

111TH CONGRESS
2D SESSION

H. R. 6549

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2010

Ms. LINDA T. SÁNCHEZ of California (for herself, Mr. JONES, and Mr. CRITZ)
introduced the following bill; which was referred to the Committee on
Ways and Means

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Enforcing Orders and
5 Reducing Customs Evasion Act of 2010”.

6 **SEC. 2. PROCEDURES FOR INVESTIGATING CLAIMS OF EVA-**
7 **SION.**

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

1 **“SEC. 516B. PROCEDURES FOR INVESTIGATING CLAIMS OF**
2 **EVASION.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) ADMINISTERING AUTHORITY.—The term
5 ‘administering authority’ means the authority de-
6 scribed in section 771(1).

7 “(2) APPROPRIATE CONGRESSIONAL COMMIT-
8 TEES.—The term ‘appropriate congressional com-
9 mittees’ means—

10 “(A) the Committee on Finance and the
11 Committee on Appropriations of the Senate;
12 and

13 “(B) the Committee on Ways and Means
14 and the Committee on Appropriations of the
15 House of Representatives.

16 “(3) COMMISSIONER.—The term ‘Commis-
17 sioner’ means the Commissioner responsible for U.S.
18 Customs and Border Protection.

19 “(4) COVERED MERCHANDISE.—The term ‘cov-
20 ered merchandise’ means merchandise that is subject
21 to—

22 “(A) an antidumping order issued under
23 section 736;

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

1 “(C) a countervailing duty order issued
2 under section 706.

3 “(5) EVADE; EVASION.—The terms ‘evade’ and
4 ‘evasion’ refer to entering or introducing covered
5 merchandise into the commerce of the United States
6 by means of—

7 “(A) any document or electronically trans-
8 mitted data or information, written or oral
9 statement, or act which is material and false, or

10 “(B) any omission which is material,
11 that results in any cash deposit or other security or
12 any amount of applicable antidumping or counter-
13 vailing duties being reduced or not being applied on
14 the merchandise.

15 “(6) INTERESTED PARTY.—The term ‘inter-
16 ested party’ means an interested party as defined in
17 section 771(9).

18 “(b) CLARIFICATIONS.—

19 “(1) NEGLIGENCE OR INTENT OF IMPORTER.—
20 The Commissioner shall investigate and make deter-
21 minations regarding evasion pursuant to this section
22 without taking into consideration whether the im-
23 porter concerned intended to violate or failed to ex-
24 ercise reasonable care resulting in a violation of an
25 antidumping order or countervailing duty order

1 under section 736 or 706, respectively, or a finding
2 issued under the Antidumping Act, 1921.

3 “(2) RULE OF CONSTRUCTION RELATING TO
4 PENALTIES.—Nothing in this section limits the au-
5 thority of U.S. Customs and Border Protection to
6 assess penalties and collect applicable duties, taxes,
7 and fees, including assessment of penalties and col-
8 lection of applicable duties, taxes, and fees pursuant
9 to section 592.

10 “(c) PROCEDURES FOR INVESTIGATING CLAIMS OF
11 EVASION.—

12 “(1) INITIATION BY PETITION OR REFERRAL.—

13 “(A) IN GENERAL.—The Commissioner
14 shall initiate an investigation pursuant to this
15 paragraph not later than 10 days after the date
16 on which the Commissioner receives a petition
17 described in subparagraph (B) or a referral de-
18 scribed in subparagraph (C).

19 “(B) PETITION DESCRIBED.—A petition
20 described in this subparagraph is a petition
21 that—

22 “(i) is filed with the Commissioner by
23 any party who is an interested party with
24 respect to covered merchandise;

1 “(ii) alleges evasion with respect to
2 covered merchandise; and

3 “(iii) is accompanied by information
4 reasonably available to the petitioner sup-
5 porting such allegations.

6 “(C) REFERRAL DESCRIBED.—A referral
7 described in this subparagraph is information
8 submitted to the Commissioner by any other
9 Federal department or agency, including the
10 Department of Commerce or the United States
11 International Trade Commission, indicating
12 evasion with respect to covered merchandise.

13 “(2) DETERMINATIONS.—

14 “(A) PRELIMINARY DETERMINATION.—

15 “(i) IN GENERAL.—Not later than 60
16 days after the date on which the Commis-
17 sioner initiates an investigation under
18 paragraph (1), the Commissioner shall
19 issue a preliminary determination, based
20 on information available to the Commis-
21 sioner at the time of such determination,
22 as to whether there is a reasonable indica-
23 tion the covered merchandise was entered
24 or introduced into the United States
25 through evasion.

1 “(ii) EXTENSION.—The Commissioner
2 may extend up to 45 days the time period
3 specified in clause (i) if the Commissioner
4 determines that sufficient information to
5 make such preliminary determination is
6 not available within such time period or
7 the inquiry is unusually complex.

8 “(B) FINAL DETERMINATION.—

9 “(i) IN GENERAL.—Not later than
10 120 days after making an affirmative pre-
11 liminary determination under subpara-
12 graph (A), the Commissioner shall make a
13 final determination as to whether the cov-
14 ered merchandise was entered or intro-
15 duced into the United States through eva-
16 sion.

17 “(ii) EXTENSION.—The Commissioner
18 may extend up to 60 days the time period
19 specified in clause (i) if the Commissioner
20 determines that sufficient information to
21 make such final determination is not avail-
22 able within such time period or the inquiry
23 is unusually complex.

24 “(iii) OPPORTUNITY FOR COMMENT;
25 HEARING.—Before issuing such final deter-

1 mination, the Commissioner shall provide
2 an opportunity for public comment and, to
3 the maximum extent practicable, hold a
4 hearing as to whether the covered mer-
5 chandise was entered or introduced into
6 the United States through evasion.

7 “(C) AUTHORITY TO COLLECT AND VERIFY
8 ADDITIONAL INFORMATION.—In making a pre-
9 liminary determination under subparagraph (A)
10 or a final determination under subparagraph
11 (B), the Commissioner—

12 “(i) shall exercise all existing authori-
13 ties to collect information needed to make
14 such determinations; and

15 “(ii) may collect such additional infor-
16 mation needed to make such determina-
17 tions, including issuing questionnaires to
18 an interested party with respect to covered
19 merchandise and conducting verifications,
20 including on-site verifications, of any infor-
21 mation.

22 “(D) ADVERSE INFERENCE.—If the Com-
23 missioner finds that an interested party with re-
24 spect to covered merchandise has failed to co-
25 operate by not acting to the best of its ability

1 to comply with a request for information the
2 Commissioner may, in making a preliminary de-
3 termination under subparagraph (A) or a final
4 determination under subparagraph (B), use an
5 inference that is adverse to the interests of that
6 party in selecting from among the facts other-
7 wise available to determine whether evasion has
8 occurred. Such adverse inference may include
9 reliance on information derived from—

10 “(i) the petition;

11 “(ii) a final determination by the
12 Commissioner in an investigation under
13 this section;

14 “(iii) an investigation or review by the
15 administering authority under title VII; or

16 “(iv) any other information placed on
17 the record.

18 “(E) NOTIFICATION AND PUBLICATION.—

19 After making a preliminary determination
20 under subparagraph (A) or a final determina-
21 tion under subparagraph (B), the Commissioner
22 shall not later than 14 days after the date on
23 which such determination is made—

24 “(i) send notification of such deter-
25 mination to—

1 “(I) the administering authority;

2 “(II) any petitioning party or re-

3 ferring Federal department or agency;

4 and

5 “(III) any importer of such prod-

6 ucts; and

7 “(ii) publish such determination in the

8 Customs Bulletin.

9 “(3) BUSINESS PROPRIETARY INFORMATION.—

10 “(A) ESTABLISHMENT OF PROCEDURES.—

11 For each investigation under paragraph (1), the

12 Commissioner shall establish procedures for the

13 submission of business proprietary information

14 under an administrative protective order that

15 protects against public disclosure of such infor-

16 mation but provides limited access to parties to

17 the investigation identified in paragraph

18 (1)(B)(i) for purposes of submitting comments

19 to the Commissioner. Such procedures shall be

20 administered, to the maximum extent prac-

21 ticable, in accordance with administrative pro-

22 tective order procedures under section 777 by

23 the administering authority.

24 “(B) DISCLOSURE OF BUSINESS PROPRI-

25 ETARY INFORMATION.—The Commissioner

1 shall, in accordance with the procedures estab-
2 lished under subparagraph (A), make all busi-
3 ness proprietary information presented to, or
4 obtained by, the Commissioner during an inves-
5 tigation available to parties to the investigation
6 under an administrative protective order, re-
7 gardless of when such information is submitted
8 during an investigation.

9 “(d) EFFECT OF DETERMINATIONS.—

10 “(1) EFFECT OF AFFIRMATIVE PRELIMINARY
11 DETERMINATION.—If the Commissioner makes a
12 preliminary determination in accordance with sub-
13 section (c)(2)(A) that there is a reasonable indica-
14 tion that covered merchandise was entered or intro-
15 duced into the United States through evasion, the
16 Commissioner shall—

17 “(A)(i) suspend liquidation of each entry
18 of the covered merchandise with respect to
19 which such determination has been made that—

20 “(I) enters on or after the date of
21 such determination; or

22 “(II) entered before such date, if the
23 liquidation of such entry is not final on
24 such date; and

1 “(ii) notwithstanding section 501, reopen
2 and hold in suspension any liquidated entry
3 subject to the investigation that was liquidated
4 on or after the later of—

5 “(I) the date that is one year before
6 the date on which the investigation was
7 initiated; or

8 “(II) the date on which suspension of
9 liquidation of entries of the covered mer-
10 chandise was first ordered pursuant to title
11 VII or the Antidumping Act, 1921;

12 “(B) notify the administering authority of
13 such determination that there is a reasonable
14 indication that covered merchandise was en-
15 tered or introduced into the United States
16 through evasion and request that the admin-
17 istering authority identify the applicable cash
18 deposit rate to be applied to the entries at
19 issue; and

20 “(C) require the posting of such cash de-
21 posit for each such entry.

22 “(2) EFFECT OF NEGATIVE PRELIMINARY DE-
23 TERMINATION.—If the Commissioner makes a pre-
24 liminary determination in accordance with sub-
25 section (c)(2)(A) that there is not a reasonable indi-

1 cation that covered merchandise was entered or in-
2 troduced into the United States through evasion, the
3 Commissioner shall continue the investigation and
4 notify the administering authority pending a final
5 determination under subsection (c)(2)(B).

6 “(3)(A) EFFECT OF AFFIRMATIVE FINAL DE-
7 TERMINATION.—If the Commissioner makes a final
8 determination in accordance with subsection
9 (c)(2)(B) that covered merchandise was entered or
10 introduced into the United States through evasion,
11 the Commissioner shall—

12 “(i) suspend, or as the case may be,
13 continue to suspend liquidation of each
14 entry of merchandise with respect to which
15 such final determination has been made
16 that enters on or after the date of such de-
17 termination;

18 “(ii) notify the administering author-
19 ity of the determination that covered mer-
20 chandise was entered or introduced into
21 the United States through evasion and re-
22 quest that the administering authority—

23 “(I) identify the applicable anti-
24 dumping or countervailing duty as-
25 sessment rate for the entries for

1 which liquidation is suspended under
2 subclause (I) or (II) of paragraph
3 (1)(A)(i) or clause (i) of this subpara-
4 graph; or

5 “(II) if no such assessment rates
6 are available at the time, identify the
7 applicable cash deposit rate to be ap-
8 plied to the entries under clause (i),
9 with the applicable antidumping or
10 countervailing duty assessment rates
11 to be provided as soon as such rates
12 become available;

13 “(iii) require the posting of cash de-
14 posits and assess duties on each entry in
15 accordance with the instructions received
16 from the administering authority under
17 paragraph (5);

18 “(iv) review and reassess the amount
19 of bond or other security the importer is
20 required to post for such merchandise en-
21 tered on or after the date of such deter-
22 mination to ensure the protection of rev-
23 enue and compliance with the law; and

1 “(v) take such additional enforcement
2 measures as the Commissioner determines
3 appropriate, such as—

4 “(I) initiating proceedings under
5 sections 592 or 596;

6 “(II) implementing, in consulta-
7 tion with the relevant Federal depart-
8 ments and agencies, rule sets or modi-
9 fications to rules sets for identifying,
10 particularly through the Automated
11 Targeting System, importers, other
12 parties, and merchandise that may be
13 associated with evasion;

14 “(III) requiring, with respect to
15 merchandise for which the importer
16 has repeatedly provided incomplete or
17 erroneous entry summary information
18 in connection with determinations of
19 evasion, the importer to submit entry
20 summary documentation and to de-
21 posit estimated duties at the time of
22 entry;

23 “(IV) referring the record in
24 whole or in part to U.S. Immigration

1 and Customs Enforcement for crimi-
2 nal investigation; and

3 “(V) transmitting the adminis-
4 trative record to the administering au-
5 thority for further appropriate pro-
6 ceedings.

7 “(B) SPECIAL RULE.—Notwithstanding
8 the initiation of an investigation under sub-
9 section (c) or a final determination under para-
10 graph (2)(B) of such subsection, the Commis-
11 sioner may pursue all enforcement measures
12 against an evasion of antidumping or counter-
13 vailing duties as the Commissioner determines
14 necessary, including enforcement measures de-
15 scribed in subclauses (I) through (IV) of sub-
16 paragraph (A)(v).

17 “(4) EFFECT OF NEGATIVE FINAL DETERMINA-
18 TION.—If the Commissioner makes a final deter-
19 mination in accordance with subsection (c)(2)(B)
20 that covered merchandise was not entered or intro-
21 duced into the United States through evasion, the
22 Commissioner shall terminate the suspension of liq-
23 uidation pursuant to paragraph (1)(A) and refund
24 any cash deposits collected pursuant to paragraph
25 (1)(C).

1 “(5) ADMINISTERING AUTHORITY.—

2 “(A) IN GENERAL.—Upon receiving a noti-
3 fication from the Commissioner under para-
4 graph (1)(B) or (3)(A)(ii), the administering
5 authority shall promptly provide to the Commis-
6 sioner the applicable cash deposit rates and
7 antidumping or countervailing duty assessment
8 rates and any necessary liquidation instruc-
9 tions.

10 “(B) SPECIAL RULE FOR CASES IN WHICH
11 THE PRODUCER OR EXPORTER IS UNKNOWN.—
12 If the Commissioner and administering author-
13 ity are unable to determine the producer or ex-
14 porter of the merchandise with respect to which
15 a notification is made under paragraph (1)(B)
16 or (3)(A)(ii), the administering authority shall
17 identify, as the applicable cash deposit rate or
18 antidumping or countervailing duty assessment
19 rate, the cash deposit or duty (as the case may
20 be) in the highest amount applicable to any
21 producer or exporter, including the ‘all other’
22 rate of the merchandise subject to an anti-
23 dumping order or countervailing duty order
24 under section 736 or 706, respectively, or a
25 finding issued under the Antidumping Act,

1 1921, or any administrative review conducted
2 under section 751.”.

3 (b) TECHNICAL AMENDMENT.—Clause (ii) of section
4 777(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C.
5 1677f(b)(1)(A)) is amended to read as follows:

6 “(ii) to an officer or employee of U.S.
7 Customs and Border Protection who is di-
8 rectly involved in conducting an investiga-
9 tion regarding fraud under this title or
10 claims of evasion under section 516B.”.

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

13 (1) in subparagraph (A)—

14 (A) in clause (i)(III), by striking “or” at
15 the end;

16 (B) in clause (ii), by adding “or” at the
17 end; and

18 (C) by adding at the end the following new
19 clause:

20 “(iii) the date of publication in the
21 Customs Bulletin of a final determination
22 described in clause (ix) of subparagraph
23 (B),”; and

24 (2) in subparagraph (B), by adding at the end
25 the following new clause:

1 “(ix) A final determination by the
2 Commissioner responsible for U.S. Cus-
3 toms and Border Protection under section
4 516B.”.

5 (d) FINALITY OF DETERMINATIONS.—Section 514(b)
6 of the Tariff Act of 1930 (19 U.S.C. 1514(b)) is amended
7 by striking “section 303” and all that follows through
8 “which are reviewable” and inserting “section 303, section
9 516B, or title VII which are reviewable”.

10 **SEC. 3. ALLOCATION OF U.S. CUSTOMS AND BORDER PRO-**
11 **TECTION PERSONNEL.**

12 (a) REASSIGNMENT AND ALLOCATION.—The Com-
13 missioner responsible for U.S. Customs and Border Pro-
14 tection shall, to the maximum extent possible, ensure that
15 U.S. Customs and Border Protection—

16 (1) employs sufficient personnel who have ex-
17 pertise and responsibility for preventing the importa-
18 tion of merchandise in a manner that evades an
19 antidumping order or countervailing duty order
20 under section 736 or 706, respectively, of the Tariff
21 Act of 1930, or a finding issued under the Anti-
22 dumping Act, 1921; and

23 (2) on the basis of risk assessment metrics, as-
24 signs sufficient personnel with primary responsibility
25 for preventing the importation of merchandise in a

1 manner that evades an antidumping order or coun-
2 tervening duty order under section 736 or 706, re-
3 spectively, of the Tariff Act of 1930, or a finding
4 issued under the Antidumping Act, 1921 to the
5 ports of entry in the United States at which the
6 Commissioner determines the most substantial
7 threats to revenue exist.

8 (b) COMMERCIAL ENFORCEMENT OFFICERS.—

9 (1) IN GENERAL.—Not later than September
10 30, 2011, and subject to the availability of appro-
11 priations, the Commissioner shall hire not less than
12 an additional 100 full-time equivalent personnel to
13 serve as Commercial Enforcement Officers within
14 the Office of Field Operations.

15 (2) ASSIGNMENT.—The Commissioner shall as-
16 sign Commercial Enforcement Officers hired under
17 paragraph (1) among the 20 United States ports of
18 entry that experienced the highest volume of trade
19 during fiscal year 2009.

20 (3) DUTIES.—The duties of a Commercial En-
21 forcement Officer hired under paragraph (1) shall be
22 principally related to the enforcement of priority
23 trade issues as identified by the Commissioner, and
24 shall include—

1 (A) supervising all trade enforcement ac-
2 tivities of personnel of the Office of Field Oper-
3 ations at the port of entry to which the Com-
4 mercial Enforcement Officer has been assigned;

5 (B) coordinating with the Office of Inter-
6 national Trade all trade enforcement activities
7 at such port of entry;

8 (C) directing the training of personnel at
9 such port of entry to effectuate the trade en-
10 forcement activities of the Office of Field Oper-
11 ations; and

12 (D) otherwise conducting trade enforce-
13 ment activities at such port of entry.

14 (4) AUTHORIZATION OF APPROPRIATIONS.—
15 There are authorized to be appropriated to carry out
16 this subsection \$20,000,000 for fiscal year 2012 and
17 each fiscal year thereafter.

18 **SEC. 4. REGULATIONS.**

19 (a) IN GENERAL.—Not later than 240 days after the
20 date of the enactment of this Act, the Commissioner re-
21 sponsible for U.S. Customs and Border Protection shall
22 issue regulations to carry out this Act and the amend-
23 ments made by this Act.

24 (b) COOPERATION BETWEEN U.S. CUSTOMS AND
25 BORDER PROTECTION AND DEPARTMENT OF COM-

1 MERCE.—Not later than 240 days after the date of the
2 enactment of this Act, the Commissioner and the Sec-
3 retary of Commerce shall establish procedures to ensure
4 maximum cooperation and communication between U.S.
5 Customs and Border Protection and the Department of
6 Commerce in order to quickly, efficiently, and accurately
7 investigate allegations of evasion under this Act and the
8 amendments made by this Act.

9 **SEC. 5. ANNUAL REPORT ON PREVENTION OF EVASION OF**
10 **ANTIDUMPING AND COUNTERVAILING DUTY**
11 **ORDERS.**

12 (a) IN GENERAL.—Not later than February 28 of
13 each year, beginning in 2012, the Commissioner respon-
14 sible for U.S. Customs and Border Protection, in consulta-
15 tion with the Secretary of Commerce, shall submit to the
16 appropriate congressional committees a report on the ef-
17 forts being taken to prevent evasion pursuant to section
18 516B of the Tariff Act of 1930 (as added by section 2
19 of this Act).

20 (b) CONTENTS.—Each report required under sub-
21 section (a) shall include, for the immediately preceding
22 year—

23 (1) the number and a brief description of peti-
24 tions and referrals received pursuant to section

1 516B(c)(1) of the Tariff Act of 1930 (as added by
2 section 2 of this Act);

3 (2) the results of such investigations, including
4 any related enforcement actions, and the amount of
5 antidumping and countervailing duties collected as a
6 result of such investigations; and

7 (3) to the extent appropriate, a summary of the
8 efforts of U.S. Customs and Border Protection,
9 other than efforts initiated pursuant section 516B of
10 the Tariff Act of 1930 (as added by section 2 of this
11 Act), to prevent evasion.

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

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

18 **SEC. 7. DEFINITIONS.**

19 In this Act, the terms “appropriate congressional
20 committees”, “Commissioner”, and “evade” and “eva-
21 sion” have the meaning given such terms in section
22 516B(a) of the Tariff Act of 1930 (as added by section
23 2 of this Act).

○