REPORT OF THE
STANDING COMMITTEE ON CUSTOMS LAW

RECOMMENDATION*

BE IT RESOLVED, That the American Bar Association urges that the Congress enact legislation which amends the Tariff Act of 1930 to clarify the Congressional intention that the members of the United States International Trade Commission meet in a non-public manner prior to decision for purposes of discussing the investigatory matters assigned to them under the Tariff Act of 1930, as amended.

REPORT

The six members of the International Trade Commission have felt constrained, by present ambiguities and interpretations of the law, to meet in a non-public manner as a body, or in groups of the number needed to make a decision, to discuss a particular investigation under the Tariff Act of 1930, as amended, at the critical point prior to the making of a decision. Such investigations include findings as to material injury or threat of material injury in dumping and countervailing duty cases, and recommendations to the President in connection with investigations relating to import injury to industries, market disruption, and review of relief actions.

In making decisions in the aforesaid investigations, the International Trade Commission (hereinafter the ITC) acts in both a quasi-legislative and quasi-administrative manner. Enabling the ITC Commissioners to exchange views, draft opinions and other information at the critical point prior to the final vote of the Commission would, we believe, create the possibility of the Commissioners being able to resolve questions and ambiguities and perhaps arrive at decisions of greater clarity. It is not supposed that the ability to meet and discuss will result in unanimity but, where such is not possible, enable the Commissioners to focus on the different perceptions in making the decision or in giving the advice. The public and the President will be better served.

We also believe the Commissioners will be assisted in their responsibilities by having the possibility of deciding matters in a

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*The recommendation was revised and approved. See page 22.
collegial manner, in that seeming disagreements or difficulties may be resolved or clarified with the result that fewer opinions will have to be written by individual commissioners. Finally, the ability to discuss cases before decision should result in opinions benefiting from the airing of the different insights.

We believe the proposed statutory amendment will have the support not only of the practitioners before the ITC but of the Administrative Conference of the United States, as well.

For the foregoing reasons, the Standing Committee on Customs Law requests the House of Delegates to adopt the accompanying recommendation supporting clarifying legislative amendment that will make it clear that the members of the International Trade Commission may meet in a non-public manner as a body in groups, or the numbers needed to make a decision, to discuss a particular investigation under the Tariff Act of 1930, prior to the making of a decision.

Respectfully submitted,

ANDREW P. VANCE
Chair

November 5, 1992
Standing Committee on Customs Law, Hector Reichard, member of the Board of Governors, moved the adoption of a revised report concerning the Tariff Act of 1930. He requested the recommendation of the Board of Governors. Secretary Palermo reported that the Board of Governors did not have the revised version, but had recommended that the original recommendation be approved. Richard Cunningham was introduced to present the report on behalf of the Standing Committee on Customs Law. He explained that the resolution would put the Association on record in support of expeditious action by the International Trade Commission to clarify its ability to hold non-public, pre-decisional meetings and proceedings under the Tariff Act of 1930. “The proceedings of the Commission relevant to this resolution,” he stated, “are its investigations under the anti-dumping law and the countervailing duty law to determine whether subsidized or unfairly priced imports are injuring or threatening material injury to U.S. industries. Since these proceedings involve confidential fact data from domestic U.S. companies that cannot be put forth on a public record, it would be very useful for this commission to be able to discuss in private, prior to decision, which is of course done in a public meeting, the facts of these cases.” He then explained that the present amended resolution is a product of discussions among the Standing Committee on Customs Law, the Section of International Law and Practice, and the Section of Administrative Law, and would put the Association on record along with a quite similar resolution previously adopted by the Administrative Conference of the United States, urging the Commission expeditiously to reconsider this aspect of its procedures. “In short,” Mr. Cunningham stated, “these are proceedings which meet both the considerations which this Association, in its original support for the Sunshine Act in general, said should be the basis for exemption for adjudication-type proceedings, determinations on the record subject to judicial review.”

There was no opposition and the motion was approved by voice vote. As adopted it reads:

BE IT RESOLVED, That the American Bar Association urges that the International Trade Commission expeditiously determine the extent to which the Government in the Sunshine Act (5 U.S.C. § 552b) permits the Members of the Commission to meet in a non-public manner prior to determinations in matters assigned to the Commission under the Tariff Act of 1930, as amended.

BE IT FURTHER RESOLVED, That in the event the Commission is unable to resolve this issue in a satisfactory manner, the American Bar Association will support such initiatives as may be appropriate to clarify the Commission’s ability to hold non-public meetings in such proceedings, whether by administrative or judicial interpretation of present law or by amendment of existing legislation.

12The full report of the Committee can be found at page 87.