

AMENDMENT TO ___
OFFERED BY MR. VISCLOSKY OF INDIANA

At the end of the bill, add the following:

1 **TITLE II—IMPROVEMENTS TO**
2 **ANTIDUMPING AND COUN-**
3 **TERVAILING DUTY LAWS**

4 **SEC. 201. SHORT TITLE.**

5 This title may be cited as the “American Trade En-
6 forcement Effectiveness Act”.

7 **SEC. 202. CONSEQUENCES OF FAILURE TO COOPERATE**
8 **WITH A REQUEST FOR INFORMATION IN A**
9 **PROCEEDING.**

10 Section 776 of the Tariff Act of 1930 (19 U.S.C.
11 1677e) is amended—

12 (1) in subsection (b)—

13 (A) by redesignating paragraphs (1)
14 through (4) as subparagraphs (A) through (D),
15 respectively, and by moving such subpara-
16 graphs, as so redesignated, 2 ems to the right;

17 (B) by striking “ADVERSE INFERENCES.—
18 If” and inserting the following: “ADVERSE IN-
19 FERENCES.—

20 “(1) IN GENERAL.—If”;

1 (C) by striking “under this title, may use”
2 and inserting the following: “under this title—
3 “(A) may use”; and

4 (D) by striking “facts otherwise available.
5 Such adverse inference may include” and in-
6 serting the following: “facts otherwise available;
7 and

8 “(B) is not required to determine, or make
9 any adjustments to, a countervailable subsidy
10 rate or weighted average dumping margin based
11 on any assumptions about information the in-
12 terested party would have provided if the inter-
13 ested party had complied with the request for
14 information.

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

18 (2) in subsection (c)—

19 (A) by striking “CORROBORATION OF SEC-
20 ONDARY INFORMATION.—When the” and in-
21 serting the following: “CORROBORATION OF
22 SECONDARY INFORMATION.—

23 “(1) IN GENERAL.—Except as provided in para-
24 graph (2), when the”; and

25 (B) by adding at the end the following:

1 “(2) EXCEPTION.—The administrative author-
2 ity and the Commission shall not be required to cor-
3 roborate any dumping margin or countervailing duty
4 applied in a separate segment of the same pro-
5 ceeding.”; and

6 (3) by adding at the end the following:

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

9 “(1) IN GENERAL.—If the administering au-
10 thority uses an inference that is adverse to the inter-
11 ests of a party under subsection (b)(1)(A) in select-
12 ing among the facts otherwise available, the admin-
13 istering authority may—

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

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

20 “(ii) if there is no same or similar
21 program, use a countervailable subsidy
22 rate for a subsidy program from a pro-
23 ceeding that the administering authority
24 considers reasonable to use, and

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

5 “(2) DISCRETION TO APPLY HIGHEST RATE.—
6 In carrying out paragraph (1), the administering au-
7 thority may apply any of the countervailable subsidy
8 rates or dumping margins specified under that para-
9 graph, including the highest such rate or margin,
10 based on the evaluation by the administering author-
11 ity of the situation that resulted in the admin-
12 istering authority using an adverse inference in se-
13 lecting among the facts otherwise available.

14 “(3) NO OBLIGATION TO MAKE CERTAIN ESTI-
15 MATES OR ADDRESS CERTAIN CLAIMS.—If the ad-
16 ministering authority uses an adverse inference
17 under subsection (b)(1)(A) in selecting among the
18 facts otherwise available, the administering authority
19 is not required, for purposes of subsection (c) or for
20 any other purpose—

21 “(A) to estimate what the countervailable
22 subsidy rate or dumping margin would have
23 been if the interested party found to have failed
24 to cooperate under subsection (b)(1) had co-
25 operated, or

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

6 **SEC. 203. DEFINITION OF MATERIAL INJURY.**

7 (a) EFFECT OF PROFITABILITY OF DOMESTIC IN-
8 DUSTRIES.—Section 771(7) of the Tariff Act of 1930 (19
9 U.S.C. 1677(7)) is amended by adding at the end the fol-
10 lowing:

11 “(J) EFFECT OF PROFITABILITY.—The
12 Commission may not determine that there is no
13 material injury or threat of material injury to
14 an industry in the United States merely be-
15 cause that industry is profitable or because the
16 performance of that industry has recently im-
17 proved.”.

18 (b) EVALUATION OF IMPACT ON DOMESTIC INDUS-
19 TRY IN DETERMINATION OF MATERIAL INJURY.—Sub-
20 clause (I) of section 771(7)(C)(iii) of the Tariff Act of
21 1930 (19 U.S.C. 1677(7)(C)(iii)) is amended to read as
22 follows:

23 “(I) actual and potential decline
24 in output, sales, market share, gross
25 profits, operating profits, net profits,

1 ability to service debt, productivity,
2 return on investments, return on as-
3 sets, and utilization of capacity.”.

4 (c) CAPTIVE PRODUCTION.—Section 771(7)(C)(iv) of
5 the Tariff Act of 1930 (19 U.S.C. 1677(7)(C)(iv)) is
6 amended—

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

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

11 (3) by striking subclause (III).

12 **SEC. 204. PARTICULAR MARKET SITUATION.**

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

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

20 (b) DEFINITION OF NORMAL VALUE.—Section
21 773(a)(1)(B)(ii)(III) of the Tariff Act of 1930 (19 U.S.C.
22 1677b(a)(1)(B)(ii)(III)) is amended by striking “in such
23 other country.”.

1 (c) DEFINITION OF CONSTRUCTED VALUE.—Section
2 773(e) of the Tariff Act of 1930 (19 U.S.C. 1677b(e))
3 is amended—

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

6 (2) by striking the flush text at the end and in-
7 serting the following:

8 “For purposes of paragraph (1), if a particular market
9 situation exists such that the cost of materials and fab-
10 rication or other processing of any kind does not accu-
11 rately reflect the cost of production in the ordinary course
12 of trade, the administering authority may use another cal-
13 culation methodology under this subtitle or any other cal-
14 culation methodology. For purposes of paragraph (1), the
15 cost of materials shall be determined without regard to
16 any internal tax in the exporting country imposed on such
17 materials or their disposition that is remitted or refunded
18 upon exportation of the subject merchandise produced
19 from such materials.”.

20 **SEC. 205. DISTORTION OF PRICES OR COSTS.**

21 (a) INVESTIGATION OF BELOW-COST SALES.—Sec-
22 tion 773(b)(2) of the Tariff Act of 1930 (19 U.S.C.
23 1677b(b)(2)) is amended by striking subparagraph (A)
24 and inserting the following:

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

3 “(i) REVIEW.—In a review conducted
4 under section 751 involving a specific ex-
5 porter, there are reasonable grounds to be-
6 lieve or suspect that sales of the foreign
7 like product have been made at prices that
8 are less than the cost of production of the
9 product if the administering authority dis-
10 regarded some or all of the exporter’s sales
11 pursuant to paragraph (1) in the investiga-
12 tion or, if a review has been completed, in
13 the most recently completed review.

14 “(ii) REQUESTS FOR INFORMATION.—
15 In an investigation initiated under section
16 732 or a review conducted under section
17 751, the administering authority shall re-
18 quest information necessary to calculate
19 the constructed value and cost of produc-
20 tion under subsections (e) and (f) to deter-
21 mine whether there are reasonable grounds
22 to believe or suspect that sales of the for-
23 eign like product have been made at prices
24 that represent less than the cost of produc-
25 tion of the product.”.

1 (b) PRICES AND COSTS IN NONMARKET ECONO-
2 MIES.—Section 773(e) of the Tariff Act of 1930 (19
3 U.S.C. 1677b(e)) is amended by adding at the end the
4 following:

5 “(5) DISCRETION TO DISREGARD CERTAIN
6 PRICE OR COST VALUES.—In valuing the factors of
7 production under paragraph (1) for the subject mer-
8 chandise, the administering authority may disregard
9 price or cost values without further investigation if
10 the administering authority has determined that
11 broadly available export subsidies existed or par-
12 ticular instances of subsidization occurred with re-
13 spect to those price or cost values or if those price
14 or cost values were subject to an antidumping
15 order.”.

16 **SEC. 206. REDUCTION IN BURDEN ON DEPARTMENT OF**
17 **COMMERCE BY REDUCING THE NUMBER OF**
18 **VOLUNTARY RESPONDENTS.**

19 Section 782(a) of the Tariff Act of 1930 (19 U.S.C.
20 1677m(a)) is amended—

21 (1) in paragraph (1), by redesignating subpara-
22 graphs (A) and (B) as clauses (i) and (ii), respec-
23 tively, and by moving such clauses, as so redesign-
24 nated, 2 ems to the right;

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

5 (3) by striking “INVESTIGATIONS AND RE-
6 VIEWS.—In” and inserting the following: “INVES-
7 TIGATIONS AND REVIEWS.—

8 “(1) IN GENERAL.—In”;

9 (4) in paragraph (1), as designated by para-
10 graph (3), by amending subparagraph (B), as redesi-
11 gnated by paragraph (2), to read as follows:

12 “(B) the number of exporters or producers
13 subject to the investigation or review is not so
14 large that any additional individual examination
15 of such exporters or producers would be unduly
16 burdensome to the administering authority and
17 inhibit the timely completion of the investiga-
18 tion or review.”; and

19 (5) by adding at the end the following:

20 “(2) DETERMINATION OF UNDULY BURDEN-
21 SOME.—In determining if an individual examination
22 under paragraph (1)(B) would be unduly burden-
23 some, the administering authority may consider the
24 following:

1 “(A) The complexity of the issues or infor-
2 mation presented in the proceeding, including
3 questionnaires and any responses thereto.

4 “(B) Any prior experience of the admin-
5 istering authority in the same or similar pro-
6 ceeding.

7 “(C) The total number of investigations
8 under subtitle A or B and reviews under section
9 751 being conducted by the administering au-
10 thority as of the date of the determination.

11 “(D) Such other factors relating to the
12 timely completion of each such investigation
13 and review as the administering authority con-
14 siders appropriate.”.

15 **SEC. 207. APPLICATION TO CANADA AND MEXICO.**

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

