

111TH CONGRESS
2^D SESSION

S. 3725

To prevent the importation of merchandise into the United States in a manner that evades antidumping and countervailing duty orders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2010

Mr. WYDEN (for himself, Ms. SNOWE, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To prevent the importation of merchandise into the United States in a manner that evades 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 Circumvention and Evasion Act of 2010”.

1 **SEC. 2. PROCEDURES FOR PREVENTION OF CIRCUMVEN-**
 2 **TION AND EVASION OF ANTIDUMPING AND**
 3 **COUNTERVAILING DUTY ORDERS.**

4 (a) IN GENERAL.—Title VII of the Tariff Act of
 5 1930 (19 U.S.C. 1671 et seq.) is amended by inserting
 6 after section 781 the following:

7 **“SEC. 781A. PROCEDURES FOR PREVENTION OF CIR-**
 8 **CUMVENTION AND EVASION OF ANTI-**
 9 **DUMPING AND COUNTERVAILING DUTY OR-**
 10 **DERS.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) COMMISSIONER.—The term ‘Commis-

13 sioner’ means the Commissioner responsible for U.S.

14 Customs and Border Protection.

15 “(2) COVERED MERCHANDISE.—

16 “(A) IN GENERAL.—The term ‘covered

17 merchandise’ means merchandise that—

18 “(i) is subject to—

19 “(I) an antidumping duty order

20 issued under section 736;

21 “(II) a finding issued under the

22 Antidumping Act, 1921; or

23 “(III) a countervailing duty order

24 issued under section 706; and

25 “(ii) is represented in any manner, in-

26 cluding by mislabeling, misidentification,

1 or misreporting of the merchandise, as
2 merchandise that—

3 “(I) is not subject to such an
4 order or finding; or

5 “(II) is subject to a lower rate of
6 duty than the rate of duty applicable
7 to the merchandise under such an
8 order or finding.

9 “(B) APPLICABILITY TO DETERMINATIONS
10 OF THE ADMINISTERING AUTHORITY.—For pur-
11 poses of investigations and determinations of
12 the administering authority under subsection
13 (b), the administering authority shall determine
14 if merchandise is covered merchandise without
15 regard to the intent of the importer.

16 “(b) PREVENTION BY ADMINISTERING AUTHOR-
17 ITY.—

18 “(1) PROCEDURES FOR INITIATING INVESTIGA-
19 TIONS.—

20 “(A) INITIATION BY ADMINISTERING AU-
21 THORITY.—An investigation under this sub-
22 section shall be initiated with respect to mer-
23 chandise imported into the United States when-
24 ever the administering authority determines,
25 from information available to the administering

1 authority, that an investigation is warranted
2 with respect to whether the merchandise is cov-
3 ered merchandise.

4 “(B) INITIATION BY PETITION OR REFER-
5 RAL.—

6 “(i) IN GENERAL.—The administering
7 authority shall determine whether to ini-
8 tiate an investigation under this subpara-
9 graph not later than 30 days after the date
10 on which the administering authority re-
11 ceives a petition described in clause (ii) or
12 a referral described in clause (iii).

13 “(ii) PETITION DESCRIBED.—A peti-
14 tion described in this clause is a petition
15 that—

16 “(I) is filed with the admin-
17 istering authority by an interested
18 party specified in subparagraph (A),
19 (C), (D), (E), (F), or (G) of section
20 771(9);

21 “(II) alleges that merchandise
22 imported into the United States is
23 covered merchandise; and

1 “(III) is accompanied by infor-
2 mation reasonably available to the pe-
3 titioner supporting those allegations.

4 “(iii) REFERRAL DESCRIBED.—A re-
5 ferral described in this clause is a referral
6 made by the Commissioner pursuant to
7 subsection (c)(2)(B).

8 “(2) TIME LIMITS FOR DETERMINATIONS.—

9 “(A) PRELIMINARY DETERMINATION.—

10 “(i) IN GENERAL.—Not later than 30
11 days after the administering authority ini-
12 tiates an investigation under paragraph (1)
13 with respect to merchandise, the admin-
14 istering authority shall issue a preliminary
15 determination, based on information avail-
16 able to the administering authority at the
17 time of the determination, with respect to
18 whether there is a reasonable basis to be-
19 lieve or suspect that the merchandise is
20 covered merchandise.

21 “(ii) EXPEDITED PROCEDURES.—If
22 the administering authority determines
23 that expedited action is warranted with re-
24 spect to an investigation initiated under
25 paragraph (1), the administering authority

1 may publish the notice of initiation of the
2 investigation and the notice of the prelimi-
3 nary determination in the Federal Register
4 at the same time.

5 “(B) FINAL DETERMINATION BY THE AD-
6 MINISTERING AUTHORITY.—The administering
7 authority shall, to the maximum extent prac-
8 ticable, issue a final determination with respect
9 to whether merchandise is covered merchandise
10 not later than 180 days after the date on which
11 the administering authority initiates an inves-
12 tigation under paragraph (1) with respect to
13 the merchandise.

14 “(3) ACCESS TO INFORMATION.—

15 “(A) ENTRY DOCUMENTS AND RECORDS.—
16 Upon receiving a request from the admin-
17 istering authority, and not later than the date
18 on which the administering authority initiates
19 an investigation under paragraph (1) with re-
20 spect to merchandise, the Commissioner shall
21 transmit to the administering authority copies
22 of the documentation and information required
23 by section 484(a)(1) with respect to the entry
24 of the merchandise.

1 “(B) ACCESS OF INTERESTED PARTIES.—
2 Not later than 10 business days after the date
3 on which the administering authority initiates
4 an investigation under paragraph (1) with re-
5 spect to merchandise, the administering author-
6 ity shall provide to the authorized representa-
7 tive of each interested party that filed a petition
8 under paragraph (1) or otherwise participates
9 in a proceeding, pursuant to a protective order,
10 the copies of the entry documentation and in-
11 formation received by the administering author-
12 ity under subparagraph (A).

13 “(4) EFFECT OF AFFIRMATIVE PRELIMINARY
14 DETERMINATION.—If the administering authority
15 makes a preliminary determination under paragraph
16 (2)(A) that merchandise is covered merchandise, the
17 administering authority shall instruct U.S. Customs
18 and Border Protection—

19 “(A) to suspend liquidation of each entry
20 of the merchandise that—

21 “(i) enters on or after the date of the
22 preliminary determination; or

23 “(ii) enters before that date, if the liq-
24 uidation of the entry is not final on that
25 date; and

1 “(B) to require the posting of a cash de-
2 posit for each entry of the merchandise in an
3 amount determined pursuant to the order or
4 finding described in subsection (a)(2)(A)(i), or
5 administrative review conducted under section
6 751, that applies to the merchandise.

7 “(5) EFFECT OF AFFIRMATIVE FINAL DETER-
8 MINATION.—

9 “(A) IN GENERAL.—If the administering
10 authority makes a final determination under
11 paragraph (2)(B) that merchandise is covered
12 merchandise, the administering authority shall
13 instruct U.S. Customs and Border Protection—

14 “(i) to assess duties on the merchan-
15 dise in an amount determined pursuant to
16 the order or finding described in subsection
17 (a)(2)(A)(i), or administrative review con-
18 ducted under section 751, that applies to
19 the merchandise;

20 “(ii) notwithstanding section 501, to
21 reliquidate, in accordance with such order,
22 finding, or administrative review, each
23 entry of the merchandise that was liq-
24 uidated—

1 “(I) on or after the date that is
2 one year before the date on which the
3 investigation was initiated under para-
4 graph (1) with respect to the mer-
5 chandise; and

6 “(II) before the date of the final
7 determination; and

8 “(iii) to review and reassess the
9 amount of bond or other security the im-
10 porter is required to post for such mer-
11 chandise entered on or after the date of
12 the final determination to ensure the pro-
13 tection of revenue and compliance with the
14 law.

15 “(B) ADDITIONAL AUTHORITY.—If the ad-
16 ministering authority makes a final determina-
17 tion under paragraph (2)(B) that merchandise
18 is covered merchandise, the administering au-
19 thority may instruct U.S. Customs and Border
20 Protection to require the importer of the mer-
21 chandise to post a cash deposit or bond on such
22 merchandise entered on or after the date of the
23 final determination in an amount the admin-
24 istering authority determines in the final deter-

1 mination to be owed with respect to the mer-
2 chandise.

3 “(6) EFFECT OF NEGATIVE FINAL DETERMINA-
4 TION.—If the administering authority makes a final
5 determination under paragraph (2)(B) that mer-
6 chandise is not covered merchandise, the admin-
7 istering authority shall terminate the suspension of
8 liquidation and refund any cash deposit imposed
9 pursuant to paragraph (4) with respect to the mer-
10 chandise.

11 “(7) SPECIAL RULE FOR CASES IN WHICH THE
12 PRODUCER OR EXPORTER IS UNKNOWN.—If the ad-
13 ministering authority is unable to determine the ac-
14 tual producer or exporter of the merchandise with
15 respect to which the administering authority initi-
16 ated an investigation under paragraph (1), the ad-
17 ministering authority shall, in requiring the posting
18 of a cash deposit under paragraph (4) or assessing
19 duties pursuant to paragraph (5)(A), impose the
20 cash deposit or duties (as the case may be) in the
21 highest amount applicable to any producer or ex-
22 porter of the merchandise pursuant to any order or
23 finding described in subsection (a)(2)(A)(i), or any
24 administrative review conducted under section 751.

1 “(8) PUBLICATION OF DETERMINATIONS.—The
2 administering authority shall publish each prelimi-
3 nary determination made under paragraph (2)(A)
4 and each final determination made under paragraph
5 (2)(B) in the Federal Register.

6 “(9) REFERRALS TO OTHER AGENCIES.—

7 “(A) AFTER PRELIMINARY DETERMINA-
8 TION.—Notwithstanding section 777 and sub-
9 ject to subparagraph (C), when the admin-
10 istering authority makes an affirmative prelimi-
11 nary determination under paragraph (2)(A), the
12 administering authority shall—

13 “(i) transmit the administrative
14 record to the Commissioner for such addi-
15 tional action as the Commissioner deter-
16 mines appropriate, including proceedings
17 under section 592; and

18 “(ii) at the request of the head of an-
19 other agency, transmit the administrative
20 record to the head of that agency.

21 “(B) AFTER FINAL DETERMINATION.—
22 Notwithstanding section 777 and subject to
23 subparagraph (C), when the administering au-
24 thority makes an affirmative final determina-

1 tion under paragraph (2)(B), the administering
2 authority shall—

3 “(i) transmit the complete administra-
4 tive record to the Commissioner; and

5 “(ii) at the request of the head of an-
6 other agency, transmit the complete ad-
7 ministrative record to the head of that
8 agency.

9 “(C) PROTECTIVE ORDERS.—Before trans-
10 mitting the administrative record with respect
11 to a proceeding to the Commissioner or the
12 head of another agency under subparagraph (A)
13 or (B), the administering authority shall verify
14 that U.S. Customs and Border Protection or
15 such other agency (as the case may be) has in
16 effect with respect to the administrative record
17 a protective order that provides the same or a
18 similar level of protection for the information in
19 the administrative record as the protective
20 order in effect with respect to such information
21 under this subsection.

22 “(c) PREVENTION BY U.S. CUSTOMS AND BORDER
23 PROTECTION.—

24 “(1) INVESTIGATIONS.—Not later than 180
25 days after the date of the enactment of the Enforce-

1 ing Orders and Reducing Circumvention and Eva-
2 sion Act of 2010, the Commissioner, in consultation
3 with the Under Secretary for International Trade of
4 the Department of Commerce and subject to the re-
5 quirements of this subsection, shall establish proce-
6 dures—

7 “(A) to permit an interested party speci-
8 fied in subparagraph (A), (C), (D), (E), (F), or
9 (G) of section 771(9) of the Tariff Act of 1930
10 (19 U.S.C. 1677(9)) to submit to U.S. Customs
11 and Border Protection a petition alleging that
12 an importer is importing covered merchandise
13 into the United States;

14 “(B) to investigate the allegations in a pe-
15 tition submitted under subparagraph (A) and
16 make determinations or referrals under para-
17 graph (2) with respect to those allegations; and

18 “(C) to notify the interested party that
19 submitted the petition of the determination or
20 referral (as the case may be) and the outcome
21 of the investigation.

22 “(2) DETERMINATIONS; REFERRALS.—Not
23 later than 60 days after a petition is submitted
24 under paragraph (1)(B), the Commissioner shall—

1 “(A) make a determination with respect to
2 whether an importer is importing covered mer-
3 chandise into the United States based on
4 whether the Commissioner has a reasonable
5 basis to believe or suspect that the importer is
6 importing such merchandise; or

7 “(B) if the Commissioner is unable to
8 make such a determination—

9 “(i) refer the matter to the admin-
10 istering authority for additional pro-
11 ceedings under subsection (b); and

12 “(ii) transmit to the administering au-
13 thority—

14 “(I) the petition submitted under
15 paragraph (1)(A);

16 “(II) copies of the entry docu-
17 ments and information required by
18 section 484(a)(1) relating to the mer-
19 chandise; and

20 “(III) to the extent otherwise
21 permitted by law, any additional
22 records or information that the Com-
23 missioner considers appropriate.

24 “(3) SUSPENSION OF LIQUIDATION AND DE-
25 POSIT REQUIREMENT.—

1 “(A) IN GENERAL.—If the Commissioner
2 makes a determination under paragraph (2)
3 that an importer is importing covered merchan-
4 dise into the United States, the Commissioner
5 shall—

6 “(i) suspend liquidation of each entry
7 of the merchandise that—

8 “(I) enters on or after the date
9 of the determination; or

10 “(II) enters before that date, if
11 the liquidation of the entry is not final
12 on that date; and

13 “(ii) with respect to each entry of the
14 merchandise referred to in clause (i), re-
15 quire the posting of a cash deposit, assess
16 any duties, and impose any other require-
17 ments that are applicable to the merchan-
18 dise under an order or finding described in
19 subsection (a)(2)(A)(i) or pursuant to an
20 administrative review conducted under sec-
21 tion 751.

22 “(B) SPECIAL RULE FOR CASES IN WHICH
23 THE PRODUCER OR EXPORTER IS UNKNOWN.—
24 If the Commissioner is unable to determine the
25 actual producer or exporter of merchandise with

1 respect to which the Commissioner initiated an
2 investigation under paragraph (1)(B), the Com-
3 missioner shall, in requiring the posting of a
4 cash deposit or assessing duties under subpara-
5 graph (A)(ii), impose the cash deposit or duties
6 (as the case may be) in the highest amount ap-
7 plicable to any producer or exporter of the mer-
8 chandise pursuant to an order or finding de-
9 scribed in subsection (a)(2)(A)(i) or an admin-
10 istrative review conducted under section 751.

11 “(d) COOPERATION BETWEEN U.S. CUSTOMS AND
12 BORDER PROTECTION AND THE DEPARTMENT OF COM-
13 MERCE.—

14 “(1) NOTIFICATION OF INVESTIGATIONS.—

15 “(A) INVESTIGATIONS BY ADMINISTERING
16 AUTHORITY.—Upon receiving a petition and
17 upon initiating an investigation under sub-
18 section (b), the administering authority shall
19 notify the Commissioner.

20 “(B) INVESTIGATIONS BY U.S. CUSTOMS
21 AND BORDER PROTECTION.—Upon initiating an
22 investigation under subsection (c), the Commis-
23 sioner shall notify the administering authority.

24 “(2) PROCEDURES FOR COOPERATION.—Not
25 later than 180 days after the date of the enactment

1 of the Enforcing Orders and Reducing Circumven-
2 tion and Evasion Act of 2010, the Commissioner
3 and the administering authority shall establish pro-
4 cedures to ensure maximum cooperation and com-
5 munication between U.S. Customs and Border Pro-
6 tection and the administering authority in order to
7 quickly, efficiently, and accurately investigate allega-
8 tions of circumvention or evasion of antidumping
9 and countervailing duty orders.

10 “(e) ANNUAL REPORT ON PREVENTING CIRCUMVEN-
11 TION AND EVASION OF ANTIDUMPING AND COUNTER-
12 VAILING DUTY ORDERS.—

13 “(1) IN GENERAL.—Not later than February
14 28 of each year beginning in 2012, the Under Sec-
15 retary for International Trade of the Department of
16 Commerce and the Commissioner shall jointly sub-
17 mit to the Committee on Finance and the Com-
18 mittee on Appropriations of the Senate and the
19 Committee on Ways and Means and the Committee
20 on Appropriations of the House of Representatives a
21 report on the efforts being taken under subsections
22 (b) and (c) to prevent circumvention and evasion of
23 antidumping and countervailing duty orders.

1 “(2) CONTENTS.—Each report required by
2 paragraph (1) shall include, for the year preceding
3 the submission of the report—

4 “(A)(i) the number of investigations initi-
5 ated pursuant to subsection (b); and

6 “(ii) a description of such investigations,
7 including—

8 “(I) the results of such investigations;

9 and

10 “(II) the amount of antidumping and
11 countervailing duties collected as a result
12 of such investigations;

13 “(B)(i) the number of petitions submitted
14 pursuant to subsection (c)(1); and

15 “(ii) a description of the investigations ini-
16 tiated by U.S. Customs and Border Protection
17 pursuant to subsection (c) and any enforcement
18 actions related to the investigations, includ-
19 ing—

20 “(I) the results of the investigations;

21 and

22 “(II) the amount of antidumping and
23 countervailing duties collected as a result
24 of the investigations;

1 “(C)(i) the number of inquiries initiated
2 pursuant to section 781; and

3 “(ii) a description of such inquiries, includ-
4 ing—

5 “(I) the results of such inquiries; and

6 “(II) the amount of antidumping and
7 countervailing duties collected as a result
8 of such inquiries; and

9 “(D) a description of investigations initi-
10 ated by other Federal agencies as a result of re-
11 ferrals under subsection (b)(10).”.

12 (b) TECHNICAL AMENDMENT.—The table of contents
13 for title VII of the Tariff Act of 1930 is amended by in-
14 serting after the item relating to section 781 the following:

 “Sec. 781A. Procedures for prevention of circumvention and evasion of anti-
 dumping and countervailing duty orders.”.

15 (c) JUDICIAL REVIEW.—Section 516A(a)(2) of the
16 Tariff Act of 1930 (19 U.S.C. 1516a(a)(2)) is amended—

17 (1) in subparagraph (A)(i)(I), by striking “or
18 (viii)” and inserting “(viii), or (ix)”; and

19 (2) in subparagraph (B), by inserting at the
20 end the following:

21 “(ix) A determination by the admin-
22 istering authority or the Commissioner re-
23 sponsible for U.S. Customs and Border
24 Protection under section 781A.”.

1 (d) TIME LIMITS FOR DETERMINATIONS OF CIR-
2 CUMVENTION.—Section 781(f) of the Tariff Act of 1930
3 (19 U.S.C. 1677(f)) is amended by striking “, to the max-
4 imum extent practicable,”.

5 (e) REGULATIONS.—Not later than 180 days after
6 the date of the enactment of this Act—

7 (1) the Secretary of Commerce shall prescribe
8 such regulations as may be necessary to carry out
9 subsection (b) of section 781A of the Tariff Act of
10 1930 (as added by subsection (a) of this section);
11 and

12 (2) the Commissioner responsible for U.S. Cus-
13 toms and Border Protection shall prescribe such reg-
14 ulations as may be necessary to carry out subsection
15 (c) of such section 781A.

16 (f) EFFECTIVE DATE.—The amendments made by
17 this section shall—

18 (1) take effect on the date that is 180 days
19 after the date of the enactment of this Act; and

20 (2) apply with respect to merchandise entered
21 on or after such date of enactment.

22 **SEC. 3. MODIFICATIONS TO PROTECTIVE ORDERS.**

23 Section 777(c)(1)(B) of the Tariff Act of 1930 (19
24 U.S.C. 1677f(c)(1)(B)) is amended to read as follows:

25 “(B) PROTECTIVE ORDER.—

1 “(i) IN GENERAL.—Except as specifi-
2 cally provided in this subparagraph, the
3 protective order under which information is
4 made available shall contain such require-
5 ments as the administering authority or
6 the Commission may determine by regula-
7 tion to be appropriate. The administering
8 authority and the Commission shall pro-
9 vide by regulation for such sanctions as the
10 administering authority and the Commis-
11 sion determine to be appropriate, including
12 disbarment from practice before the agen-
13 cy.

14 “(ii) CONCURRENT PROCEEDINGS.—
15 In the case of concurrent proceedings cov-
16 ering the same subject merchandise con-
17 ducted pursuant to subtitles A and B of
18 this title, a single protective order shall be
19 issued for both proceedings.

20 “(iii) APPLICABILITY TO PRO-
21 CEEDINGS BEFORE U.S. CUSTOMS AND
22 BORDER PROTECTION.—A protective order
23 issued pursuant to this paragraph shall au-
24 thorize the use of business proprietary in-
25 formation made available pursuant to a

1 protective order in proceedings before U.S.
2 Customs and Border Protection.”.

3 **SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE REPORT.**

4 Not later than 2 years after the date of the enact-
5 ment of this Act, the Comptroller General of the United
6 States shall submit to the Committee on Finance and the
7 Committee on Appropriations of the Senate and the Com-
8 mittee on Ways and Means and the Committee on Appro-
9 priations of the House of Representatives a report assess-
10 ing the effectiveness of—

11 (1) the provisions of, and amendments made
12 by, this Act; and

13 (2) the actions taken and procedures developed
14 by the Secretary of Commerce and the Commis-
15 sioner responsible for U.S. Customs and Border
16 Protection pursuant to such provisions and amend-
17 ments to prevent circumvention and evasion of anti-
18 dumping and countervailing duty orders under title
19 VII of the Tariff Act of 1930 (19 U.S.C. 1671 et
20 seq.).

21 **SEC. 5. ALLOCATION OF U.S. CUSTOMS AND BORDER PRO-**
22 **TECTION PERSONNEL.**

23 The Commissioner responsible for U.S. Customs and
24 Border Protection shall, to the maximum extent prac-

1 ticable, ensure that U.S. Customs and Border Protec-
2 tion—

3 (1) employs sufficient personnel who have ex-
4 pertise and responsibility for preventing the importa-
5 tion of merchandise in a manner that evades anti-
6 dumping and countervailing duty orders issued
7 under title VII of the Tariff Act of 1930 (19 U.S.C.
8 1671 et seq.); and

9 (2) assigns sufficient personnel with primary re-
10 sponsibility for preventing the importation of mer-
11 chandise in a manner that evades antidumping and
12 countervailing duty orders to the ports of entry in
13 the United States at which the Commissioner deter-
14 mines the largest quantity of merchandise imported
15 in such a manner entered the United States during
16 the most recent 2-year period for which data are
17 available.

18 **SEC. 6. APPLICATION TO CANADA AND MEXICO.**

19 Pursuant to article 1902 of the North American Free
20 Trade Agreement and section 408 of the North American
21 Free Trade Agreement Implementation Act, the amend-
22 ments made by this Act shall apply with respect to goods
23 from Canada and Mexico.

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