

DESCRIPTION OF CHAIRMAN'S MARK TO ENFORCE ANTIDUMPING AND COUNTERVAILING DUTY ORDERS AND REDUCE CUSTOMS EVASION

Scheduled for Markup
by the
Senate Committee on Finance
on July 18, 2012

I. Introduction

The Senate Committee on Finance has scheduled a markup of a proposal to enhance U.S. Customs Border and Protection's enforcement of antidumping and countervailing duty orders by investigating and taking actions to prevent evasion. This proposal modifies S. 1133, the Enforcing Orders and Reducing Customs Evasion Act (the ENFORCE Act), as introduced by Senators Ron Wyden and Olympia Snowe. Evasion refers to entering merchandise into the United States for consumption by an act or omission that is material and false, and that results in the antidumping or countervailing duties owed being reduced or not applied to such merchandise. This document provides a description of the proposal.

II. Proposal

Present Law

Under current customs laws, U.S. Customs and Border Protection (CBP) can take enforcement action against the evasion of antidumping and countervailing duty orders, which includes the assessment of civil penalties against importers who attempt to evade such orders. Current customs laws do not, however, establish a set of specific procedures for interested parties and other Federal agencies to notify CBP of good faith allegations of evasion and a specific process for CBP to take action to prevent evasion.

Description of Proposal

The proposal amends the Tariff Act of 1930 by creating a set of procedures for investigating allegations of evasion of antidumping and countervailing duty orders, under newly-created section 517, as described below.

The proposal requires the Commissioner responsible for U.S. Customs and Border Protection (“the Commissioner”), acting pursuant to the delegation of authority by the Secretary of Treasury over customs revenue functions, to initiate an investigation within 10 business days of receipt of a proper allegation or referral that reasonably suggests that merchandise covered by an antidumping and/or countervailing duty order is entering the United States through evasion. The Commissioner may accept allegations by U.S. producers of, or further processors of merchandise that is like or most similar to, merchandise covered by the antidumping and/or countervailing duty order who allege that such covered merchandise is entering the United States through evasion. Referrals may be submitted to the Commissioner by other Federal agencies. The proposal requires the Commissioner to make a determination not later than 270 calendar days after the date of initiation with respect to whether there is substantial evidence that the merchandise under investigation was entered through evasion.

The proposal authorizes the Commissioner to request information from the U.S. producer making the allegation, as well as the importer, foreign producer, and foreign exporter of the alleged covered merchandise. The Commissioner may also request information from the government of the foreign country from which the alleged covered merchandise was exported. The bill provides that the Commissioner may make an adverse inference if the importer, exporter, or producer of the merchandise under investigation, or the U.S. producer making the allegation, did not act to the best of their ability to provide information requested by the Commissioner.

The proposal requires the Commissioner, no later than 5 business days after making a determination, to notify the U.S. producer who made an allegation that initiated an evasion investigation of the determination.

If the Commissioner makes an affirmative determination of evasion, the Commissioner shall (1) suspend the liquidation of any unliquidated entries of the covered merchandise that is the subject of the allegation entered between the date of initiation and the date of the determination; (2) extend the period for liquidating any unliquidated entries of merchandise that entered before the initiation of the investigation; (3) notify the Department of Commerce of the determination and request that Commerce determine the appropriate duty rates for such covered merchandise; (4) require importers of such covered merchandise to post cash deposits and assess duties on the covered merchandise as directed by Commerce; and (5) take such additional enforcement measures as the Commissioner deems appropriate, including modifying CBP’s procedures for identifying future evasion, requiring a deposit of estimated duties on future entries, and referring the matter to U.S. Immigration and Customs Enforcement for civil or criminal investigation.

In order to ensure that appropriate duties can be collected on entries of covered merchandise made during the pendency of an investigation, the proposal sets forth an “interim measures” mechanism. Under this mechanism, the Commissioner shall determine within 90 calendar days of initiation of an evasion investigation whether there is a reasonable suspicion that entries of covered merchandise that is the subject of the allegation were entered through evasion. If the Commissioner decides there is a reasonable suspicion, the Commissioner shall (1) suspend the liquidation of any unliquidated entries of the covered merchandise entered after the date of initiation; (2) extend the period for liquidating any unliquidated entries of merchandise that entered before the initiation of the investigation; and (3) take any additional measures necessary to protect the ability to collect appropriate duties, which may include requiring a single transaction bond or posting cash deposits with respect to entries of covered merchandise. If the Commissioner determines that the merchandise being investigated poses a health or safety risk, CBP will notify the appropriate Federal agencies of that risk.

The proposal provides a period of 30 business days for the U.S. producer who made the allegation of evasion or the importer of the covered merchandise alleged to have entered by evasion to request de novo administrative review by the Commissioner after notification of a determination. The proposal also amends the Tariff Act of 1930 to provide that determinations of evasion made under newly-created section 517 shall be subject to judicial review once any administrative review of the determination has been completed.

Finally, the proposal requires the Commissioner to submit to the Committee on Finance of the Senate and the Ways & Means Committee of the House an annual report on the Commissioner’s efforts to deter evasion of antidumping and countervailing duty orders.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to implement the bill within 180 days of enactment.

Effective Date

The effective date of the proposal is 180 days after the date of enactment.