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ENFORCING ORDERS AND REDUCING CUSTOMS EVASION ACT OF 2012

SEPTEMBER 10, 2012.—Ordered to be printed

Mr. BAUCUS, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 3524]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, having considered S. 3524, the Enforcing Orders and Reducing Customs Evasion Act of 2012 (“the ENFORCE Act of 2012”), an original bill to deter the evasion of antidumping and countervailing duty orders, and for other purposes, reports favorably thereon without amendment and refers the bill to the full Senate with a recommendation that the bill do pass.

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I. REPORT AND OTHER MATTERS OF THE COMMITTEE

A. REPORT OF THE COMMITTEE ON FINANCE

The Committee on Finance, having considered S. 3524, the ENFORCE Act of 2012, an original bill to enhance U.S. Customs and Border Protection’s (CBP) enforcement of antidumping and counter-

vailing duty orders by investigating and taking actions to prevent evasion, reports favorably thereon without amendment and refers the bill to the full Senate with a recommendation that the bill do pass.

B. BACKGROUND AND GENERAL REASONS FOR THE BILL

The Committee on Finance considered S. 3524 in the context of heightened concern from a range of U.S. industries and stakeholders that significant evasion of antidumping (AD) and countervailing duty (CVD) orders continues to occur, as well as concerns that CBP's efforts to combat evasion lack sufficient transparency. In addition, CBP currently lacks an established set of procedures for it to conduct timely investigations of alleged evasion. A recent report by the General Accountability Office, entitled *Antidumping and Countervailing Duties: Management Enhancements Needed to Improve Efforts to Detect and Deter Duty Evasion*, GAO-12-55, also raised concerns about evasion.

1. *Antidumping and countervailing duty orders*

AD laws provide relief to domestic industries that have been injured or are threatened by imported merchandise sold in the U.S. market at prices below fair market value (typically, the price the foreign firm charges for a comparable product sold in its home market or less than the foreign firm's cost of production). CVD laws provide relief to domestic industries that have been injured or are threatened by imported merchandise sold in the U.S. market that has been unfairly subsidized by a foreign government or public entity and sold at lower prices than similar goods produced in the United States. AD and CVD laws provide for additional import duties to be placed on the dumped and/or subsidized imports to mitigate the unfair dumping or subsidization of those imports. Statutory authority for AD and CVD investigations derives from Title VII of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, and as subsequently amended.

Under Title VII of the Tariff Act of 1930, the Department of Commerce (Commerce) is responsible for determining whether imported merchandise has been dumped and/or unfairly subsidized. The U.S. International Trade Commission (ITC) is responsible for determining whether dumping and/or countervailable subsidies have injured, or threaten to injure, domestic producers of similar merchandise. If both Commerce and ITC issue affirmative final determinations, Commerce issues AD and/or CVD orders, which establish cash deposit rates on entries of imported merchandise subject to the order. Those entries will be liquidated at the cash deposit rate, unless interested parties request an administrative review to determine the actual level of dumping and/or countervailable subsidies during the period of review. CBP is responsible for the collection of cash deposits and ultimate duties on imports of subject merchandise.

According to the above-mentioned General Accountability Office report, as of March 2012, there were 283 AD and CVD orders in effect on a range of U.S. imports.

2. Evasion of antidumping and countervailing duty orders

Evasion refers to entering merchandise into the United States for consumption by an act or omission that is material and false, and which results in AD or CVD duties being reduced, not applied to, or collected on such merchandise. Examples of evasion could include, but are not limited to, the misrepresentation of the merchandise's true country of origin (through fraudulent country-of-origin markings on the product itself and false sales), shipping and entry documentation, and misreporting of the merchandise's physical characteristics.

As noted above, CBP is responsible for ensuring that the appropriate duties are collected on imports of subject merchandise. U.S. Immigration and Customs Enforcement (ICE) is responsible for conducting criminal investigations of customs evasion.

In recent years, through the cooperation of several Federal agencies, there have been indictments, convictions, and prison sentences for evaders of AD/CVD orders. Deputy Assistant Secretary (DAS) for Import Administration Ronald K. Lorentzen described several Federal criminal cases involving evaders of AD/CVD orders in his May 5, 2011 testimony at a hearing of the Committee on Finance Subcommittee on International Trade, Customs, and Global Competitiveness on the subject of enforcement of U.S. trade laws in the face of customs fraud and duty evasion.

In his testimony, DAS Lorentzen described how in one case Federal prosecutors obtained an indictment against a German food conglomerate and several of its executives for conspiring to illegally import into the United States more than \$40 million of honey from China between 2002 and 2009 and concealing its country of origin in order to avoid paying nearly \$80 million in AD duties.

In another case, according to Lorentzen, a U.S. importer was arrested and charged with fraud, smuggling, and money laundering in connection with importing Chinese-made hangers into the United States by transshipping the goods through a third country and falsely claiming a country of origin other than China. In a third example, involving frozen fish fillets from Vietnam, Lorentzen explained that prosecutors obtained several convictions and prison sentences when Vietnamese exporters and U.S. importers intentionally mislabeled frozen fish fillets subject to AD duties as different types of fish so as to evade those duties.

Notwithstanding these Federal criminal cases, several U.S. industries and stakeholders have raised concerns to Congress and the Administration in recent years that (1) CBP does not have a uniform and established process for investigating allegations of evasion; (2) CBP does not provide any information to U.S. producers alleging evasion on the ultimate disposition by CBP of their allegations of evasion; and (3) significant evasion of AD and CVD duties continues to occur.

Under current customs laws, CBP can take enforcement actions against the evasion of AD and CVD 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 formal procedures for interested parties and other Federal agencies to submit to CBP good faith allegations and evidence of evasion. Current law does not require CBP to take specific enforcement actions to prevent evasion when substantial evidence of

evasion is established. CBP also has no current obligation or authority to notify parties that submit valid allegations of evasion as to the outcome of CBP's determination. Finally, there is no formal process for administrative or judicial review of CBP's determination regarding a valid evasion allegation.

3. Congressional action

In the 112th Congress, Members of the House and Senate introduced legislation to address the ongoing problems with AD/CVD evasion. Senator Wyden introduced S. 1133, the Enforcing Orders and Reducing Customs Evasion Act of 2011, and Representative Long introduced H.R. 3057, a companion House bill to S. 1133 and titled the same. In addition, Representative Boustany introduced H.R. 5708, the Preventing Recurring Trade Evasion and Circumvention Act (the PROTECT Act).

4. Committee consideration

On July 13, 2012, following consultation with Ranking Member Hatch and Senator Wyden (the latter of whom was the chief sponsor of S. 1133), Chairman Baucus announced his mark of an original bill to enhance CBP's enforcement of AD and CVD orders by investigating and taking actions to prevent evasion.

The Senate Committee on Finance met in open executive session on July 18, 2012 to consider four legislative proposals, including the Chairman's Mark of the ENFORCE Act of 2012. During the Committee's consideration of the proposal, two amendments were offered and withdrawn. The first amendment was offered by Senator Hatch and would have established a U.S. Customs and Border Protection Reimbursement Pilot Program for user fees for CBP services at airports, seaports, and land ports as part of the underlying bill. The second amendment was offered by Senator Stabenow and would have added the Senator's Protect American Innovation Act to the underlying bill. The Committee ultimately approved the Chairman's Mark of the ENFORCE Act by voice vote.

C. GENERAL DESCRIPTION OF THE BILL

Section 1 sets forth the short title of the bill as the Enforcing Orders and Reducing Customs Evasion Act of 2012.

Section 2 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 bill requires the Commissioner responsible for CBP (the Commissioner), acting pursuant to the delegation of authority by the Secretary of Treasury over customs revenue functions, to initiate an investigation within ten business days of receipt of a proper allegation or referral that reasonably suggests that merchandise covered by an AD/CVD 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 AD/CVD order who allege that such covered merchandise is entering the United States through evasion. Referrals of evasion also may be submitted to the Commissioner by other Federal agencies. The bill requires the Commissioner to make a determination not later than 270 calendar

days after the date of initiation of an evasion investigation with respect to whether there is substantial evidence that the merchandise under investigation was entered into the United States through evasion.

The bill 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 its ability to provide information requested by the Commissioner. The bill further requires the Commissioner, no later than five 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 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 require CBP to 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 ICE 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 bill sets forth an interim measures mechanism. Under this mechanism, the Commissioner shall determine within ninety calendar days of initiation of an evasion investigation whether there is a reasonable suspicion that entries of covered merchandise that are 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 may notify the appropriate Federal agencies of that risk.

The bill provides a period of thirty business days for the U.S. producer who made the allegation of evasion or the importer of the

covered merchandise alleged to have entered the merchandise subject to the evasion determination to request de novo administrative review by the Commissioner after notification of a determination. The bill also establishes that judicial review shall be available to the party alleging evasion or the party found to have entered merchandise subject to the investigation through evasion of any administrative review of the evasion determination by CBP.

The effective date of the bill is 180 days after the date of enactment. In addition, the bill provides that the Secretary of the Treasury shall prescribe such regulations as may be necessary to implement the bill within 180 days of enactment.

Section 3 of the bill requires the Commissioner to submit to the Committee on Finance of the Senate and the Ways and Means Committee of the House an annual report on the Commissioner's efforts to deter evasion of antidumping and countervailing duty orders.

II. BUDGETARY IMPACT OF S. 3524

JULY 27, 2012.

Hon. MAX BAUCUS,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Enforcing Orders and Reducing Customs Evasion Act of 2012.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kalyani Parthasarathy.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 3524—Enforcing Orders and Reducing Customs Evasion Act of 2012

Summary: The Enforcing Orders and Reducing Customs Evasion Act of 2012 would establish specific procedures for Customs and Border Protection (CBP), a part of the Department of Homeland Security, to follow when investigating allegations of evasion of antidumping or countervailing duties, and it would increase the ability of CBP to obtain information and collect such duties.

CBO estimates that costs for additional CBP personnel to implement the bill would reach \$1 million annually, assuming the availability of appropriated funds, beginning in fiscal year 2014. CBO estimates that enacting this bill would increase revenues by insignificant amounts in 2013, by \$4 million over the 2013–2017 period, and by \$13 million over the 2013–2022 period. CBO also estimates that the bill would have no effect on direct spending. Pay-as-you-go procedures apply because enacting the legislation would affect revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of the Enforcing Orders and Reducing Customs Eva-

sion Act of 2012 is shown in the following table. The costs of this legislation fall primarily within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2013	2014	2015	2016	2017	2013–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	*	1	1	1	1	4
Estimated Outlays	*	1	1	1	1	4
CHANGES IN REVENUES						
Estimated Revenues ^a	*	*	1	1	1	4

Note: * indicates amounts that are between –\$500,000 and \$500,000. Components may not sum to totals because of rounding.

^aEnacting the bill would increase revenues by \$13 million over the 2012–2022 period (see Statutory Pay-As-You-Go table on page 3 for annual effects through 2022).

Basis of estimate: For the purposes of this estimate, CBO assumes that the bill will be enacted early in fiscal year 2013.

Spending subject to appropriation

Based on information from CBP, we expect the agency to hire up to 10 additional employees to carry out the bill's provisions. CBO estimates that costs for the additional personnel would reach \$1 million annually from appropriated funds, beginning in fiscal year 2014, and total \$4 million over the 2013–2017 period.

Revenues

The bill would establish a set of procedures for CBP to follow when investigating allegations of antidumping and countervailing duties. Those procedures would include requiring expedited initiation of investigations and suspending the final assessment of tariffs on the goods alleged to be evading duties until the investigation is completed. The bill also would give CBP broader authority to collect information from both the party alleging evasion and the importer of the goods for making the preliminary and final determinations of evasion. The bill would permit CBP to take into account the cooperation of those parties in the investigation when assessing the evidence and reaching the final determination. Based on information provided by CBP, CBO estimates that enacting this bill would increase revenues by insignificant amounts in 2013, by \$4 million over the 2013–2017 period, and by \$13 million over the 2013–2022 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS OF THE ENFORCING ORDERS AND REDUCING CUSTOMS EVASION ACT OF 2012, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FINANCE ON JULY 18, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	0	0	–1	–1	–1	–1	–2	–2	–2	–2	–4	–13

Estimated intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Kalyani Parthasarathy and Mark Grabowicz; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Danielle Parnass.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis; Frank Sammartino, Assistant Director for Tax Analysis.

III. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the resolution will not significantly regulate any individuals or businesses, will not affect the personal privacy of individuals, and will result in no significant additional paperwork. The following information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. No. 104–04). The Committee has reviewed the provisions of S. 3326 as approved by the Committee on July 18, 2012. In accordance with the requirement of Pub. L. No. 104–04, the Committee has determined that the bill contains no intergovernmental mandates, as defined in the UMRA, and would not affect the budgets of state, local, or tribal governments.

IV. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

* * * * *

SEC. 517. PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) *DEFINITIONS.—In this section:*

(1) *ADMINISTERING AUTHORITY.—The term “administering authority” has the meaning given that term in section 771(1).*

(2) *COMMISSIONER.—The term “Commissioner” means the Commissioner responsible for U.S. Customs and Border Protection, acting pursuant to the delegation by the Secretary of the*

Treasury of the authority of the Secretary with respect to customs revenue functions (as defined in section 415 of the Homeland Security Act of 2002 (6 U.S.C. 215)).

(3) *COVERED MERCHANDISE.*—The term “covered merchandise” means merchandise that is subject to—

- (A) *an antidumping duty order issued under section 736;*
- (B) *a finding issued under the Antidumping Act, 1921; or*
- (C) *a countervailing duty order issued under section 706.*

(4) *ENTER; ENTRY.*—The terms “enter” and “entry” refer to the entry, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.

(5) *EVASION.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), the term “evasion” refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

(B) *EXCEPTION FOR CLERICAL ERROR.*—

(i) *IN GENERAL.*—Except as provided in clause (ii), the term “evasion” does not include entering covered merchandise into the customs territory of the United States by means of—

- (I) *a document or electronically transmitted data or information, written or oral statement, or act that is false as a result of a clerical error; or*
- (II) *an omission that results from a clerical error.*

(ii) *PATTERNS OF NEGLIGENT CONDUCT.*—If the Commissioner determines that a person has entered covered merchandise into the customs territory of the United States by means of a clerical error referred to in subclause (I) or (II) of clause (i) and that the clerical error is part of a pattern of negligent conduct on the part of that person, the Commissioner may determine, notwithstanding clause (i), that the person has entered such covered merchandise into the customs territory of the United States through evasion.

(iii) *ELECTRONIC REPETITION OF ERRORS.*—For purposes of clause (ii), the mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

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

(b) *INVESTIGATIONS.*—

(1) *IN GENERAL.*—Not later than 10 business days after receiving an allegation described in paragraph (2) or a referral described in paragraph (3), the Commissioner shall initiate an investigation if the Commissioner determines that the information provided in the allegation or the referral, as the case may be, reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion.

(2) *ALLEGATION DESCRIBED.*—An allegation described in this paragraph is an allegation that a person has entered covered merchandise into the customs territory of the United States through evasion that is—

(A) filed with the Commissioner by a person that is a producer in the United States of merchandise—

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

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

(B) accompanied by information reasonably available to the person that filed the allegation.

(3) *REFERRAL DESCRIBED.*—A referral described in this paragraph is information submitted to the Commissioner by any other Federal agency, including the Department of Commerce or the United States International Trade Commission, that reasonably suggests that a person has entered covered merchandise into the customs territory of the United States through evasion.

(4) *CONSOLIDATION OF ALLEGATIONS AND REFERRALS.*—

(A) *IN GENERAL.*—The Commissioner may consolidate multiple allegations described in paragraph (2) and referrals described in paragraph (3) into a single investigation if the Commissioner determines it is appropriate to do so.

(B) *EFFECT ON TIMING REQUIREMENTS.*—If the Commissioner consolidates multiple allegations or referrals into a single investigation under subparagraph (A), the date on which the Commissioner receives the first such allegation or referral shall be used for purposes of the requirement under paragraph (1) with respect to the timing of the initiation of the investigation.

(5) *INFORMATION-SHARING TO PROTECT HEALTH AND SAFETY.*—If, during the course of conducting an investigation under paragraph (1) with respect to covered merchandise, the Commissioner has reason to suspect that such covered merchandise may pose a health or safety risk to consumers, the Commissioner shall provide, as appropriate, information to the appropriate Federal agencies for purposes of mitigating the risk.

(c) *DETERMINATIONS.*—

(1) *IN GENERAL.*—Not later than 270 calendar days after the date on which the Commissioner initiates an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall make a determination, based on substantial evidence, with respect to whether such covered merchandise was entered into the customs territory of the United States through evasion.

(2) *AUTHORITY TO COLLECT AND VERIFY ADDITIONAL INFORMATION.*—In making a determination under paragraph (1) with respect to covered merchandise, the Commissioner may collect such additional information as is necessary to make the determination through such methods as the Commissioner considers appropriate, including by—

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

(i) a person that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise;

(ii) a person alleged to have entered such covered merchandise into the customs territory of the United States through evasion;

(iii) a person that is a foreign producer or exporter of such covered merchandise; or

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

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

(3) *ADVERSE INFERENCE.*—If the Commissioner finds that a person described in clause (i), (ii), or (iii) of paragraph (2)(A) has failed to cooperate by not acting to the best of the person's ability to comply with a request for information, the Commissioner may, in making a determination under paragraph (1), use an inference that is adverse to the interests of that person in selecting from among the facts otherwise available to make the determination.

(4) *NOTIFICATION.*—Not later than 5 business days after making a determination under paragraph (1) with respect to covered merchandise, the Commissioner—

(A) shall provide to each person that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise a notification of the determination and may, in addition, include an explanation of the basis for the determination; and

(B) may provide to importers, in such manner as the Commissioner determines appropriate, information discovered in the investigation that the Commissioner determines will help educate importers with respect to importing merchandise into the customs territory of the United States in accordance with all applicable laws and regulations.

(d) *EFFECT OF DETERMINATIONS.*—

(1) *IN GENERAL.*—If the Commissioner makes a determination under subsection (c) that covered merchandise was entered into the customs territory of the United States through evasion, the Commissioner shall—

(A)(i) suspend the liquidation of unliquidated entries of such covered merchandise that are subject to the determination and that enter on or after the date of the initiation of the investigation under subsection (b) with respect to such covered merchandise and on or before the date of the determination; or

(ii) if the Commissioner has already suspended the liquidation of such entries pursuant to subsection (e)(1), continue to suspend the liquidation of such entries;

(B) pursuant to the Commissioner's authority under section 504(b)—

(i) extend the period for liquidating unliquidated entries of such covered merchandise that are subject to the determination and that entered before the date of the initiation of the investigation; or

(ii) if the Commissioner has already extended the period for liquidating such entries pursuant to subsection (e)(1), continue to extend the period for liquidating such entries;

(C) notify the administering authority of the determination and request that the administering authority—

(i) identify the applicable antidumping or countervailing duty assessment rates for entries described in subparagraphs (A) and (B); or

(ii) if no such assessment rate for such an entry is available at the time, identify the applicable cash deposit rate to be applied to the entry, with the applicable antidumping or countervailing duty assessment rate to be provided as soon as that rate becomes available;

(D) require the posting of cash deposits and assess duties on entries described in subparagraphs (A) and (B) in accordance with the instructions received from the administering authority under paragraph (2); and

(E) take such additional enforcement measures as the Commissioner determines appropriate, such as—

(i) initiating proceedings under section 592 or 596;

(ii) implementing, in consultation with the relevant Federal agencies, rule sets or modifications to rules sets for identifying, particularly through the Automated Targeting System and the Automated Commercial Environment, importers, other parties, and merchandise that may be associated with evasion;

(iii) requiring, with respect to merchandise for which the importer has repeatedly provided incomplete or erroneous entry summary information in connection with determinations of evasion, the importer to deposit estimated duties at the time of entry; and

(iv) referring the record in whole or in part to U.S. Immigration and Customs Enforcement for civil or criminal investigation.

(2) COOPERATION OF ADMINISTERING AUTHORITY.—

(A) *IN GENERAL.*—Upon receiving a notification from the Commissioner under paragraph (1)(C), the administering authority shall promptly provide to the Commissioner the applicable cash deposit rates and antidumping or countervailing duty assessment rates and any necessary liquidation instructions.

(B) *SPECIAL RULE FOR CASES IN WHICH THE PRODUCER OR EXPORTER IS UNKNOWN.*—If the Commissioner and the administering authority are unable to determine the producer or exporter of the merchandise with respect to which a noti-

fication is made under paragraph (1)(C), the administering authority shall identify, as the applicable cash deposit rate or antidumping or countervailing duty assessment rate, the cash deposit or duty (as the case may be) in the highest amount applicable to any producer or exporter, including the “all-others” rate of the merchandise subject to an antidumping order or countervailing duty order under section 736 or 706, respectively, or a finding issued under the Antidumping Act, 1921, or any administrative review conducted under section 751.

(e) *INTERIM MEASURES.*—Not later than 90 calendar days after initiating an investigation under subsection (b) with respect to covered merchandise, the Commissioner shall decide based on the investigation if there is a reasonable suspicion that such covered merchandise was entered into the customs territory of the United States through evasion and, if the Commissioner decides there is such a reasonable suspicion, the Commissioner shall—

(1) suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after the date of the initiation of the investigation;

(2) pursuant to the Commissioner’s authority under section 504(b), extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation; and

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

(f) *ADMINISTRATIVE REVIEW.*—

(1) *IN GENERAL.*—Not later than 30 business days after the Commissioner makes a determination under subsection (c) with respect to whether covered merchandise was entered into the customs territory of the United States through evasion, a person determined to have entered such covered merchandise through evasion or a person that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered merchandise may file an appeal with the Commissioner for de novo review of the determination.

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

(g) *JUDICIAL REVIEW.*—

(1) *IN GENERAL.*—Not later than 30 business days after the Commissioner completes a review under subsection (f) of a determination under subsection (c) with respect to whether covered merchandise was entered into the customs territory of the United States through evasion, a person determined to have entered such covered merchandise through evasion or a person that filed an allegation under paragraph (2) of subsection (b) that resulted in the initiation of an investigation under paragraph (1) of that subsection with respect to such covered mer-

chandise may commence a civil action in the United States Court of International Trade by filing concurrently a summons and complaint contesting any factual findings or legal conclusions upon which the determination is based.

(2) STANDARD OF REVIEW.—In a civil action under this subsection, the court shall hold unlawful any determination, finding, or conclusion found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(h) RULE OF CONSTRUCTION WITH RESPECT TO OTHER CIVIL AND CRIMINAL PROCEEDINGS AND INVESTIGATIONS.—No determination under subsection (c) or action taken by the Commissioner pursuant to this section shall be construed to limit the authority to carry out, or the scope of, any other proceeding or investigation pursuant to any other provision of Federal or State law, including sections 592 and 596.

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

