

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1046

To provide a private cause of action for the recovery of damages for economic loss caused by the dumping of foreign merchandise into United States markets, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1993

Mrs. BYRNE introduced the following bill; which was referred jointly to the Committees on Ways and Means and the Judiciary

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## A BILL

To provide a private cause of action for the recovery of damages for economic loss caused by the dumping of foreign merchandise into United States markets, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That (a) subtitle B of title VII of the Tariff Act of 1930  
4       (19 U.S.C. 1673 et seq.) is amended by inserting after  
5       section 739 the following new section:

6       **“SEC. 740A. PRIVATE REMEDY FOR INJURY RESULTING**  
7                               **FROM DUMPING.**

8       “(a) DEFINITIONS.—For purposes of this section—

1           “(1) The term ‘court’ means any District Court  
2 of the United States.

3           “(2) The term ‘dumped merchandise’ means the  
4 class or kind of merchandise sold at less than for-  
5 eign market value.

6           “(3) The term ‘eligible party’ means any person  
7 described in subparagraph (C), (D), (E), (F), or (G)  
8 of section 771(9) (including any member or a person  
9 described in such subparagraph (E), (F), or (G)).

10           “(4) The term ‘foreign market value’ has the  
11 same meaning given such term in section 773.

12           “(b) CAUSE OF ACTION.—

13           “(1) IN GENERAL.—An eligible party that suf-  
14 fers economic loss by reason of the importation and  
15 sale of dumped merchandise may bring an action for  
16 damages in the court against any of the following:

17           “(A) Any manufacturer of the dumped  
18 merchandise.

19           “(B) Any exporter of the dumped mer-  
20 chandise to the United States.

21           “(C) Any importer of the dumped mer-  
22 chandise into the United States, if the importer  
23 is an affiliate or subsidiary of a manufacturer  
24 or exporter referred to in subparagraph (A) or  
25 (B).

1           “(2) JURISDICTION OVER FOREIGN PERSONS.—  
2           For purposes of actions brought under this section,  
3           the court has jurisdiction over any foreign person  
4           that is described in paragraph (1)(A), (B), or (C).

5           “(3) PROCESS.—Process may be served on a  
6           defendant in any action commenced under this sec-  
7           tion in any place within the United States where the  
8           defendant may be found or transacts business.

9           “(c) ECONOMIC LOSS.—

10           “(1) APPLICABLE PERIOD; PRESUMPTION OF  
11           LOSS.—If an action is brought under subsection (b),  
12           and there has been a petition filed under section  
13           732, the administering authority and the Commis-  
14           sion shall include in their investigations the period  
15           covered by the private action. There shall be a pre-  
16           sumption of economic loss if a petition filed under  
17           section 732 on behalf of an eligible party resulted in  
18           affirmative determinations under subsections (a) and  
19           (b) of section 735 regarding a class or kind of mer-  
20           chandise.

21           “(2) NO PRESUMPTION OF LOSS.—If there have  
22           been no affirmative determinations under sub-  
23           sections (a) and (b) of section 735, there shall be no  
24           presumption of economic loss.

1           “(3) LIMITATION ON AWARD.—Under no cir-  
2           cumstances shall the court award damages for a pe-  
3           riod subject to the potential assessment of anti-  
4           dumping duties.

5           “(4) EVALUATION OF LOSS.—In evaluating the  
6           economic loss sustained by the eligible party, the  
7           court shall consider all information, including poten-  
8           tial lost sales, worker layoffs, plant closures, or fi-  
9           nancial losses, submitted by the eligible party and by  
10          parties described in subsection (b)(1)(A), (B), or  
11          (C). The court may consider, but may not require,  
12          an econometric analysis or any other scientific study  
13          estimating the actual effects of the dumped mer-  
14          chandise on the eligible party.

15          “(d) DAMAGES.—

16                 “(1) IN GENERAL.—In any action brought  
17                 under subsection (b), the eligible party, upon a find-  
18                 ing of liability on the part of the defendant, is enti-  
19                 tled to recover—

20                         “(A) actual damages for the economic loss  
21                         (including injury to business or property) sus-  
22                         tained by the eligible party; and

23                         “(B) the costs of the action, including rea-  
24                         sonable attorney’s fees.

1           “(2) CALCULATION OF DAMAGES.—In calculat-  
2           ing damages for purposes of this section, the  
3           court—

4                   “(A) shall give regard to injury to the eli-  
5                   gible party resulting from the importation into  
6                   the United States and sale of dumped merchan-  
7                   dise and of other merchandise, if any, produced  
8                   by the defendant and that consists in part of  
9                   merchandise that, if entered or withdrawn from  
10                  warehouse separately, would be dumped mer-  
11                  chandise; and

12                   “(B) may give such regard to the affirma-  
13                   tive finding under subsection (b) of section 735  
14                   regarding the dumped merchandise as it consid-  
15                   ers appropriate.

16           “(e) TIME FOR BRINGING ACTION.—

17                   “(1) IN GENERAL.—Except as provided in para-  
18                   graph (2), an action may not be brought under this  
19                   section unless commenced within 2 years after the  
20                   date on which the cause of action accrues.

21                   “(2) TOLLING OF LIMITATION.—The running of  
22                   the 2-year limitation in paragraph (1) shall be sus-  
23                   pended while any administrative or judicial review of  
24                   an affirmative determination under subsection (a) or

1 (b) of section 735 is pending and until a decision  
2 upon that review is rendered.”.

3 (b) The table of contents for such title VII is  
4 amended by adding after the entry for section 739 the fol-  
5 lowing:

“SEC. 740A. Private remedy for injury resulting from dumping.”.

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