the subject of the  
24                         action or an appeal of a final determination in  
25                         such a proceeding; and

1 “(B) for 1 year thereafter.

2 “(g) NONCOMPLIANCE WITH COURT ORDER.—If a  
3 defendant in an action brought under subsection (b) fails  
4 to comply with any discovery order or other order or de-  
5 cree of the court, the court may—

6 “(1) enjoin the further importation into, or the  
7 sale or distribution within, the United States by the  
8 defendant of articles that are the same as, or similar  
9 to, the articles that are alleged in the action to have  
10 been sold or imported under the conditions described  
11 in subsection (a) until such time as the defendant  
12 complies with the order or decree; or

13 “(2) take any other action authorized by law or  
14 by the Federal Rules of Civil Procedure, including  
15 entering judgment for the plaintiff.

16 “(h) CONFIDENTIALITY AND PRIVILEGED STATUS.—

17 “(1) IN GENERAL.—Except as provided in para-  
18 graph (2), the confidential or privileged status ac-  
19 corded by law to any documents, evidence, com-  
20 ments, or information shall be maintained in any ac-  
21 tion brought under subsection (b).

22 “(2) EXCEPTION.—In an action brought under  
23 subsection (b) the court may—

24 “(A) examine, in camera, any confidential  
25 or privileged material;

1                   “(B) accept depositions, documents, affida-  
2                   vits, or other evidence under seal; and

3                   “(C) disclose such material under such  
4                   terms and conditions as the court may order.

5           “(i) EXPEDITION OF ACTION.—An action brought  
6 under subsection (b) shall be advanced on the docket and  
7 expedited in every way possible.

8           “(j) DEFINITIONS.—In this section, the terms ‘sub-  
9 sidy’, ‘material injury’, and ‘interested party’ have the  
10 meanings given those terms under title VII of the Tariff  
11 Act of 1930 (19 U.S.C. 1671 et seq.).

12           “(k) INTERVENTION BY THE UNITED STATES.—The  
13 court shall permit the United States to intervene in any  
14 action brought under subsection (b) as a matter of right.  
15 The United States shall have all the rights of a party to  
16 such action.

17           “(l) NULLIFICATION OF ORDER.—An order by a  
18 court under this section may be set aside by the President  
19 pursuant to section 203 of the International Emergency  
20 Economic Powers Act (50 U.S.C. 1702).”.

21 **SEC. 3. AMENDMENTS TO THE TARIFF ACT OF 1930.**

22           (a) IN GENERAL.—Title VII of the Tariff Act of  
23 1930 (19 U.S.C. 1671 et seq.) is amended by inserting  
24 after section 753 following new section:

1 **“SEC. 754. CONTINUED DUMPING AND SUBSIDY OFFSET.**

2       “(a) IN GENERAL.—Duties assessed pursuant to a  
3 countervailing duty order, an antidumping duty order, or  
4 a finding under the Antidumping Act of 1921 shall be dis-  
5 tributed on an annual basis under this section to the af-  
6 fected domestic producers for qualifying expenditures and  
7 to adversely affected employees for assistance. Such dis-  
8 tribution shall be known as the ‘continued dumping and  
9 subsidy offset’.

10       “(b) DEFINITIONS.—In this section:

11               “(1) AFFECTED DOMESTIC PRODUCER.—The  
12 term ‘affected domestic producer’ means any manu-  
13 facturer, producer, farmer, rancher, or worker rep-  
14 resentative (including associations of such persons)  
15 that—

16                       “(A) was a petitioner or interested party in  
17 support of the petition with respect to which an  
18 antidumping duty order, a finding under the  
19 Antidumping Act of 1921, or a countervailing  
20 duty order has been entered, and

21                       “(B) remains in operation.

22 Companies, businesses, or persons that have ceased  
23 the production of the product covered by the order  
24 or finding or who have been acquired by a company  
25 or business that is related to a company that op-

1 posed the investigation shall not be an affected do-  
2 mestic producer.

3 “(2) ASSISTANCE.—The term ‘assistance’  
4 means allowances, training, and employment services  
5 similar to those provided under subchapter D of  
6 chapter 2 of title II of the Trade Act of 1974, as  
7 in effect on January 1, 1999 (19 U.S.C. 2331 et  
8 seq.).

9 “(3) COMMISSIONER.—The term ‘Commis-  
10 sioner’ means the Commissioner of Customs.

11 “(4) COMMISSION.—The term ‘Commission’  
12 means the United States International Trade Com-  
13 mission.

14 “(5) QUALIFYING EXPENDITURE.—The term  
15 ‘qualifying expenditure’ means an expenditure in-  
16 curred after the issuance of the antidumping duty  
17 finding or order or countervailing duty order in any  
18 of the following categories:

19 “(A) Plant.

20 “(B) Equipment.

21 “(C) Research and development.

22 “(D) Personnel training.

23 “(E) Acquisition of technology.

24 “(F) Health care benefits to employees  
25 paid for by the employer.

1           “(G) Pension benefits to employees paid  
2           for by the employer.

3           “(H) Environmental equipment, training,  
4           or technology.

5           “(I) Acquisition of raw materials and other  
6           inputs.

7           “(J) Borrowed working capital or other  
8           funds needed to maintain production.

9           “(6) RELATED TO.—A company, business, or  
10          person shall be considered to be ‘related to’ another  
11          company, business, or person if—

12           “(A) the company, business, or person di-  
13           rectly or indirectly controls or is controlled by  
14           the other company, business, or person,

15           “(B) a third party directly or indirectly  
16           controls both companies, businesses, or persons,

17           “(C) both companies, businesses, or per-  
18           sons directly or indirectly control a third party  
19           and there is reason to believe that the relation-  
20           ship causes the first company, business, or per-  
21           sons to act differently than a nonrelated party.

22          For purposes of this paragraph, a party shall be  
23          considered to directly or indirectly control another  
24          party if the party is legally or operationally in a po-

1       sition to exercise restraint or direction over the other  
2       party.

3           “(7) ADVERSELY AFFECTED EMPLOYEE.—The  
4       term ‘adversely affected employee’ means an em-  
5       ployee of an affected domestic producer that has be-  
6       come totally or partially separated because—

7           “(A) the sales or production, or both, of  
8       the domestic producer have decreased abso-  
9       lutely; and

10          “(B) imports of articles directly competi-  
11       tive with articles produced by the domestic pro-  
12       ducer have increased or are the subject of an  
13       antidumping duty order, a finding under the  
14       Antidumping Act of 1921, or a countervailing  
15       duty order described in paragraph (1)(A).

16       The Secretary of Labor shall determine if an em-  
17       ployee is eligible for assistance under this section.

18          “(c) DISTRIBUTION PROCEDURES.—The Commis-  
19       sioner, in consultation with the Secretary of Labor, shall  
20       prescribe procedures for distribution of the continued  
21       dumping or subsidies offset required by this section. Such  
22       distribution shall be made not later than 60 days after  
23       the first day of a fiscal year from duties assessed during  
24       the preceding fiscal year.

1       “(d) PARTIES ELIGIBLE FOR DISTRIBUTION OF  
2 ANTIDUMPING AND COUNTERVAILING DUTIES AS-  
3 SESSED.—

4           “(1) LIST OF AFFECTED DOMESTIC PRO-  
5 DUCERS.—The Commission shall forward to the  
6 Commissioner within 60 days after the effective date  
7 of this section in the case of orders or findings in  
8 effect on such effective date, or in any other case,  
9 within 60 days after the date an antidumping or  
10 countervailing duty order or finding is issued, a list  
11 of petitioners and persons with respect to each order  
12 and finding and a list of persons that indicate sup-  
13 port of the petition by letter or through question-  
14 naire response. In those cases in which a determina-  
15 tion of injury was not required or the Commission’s  
16 records do not permit an identification of those in  
17 support of a petition, the Commission shall consult  
18 with the administering authority to determine the  
19 identity of the petitioner and those domestic parties  
20 who have entered appearances during administrative  
21 reviews conducted by the administering authority  
22 under section 751.

23           “(2) PUBLICATION OF LIST.—The Commis-  
24 sioner shall publish in the Federal Register at least  
25 30 days before the distribution of a continued dump-

1 ing and subsidy offset, a notice of intention to dis-  
2 tribute the offset and the list of affected domestic  
3 producers and adversely affected employees poten-  
4 tially eligible for the distribution based on the list  
5 obtained from the Commission under paragraph (1).

6 “(3) CERTIFICATION.—

7 “(A) DOMESTIC PRODUCER.—The Com-  
8 missioner shall request a certification from each  
9 potentially eligible affected domestic producer—

10 “(i) that the producer desires to re-  
11 ceive a distribution;

12 “(ii) that the producer is eligible to  
13 receive the distribution as an affected do-  
14 mestic producer; and

15 “(iii) the qualifying expenditures in-  
16 curred by the producer since the issuance  
17 of the order or finding for which distribu-  
18 tion under this section has not previously  
19 been made.

20 “(B) ADVERSELY AFFECTED EMPLOYEE.—

21 The Commissioner shall request a certification  
22 from each group of potentially eligible adversely  
23 affected employees—

24 “(i) that the employees are employed  
25 by a domestic producer; and

1 “(ii) that the conditions described in  
2 subsection (b)(7) exist.

3 “(4) DISTRIBUTION OF FUNDS.—The Commis-  
4 sioner, in consultation with the Secretary of Labor,  
5 shall distribute all funds (including all interest  
6 earned on the funds) from assessed duties received  
7 in the preceding fiscal year to affected domestic pro-  
8 ducers and adversely affected employees based on  
9 the certifications described in paragraph (3). The  
10 distributions shall be made on a pro rata basis based  
11 on new and remaining qualifying expenditures and  
12 assistance needs.

13 “(e) SPECIAL ACCOUNTS.—

14 “(1) ESTABLISHMENTS.—Within 14 days after  
15 the effective date of this section, with respect to  
16 antidumping duty orders and findings and counter-  
17 vailing duty orders in effect on the effective date of  
18 this section, and within 14 days after the date an  
19 antidumping duty order or finding or countervailing  
20 duty order issued after the effective date takes ef-  
21 fect, the Commissioner shall establish in the Treas-  
22 ury of the United States a special account with re-  
23 spect to each such order or finding.

24 “(2) DEPOSITS INTO ACCOUNTS.—The Commis-  
25 sioner shall deposit into the special accounts, all

1       antidumping or countervailing duties (including in-  
2       terest earned on such duties) that are assessed after  
3       the effective date of this section under the anti-  
4       dumping order or finding or the countervailing duty  
5       order with respect to which the account was estab-  
6       lished.

7               “(3) TIME AND MANNER OF DISTRIBUTIONS.—  
8       Consistent with the requirements of subsections (c)  
9       and (d), the Commissioner shall by regulation pre-  
10      scribe the time and manner in which distribution of  
11      the funds in a special account shall made.

12              “(4) TERMINATION.—A special account shall  
13      terminate after—

14              “(a) the order or finding with respect to  
15      which the account was established has termi-  
16      nated;

17              “(B) all entries relating to the order or  
18      finding are liquidated and duties assessed col-  
19      lected;

20              “(C) the Commissioner has provided notice  
21      and a final opportunity to obtain distribution  
22      pursuant to subsection (c); and

23              “(D) 90 days has elapsed from the date of  
24      the notice described in subparagraph (C).

1       Amounts not claimed within 90 days of the date of  
2       the notice described in subparagraph (C), shall be  
3       deposited into the general fund of the Treasury.”.

4       (b) CONFORMING AMENDMENT.—The table of con-  
5       tents for title VII of the Tariff Act of 1930 is amended  
6       by inserting the following new item after the item relating  
7       to section 753:

“Sec. 754. Continued dumping and subsidy offset.”.

8       (c) EFFECTIVE DATE.—The amendments made by  
9       this section shall apply with respect to all antidumping  
10      and countervailing duty assessments made on or after Oc-  
11      tober 1, 1996.

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