

## Calendar No. 500

112TH CONGRESS  
2D 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 iden-  
3           tify, 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 rrently 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

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> 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