

112TH CONGRESS
2D SESSION

H. R. 5708

To prevent the evasion of antidumping and countervailing duty orders, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 10, 2012

Mr. BOUSTANY (for himself and Mr. RICHMOND) introduced the following bill;
which was referred to the Committee on Ways and Means

A BILL

To prevent the evasion of antidumping and countervailing
duty orders, 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 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Preventing Recurring Trade Evasion and Circumvention
6 Act” or “PROTECT Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

Sec. 3. Application to Canada and Mexico.

TITLE I—ACTIONS RELATING TO ENFORCEMENT OF TRADE
REMEDY LAWS

- Sec. 101. Trade Remedy Law Enforcement Division.
 Sec. 102. Collection of information on evasion of trade remedy laws.
 Sec. 103. Access to information.
 Sec. 104. Cooperation with foreign countries on preventing evasion of trade
 remedy laws.
 Sec. 105. Trade negotiating objectives.

TITLE II—OTHER MATTERS

- Sec. 201. Allocation and training of personnel.
 Sec. 202. Annual report on prevention of evasion of antidumping and counter-
 vailing duty orders.
 Sec. 203. Addressing circumvention by new shippers.

1 SEC. 2. DEFINITIONS.

2 In this Act:

3 (1) APPROPRIATE CONGRESSIONAL COMMIT-
 4 TEES.—The term “appropriate congressional com-
 5 mittees” means—

6 (A) the Committee on Finance and the
 7 Committee on Appropriations of the Senate;
 8 and

9 (B) the Committee on Ways and Means
 10 and the Committee on Appropriations of the
 11 House of Representatives.

12 (2) COMMISSIONER.—The term “Commis-
 13 sioner” means the Commissioner responsible for
 14 U.S. Customs and Border Protection.

15 (3) COVERED MERCHANDISE.—The term “cov-
 16 ered merchandise” means merchandise that is sub-
 17 ject to—

1 (A) a countervailing duty order issued
2 under section 706 of the Tariff Act of 1930; or

3 (B) an antidumping duty order issued
4 under section 736 of the Tariff Act of 1930.

5 (4) ELIGIBLE SMALL BUSINESS.—

6 (A) IN GENERAL.—The term “eligible
7 small business” means any business concern
8 which, in the Commissioner’s judgment, due to
9 its small size, has neither adequate internal re-
10 sources nor financial ability to obtain qualified
11 outside assistance in preparing and submitting
12 for consideration allegations of evasion.

13 (B) NON-REVIEWABILITY.—Any agency
14 decision regarding whether a business concern
15 is an eligible small business for purposes of sec-
16 tion 101(b)(3) is not reviewable by any other
17 agency or by any court.

18 (5) ENTER; ENTRY.—The terms “enter” and
19 “entry” refer to the entry, or withdrawal from ware-
20 house for consumption, in the customs territory of
21 the United States.

22 (6) EVADE; EVASION.—The terms “evade” and
23 “evasion” refer to entering covered merchandise into
24 the customs territory of the United States by means
25 of any document or electronically transmitted data

1 or information, written or oral statement, or act that
 2 is material and false, or any omission that is mate-
 3 rial, and that results in any cash deposit or other se-
 4 curity or any amount of applicable antidumping or
 5 countervailing duties being reduced or not being ap-
 6 plied with respect to the merchandise.

7 (7) SECRETARY.—The term “Secretary” means
 8 the Secretary of the Treasury.

9 (8) TRADE REMEDY LAWS.—The term “trade
 10 remedy laws” means title VII of the Tariff Act of
 11 1930.

12 **SEC. 3. APPLICATION TO CANADA AND MEXICO.**

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

18 **TITLE I—ACTIONS RELATING TO** 19 **ENFORCEMENT OF TRADE** 20 **REMEDY LAWS**

21 **SEC. 101. TRADE REMEDY LAW ENFORCEMENT DIVISION.**

22 (a) ESTABLISHMENT.—

23 (1) IN GENERAL.—The Secretary of Homeland
 24 Security shall establish and maintain within the Of-
 25 fice of International Trade of U.S. Customs and

1 Border Protection, established under section 2(d) of
2 the Act of March 3, 1927 (44 Stat. 1381, chapter
3 348; 19 U.S.C. 2072(d)), a Trade Remedy Law En-
4 forcement Division.

5 (2) COMPOSITION.—The Trade Law Remedy
6 Enforcement Division shall be composed of—

7 (A) headquarters personnel led by a Direc-
8 tor, who shall report to the Assistant Commis-
9 sioner of the Office of International Trade; and

10 (B) a National Targeting and Analysis
11 Group dedicated to preventing and countering
12 evasion.

13 (3) DUTIES.—The Trade Remedy Law Enforce-
14 ment Division shall be dedicated—

15 (A) to the development and administration
16 of policies to prevent and counter evasion;

17 (B) to direct enforcement and compliance
18 assessment activities concerning evasion;

19 (C) to the development and conduct of
20 commercial risk assessment targeting with re-
21 spect to cargo destined for the United States in
22 accordance with subsection (c);

23 (D) to issuing Trade Alerts described in
24 subsection (d); and

1 (E) to the development of policies for the
2 application of single entry and continuous
3 bonds for entries of covered merchandise to suf-
4 ficiently protect the collection of antidumping
5 and countervailing duties commensurate with
6 the level of risk of noncollection.

7 (b) DUTIES OF DIRECTOR.—The duties of the Direc-
8 tor of the Trade Remedy Law Enforcement Division shall
9 include—

10 (1) directing the trade enforcement and compli-
11 ance assessment activities of U.S. Customs and Bor-
12 der Protection that concern evasion;

13 (2) facilitating, promoting, and coordinating co-
14 operation and the exchange of information between
15 U.S. Customs and Border Protection, U.S. Immigra-
16 tion and Customs Enforcement, and other relevant
17 agencies regarding evasion;

18 (3) notifying on a timely basis the admin-
19 istering authority (as defined in section 771(1) of
20 the Tariff Act of 1930 (19 U.S.C. 1677(1))) and the
21 Commission (as defined in section 771(2) of the
22 Tariff Act of 1930 (19 U.S.C. 1677(2))) of any
23 finding, determination, civil action, or criminal ac-
24 tion taken by U.S. Customs and Border Protection
25 or other Federal agency regarding evasion;

1 (4) serving as the primary liaison between U.S.
2 Customs and Border Protection and the public re-
3 garding United States Government activities con-
4 cerning evasion, including—

5 (A) receive and transmit to the appropriate
6 U.S. Customs and Border Protection office alle-
7 gations from parties of evasion;

8 (B) upon request by the party or parties
9 that submitted an allegation of evasion, provide
10 information to such party or parties on the sta-
11 tus of U.S. Customs and Border Protection’s
12 consideration of the allegation and decision to
13 pursue or not pursue any investigations or
14 other actions, such as changes in policies, pro-
15 cedures, or resource allocation as a result of the
16 allegation;

17 (C) as needed, request from the party or
18 parties that submitted an allegation of evasion
19 any additional information that may be relevant
20 for U.S. Customs and Border Protection deter-
21 mining whether to initiate an investigation or
22 take any other action regarding the allegation;

23 (D) notify on a timely basis the party or
24 parties that submitted such an allegation of the
25 results of any civil or criminal actions taken by

1 U.S. Customs and Border Protection or other
2 Federal agency regarding evasion as a direct or
3 indirect result of the allegation;

4 (E) upon request, provide technical assist-
5 ance and advice to eligible small businesses to
6 enable such businesses to prepare and submit
7 allegations of evasion, except that the Director
8 may deny assistance if the Director concludes
9 that the allegation, if submitted, would not lead
10 to the initiation of an investigation or any other
11 action to address the allegation;

12 (F) in cooperation with the public, the Ad-
13 visory Committee on Commercial Operations of
14 the United States Customs Service, the Trade
15 Support Network and any other relevant parties
16 and organizations, develop guidelines on the
17 types and nature of information that may be
18 provided in allegations of evasion; and

19 (G) regularly consult with the public, the
20 Advisory Committee on Commercial Operations
21 of the United States Customs Service, the
22 Trade Support Network, and any other relevant
23 parties and organizations regarding the develop-
24 ment and implementation of regulations, inter-

1 pretations, and policies related to countering
2 evasion.

3 (c) PREVENTING AND COUNTERING EVASION OF THE
4 TRADE REMEDY LAWS.—In carrying out its duties with
5 respect to preventing and countering evasion, the National
6 Targeting and Analysis Group dedicated to preventing and
7 countering evasion shall—

8 (1) establish targeted risk assessment meth-
9 odologies and standards—

10 (A) for evaluating the risk that cargo des-
11 tined for the United States may constitute
12 evading covered merchandise; and

13 (B) for issuing, as appropriate, Trade
14 Alerts described in subsection (d); and

15 (2) to the extent practicable and otherwise au-
16 thorized by law, use information available from the
17 Automated Commercial System, the Automated
18 Commercial Environment computer system, the
19 Automated Targeting System, the Automated Entry
20 System, the International Trade Data System, and
21 the Treasury Enforcement Communications System,
22 and any successor systems, to administer the meth-
23 odologies and standards established under paragraph
24 (1).

1 (d) TRADE ALERTS.—Based upon the application of
2 the targeted risk assessment methodologies and standards
3 established under subsection (c), the Director of the Trade
4 Remedy Law Enforcement Division shall issue Trade
5 Alerts or other such means of notification to directors of
6 United States ports of entry directing further inspection,
7 or physical examination or testing, of specific merchandise
8 to ensure compliance with the trade remedy laws.

9 (e) DEFINITIONS.—In this section—

10 (1) the term “Advisory Committee on Commer-
11 cial Operations of the United States Customs Serv-
12 ice” means the Advisory Committee established
13 under section 9503(c) of the Omnibus Budget Rec-
14 onciliation Act of 1987 (19 U.S.C. 2071 note); and

15 (2) the term “Trade Support Network” means
16 the network of private sector entities that provide
17 input on the design and development of moderniza-
18 tion projects of U.S. Customs and Border Protec-
19 tion.

20 (f) USE OF TRADE DATA FOR COMMERCIAL EN-
21 FORCEMENT PURPOSES.—Section 343(a)(3) of the Trade
22 Act of 2002 (19 U.S.C. 2071 note) is amended—

23 (1) by striking subparagraph (F); and

1 (2) by redesignating subparagraphs (G)
2 through (L) as subparagraphs (F) through (K), re-
3 spectively.

4 **SEC. 102. COLLECTION OF INFORMATION ON EVASION OF**
5 **TRADE REMEDY LAWS.**

6 (a) **AUTHORITY TO COLLECT INFORMATION.**—To de-
7 termine whether covered merchandise is being entered into
8 the customs territory of the United States through eva-
9 sion, the Secretary, acting through the Commissioner—

10 (1) shall exercise all existing authorities to col-
11 lect information needed to make the determination;
12 and

13 (2) may collect such additional information as
14 is necessary to make the determination through such
15 methods as the Commissioner considers appropriate,
16 including by issuing questionnaires with respect to
17 the entry or entries at issue to—

18 (A) a person who filed an allegation with
19 respect to the covered merchandise;

20 (B) a person who is alleged to have en-
21 tered the covered merchandise into the customs
22 territory of the United States through evasion;
23 or

24 (C) any other person who is determined to
25 have information relevant to the allegation of

1 entry of covered merchandise into the customs
2 territory of the United States through evasion.

3 (b) ADVERSE INFERENCE.—

4 (1) IN GENERAL.—If the Secretary finds that a
5 person who filed an allegation, a person alleged to
6 have entered covered merchandise into the customs
7 territory of the United States through evasion, or a
8 foreign producer or exporter of covered merchandise
9 that is alleged to have entered into the customs ter-
10 ritory of the United States through evasion, has
11 failed to cooperate by not acting to the best of the
12 person's ability to comply with a request for infor-
13 mation, the Secretary may, in making a determina-
14 tion whether an entry or entries of covered merchan-
15 dise may constitute merchandise that is entered into
16 the customs territory of the United States through
17 evasion, use an inference that is adverse to the inter-
18 ests of that person in selecting from among the facts
19 otherwise available to determine whether evasion has
20 occurred.

21 (2) ADVERSE INFERENCE DESCRIBED.—An ad-
22 verse inference used under paragraph (1) may in-
23 clude reliance on information derived from—

1 (A) the allegation of evasion of the trade
2 remedy laws, if any, submitted to U.S. Customs
3 and Border Protection;

4 (B) a determination by the Commissioner
5 in another investigation, proceeding, or other
6 action regarding evasion of the unfair trade
7 laws; or

8 (C) any other available information.

9 **SEC. 103. ACCESS TO INFORMATION.**

10 (a) IN GENERAL.—Section 777(b)(1)(A)(ii) of the
11 Trade Act of 1930 (19 U.S.C. 1677f(b)(1)(A)(ii)) is
12 amended by inserting “negligence, gross negligence,
13 or” after “regarding”.

14 (b) ADDITIONAL INFORMATION.—Notwithstanding
15 any other provision of law, the Secretary is authorized to
16 provide to the Secretary of Commerce or the U.S. Inter-
17 national Trade Commission any information that is nec-
18 essary to enable the Secretary of Commerce or the U.S.
19 International Trade Commission to assist the Secretary
20 to identify, through risk assessment targeting or other-
21 wise, covered merchandise that is entered into the customs
22 territory of the United States through evasion.

1 **SEC. 104. COOPERATION WITH FOREIGN COUNTRIES ON**
2 **PREVENTING EVASION OF TRADE REMEDY**
3 **LAWS.**

4 (a) BILATERAL AGREEMENTS.—

5 (1) IN GENERAL.—The Secretary shall seek to
6 negotiate and enter into bilateral agreements with
7 the customs authorities or other appropriate authori-
8 ties of foreign countries for purposes of cooperation
9 on preventing evasion of the trade remedy laws of
10 the United States and the trade remedy laws of the
11 other country.

12 (2) PROVISIONS AND AUTHORITIES.—The Sec-
13 retary shall seek to include in each such bilateral
14 agreement the following provisions and authorities:

15 (A) On the request of the importing party,
16 the exporting party shall provide, consistent
17 with its laws, regulations, and procedures, pro-
18 duction, trade, and transit documents and other
19 information necessary to determine whether an
20 entry or entries exported from the exporting
21 party are subject to the importing party's trade
22 remedy laws.

23 (B) On the written request of the import-
24 ing party, the exporting party shall conduct a
25 verification for purposes of enabling the import-

1 ing party to make a determination described in
2 subparagraph (A).

3 (C) The exporting party may allow the im-
4 porting party to participate in a verification de-
5 scribed in subparagraph (B), including through
6 a site visit.

7 (D) If the exporting party does not allow
8 participation of the importing party in a
9 verification described in subparagraph (B), the
10 importing party may take this fact into consid-
11 eration in its trade enforcement and compliance
12 assessment activities regarding the compliance
13 of the exporting countries' exports with the im-
14 porting countries' trade remedy laws.

15 (b) CONSIDERATION.—The Commissioner is author-
16 ized to take into consideration whether a country is a sig-
17 natory to a bilateral agreement described in subsection (a)
18 and the extent to which the country is cooperating under
19 the bilateral agreement for purposes of trade enforcement
20 and compliance assessment activities of U.S. Customs and
21 Border Protection that concern evasion by such country's
22 exports.

23 (c) REPORT.—Not later than December 31 of each
24 year beginning after the date of the enactment of this Act,

1 the Secretary shall submit to the appropriate congres-
 2 sional committees a report summarizing—

3 (1) the status of any ongoing negotiations of bi-
 4 lateral agreements described in subsection (a), in-
 5 cluding the identities of the countries involved in
 6 such negotiations;

7 (2) the terms of any completed bilateral agree-
 8 ments described in subsection (a); and

9 (3) bilateral cooperation and other activities
 10 conducted pursuant to or enabled by any completed
 11 bilateral agreements described in subsection (a).

12 **SEC. 105. TRADE NEGOTIATING OBJECTIVES.**

13 The principal negotiating objectives of the United
 14 States shall include obtaining the objectives of the bilat-
 15 eral agreements described under section 104(a) for any
 16 trade agreements under negotiation as of the date of the
 17 enactment of this Act or future trade agreement negotia-
 18 tions.

19 **TITLE II—OTHER MATTERS**

20 **SEC. 201. ALLOCATION AND TRAINING OF PERSONNEL.**

21 The Commissioner shall, to the maximum extent pos-
 22 sible, ensure that U.S. Customs and Border Protection—

23 (1) employs sufficient personnel who have ex-
 24 pertise in, and responsibility for, preventing and in-
 25 vestigating the entry of covered merchandise into the

1 customs territory of the United States through eva-
2 sion;

3 (2) on the basis of risk assessment metrics, as-
4 signs sufficient personnel with primary responsibility
5 for preventing the entry of covered merchandise into
6 the customs territory of the United States through
7 evasion to the ports of entry in the United States at
8 which the Commissioner determines potential eva-
9 sion presents the most substantial threats to the rev-
10 enue of the United States; and

11 (3) provides adequate training to relevant per-
12 sonnel to increase expertise and effectiveness in the
13 prevention and investigation of entries of covered
14 merchandise into the customs territory of the United
15 States through evasion.

16 **SEC. 202. ANNUAL REPORT ON PREVENTION OF EVASION**
17 **OF ANTIDUMPING AND COUNTERVAILING**
18 **DUTY ORDERS.**

19 (a) IN GENERAL.—Not later than February 28 of
20 each year, beginning in 2013, the Commissioner, in con-
21 sultation with the Secretary of Commerce and the Assist-
22 ant Secretary for U.S. Immigration and Customs Enforce-
23 ment, shall submit to the appropriate congressional com-
24 mittees a report on the efforts being taken to prevent and
25 investigate evasion.

1 (b) CONTENTS.—Each report required under sub-
2 section (a) shall include—

3 (1) for the calendar year preceding the submis-
4 sion of the report—

5 (A) a summary of the efforts of U.S. Cus-
6 toms and Border Protection to prevent and in-
7 vestigate evasion;

8 (B) the number of allegations of evasion
9 received and the number of allegations of eva-
10 sion resulting in investigations by U.S. Customs
11 and Border Protection or any other agency;

12 (C) a summary of the completed investiga-
13 tions of evasion, including the number and na-
14 ture of the investigations initiated, conducted,
15 or completed, as well as their resolution;

16 (D) with respect to investigations that lead
17 to lead to issuance of a penalty notice, the pen-
18 alty amounts;

19 (E) the amounts of antidumping and coun-
20 tervailing duties collected as a result of any in-
21 vestigations or other actions by U.S. Customs
22 and Border Protection or any other agency;

23 (F) a description of the allocation of per-
24 sonnel and other resources of U.S. Customs and
25 Border Protection and U.S. Immigration and

1 Customs Enforcement to prevent and investiga-
2 tion evasion, including any assessments con-
3 ducted regarding the allocation of such per-
4 sonnel and resources; and

5 (G) a description of training conducted to
6 increase expertise and effectiveness in the pre-
7 vention and investigation of evasion; and

8 (2) a description of U.S. Customs and Border
9 Protection processes and procedures to prevent and
10 investigate evasion, including—

11 (A) the specific guidelines, policies, and
12 practices used by U.S. Customs and Border
13 Protection to ensure that allegations of evasion
14 are promptly evaluated and acted upon in a
15 timely manner;

16 (B) an evaluation of the efficacy of such
17 existing guidelines, policies, and practices;

18 (C) identification of any changes since the
19 last report that have materially improved or re-
20 duced the effectiveness of U.S. Customs and
21 Border Protection to prevent and investigate
22 evasion;

23 (D) a description of the development and
24 implementation of policies for the application of
25 single entry and continuous bonds for entries of

covered merchandise to sufficiently protect the collection of antidumping and countervailing duties commensurate with the level of risk on noncollection;

(E) the processes and procedures for increased cooperation and information sharing with the Department of Commerce, U.S. Immigration and Customs Enforcement, and any other relevant Federal agencies to prevent and investigate evasion; and

(F) identification of any recommended policy changes of other Federal agencies or legislative changes to improve the effectiveness of U.S. Customs and Border Protection to prevent and investigate evasion.

SEC. 203. ADDRESSING CIRCUMVENTION BY NEW SHIPPERS.

Section 751(a)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(2)(B)) is amended—

(1) by striking clause (iii);

(2) by redesignating clause (iv) as clause (iii);

and

(3) inserting after clause (iii), as redesignated by paragraph (2) of this section, the following:

1 “(iv) Any weighted average dumping
2 margin or individual countervailing duty
3 rate determined for an exporter or pro-
4 ducer in a review conducted under clause
5 (i) shall be based solely on the bona fide
6 United States sales of an exporter or pro-
7 ducer, as the case may be, made during
8 the period covered by the review. In deter-
9 mining whether the United States sales of
10 an exporter or producer made during the
11 period covered by the review were bona
12 fide, the administering authority shall con-
13 sider, depending on the circumstances sur-
14 rounding such sales—

15 “(I) the prices of such sales;

16 “(II) whether such sales were
17 made in commercial quantities;

18 “(III) the timing of such sales;

19 “(IV) the expenses arising from
20 such sales;

21 “(V) whether the subject mer-
22 chandise involved in such sales were
23 resold in the United States at a prof-
24 it;

1 “(VI) whether such sales were
2 made on an arms-length basis; and

3 “(VII) any other factor the ad-
4 ministering authority determines to be
5 relevant as to whether such sales are,
6 or are not, likely to be typical of those
7 the exporter or producer will make
8 after completion of the review.”.

○