

Calendar No. 500

112TH CONGRESS
2^D SESSION**S. 3524****[Report No. 112–209]**

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 2012

Mr. BAUCUS, from the Committee on Finance, reported the following original
bill; which was read twice and placed on the calendar

A BILL

To deter 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.**

4 This Act may be cited as the “Enforcing Orders and
5 Reducing Customs Evasion Act of 2012”.

1 **SEC. 2. PROCEDURES FOR INVESTIGATING CLAIMS OF EVA-**
 2 **SION OF ANTIDUMPING AND COUNTER-**
 3 **VAILING DUTY ORDERS.**

4 (a) IN GENERAL.—The Tariff Act of 1930 is amend-
 5 ed by inserting after section 516A (19 U.S.C. 1516a) the
 6 following:

7 **“SEC. 517. PROCEDURES FOR INVESTIGATING CLAIMS OF**
 8 **EVASION OF ANTIDUMPING AND COUNTER-**
 9 **VAILING DUTY ORDERS.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) ADMINISTERING AUTHORITY.—The term
 12 ‘administering authority’ has the meaning given that
 13 term in section 771(1).

14 “(2) COMMISSIONER.—The term ‘Commis-
 15 sioner’ means the Commissioner responsible for U.S.
 16 Customs and Border Protection, acting pursuant to
 17 the delegation by the Secretary of the Treasury of
 18 the authority of the Secretary with respect to cus-
 19 toms revenue functions (as defined in section 415 of
 20 the Homeland Security Act of 2002 (6 U.S.C. 215)).

21 “(3) COVERED MERCHANDISE.—The term ‘cov-
 22 ered merchandise’ means merchandise that is subject
 23 to—

24 “(A) an antidumping duty order issued
 25 under section 736;

1 “(B) a finding issued under the Anti-
2 dumping Act, 1921; or

3 “(C) a countervailing duty order issued
4 under section 706.

5 “(4) ENTER; ENTRY.—The terms ‘enter’ and
6 ‘entry’ refer to the entry, or withdrawal from ware-
7 house for consumption, of merchandise in the cus-
8 toms territory of the United States.

9 “(5) EVASION.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the term ‘evasion’ refers to
12 entering covered merchandise into the customs
13 territory of the United States by means of any
14 document or electronically transmitted data or
15 information, written or oral statement, or act
16 that is material and false, or any omission that
17 is material, and that results in any cash deposit
18 or other security or any amount of applicable
19 antidumping or countervailing duties being re-
20 duced or not being applied with respect to the
21 merchandise.

22 “(B) EXCEPTION FOR CLERICAL ERROR.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (ii), the term ‘evasion’ does
25 not include entering covered merchandise

1 into the customs territory of the United
2 States by means of—

3 “(I) a document or electronically
4 transmitted data or information, writ-
5 ten or oral statement, or act that is
6 false as a result of a clerical error; or

7 “(II) an omission that results
8 from a clerical error.

9 “(ii) PATTERNS OF NEGLIGENT CON-
10 DUCT.—If the Commissioner determines
11 that a person has entered covered mer-
12 chandise into the customs territory of the
13 United States by means of a clerical error
14 referred to in subclause (I) or (II) of
15 clause (i) and that the clerical error is part
16 of a pattern of negligent conduct on the
17 part of that person, the Commissioner may
18 determine, notwithstanding clause (i), that
19 the person has entered such covered mer-
20 chandise into the customs territory of the
21 United States through evasion.

22 “(iii) ELECTRONIC REPETITION OF
23 ERRORS.—For purposes of clause (ii), the
24 mere nonintentional repetition by an elec-
25 tronic system of an initial clerical error

1 does not constitute a pattern of negligent
2 conduct.

3 “(iv) RULE OF CONSTRUCTION.—A
4 determination by the Commissioner that a
5 person has entered covered merchandise
6 into the customs territory of the United
7 States by means of a clerical error referred
8 to in subclause (I) or (II) of clause (i)
9 rather than through evasion shall not be
10 construed to excuse that person from the
11 payment of any duties applicable to the
12 merchandise.

13 “(b) INVESTIGATIONS.—

14 “(1) IN GENERAL.—Not later than 10 business
15 days after receiving an allegation described in para-
16 graph (2) or a referral described in paragraph (3),
17 the Commissioner shall initiate an investigation if
18 the Commissioner determines that the information
19 provided in the allegation or the referral, as the case
20 may be, reasonably suggests that covered merchan-
21 dise has been entered into the customs territory of
22 the United States through evasion.

23 “(2) ALLEGATION DESCRIBED.—An allegation
24 described in this paragraph is an allegation that a
25 person has entered covered merchandise into the

1 customs territory of the United States through eva-
2 sion that is—

3 “(A) filed with the Commissioner by a per-
4 son that is a producer in the United States of
5 merchandise—

6 “(i) that is like, or in the absence of
7 like, most similar in characteristics and
8 uses with, such covered merchandise; or

9 “(ii) into which merchandise described
10 in clause (i) is incorporated; and

11 “(B) accompanied by information reason-
12 ably available to the person that filed the alle-
13 gation.

14 “(3) REFERRAL DESCRIBED.—A referral de-
15 scribed in this paragraph is information submitted
16 to the Commissioner by any other Federal agency,
17 including the Department of Commerce or the
18 United States International Trade Commission, that
19 reasonably suggests that a person has entered cov-
20 ered merchandise into the customs territory of the
21 United States through evasion.

22 “(4) CONSOLIDATION OF ALLEGATIONS AND
23 REFERRALS.—

24 “(A) IN GENERAL.—The Commissioner
25 may consolidate multiple allegations described

1 in paragraph (2) and referrals described in
2 paragraph (3) into a single investigation if the
3 Commissioner determines it is appropriate to do
4 so.

5 “(B) EFFECT ON TIMING REQUIRE-
6 MENTS.—If the Commissioner consolidates mul-
7 tiple allegations or referrals into a single inves-
8 tigation under subparagraph (A), the date on
9 which the Commissioner receives the first such
10 allegation or referral shall be used for purposes
11 of the requirement under paragraph (1) with
12 respect to the timing of the initiation of the in-
13 vestigation.

14 “(5) INFORMATION-SHARING TO PROTECT
15 HEALTH AND SAFETY.—If, during the course of con-
16 ducting an investigation under paragraph (1) with
17 respect to covered merchandise, the Commissioner
18 has reason to suspect that such covered merchandise
19 may pose a health or safety risk to consumers, the
20 Commissioner shall provide, as appropriate, informa-
21 tion to the appropriate Federal agencies for pur-
22 poses of mitigating the risk.

23 “(c) DETERMINATIONS.—

24 “(1) IN GENERAL.—Not later than 270 cal-
25 endar days after the date on which the Commis-

1 sioner initiates an investigation under subsection (b)
2 with respect to covered merchandise, the Commis-
3 sioner shall make a determination, based on sub-
4 stantial evidence, with respect to whether such cov-
5 ered merchandise was entered into the customs terri-
6 tory of the United States through evasion.

7 “(2) AUTHORITY TO COLLECT AND VERIFY AD-
8 DITIONAL INFORMATION.—In making a determina-
9 tion under paragraph (1) with respect to covered
10 merchandise, the Commissioner may collect such ad-
11 ditional information as is necessary to make the de-
12 termination through such methods as the Commis-
13 sioner considers appropriate, including by—

14 “(A) issuing a questionnaire with respect
15 to such covered merchandise to—

16 “(i) a person that filed an allegation
17 under paragraph (2) of subsection (b) that
18 resulted in the initiation of an investiga-
19 tion under paragraph (1) of that sub-
20 section with respect to such covered mer-
21 chandise;

22 “(ii) a person alleged to have entered
23 such covered merchandise into the customs
24 territory of the United States through eva-
25 sion;

1 “(iii) a person that is a foreign pro-
 2 ducer or exporter of such covered merchan-
 3 dise; or

4 “(iv) the government of a country
 5 from which such covered merchandise was
 6 exported; and

7 “(B) conducting verifications, including on-
 8 site verifications, of any relevant information.

9 “(3) ADVERSE INFERENCE.—If the Commis-
 10 sioner finds that a person described in clause (i),
 11 (ii), or (iii) of paragraph (2)(A) has failed to cooper-
 12 ate by not acting to the best of the person’s ability
 13 to comply with a request for information, the Com-
 14 missioner may, in making a determination under
 15 paragraph (1), use an inference that is adverse to
 16 the interests of that person in selecting from among
 17 the facts otherwise available to make the determina-
 18 tion.

19 “(4) NOTIFICATION.—Not later than 5 business
 20 days after making a determination under paragraph
 21 (1) with respect to covered merchandise, the Com-
 22 missioner—

23 “(A) shall provide to each person that filed
 24 an allegation under paragraph (2) of subsection
 25 (b) that resulted in the initiation of an inves-

1 tigation under paragraph (1) of that subsection
2 with respect to such covered merchandise a no-
3 tification of the determination and may, in ad-
4 dition, include an explanation of the basis for
5 the determination; and

6 “(B) may provide to importers, in such
7 manner as the Commissioner determines appro-
8 priate, information discovered in the investiga-
9 tion that the Commissioner determines will help
10 educate importers with respect to importing
11 merchandise into the customs territory of the
12 United States in accordance with all applicable
13 laws and regulations.

14 “(d) EFFECT OF DETERMINATIONS.—

15 “(1) IN GENERAL.—If the Commissioner makes
16 a determination under subsection (c) that covered
17 merchandise was entered into the customs territory
18 of the United States through evasion, the Commis-
19 sioner shall—

20 “(A)(i) suspend the liquidation of unliqui-
21 dated entries of such covered merchandise that
22 are subject to the determination and that enter
23 on or after the date of the initiation of the in-
24 vestigation under subsection (b) with respect to

1 such covered merchandise and on or before the
2 date of the determination; or

3 “(ii) if the Commissioner has already sus-
4 pended the liquidation of such entries pursuant
5 to subsection (e)(1), continue to suspend the
6 liquidation of such entries;

7 “(B) pursuant to the Commissioner’s au-
8 thority under section 504(b)—

9 “(i) extend the period for liquidating
10 unliquidated entries of such covered mer-
11 chandise that are subject to the determina-
12 tion and that entered before the date of
13 the initiation of the investigation; or

14 “(ii) if the Commissioner has already
15 extended the period for liquidating such
16 entries pursuant to subsection (e)(1), con-
17 tinue to extend the period for liquidating
18 such entries;

19 “(C) notify the administering authority of
20 the determination and request that the admin-
21 istering authority—

22 “(i) identify the applicable anti-
23 dumping or countervailing duty assessment
24 rates for entries described in subpara-
25 graphs (A) and (B); or

1 “(ii) if no such assessment rate for
2 such an entry is available at the time,
3 identify the applicable cash deposit rate to
4 be applied to the entry, with the applicable
5 antidumping or countervailing duty assess-
6 ment rate to be provided as soon as that
7 rate becomes available;

8 “(D) require the posting of cash deposits
9 and assess duties on entries described in sub-
10 paragraphs (A) and (B) in accordance with the
11 instructions received from the administering au-
12 thority under paragraph (2); and

13 “(E) take such additional enforcement
14 measures as the Commissioner determines ap-
15 propriate, such as—

16 “(i) initiating proceedings under sec-
17 tion 592 or 596;

18 “(ii) implementing, in consultation
19 with the relevant Federal agencies, rule
20 sets or modifications to rules sets for iden-
21 tifying, particularly through the Auto-
22 mated Targeting System and the Auto-
23 mated Commercial Environment, import-
24 ers, other parties, and merchandise that
25 may be associated with evasion;

1 “(iii) requiring, with respect to mer-
 2 chandise for which the importer has re-
 3 peatedly provided incomplete or erroneous
 4 entry summary information in connection
 5 with determinations of evasion, the im-
 6 porter to deposit estimated duties at the
 7 time of entry; and

8 “(iv) referring the record in whole or
 9 in part to U.S. Immigration and Customs
 10 Enforcement for civil or criminal investiga-
 11 tion.

12 “(2) COOPERATION OF ADMINISTERING AU-
 13 THORITY.—

14 “(A) IN GENERAL.—Upon receiving a noti-
 15 fication from the Commissioner under para-
 16 graph (1)(C), the administering authority shall
 17 promptly provide to the Commissioner the ap-
 18 plicable cash deposit rates and antidumping or
 19 countervailing duty assessment rates and any
 20 necessary liquidation instructions.

21 “(B) SPECIAL RULE FOR CASES IN WHICH
 22 THE PRODUCER OR EXPORTER IS UNKNOWN.—
 23 If the Commissioner and the administering au-
 24 thority are unable to determine the producer or
 25 exporter of the merchandise with respect to

1 which a notification is made under paragraph
2 (1)(C), the administering authority shall identify,
3 as the applicable cash deposit rate or anti-
4 dumping or countervailing duty assessment
5 rate, the cash deposit or duty (as the case may
6 be) in the highest amount applicable to any
7 producer or exporter, including the ‘all-others’
8 rate of the merchandise subject to an anti-
9 dumping order or countervailing duty order
10 under section 736 or 706, respectively, or a
11 finding issued under the Antidumping Act,
12 1921, or any administrative review conducted
13 under section 751.

14 “(e) INTERIM MEASURES.—Not later than 90 cal-
15 endar days after initiating an investigation under sub-
16 section (b) with respect to covered merchandise, the Com-
17 missioner shall decide based on the investigation if there
18 is a reasonable suspicion that such covered merchandise
19 was entered into the customs territory of the United
20 States through evasion and, if the Commissioner decides
21 there is such a reasonable suspicion, the Commissioner
22 shall—

23 “(1) suspend the liquidation of each unliqui-
24 dated entry of such covered merchandise that en-

1 tered on or after the date of the initiation of the in-
2 vestigation;

3 “(2) pursuant to the Commissioner’s authority
4 under section 504(b), extend the period for liqui-
5 dating each unliquidated entry of such covered mer-
6 chandise that entered before the date of the initi-
7 ation of the investigation; and

8 “(3) pursuant to the Commissioner’s authority
9 under section 623, take such additional measures as
10 the Commissioner determines necessary to protect
11 the revenue of the United States, including requiring
12 a single transaction bond or additional security or
13 the posting of a cash deposit with respect to such
14 covered merchandise.

15 “(f) ADMINISTRATIVE REVIEW.—

16 “(1) IN GENERAL.—Not later than 30 business
17 days after the Commissioner makes a determination
18 under subsection (c) with respect to whether covered
19 merchandise was entered into the customs territory
20 of the United States through evasion, a person de-
21 termined to have entered such covered merchandise
22 through evasion or a person that filed an allegation
23 under paragraph (2) of subsection (b) that resulted
24 in the initiation of an investigation under paragraph
25 (1) of that subsection with respect to such covered

1 merchandise may file an appeal with the Commis-
2 sioner for de novo review of the determination.

3 “(2) TIMELINE FOR REVIEW.—Not later than
4 60 business days after an appeal of a determination
5 is filed under paragraph (1), the Commissioner shall
6 complete the review of the determination.

7 “(g) JUDICIAL REVIEW.—

8 “(1) IN GENERAL.—Not later than 30 business
9 days after the Commissioner completes a review
10 under subsection (f) of a determination under sub-
11 section (c) with respect to whether covered merchan-
12 dise was entered into the customs territory of the
13 United States through evasion, a person determined
14 to have entered such covered merchandise through
15 evasion or a person that filed an allegation under
16 paragraph (2) of subsection (b) that resulted in the
17 initiation of an investigation under paragraph (1) of
18 that subsection with respect to such covered mer-
19 chandise may commence a civil action in the United
20 States Court of International Trade by filing concu-
21 rently a summons and complaint contesting any fac-
22 tual findings or legal conclusions upon which the de-
23 termination is based.

24 “(2) STANDARD OF REVIEW.—In a civil action
25 under this subsection, the court shall hold unlawful

1 any determination, finding, or conclusion found to be
2 arbitrary, capricious, an abuse of discretion, or oth-
3 erwise not in accordance with law.

4 “(h) RULE OF CONSTRUCTION WITH RESPECT TO
5 OTHER CIVIL AND CRIMINAL PROCEEDINGS AND INVES-
6 TIGATIONS.—No determination under subsection (c) or ac-
7 tion taken by the Commissioner pursuant to this section
8 shall be construed to limit the authority to carry out, or
9 the scope of, any other proceeding or investigation pursu-
10 ant to any other provision of Federal or State law, includ-
11 ing sections 592 and 596.”.

12 (b) CONFORMING AMENDMENT.—Section 1581(c) of
13 title 28, United States Code, is amended by inserting “or
14 517” after “516A”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the date that is 180 days
17 after the date of the enactment of this Act.

18 (d) REGULATIONS.—Not later than the date that is
19 180 days after the date of the enactment of this Act, the
20 Secretary of the Treasury shall prescribe such regulations
21 as may be necessary to implement the amendments made
22 by this section.

23 (e) APPLICATION TO CANADA AND MEXICO.—Pursu-
24 ant to article 1902 of the North American Free Trade
25 Agreement and section 408 of the North American Free

1 Trade Agreement Implementation Act (19 U.S.C. 3438),
 2 the amendments made by this section shall apply with re-
 3 spect to goods from Canada and Mexico.

4 **SEC. 3. ANNUAL REPORT ON PREVENTION AND INVESTIGA-**
 5 **TION OF EVASION OF ANTIDUMPING AND**
 6 **COUNTERVAILING DUTY ORDERS.**

7 (a) IN GENERAL.—Not later than January 15 of
 8 each calendar year that begins on or after the date that
 9 is 270 days after the date of the enactment of this Act,
 10 the Commissioner, in consultation with the Secretary of
 11 Commerce and the Assistant Secretary for U.S. Immigra-
 12 tion and Customs Enforcement, shall submit to the Com-
 13 mittee on Finance of the Senate and the Committee on
 14 Ways and Means of the House of Representatives a report
 15 on the efforts being taken to prevent and investigate the
 16 entry of covered merchandise into the customs territory
 17 of the United States through evasion.

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

20 (1) for the calendar year preceding the submis-
 21 sion of the report—

22 (A) a summary of the efforts of U.S. Cus-
 23 toms and Border Protection to prevent and in-
 24 vestigate the entry of covered merchandise into

1 the customs territory of the United States
2 through evasion;

3 (B) the number of allegations of evasion
4 received under subsection (b) of section 517 of
5 the Tariff Act of 1930 (as added by section 2
6 of this Act) and the number of such allegations
7 resulting in investigations by U.S. Customs and
8 Border Protection or any other agency;

9 (C) a summary of investigations initiated
10 under subsection (b) of such section 517, in-
11 cluding—

12 (i) the number and nature of the in-
13 vestigations initiated, conducted, and com-
14 pleted; and

15 (ii) the resolution of each completed
16 investigation;

17 (D) the number of investigations initiated
18 under that subsection not completed during the
19 time provided for making determinations under
20 subsection (c) of such section 517 and an expla-
21 nation for why the investigations could not be
22 completed on time;

23 (E) the amount of additional duties that
24 were determined to be owed as a result of such
25 investigations, the amount of such duties that

1 were collected, and, for any such duties not col-
2 lected, a description of the reasons those duties
3 were not collected;

4 (F) with respect to each such investigation
5 that led to the imposition of a penalty, the
6 amount of the penalty;

7 (G) an identification of the countries of or-
8 igin of covered merchandise determined under
9 subsection (c) of such section 517 to be entered
10 into the customs territory of the United States
11 through evasion;

12 (H) the amount of antidumping and coun-
13 tervailing duties collected as a result of any in-
14 vestigations or other actions by U.S. Customs
15 and Border Protection or any other agency;

16 (I) a description of the allocation of per-
17 sonnel and other resources of U.S. Customs and
18 Border Protection and U.S. Immigration and
19 Customs Enforcement to prevent and inves-
20 tigate evasion, including any assessments con-
21 ducted regarding the allocation of such per-
22 sonnel and resources; and

23 (J) a description of training conducted to
24 increase expertise and effectiveness in the pre-
25 vention and investigation of evasion; and

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

4 (A) the specific guidelines, policies, and
5 practices used by U.S. Customs and Border
6 Protection to ensure that allegations of evasion
7 are promptly evaluated and acted upon in a
8 timely manner;

9 (B) an evaluation of the efficacy of those
10 guidelines, policies, and practices;

11 (C) an identification of any changes since
12 the last report required by this section, if any,
13 that have materially improved or reduced the
14 effectiveness of U.S. Customs and Border Pro-
15 tection in preventing and investigating evasion;

16 (D) a description of the development and
17 implementation of policies for the application of
18 single entry and continuous bonds for entries of
19 covered merchandise to sufficiently protect the
20 collection of antidumping and countervailing
21 duties commensurate with the level of risk of
22 not collecting those duties;

23 (E) a description of the processes and pro-
24 cedures for increased cooperation and informa-
25 tion sharing with the Department of Commerce,

1 U.S. Immigration and Customs Enforcement,
2 and any other relevant Federal agencies to pre-
3 vent and investigate evasion; and

4 (F) an identification of any recommended
5 policy changes for other Federal agencies or
6 legislative changes to improve the effectiveness
7 of U.S. Customs and Border Protection in pre-
8 venting and investigating evasion.

9 (c) PUBLIC SUMMARY.—The Commissioner shall
10 make available to the public a summary of the report re-
11 quired by subsection (a) that includes, at a minimum—

12 (1) a description of the type of merchandise
13 with respect to which investigations were initiated
14 under subsection (b) of section 517 of the Tariff Act
15 of 1930 (as added by section 2 of this Act);

16 (2) the amount of additional duties determined
17 to be owed as a result of such investigations and the
18 amount of such duties that were collected;

19 (3) an identification of the countries of origin
20 of covered merchandise determined under subsection
21 (c) of such section 517 to be entered into the cus-
22 toms territory of the United States through evasion;
23 and

1 (4) a description of the types of measures used
2 by U.S. Customs and Border Protection to prevent
3 and investigate evasion.

4 (d) DEFINITIONS.—In this section, the terms “Com-
5 missioner”, “covered merchandise”, and “evasion” have
6 the meanings given those terms in section 517(a) of the
7 Tariff Act of 1930 (as added by section 2 of this Act).

Calendar No. 500

112TH CONGRESS
2^D Session

S. 3524

[Report No. 112-209]

A BILL

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

SEPTEMBER 10, 2012

Read twice and placed on the calendar