

118TH CONGRESS
1ST SESSION

S. 1856

To amend the Tariff Act of 1930 to improve the administration of antidumping and countervailing duty laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2023

Mr. BROWN (for himself, Mr. YOUNG, Ms. KLOBUCHAR, Mr. BRAUN, Mr. MANCHIN, Mr. TUBERVILLE, Ms. BALDWIN, Mr. COTTON, Mr. CASEY, Mrs. CAPITO, Mr. FETTERMAN, Mr. VANCE, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Tariff Act of 1930 to improve the administration of antidumping and countervailing duty laws, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Leveling the Playing Field 2.0 Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SUCCESSIVE INVESTIGATIONS

- Sec. 101. Establishment of special rules for determination of material injury in the case of successive antidumping and countervailing duty investigations.
- Sec. 102. Initiation of successive antidumping and countervailing duty investigations.
- Sec. 103. Issuance of determinations with respect to successive antidumping and countervailing duty investigations.

TITLE II—RESPONDING TO MARKET DISTORTIONS

- Sec. 201. Addressing cross-border subsidies in countervailing duty investigations.
- Sec. 202. Modification of definition of ordinary course of trade to specify that an insufficient quantity of foreign like products constitutes a situation outside the ordinary course of trade.
- Sec. 203. Modification of adjustments to export price and constructed export price with respect to duty drawback.
- Sec. 204. Modification of determination of normal value to account for distortions of costs that occur in foreign countries.
- Sec. 205. Special rules for calculation of cost of production and constructed value to address distorted costs.

TITLE III—PREVENTING CIRCUMVENTION

- Sec. 301. Modification of requirements in circumvention inquiries.
- Sec. 302. Requirement of provision by importer of certification by importer or other party.
- Sec. 303. Clarification of authority for Department of Commerce regarding merchandise covered by antidumping and countervailing duty proceedings.
- Sec. 304. Asset requirements applicable to nonresident importers.

TITLE IV—COUNTERING CURRENCY UNDERVALUATION

- Sec. 401. Investigation or review of currency undervaluation under countervailing duty law.
- Sec. 402. Determination of benefit with respect to currency undervaluation.

TITLE V—PREVENTING DUTY EVASION

- Sec. 501. Limitation on protest against decisions of U.S. Customs and Border Protection of claims of evasion of antidumping and countervailing duty orders.
- Sec. 502. Procedures for investigating claims of evasion of safeguard actions.
- Sec. 503. Application of provisions relating to certain proprietary information.

TITLE VI—GENERAL PROVISIONS

- Sec. 601. Application to Canada and Mexico.
- Sec. 602. Effective date.

**TITLE I—SUCCESSIVE
INVESTIGATIONS**

**SEC. 101. ESTABLISHMENT OF SPECIAL RULES FOR DETER-
MINATION OF MATERIAL INJURY IN THE
CASE OF SUCCESSIVE ANTIDUMPING AND
COUNTERVAILING DUTY INVESTIGATIONS.**

(a) IN GENERAL.—Section 771(7) of the Tariff Act of 1930 (19 U.S.C. 1677(7)) is amended—

(1) by redesignating subparagraphs (E) through (J) as subparagraphs (F) through (K), respectively;

(2) in subparagraph (I), as redesignated by paragraph (1)—

(A) by striking “subparagraph (G)(ii)” and inserting “subparagraph (H)(ii)”; and

(B) by striking “subparagraph (F)” and inserting “subparagraph (G)”; and

(3) by inserting after subparagraph (D) the following:

“(E) SPECIAL RULES FOR SUCCESSIVE INVESTIGATIONS.—

“(i) IN GENERAL.—

“(I) EVALUATION OF IMPACT ON DOMESTIC INDUSTRY.—In evaluating the impact of imports of the merchan-

1 dise on producers of domestic like
2 products under subparagraph (C)(iii),
3 the Commission shall—

4 “(aa) consider the condition
5 of the domestic industry as found
6 in a recently completed investiga-
7 tion;

8 “(bb) consider the effect of
9 a concurrent investigation or re-
10 cently completed investigation on
11 trade and the financial perform-
12 ance of the domestic industry, in-
13 cluding whether the imports are
14 likely to lead to the continuation
15 or recurrence of material injury
16 determined by the Commission in
17 any concurrent investigation or
18 recently completed investigation;
19 and

20 “(cc) include in the record
21 any prior injury determinations
22 by the Commission with respect
23 to imports of the merchandise.

24 “(II) EFFECT OF RECENT IM-
25 PROVEMENT ON MATERIAL INJURY

1 DETERMINATION.—For the purposes
2 of this subparagraph, the Commission
3 may not find that there is no material
4 injury or threat of material injury to
5 a domestic industry solely based on
6 recent improvements in the industry’s
7 performance, such as an increase in
8 sales, market share, or profitability of
9 domestic producers, that are related
10 to relief granted pursuant to a con-
11 current investigation or recently com-
12 pleted investigation.

13 “(ii) RETROACTIVE APPLICATION OF
14 FINAL DETERMINATION.—In making any
15 finding under section 705(b)(4)(A) or
16 735(b)(4)(A) in a successive investigation,
17 the Commission shall consider that a con-
18 current investigation or recently completed
19 investigation contributes to the likelihood
20 that the remedial effect of the counter-
21 vailing duty order to be issued under sec-
22 tion 706 or the antidumping duty order to
23 be issued under section 736 will be seri-
24 ously undermined.”.

1 (b) DEFINITIONS.—Section 771 of the Tariff Act of
2 1930 (19 U.S.C. 1677) is amended by adding at the end
3 the following:

4 “(37) TREATMENT OF SUCCESSIVE INVESTIGA-
5 TIONS.—For purposes of paragraph (7)(E) and sec-
6 tions 702(f), 732(f), and 784:

7 “(A) CONCURRENT INVESTIGATION.—The
8 term ‘concurrent investigation’ means an ongo-
9 ing investigation in which an affirmative deter-
10 mination under section 703(a) or 733(a) has
11 been made by the Commission with respect to
12 imports of a class or kind of merchandise that
13 are the same or similar to imports of a class or
14 kind of merchandise that are the subject of a
15 successive investigation.

16 “(B) RECENTLY COMPLETED INVESTIGA-
17 TION.—The term ‘recently completed investiga-
18 tion’ means a completed investigation in which
19 an affirmative determination under section
20 705(b) or 735(b) was issued by the Commission
21 with respect to imports of a class or kind of
22 merchandise that are the same or similar to im-
23 ports of a class or kind of merchandise that are
24 the subject of a successive investigation not

1 more than 2 years before the date of initiation
2 of the successive investigation.

3 “(C) SUCCESSIVE INVESTIGATION.—The
4 term ‘successive investigation’ means an inves-
5 tigation that has been initiated by the admin-
6 istering authority following a petition filed pur-
7 suant to section 702(f) or 732(f).”.

8 **SEC. 102. INITIATION OF SUCCESSIVE ANTIDUMPING AND**
9 **COUNTERVAILING DUTY INVESTIGATIONS.**

10 (a) COUNTERVAILING DUTY INVESTIGATION.—Sec-
11 tion 702 of the Tariff Act of 1930 (19 U.S.C. 1671a) is
12 amended by adding at the end the following:

13 “(f) INITIATION BY ADMINISTERING AUTHORITY OF
14 SUCCESSIVE COUNTERVAILING DUTY INVESTIGATION.—
15 A successive investigation shall be initiated—

16 “(1) under subsection (a), if—

17 “(A) the requirements under that sub-
18 section are met with respect to imports of a
19 class or kind of merchandise; and

20 “(B) imports of the same or similar class
21 or kind of merchandise are or have been the
22 subject of a concurrent investigation or recently
23 completed investigation; or

24 “(2) under subsection (b), if—

1 “(A) the determinations under clauses (i)
2 and (ii) of subsection (c)(1)(A) are affirmative
3 with respect to imports of a class or kind of
4 merchandise; and

5 “(B) imports of the same or similar class
6 or kind of merchandise are or have been the
7 subject of a concurrent investigation or recently
8 completed investigation.”.

9 (b) ANTIDUMPING DUTY INVESTIGATION.—Section
10 732 of the Tariff Act of 1930 (19 U.S.C. 1673a) is
11 amended by adding at the end the following:

12 “(f) INITIATION BY ADMINISTERING AUTHORITY OF
13 SUCCESSIVE ANTIDUMPING DUTY INVESTIGATION.—A
14 successive investigation shall be initiated—

15 “(1) under subsection (a), if—

16 “(A) the requirements under that sub-
17 section are met with respect to imports of a
18 class or kind of merchandise; and

19 “(B) imports of the same or similar class
20 or kind of merchandise are or have been the
21 subject of a concurrent investigation or recently
22 completed investigation; or

23 “(2) under subsection (b), if—

24 “(A) the determinations under clauses (i)
25 and (ii) of subsection (c)(1)(A) are affirmative

1 with respect to imports of a class or kind of
 2 merchandise; and

3 “(B) imports of the same or similar class
 4 or kind of merchandise are or have been the
 5 subject of a concurrent investigation or recently
 6 completed investigation.”.

7 **SEC. 103. ISSUANCE OF DETERMINATIONS WITH RESPECT**
 8 **TO SUCCESSIVE ANTIDUMPING AND COUN-**
 9 **TERVAILING DUTY INVESTIGATIONS.**

10 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
 11 iff Act of 1930 (19 U.S.C. 1677 et seq.) is amended by
 12 adding at the end the following:

13 **“SEC. 784. DETERMINATIONS RELATING TO SUCCESSIVE IN-**
 14 **VESTIGATIONS.**

15 “(a) IN GENERAL.—Notwithstanding any other pro-
 16 vision of this title, the administering authority—

17 “(1) with respect to a successive investigation
 18 under section 702(f)—

19 “(A) shall issue a preliminary determina-
 20 tion under section 703(b) not later than 85
 21 days after initiating the investigation;

22 “(B) may not postpone under section
 23 703(c) such deadline for the issuance of a pre-
 24 liminary determination unless requested by the
 25 petitioner;

1 “(C) upon receipt of an allegation by the
2 petitioner pursuant to section 703(e), shall
3 make a determination under section 703(e) with
4 respect to the investigation;

5 “(D) shall issue a final determination
6 under section 705(a) not later than 75 days
7 after issuing the preliminary determination
8 under subparagraph (A); and

9 “(E) shall extend the date of the final de-
10 termination under section 705(a) if requested
11 by the petitioner; and

12 “(2) with respect to a successive investigation
13 under section 732(f)—

14 “(A) shall issue a preliminary determina-
15 tion under section 733(b) not later than 140
16 days after initiating the investigation;

17 “(B) may not postpone under section
18 733(c) such deadline for the issuance of a pre-
19 liminary determination unless requested by the
20 petitioner;

21 “(C) upon receipt of an allegation by the
22 petitioner pursuant to section 733(e), shall
23 make a determination under section 733(e) with
24 respect to the investigation;

1 “(D) shall issue a final determination
2 under section 735(a) not later than 75 days
3 after issuing the preliminary determination
4 under subparagraph (A); and

5 “(E) may extend the date of the final de-
6 termination under section 735(a)(2) if re-
7 quested by the petitioner.”.

8 (b) CLERICAL AMENDMENT.—The table of contents
9 for the Tariff Act of 1930 is amended by inserting after
10 the item relating to section 783 the following:

“Sec. 784. Determinations relating to successive investigations.”.

11 **TITLE II—RESPONDING TO**
12 **MARKET DISTORTIONS**

13 **SEC. 201. ADDRESSING CROSS-BORDER SUBSIDIES IN**
14 **COUNTERVAILING DUTY INVESTIGATIONS.**

15 (a) IN GENERAL.—Section 701(d) of the Tariff Act
16 of 1930 (19 U.S.C. 1671(d)) is amended—

17 (1) in the subsection heading, by striking
18 “TREATMENT OF INTERNATIONAL CONSORTIA” and
19 inserting “CUMULATION OF CROSS-BORDER SUB-
20 SIDIES”;

21 (2) by striking “For purposes” and inserting
22 the following:

23 “(1) INTERNATIONAL CONSORTIA AND MULTI-
24 NATIONAL CORPORATIONS.—For purposes”;

1 (3) in paragraph (1), as designated by para-
2 graph (2)—

3 (A) by inserting after “in their respective
4 home countries,” the following: “or multi-
5 national corporations that are engaged in the
6 production of subject merchandise receive
7 countervailable subsidies to assist, permit, or
8 otherwise enable their production or manufac-
9 turing operations in the country in which the
10 class or kind of merchandise is produced, ex-
11 ported, or sold (or likely to be sold) for impor-
12 tation into the United States,”; and

13 (B) by inserting after “the international
14 consortium” the following: “or multinational
15 corporation”; and

16 (4) by adding at the end the following:

17 “(2) TRANSNATIONAL SUBSIDIES.—

18 “(A) IN GENERAL.—For purposes of this
19 subtitle, if there is a countervailable subsidy by
20 a government of a third country or any public
21 entity within the territory of a third country
22 with respect to the manufacture, production, or
23 export of a class or kind of merchandise that is
24 produced, exported, or sold (or likely to be sold)
25 for importation into the United States from the

1 territory of the subject country, and the govern-
2 ment of the subject country or any public entity
3 within the territory of the subject country facili-
4 tates the provision of such subsidy, then the ad-
5 ministering authority shall treat the subsidy as
6 having been provided by the government of the
7 subject country or a public entity within the
8 territory of the subject country and shall cumu-
9 late all such countervailable subsidies, as well
10 as countervailable subsidies provided directly or
11 indirectly by the government or any public enti-
12 ty within the territory of the subject country.

13 “(B) APPLICATION.—This paragraph shall
14 be applied in a manner consistent with the
15 international obligations of the United States.”.

16 (b) DEFINITIONS.—Section 771 of the Tariff Act of
17 1930 (19 U.S.C. 1677) is amended—

18 (1) in paragraph (5A), by inserting after sub-
19 paragraph (D) the following:

20 “(E) TRANSNATIONAL SUBSIDY.—In deter-
21 mining whether a transnational subsidy is a
22 specific subsidy, in law or in fact, the admin-
23 istering authority shall examine the situation in
24 the subject country based on subparagraphs
25 (B), (C), and (D).”;

1 (2) in paragraph (9)—

2 (A) in subparagraph (F), by striking
3 “and” at the end;

4 (B) in subparagraph (G), by striking the
5 period at the end and inserting “, and”; and

6 (C) by adding at the end the following:

7 “(H) in any proceeding under subtitle A
8 involving a transnational subsidy, the govern-
9 ment of the third country.”; and

10 (3) by adding at the end the following:

11 “(38) MULTINATIONAL CORPORATION.—The
12 term ‘multinational corporation’ means a person,
13 firm, or corporation that owns or controls, directly
14 or indirectly, facilities for the production of subject
15 merchandise in two or more foreign countries.”.

16 (c) UPSTREAM SUBSIDIES.—Section 771A of the
17 Tariff Act of 1930 (19 U.S.C. 1677–1) is amended by
18 adding at the end the following:

19 “(d) MULTINATIONAL CORPORATIONS.—

20 “(1) IN GENERAL.—This section shall apply to
21 purchases of input products by multinational cor-
22 porations if—

23 “(A) the multinational corporation manu-
24 factures or produces merchandise in a country

1 that is the subject of a countervailing duty pro-
2 ceeding;

3 “(B) the multinational corporation pur-
4 chases the input product from a cross-owned
5 company located in a third country with respect
6 to which the administering authority has made
7 an affirmative determination under section
8 703(b)(1) or 705(a)(1) with respect to a
9 countervailable subsidy provided—

10 “(i) for the manufacture, production,
11 or exportation of that input product; or

12 “(ii) to that cross-owned company;
13 and

14 “(C) in the judgment of the administering
15 authority, the countervailing subsidy described
16 in subparagraph (B) bestows a competitive ben-
17 efit on that merchandise.

18 “(2) TIMING OF SUBSIDY.—If a countervailable
19 subsidy is provided to a multinational corporation or
20 a cross-owned company that did not exist at the
21 time the administering authority made an affirma-
22 tive determination described in paragraph (1)(B),
23 the administering authority is not precluded from
24 examining the subsidy under paragraph (1).

1 “(3) APPLICATION.—This subsection shall be
2 applied in a manner consistent with the inter-
3 national obligations of the United States.

4 “(4) DEFINITIONS.—In this subsection:

5 “(A) CROSS-OWNED COMPANY; MULTI-
6 NATIONAL CORPORATION.—The terms ‘cross-
7 owned company’ and ‘multinational corporation’
8 have the meanings given those terms as defined
9 by the administering authority by regulation.

10 “(B) UPSTREAM SUBSIDY.—The term ‘up-
11 stream subsidy’ has the meaning given that
12 term in subsection (a), except that the term
13 shall include an export subsidy.”.

14 **SEC. 202. MODIFICATION OF DEFINITION OF ORDINARY**
15 **COURSE OF TRADE TO SPECIFY THAT AN IN-**
16 **SUFFICIENT QUANTITY OF FOREIGN LIKE**
17 **PRODUCTS CONSTITUTES A SITUATION OUT-**
18 **SIDE THE ORDINARY COURSE OF TRADE.**

19 Section 771(15) of the Tariff Act of 1930 (19 U.S.C.
20 1677(15)) is amended by adding at the end the following:

21 “(D) Situations in which the quantity of a
22 foreign like product selected for comparison
23 under section 771(16) is insufficient to estab-
24 lish a proper comparison to the export price or
25 constructed export price.”.

1 **SEC. 203. MODIFICATION OF ADJUSTMENTS TO EXPORT**
2 **PRICE AND CONSTRUCTED EXPORT PRICE**
3 **WITH RESPECT TO DUTY DRAWBACK.**

4 Section 772(c)(1)(B) of the Tariff Act of 1930 (19
5 U.S.C. 1677a(c)(1)(B)) is amended—

6 (1) by striking “any”; and

7 (2) by inserting after “United States” the fol-
8 lowing: “, but that amount shall not exceed the per
9 unit amount of such duties contained in the weight-
10 ed average cost of production”.

11 **SEC. 204. MODIFICATION OF DETERMINATION OF NORMAL**
12 **VALUE TO ACCOUNT FOR DISTORTIONS OF**
13 **COSTS THAT OCCUR IN FOREIGN COUNTRIES.**

14 (a) NORMAL VALUE.—

15 (1) IN GENERAL.—Section 773(b)(3) of the
16 Tariff Act of 1930 (19 U.S.C. 1677b(b)(3)) is
17 amended—

18 (A) in subparagraph (A), by striking
19 “business” and inserting “trade”; and

20 (B) in the flush text after subparagraph
21 (C), by inserting before “For purposes” the fol-
22 lowing: “For purposes of subparagraph (A), if
23 a particular market situation exists such that
24 the cost of materials and fabrication or other
25 processing of any kind does not reasonably re-
26 flect the cost of production in the ordinary

1 course of trade, the administering authority
 2 may use another calculation methodology under
 3 this subtitle or any other calculation method-
 4 ology.”.

5 (2) REFLECTION OF COSTS OF PRODUCTION.—
 6 Section 773(e) of the Tariff Act of 1930 (19 U.S.C.
 7 1677b(e)) is amended, in the first sentence of the
 8 flush text after paragraph (3), by striking “accu-
 9 rately” and inserting “reasonably”.

10 (b) MODIFICATION OF DEFINITION OF ORDINARY
 11 COURSE OF TRADE.—Section 771(15) of the Tariff Act
 12 of 1930 (19 U.S.C. 1677(15)(C)) is amended—

13 (1) by redesignating subparagraphs (A) through
 14 (C) as clauses (i) through (iii), respectively, and
 15 moving those clauses, as so redesignating, two ems
 16 to the right;

17 (2) by striking “The term” and inserting the
 18 following:

19 “(A) IN GENERAL.—The term”;

20 (3) in subparagraph (A), as designated by para-
 21 graph (2), in clause (iii), as redesignated by para-
 22 graph (1)—

23 (A) by striking “that the particular market
 24 situation prevents” and inserting “that a par-
 25 ticular market situation exists that—

1 “(I) prevents”;

2 (B) in subclause (I), as designated by sub-
 3 paragraph (A), by striking the period at the
 4 end and inserting “, relating to normal value
 5 determined under subsection (a) of section 773;
 6 or”; and

7 (C) by adding at the end the following:

8 “(II) distorts costs of production,
 9 relating to normal value determined
 10 under subsections (b) and (e) of sec-
 11 tion 773.”; and

12 (4) by adding at the end the following:

13 “(B) COST OF PRODUCTION.—For pur-
 14 poses of making a determination under sub-
 15 paragraph (A)(iii)(II) with respect to subject
 16 merchandise, the administering authority shall
 17 determine that a particular market situation ex-
 18 ists that distorts costs of production if a par-
 19 ticular market situation exists such that the
 20 cost of materials and fabrication or other proc-
 21 essing of any kind does not reasonably reflect
 22 the cost of production in the ordinary course of
 23 trade.”.

24 (c) DEFINITION OF PARTICULAR MARKET SITUA-
 25 TION.—Section 771 of the Tariff Act of 1930 (19 U.S.C.

1 1677), as amended by sections 101(b) and 201(b)(3), is
2 further amended by adding at the end the following:

3 “(39) PARTICULAR MARKET SITUATION.—

4 “(A) IN GENERAL.—The term ‘particular
5 market situation’ means a certain circumstance
6 or set of circumstances that the administering
7 authority determines either prevents a proper
8 comparison of prices in the comparison market
9 with the export price or constructed export
10 price or distorts the costs of production of the
11 subject merchandise.

12 “(B) DISTORTION OF COSTS OF PRODUC-
13 TION.—

14 “(i) EXAMPLES OF DISTORTIONS OF
15 COSTS OF PRODUCTION THAT MAY CREATE
16 A PARTICULAR MARKET SITUATION.—Ex-
17 amples of circumstances that are likely to
18 distort the costs of production and thus
19 are deemed to create a particular market
20 situation for subject merchandise for pur-
21 poses of subparagraph (A) include the fol-
22 lowing circumstances:

23 “(I) An input into the production
24 of subject merchandise is produced in
25 such amounts that there is more sup-

1 ply than demand in international mar-
2 kets for the input.

3 “(II) A foreign government, a
4 state-owned enterprise, or any other
5 public body is the predominant pro-
6 ducer or supplier of an input into the
7 production of subject merchandise.

8 “(III) A foreign government in-
9 tervenes in the market for an input
10 into the production of subject mer-
11 chandise.

12 “(IV) A foreign government lim-
13 its exports of an input into the pro-
14 duction of subject merchandise.

15 “(V) A foreign government im-
16 poses export taxes on an input into
17 the production of subject merchan-
18 dise.

19 “(VI) A foreign government ex-
20 empts an importer, producer, or ex-
21 porter of subject merchandise from
22 paying duties or taxes associated with
23 trade remedies established by the for-
24 eign government relating to an input

1 into the production of subject mer-
2 chandise.

3 “(VII) A foreign government re-
4 bates duties or taxes paid by an im-
5 porter, producer, or exporter of sub-
6 ject merchandise associated with trade
7 remedies established by the foreign
8 government related to an input into
9 the production of subject merchan-
10 dise.

11 “(VIII) A foreign government
12 provides financial assistance or sup-
13 port to the producer or exporter of
14 subject merchandise, or to a producer
15 or supplier of an input into the pro-
16 duction of subject merchandise.

17 “(IX) A foreign government
18 takes action that influences the pro-
19 duction of subject merchandise or an
20 input into the production of subject
21 merchandise, such as domestic content
22 and technology transfer requirements.

23 “(X) A foreign government does
24 not enforce its property (including in-
25 tellectual property), human rights,

1 labor, or environmental protection
2 laws and policies, or those laws and
3 policies are otherwise shown to be in-
4 effective with respect to either a pro-
5 ducer or exporter of subject merchan-
6 dise, or to a producer or supplier of
7 an input into the production of sub-
8 ject merchandise in the subject coun-
9 try.

10 “(XI) A foreign government does
11 not implement property (including in-
12 tellectual property), human rights,
13 labor, or environmental protection
14 laws and policies.

15 “(XII) A business relationship
16 between one or more producers of
17 subject merchandise and suppliers of
18 inputs to the production of subject
19 merchandise is such that prices of the
20 inputs are not determined in accord-
21 ance with general market principles,
22 such as through a strategic alliance or
23 noncompetitive arrangement.

24 “(ii) DISTORTIONS CAUSED BY PAR-
25 TICULAR MARKET SITUATIONS NEED NOT

1 BE QUANTIFIED.—If the administering au-
2 thority determines the existence of a par-
3 ticular market situation under subpara-
4 graph (A) but cannot measure the distor-
5 tions caused by that particular market sit-
6 uation on prices or costs in the exporting
7 country, the administering authority is not
8 required to quantify those distortions and
9 may use any available information and
10 methodology to address those distortions in
11 its analysis and calculations.

12 “(iii) PARTICULAR MARKET SITUA-
13 TIONS MAY EXIST IN MULTIPLE COUN-
14 TRIES.—

15 “(I) IN GENERAL.—The same
16 market situation, or a similar market
17 situation, that distorts the costs of
18 production of the subject merchandise
19 can exist in multiple countries or mar-
20 kets and still be considered particular
21 if the administering authority deter-
22 mines that a market situation exists
23 that distorts costs of production for
24 certain products or parties in the sub-
25 ject country.

1 “(II) NO LIMITATION.—There is
2 no limitation to the number of prod-
3 ucts or parties that may be impacted
4 by a particular market situation.

5 “(C) OTHER FACTORS.—In finding that a
6 particular market situation exists, or in using
7 another calculation methodology under this
8 paragraph, the administering authority is not
9 required to consider—

10 “(i) the costs or prices that would
11 otherwise exist in the ordinary course of
12 trade in the absence of the particular mar-
13 ket situation or any of its contributing cir-
14 cumstances;

15 “(ii) whether there is any difference
16 between the particular market situation or
17 any of its contributing circumstances in
18 the exporting country as opposed to any
19 other country; or

20 “(iii) the length of time that the par-
21 ticular market situation or any of its con-
22 tributing circumstances has existed.”.

1 **SEC. 205. SPECIAL RULES FOR CALCULATION OF COST OF**
2 **PRODUCTION AND CONSTRUCTED VALUE TO**
3 **ADDRESS DISTORTED COSTS.**

4 Section 773(f)(3) of the Tariff Act of 1930 (19
5 U.S.C. 1677b(f)(3)) is amended—

6 (1) by striking “If, in the case” and inserting
7 the following:

8 “(A) MAJOR INPUTS FROM AFFILIATED
9 PERSONS.—If, in the case”; and

10 (2) by adding at the end the following:

11 “(B) MAJOR INPUTS FROM CERTAIN UNAF-
12 FILIATED PERSONS.—

13 “(i) IN GENERAL.—In the case of a
14 transaction between the exporter or pro-
15 ducer of the merchandise and any unaffili-
16 ated person described in clause (ii) involv-
17 ing a major input to the merchandise, the
18 administering authority may value such
19 major input based on the information
20 available regarding what the amount would
21 have been if the transaction had occurred
22 between the exporter or producer of the
23 merchandise and an unaffiliated person
24 that is not described in clause (ii) if that
25 amount is greater than the amount re-

1 flected in the records of the exporter or
2 producer of the merchandise.

3 “(ii) UNAFFILIATED PERSONS DE-
4 SCRIBED.—An unaffiliated person de-
5 scribed in this clause is—

6 “(I) any person in a nonmarket
7 economy country;

8 “(II) any producer, exporter, or
9 supplier of the input described in
10 clause (i) found by the administering
11 authority, or by any investigating au-
12 thority of a third country, to be re-
13 ceiving a countervailable subsidy per-
14 taining to an identical or comparable
15 input in the subject country if there is
16 no countervailing duty imposed on the
17 input pursuant to a measure in effect
18 in the exporting country based upon a
19 finding by the investigating authority
20 of the exporting country that the pro-
21 ducer or supplier of the input de-
22 scribed in clause (i) received a
23 countervailable subsidy;

24 “(III) any producer, exporter, or
25 supplier of the input described in

1 clause (i) found by the administering
2 authority, or by any investigating au-
3 thority of a third country to be selling
4 an identical or comparable input for
5 less than fair market value in the sub-
6 ject country if there is no anti-
7 dumping duty imposed on the input
8 pursuant to a measure in effect in the
9 exporting country based upon a find-
10 ing by the investigating authority of
11 the exporting country that the pro-
12 ducer or supplier sold the input de-
13 scribed in clause (i) for less than fair
14 market value into the subject country;

15 “(IV) a government or public
16 body within the territory of the ex-
17 porting country or any other country;
18 or

19 “(V) a group of governments or
20 public bodies, or a combination there-
21 of, that collectively account for a
22 meaningful share of the production of
23 the input described in clause (i).

24 “(iii) APPLICATION.—Subclauses (I),
25 (II), and (III) of clause (ii) shall not apply

1 to inputs described in clause (i) that are
2 produced in the exporting country.”.

3 **TITLE III—PREVENTING**
4 **CIRCUMVENTION**

5 **SEC. 301. MODIFICATION OF REQUIREMENTS IN CIR-**
6 **CUMVENTION INQUIRIES.**

7 (a) IN GENERAL.—Section 781 of the Tariff Act of
8 1930 (19 U.S.C. 1677j) is amended by striking subsection
9 (f) and inserting the following:

10 “(f) PROCEDURES FOR CONDUCTING CIRCUMVEN-

11 TION INQUIRIES.—
12 “(1) INITIATION BY ADMINISTERING AUTHOR-

13 ITY.—A circumvention inquiry shall be initiated
14 whenever the administering authority determines,
15 from information available to it, that a formal in-

16 quiry is warranted into the question of whether the
17 elements necessary for a determination under this
18 section exist.
19 “(2) INITIATION BY INQUIRY REQUEST.—
20 “(A) IN GENERAL.—A circumvention in-

21 quiry shall be initiated whenever an interested
22 party files an inquiry request that alleges the
23 elements necessary for a determination under
24 this section, accompanied by information rea-

1 sonably available to the requestor supporting
2 those allegations.

3 “(B) RULES.—The administering author-
4 ity shall specify requirements for the contents
5 and service of an inquiry request under sub-
6 paragraph (A).

7 “(C) ACCEPTANCE OF COMMUNICA-
8 TIONS.—The administering authority shall not
9 accept any unsolicited oral or written commu-
10 nication from any person other than the inter-
11 ested party filing an inquiry request before the
12 administering authority decides whether to ini-
13 tiate an inquiry, except for communications re-
14 garding the status of the consideration of the
15 inquiry request.

16 “(3) ACTION WITH RESPECT TO INQUIRY RE-
17 QUEST.—

18 “(A) IN GENERAL.—Subject to subpara-
19 graph (B), not later than 45 days after the fil-
20 ing of an inquiry request under paragraph
21 (2)(A), the administering authority shall—

22 “(i) initiate a circumvention inquiry;

23 “(ii) dismiss the inquiry request as in-
24 adequate and notify the requestor in writ-
25 ing of the reasons for the dismissal; or

1 “(iii) notify all interested parties that
2 the inquiry request will be addressed
3 through a determination under section
4 781A as to whether a particular type of
5 merchandise is within the class or kind of
6 merchandise described in an existing find-
7 ing of dumping or an antidumping or
8 countervailing duty order.

9 “(B) EXTENSION.—The administering au-
10 thority may extend the deadline under subpara-
11 graph (A) by a period not to exceed 15 days if
12 an interested party has placed information on
13 the record in response to the request for a cir-
14 cumvention inquiry.

15 “(4) DETERMINATIONS.—

16 “(A) PRELIMINARY DETERMINATIONS.—

17 “(i) IN GENERAL.—Except as pro-
18 vided in clause (ii), not later than 150
19 days after the date on which the admin-
20 istering authority initiates a circumvention
21 inquiry under paragraph (1) or (3)(A), the
22 administering authority shall make a pre-
23 liminary determination, based on the infor-
24 mation available to it at the time of the de-
25 termination, of whether there is a reason-

1 able basis to believe or suspect that the
2 merchandise subject to the inquiry is cir-
3 cumventing an existing finding of dumping
4 or an antidumping or countervailing duty
5 order.

6 “(ii) EXTENSION.—The administering
7 authority may extend the deadline under
8 clause (i) by a period not to exceed 60
9 days.

10 “(B) FINAL DETERMINATIONS.—

11 “(i) IN GENERAL.—Except as pro-
12 vided in clause (ii), not later than 150
13 days after issuing a preliminary determina-
14 tion under subparagraph (A) with respect
15 to a circumvention inquiry, the admin-
16 istering authority shall make a final deter-
17 mination of whether the merchandise sub-
18 ject to the inquiry is circumventing an ex-
19 isting finding of dumping or an anti-
20 dumping or countervailing duty order.

21 “(ii) EXTENSION.—The administering
22 authority may extend the deadline under
23 clause (i) by a period not to exceed 65
24 days.

1 “(C) OTHER CLASS OR KIND DETERMINA-
 2 TIONS.—If an inquiry request under paragraph
 3 (2)(A) is addressed through a class or kind de-
 4 termination under section 781A, the admin-
 5 istering authority shall make such determina-
 6 tion not later than 335 days after the filing of
 7 the inquiry request.

8 “(5) RULE OF CONSTRUCTION.—Nothing in
 9 this section shall be construed to prevent the admin-
 10 istering authority from simultaneously initiating a
 11 circumvention inquiry under paragraph (1) or (3)(A)
 12 and issuing a preliminary determination under para-
 13 graph (4)(A).”.

14 (b) SUSPENSION OF LIQUIDATION AND COLLECTION
 15 OF DEPOSITS OF ENTRIES SUBJECT TO CIRCUMVENTION
 16 INQUIRY.—Section 781 of the Tariff Act of 1930 is fur-
 17 ther amended by adding at the end the following:

18 “(g) SUSPENSION OF LIQUIDATION AND COLLECTION
 19 OF DEPOSITS OF ENTRIES SUBJECT TO CIRCUMVENTION
 20 INQUIRY.—

21 “(1) INITIATION.—If the administering author-
 22 ity initiates a circumvention inquiry under para-
 23 graph (1) or (3)(A) of subsection (f), for each unliq-
 24 uidated entry of merchandise subject to the cir-
 25 cumvention inquiry that was already subject to the

1 suspension of liquidation, the administering author-
2 ity shall order—

3 “(A) the continued suspension of liquida-
4 tion of such entry; and

5 “(B) the continued posting of a cash de-
6 posit, at the prevailing all-others or country-
7 wide rate, for each such entry.

8 “(2) PRELIMINARY DETERMINATION.—If the
9 administering authority issues a preliminary affirm-
10 ative determination under paragraph (4)(A) of sub-
11 section (f) with respect to a circumvention inquiry
12 initiated under paragraph (1) or (3)(A) of that sub-
13 section, the administering authority shall order—

14 “(A) the continued suspension of liquida-
15 tion for each unliquidated entry of merchandise
16 subject to the circumvention inquiry that was
17 already subject to the suspension of liquidation;

18 “(B) the suspension of liquidation for each
19 unliquidated entry of merchandise subject to
20 the circumvention inquiry not yet suspended
21 that is entered, or withdrawn from warehouse,
22 for consumption on or after the date of publica-
23 tion of the notice of initiation of the circumven-
24 tion inquiry;

1 “(C) the suspension of liquidation for each
2 entry of merchandise subject to the circumven-
3 tion inquiry not yet suspended that is entered,
4 or withdrawn from warehouse, for consumption
5 before the date of publication of the notice of
6 initiation of the circumvention inquiry if the ad-
7 ministering authority determines, under the cir-
8 cumstances, that suspension under this sub-
9 paragraph is warranted; and

10 “(D) the posting, or continued posting, of
11 a cash deposit in an amount equal to the anti-
12 dumping duty or countervailing duty applicable
13 for each entry of merchandise described in sub-
14 paragraph (A), (B), or (C).

15 “(3) FINAL DETERMINATION.—If the admin-
16 istering authority issues a final affirmative deter-
17 mination under paragraph (4)(B) of subsection (f)
18 with respect to a circumvention inquiry initiated
19 under paragraph (1) or (3)(A) of that subsection,
20 the administering authority shall order—

21 “(A) the continued suspension of liquida-
22 tion for each unliquidated entry of merchandise
23 subject to the circumvention inquiry that was
24 already subject to the suspension of liquidation;

1 “(B) the suspension of liquidation of each
2 entry of merchandise subject to the circumven-
3 tion inquiry that is entered, or withdrawn from
4 warehouse, for consumption on or after the date
5 of publication of the notice of initiation of the
6 circumvention inquiry;

7 “(C) the suspension of liquidation of each
8 entry of merchandise subject to the circumven-
9 tion inquiry that is entered, or withdrawn from
10 warehouse, for consumption before the date of
11 publication of the notice of initiation of cir-
12 cumvention inquiry if the administering author-
13 ity determines, under the circumstances, that
14 suspension under this subparagraph is war-
15 ranted; and

16 “(D) the posting, or continued posting, of
17 a cash deposit in an amount equal to the anti-
18 dumping duty or countervailing duty applicable
19 for each entry of merchandise described in sub-
20 paragraph (A), (B), or (C).

21 “(4) RULE OF CONSTRUCTION.—Nothing in
22 this section shall be construed to prevent the admin-
23 istering authority from applying the requirements
24 under this subsection in a class or kind determina-
25 tion under section 781A.

1 “(h) APPLICATION OF CIRCUMVENTION DETERMINA-
2 TION.—

3 “(1) IN GENERAL.—The administering author-
4 ity shall consider the appropriate remedy to address
5 circumvention and prevent evasion of an order or
6 finding pursuant to an affirmative determination
7 under subparagraph (A) or (B) of subsection (f)(4).

8 “(2) REMEDIES CONSIDERED.—Remedies con-
9 sidered under paragraph (1) may include the fol-
10 lowing:

11 “(A) The application of the determination
12 described in paragraph (1) on a producer-spe-
13 cific, exporter-specific, or importer-specific
14 basis, or some combination thereof, and, as the
15 administering authority determines appropriate,
16 the implementation of a certification require-
17 ment under section 785.

18 “(B) The application of the determination
19 described in paragraph (1) on a countrywide
20 basis to all merchandise from a particular coun-
21 try, regardless of producer, exporter, or im-
22 porter of that merchandise, and, as the admin-
23 istering authority determines appropriate, the
24 implementation of a certification requirement
25 under section 785.

1 “(3) EXEMPTION FOR MERCHANDISE UNDER
2 CERTIFICATION.—If a certification requirement
3 under section 785 is implemented under this sub-
4 section and the importer or other party to which the
5 requirement is applied complies with that require-
6 ment, antidumping and countervailing duties under
7 this title may not be applied to the merchandise
8 under certification.”.

9 (c) PUBLICATION IN THE FEDERAL REGISTER.—Sec-
10 tion 777(i) of the Tariff Act of 1930 (19 U.S.C. 1677f(i))
11 is amended by adding at the end the following:

12 “(4) CIRCUMVENTION INQUIRIES.—Whenever
13 the administering authority makes a determination
14 under section 781 whether to initiate a circumven-
15 tion inquiry or makes a preliminary or final deter-
16 mination under subsection (f)(4) of that section, the
17 administering authority shall publish the facts and
18 conclusions supporting that determination and shall
19 publish notice of that determination in the Federal
20 Register.”.

21 (d) ADDING VERIFICATION RESPONSES IN CIR-
22 CUMVENTION INQUIRIES.—Section 782(i) of the Tariff
23 Act of 1930 (19 U.S.C. 1677m(i)) is amended—

24 (1) in paragraph (2), by striking “and” at the
25 end;

1 (2) in paragraph (3)(B), by striking the period
2 at the end and inserting “, and”; and

3 (3) by adding at the end the following:

4 “(4) a final determination in a circumvention
5 inquiry conducted pursuant to section 781 if good
6 cause for verification is shown.”.

7 **SEC. 302. REQUIREMENT OF PROVISION BY IMPORTER OF**
8 **CERTIFICATION BY IMPORTER OR OTHER**
9 **PARTY.**

10 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
11 iff Act of 1930 (19 U.S.C. 1677 et seq.), as amended by
12 section 103(a), is further amended by adding at the end
13 the following:

14 **“SEC. 785. REQUIREMENT FOR CERTIFICATION BY IM-**
15 **PORTER OR OTHER PARTY.**

16 “(a) REQUIREMENT.—

17 “(1) IN GENERAL.—For imports of merchan-
18 dise into the customs territory of the United States,
19 the administering authority may require an importer
20 or other party—

21 “(A) to provide a certification described in
22 paragraph (2) at the time of entry or with the
23 entry summary;

24 “(B) to maintain that certification; or

1 “(C) to otherwise demonstrate compliance
2 with the requirements for that certification.

3 “(2) CERTIFICATION DESCRIBED.—A certifi-
4 cation described in this paragraph is a certification
5 by the importer of the merchandise or other party,
6 as required by the administering authority, including
7 a certification that—

8 “(A) the merchandise is not subject to an
9 antidumping or countervailing duty proceeding
10 under this title; and

11 “(B) the inputs used in production, trans-
12 formation, or processing of the merchandise are
13 not subject to an antidumping or countervailing
14 duty under this title.

15 “(3) AVAILABLE UPON REQUEST.—A certifi-
16 cation required by the administering authority under
17 paragraph (1), if not already provided, shall be made
18 available upon request to the administering author-
19 ity or the Commissioner of U.S. Customs and Bor-
20 der Protection (in this section referred to as the
21 ‘Commissioner’).

22 “(b) AUTHORITY TO SUSPEND LIQUIDATION, COL-
23 LECT CASH DEPOSITS AND ASSESS DUTIES.—

24 “(1) IN GENERAL.—If the administering au-
25 thority requires an importer or other party to pro-

1 vide a certification described in paragraph (2) of
2 subsection (a) for merchandise imported into the
3 customs territory of the United States pursuant to
4 paragraph (1) of that subsection, and the importer
5 or other party does not provide that certification or
6 that certification contains any false, misleading, or
7 fraudulent statement or representation or any mate-
8 rial omission, the administering authority shall in-
9 struct the Commissioner—

10 “(A) to suspend liquidation of the entry;

11 “(B) to require that the importer or other
12 party post a cash deposit in an amount equal
13 to the antidumping duty or countervailing duty
14 applicable to the merchandise; and

15 “(C) to assess the appropriate rate of duty
16 upon liquidation or reliquidation of the entry.

17 “(2) ASSESSMENT RATE.—If no rate of duty
18 for an entry is available at the time of assessment
19 under paragraph (1)(C), the administering authority
20 shall identify the applicable cash deposit rate to be
21 applied to the entry, with the applicable duty rate to
22 be provided as soon as the duty rate becomes avail-
23 able.

24 “(c) PENALTIES.—If the administering authority re-
25 quires an importer or other party to provide a certification

1 described in paragraph (2) of subsection (a) for merchan-
 2 dise imported into the customs territory of the United
 3 States pursuant to paragraph (1) of that subsection, and
 4 the importer or other party does not provide that certifi-
 5 cation or that certification contains any false, misleading,
 6 or fraudulent statement or representation or any material
 7 omission, the importer of the merchandise may be subject
 8 to a penalty pursuant to section 592 of this Act, section
 9 1001 of title 18, United States Code, or any other applica-
 10 ble provision of law.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
 12 for the Tariff Act of 1930, as amended by section 103(b),
 13 is further amended by inserting after the item relating to
 14 section 784 the following:

“Sec. 785. Requirement for certification by importer or other party.”.

15 **SEC. 303. CLARIFICATION OF AUTHORITY FOR DEPART-**
 16 **MENT OF COMMERCE REGARDING MERCHAN-**
 17 **DISE COVERED BY ANTIDUMPING AND COUN-**
 18 **TERVAILING DUTY PROCEEDINGS.**

19 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
 20 iff Act of 1930 (19 U.S.C. 1677 et seq.) is amended by
 21 inserting after section 781 the following:

1 **“SEC. 781A. DETERMINATIONS OF MERCHANDISE COVERED**
2 **UNDER ANTIDUMPING OR COUNTERVAILING**
3 **DUTY PROCEEDING.**

4 “(a) IN GENERAL.—To determine whether merchan-
5 dise imported into the United States is covered by an anti-
6 dumping or countervailing duty proceeding under this
7 title, the administering authority may use any reasonable
8 method and is not bound by the determinations of any
9 other Federal agency, including tariff classification and
10 country of origin marking rulings issued by the Commis-
11 sioner of U.S. Customs and Border Protection.

12 “(b) CLASS OR KIND OF MERCHANDISE.—For pur-
13 poses of this title, determinations regarding whether mer-
14 chandise is the same class or kind may be made under
15 this section or under section 781 in accordance with the
16 criteria set forth in this section or in section 781, as the
17 case may be.

18 “(c) ORIGIN OF MERCHANDISE.—To determine the
19 origin of merchandise for purposes of an antidumping or
20 countervailing duty proceeding under this title, the admin-
21 istering authority may apply any reasonable method and
22 may consider relevant factors, including—

23 “(1) whether the processed downstream product
24 is a different class or kind of merchandise than the
25 upstream product;

1 “(2) the physical characteristics of the mer-
2 chandise;

3 “(3) the intended end use of the downstream
4 product;

5 “(4) the cost of production and the value added
6 of further processing in a third country or countries;

7 “(5) the nature and sophistication of processing
8 in a third country or countries;

9 “(6) the level of investment in a third country
10 or countries; and

11 “(7) any other factors that the administering
12 authority considers appropriate, including whether
13 an essential characteristic of the merchandise, or an
14 essential component thereof, is substantially trans-
15 formed in the country of exportation.”.

16 (b) CLERICAL AMENDMENT.—The table of contents
17 for the Tariff Act of 1930 is amended by inserting after
18 the item relating to section 781 the following:

 “Sec. 781A. Determinations of merchandise covered under antidumping or
 countervailing duty proceeding.”.

19 (c) REVIEWABLE DETERMINATIONS.—Section
20 516A(a)(2)(A) of the Tariff Act of 1930 (19 U.S.C.
21 1516a(a)(2)(A)) is amended—

22 (1) in clause (i)(I), by striking “(iv),”; and

23 (2) by amending clause (ii) to read as follows:

1 “(ii) the date of publication in the
2 Federal Register of notice of a determina-
3 tion described in clause (iv) of subpara-
4 graph (B) or, if no such notice is pub-
5 lished, the date on which the administering
6 authority conveys a copy of such deter-
7 mination to an interested party who is a
8 party to the proceeding.”.

9 **SEC. 304. ASSET REQUIREMENTS APPLICABLE TO NON-**
10 **RESIDENT IMPORTERS.**

11 (a) IN GENERAL.—Part III of title IV of the Tariff
12 Act of 1930 (19 U.S.C. 1481 et seq.) is amended by in-
13 serting after section 484b the following:

14 **“SEC. 484c. ASSET REQUIREMENTS APPLICABLE TO NON-**
15 **RESIDENT IMPORTERS.**

16 “(a) DEFINITIONS.—In this section:

17 “(1) IMPORTER; NONRESIDENT IMPORTER.—
18 The terms ‘importer’ and ‘nonresident importer’
19 have the meanings given those terms in section
20 641(i).

21 “(2) RESIDENT IMPORTER.—The term ‘resident
22 importer’ means any importer other than a non-
23 resident importer.

1 “(b) REQUIREMENTS FOR NONRESIDENT IMPORT-
2 ERS.—Except as provided in subsection (c), the Commis-
3 sioner of U.S. Customs and Border Protection shall—

4 “(1) require a nonresident importer that im-
5 ports merchandise into the United States to main-
6 tain assets in the United States sufficient to pay all
7 duties that may potentially be applied to the mer-
8 chandise; and

9 “(2) require a bond with respect to the mer-
10 chandise in an amount sufficient to ensure full liabil-
11 ity on the part of a nonresident importer and the
12 surety of the importer based on the amount of assets
13 the Commissioner determines to be sufficient under
14 subsection (c).

15 “(c) DETERMINATION OF AMOUNT OF ASSETS RE-
16 QUIRED TO BE MAINTAINED.—For purposes of sub-
17 section (b)(1), the Commissioner shall calculate the
18 amount of assets sufficient to pay all duties that may po-
19 tentially be applied to merchandise imported by a non-
20 resident importer based on an amount that exceeds the
21 amount, calculated using the fair market value of the mer-
22 chandise, of all duties, fees, interest, taxes, or other
23 charges, and all deposits for duties, fees, interest, taxes,
24 or other charges, that would apply with respect to the mer-
25 chandise if the merchandise were subject to the highest

1 rate of duty applicable to such merchandise imported from
2 any country.

3 “(d) MAINTENANCE OF ASSETS IN THE UNITED
4 STATES.—

5 “(1) IN GENERAL.—For purposes of subsection
6 (b)(1), a nonresident importer of merchandise meets
7 the requirement to maintain assets in the United
8 States if the importer has clear title, at all times be-
9 tween the entry of the merchandise and the liquida-
10 tion of the entry, to assets described in paragraph
11 (2) with a value equal to the amount determined
12 under subsection (c).

13 “(2) ASSETS DESCRIBED.—An asset described
14 in this paragraph is—

15 “(A) an asset held by a United States fi-
16 nancial institution;

17 “(B) an interest in an entity organized
18 under the laws of the United States or any ju-
19 risdiction within the United States; or

20 “(C) an interest in real or personal prop-
21 erty located in the United States or any terri-
22 tory or possession of the United States.

23 “(e) EXCEPTIONS.—The requirements of this section
24 shall not apply with respect to a nonresident importer—

1 “(1) that is a validated Tier 2 or Tier 3 partici-
2 pant in the Customs-Trade Partnership Against
3 Terrorism program established under subtitle B of
4 title II of the Security and Accountability For Every
5 Port Act of 2006 (6 U.S.C. 961 et seq.); or

6 “(2) if the Commissioner is satisfied, based on
7 certified information supplied by the importer and
8 any other relevant evidence, that the Commissioner
9 has the same or equivalent ability to collect all du-
10 ties that may potentially be applied to merchandise
11 imported by the importer as the Commissioner
12 would have if the importer were a resident importer.

13 “(f) PROCEDURES.—The Commissioner shall pre-
14 scribe procedures for assuring that nonresident importers
15 maintain the assets required by subsection (b).

16 “(g) PENALTIES.—

17 “(1) IN GENERAL.—It shall be unlawful for any
18 person to import into the United States any mer-
19 chandise in violation of this section.

20 “(2) CIVIL PENALTIES.—Any person who vio-
21 lates paragraph (1) shall—

22 “(A) in the case of merchandise described
23 in such paragraph with a domestic value that is
24 equal to or greater than \$50,000, be liable for

1 a civil penalty of \$50,000 for each such viola-
2 tion; or

3 “(B) in the case of merchandise described
4 in such paragraph with a domestic value that is
5 less than \$50,000, be liable for a civil penalty
6 equal to 50 percent of the amount of such do-
7 mestic value for each such violation.

8 “(3) OTHER PENALTIES.—In addition to the
9 penalties specified in paragraph (2), any violation of
10 this section that violates any other provision of the
11 customs and trade laws of the United States (as de-
12 fined in section 2 of the Trade Facilitation and
13 Trade Enforcement Act of 2015 (19 U.S.C. 4301))
14 shall be subject to any applicable civil or criminal
15 penalty, including seizure and forfeiture, that may
16 be imposed under that provision or title 18, United
17 States Code.”.

18 (b) CLERICAL AMENDMENT.—The table of contents
19 for the Tariff Act of 1930 is amended by inserting after
20 the item relating to section 484b the following:

“Sec. 484c. Asset requirements applicable to nonresident importers.”.

21 (c) EFFECTIVE DATE AND APPLICATION.—

22 (1) IN GENERAL.—Section 484c of the Tariff
23 Act of 1930, as added by subsection (a)—

24 (A) takes effect on the date of the enact-
25 ment of this Act; and

1 (B) applies with respect to merchandise
2 entered, or withdrawn from warehouse for con-
3 sumption, on or after the date that is 180 days
4 after such date of enactment.

5 (2) DEADLINE FOR PROCEDURES.—The Com-
6 missioner of U.S. Customs and Border Protection
7 shall ensure the procedures required under sub-
8 section (f) of section 484c of the Tariff Act of 1930,
9 as added by subsection (a), are prescribed and in ef-
10 fect not later than 90 days after the date of the en-
11 actment of this Act.

12 **TITLE IV—COUNTERING**
13 **CURRENCY UNDERVALUATION**

14 **SEC. 401. INVESTIGATION OR REVIEW OF CURRENCY**
15 **UNDERVALUATION UNDER COUNTERVAILING**
16 **DUTY LAW.**

17 Section 702(c) of the Tariff Act of 1930 (19 U.S.C.
18 1671a(c)) is amended by adding at the end the following:

19 “(6) CURRENCY UNDERVALUATION.—For pur-
20 poses of a countervailing duty investigation under
21 this subtitle in which the determinations under
22 clauses (i) and (ii) of paragraph (1)(A) are affirma-
23 tive and the petition includes an allegation of cur-
24 rency undervaluation by the government of a coun-
25 try or any public entity within the territory of a

1 country that meets the requirements of clause (i) of
2 that paragraph, or for purposes of a review under
3 subtitle C with respect to a countervailing duty
4 order involving such an allegation, the administering
5 authority shall examine in its investigation or review
6 whether currency undervaluation by the government
7 of a country or any public entity within the territory
8 of a country is providing, directly or indirectly, a
9 countervailable subsidy.”.

10 **SEC. 402. DETERMINATION OF BENEFIT WITH RESPECT TO**
11 **CURRENCY UNDERVALUATION.**

12 Section 771(5)(E) of the Tariff Act of 1930 (19
13 U.S.C. 1677(5)(E)) is amended—

14 (1) in clause (iii), by striking “, and” and in-
15 serting a comma;

16 (2) in clause (iv), by striking the period at the
17 end and inserting “, and”;

18 (3) by inserting after clause (iv) the following:

19 “(v) in the case of an exchange of an
20 undervalued currency under a unified ex-
21 change rate, if there is a difference be-
22 tween the amount of currency received in
23 exchange for United States dollars and the
24 amount of currency that the recipient

1 would have received absent an undervalued
2 currency.”; and

3 (4) in the flush text following clause (v), as
4 added by paragraph (3), by adding at the end the
5 following: “For purposes of clause (v), a determina-
6 tion of the existence and amount of a benefit from
7 the exchange of an undervalued currency shall take
8 into account a comparison of the exchange rates de-
9 rived from a methodology determined by the admin-
10 istering authority to be appropriate in light of the
11 facts and circumstances to the relevant actual ex-
12 change rates, and whether there is government ac-
13 tion on the exchange rate that contributes to an
14 undervaluation of the currency.”.

15 **TITLE V—PREVENTING DUTY**
16 **EVASION**

17 **SEC. 501. LIMITATION ON PROTEST AGAINST DECISIONS OF**
18 **U.S. CUSTOMS AND BORDER PROTECTION OF**
19 **CLAIMS OF EVASION OF ANTIDUMPING AND**
20 **COUNTERVAILING DUTY ORDERS.**

21 (a) EXPANSION OF LIMITATION.—Section 514(b) of
22 the Tariff Act of 1930 (19 U.S.C. 1514(b)) is amended—

23 (1) by striking “title, determinations” and in-
24 serting “title, or with respect to determinations

1 made under section 517 of this title which are re-
2 viewable under section 517(g), determinations”; and

3 (2) by inserting after “a determination listed in
4 section 516A of this title” the following: “or a deter-
5 mination listed in section 517 of this title, as the
6 case may be,”.

7 (b) **RULE OF CONSTRUCTION ON INVESTIGATION OF**
8 **CLAIMS OF EVASION.**—Section 517(h) of the Tariff Act
9 of 1930 (19 U.S.C. 1517(h)) is amended by inserting be-
10 fore the period at the end the following: “, except that
11 any decision as to the liquidation or reliquidation of an
12 entry of covered merchandise in accordance with a deter-
13 mination under subsection (c) and review under subsection
14 (f), if applicable, shall not be subject to a protest of such
15 decision filed in accordance with section 514”.

16 **SEC. 502. PROCEDURES FOR INVESTIGATING CLAIMS OF**
17 **EVASION OF SAFEGUARD ACTIONS.**

18 (a) **TARIFF ACT OF 1930.**—Section 517 of the Tariff
19 Act of 1930 (19 U.S.C. 1517) is amended—

20 (1) in the section heading, by inserting “**AND**
21 **SAFEGUARD ACTIONS**” after “**ORDERS**”;

22 (2) in subsection (a)—

23 (A) in paragraph (3)—

24 (i) in subparagraph (A), by striking
25 “or” at the end;

1 (ii) in subparagraph (B), by striking
2 the period at the end and inserting “; or”;
3 and

4 (iii) by adding at the end the fol-
5 lowing:

6 “(C) an action taken under section 203 of
7 the Trade Act of 1974 (19 U.S.C. 2253).”; and

8 (B) in paragraph (5)(A), by inserting after
9 “applicable antidumping or countervailing du-
10 ties” the following: “or any applicable safe-
11 guard action”;

12 (3) in subsection (b)(4), in subparagraphs (A)
13 and (B), by inserting after “covered merchandise”
14 each place it appears the following: “under subpara-
15 graph (A) or (B) of subsection (a)(3)”;

16 (4) in subsection (d)(1)—

17 (A) in subparagraph (C)—

18 (i) in the matter preceding clause (i),
19 by inserting after “(C)” the following: “if
20 the determination relates to covered mer-
21 chandise under subparagraph (A) or (B) of
22 subsection (a)(3).”; and

23 (ii) in clause (i), by inserting “of this
24 paragraph” after “subparagraphs (A) and
25 (B).”; and

1 (B) in subparagraph (D)—

2 (i) by inserting after “(D)” the fol-
3 lowing: “if the determination relates to
4 covered merchandise under subparagraph
5 (A) or (B) of subsection (a)(3),”; and

6 (ii) by inserting “of this paragraph”
7 after “subparagraphs (A) and (B)”.

8 (b) TRADE FACILITATION AND TRADE ENFORCE-
9 MENT ACT OF 2015.—The Trade Facilitation and Trade
10 Enforcement Act of 2015 is amended—

11 (1) in section 402 (19 U.S.C. 4361)—

12 (A) in paragraph (2)—

13 (i) in subparagraph (A), by striking
14 “or” at the end;

15 (ii) in subparagraph (B), by striking
16 the period at the end and inserting “; or”;
17 and

18 (iii) by adding at the end the fol-
19 lowing:

20 “(C) an action taken under section 203 of
21 the Trade Act of 1974 (19 U.S.C. 2253).”;

22 (B) in paragraph (5), by inserting after
23 “applicable antidumping or countervailing du-
24 ties” the following: “or any applicable safe-
25 guard action”; and

1 (C) in paragraph (7), by inserting before
2 the period at the end the following: “and chap-
3 ter 1 of title II of the Trade Act of 1974 (19
4 U.S.C. 2251 et seq.)”; and
5 (2) in section 412 (19 U.S.C. 4372)—

6 (A) in subsection (a)(2)—
7 (i) by redesignating subparagraphs
8 (A), (B), and (C) as subparagraphs (B),
9 (C), and (D), respectively; and
10 (ii) by inserting before subparagraph
11 (B), as redesignated by clause (i), the fol-
12 lowing:

13 “(A) a person reasonably suspected of en-
14 tering covered merchandise into the customs
15 territory of the United States through eva-
16 sion;”; and

17 (B) in subsection (b)(1)—
18 (i) in subparagraph (B)—
19 (I) by redesignating clauses (i),
20 (ii), and (iii) as clauses (ii), (iii), and
21 (iv), respectively; and
22 (II) by inserting before clause
23 (ii), as redesignated by subclause (I),
24 the following:

1 “(i) a person from whom information
2 was requested pursuant to subsection
3 (a)(2)(A);” and

4 (ii) in subparagraph (C), by striking
5 “clause (ii) or (iii)” and inserting “clause
6 (i), (iii), or (iv)”.

7 **SEC. 503. APPLICATION OF PROVISIONS RELATING TO CER-**
8 **TAIN PROPRIETARY INFORMATION.**

9 (a) IN GENERAL.—Section 517 of the Tariff Act of
10 1930 (19 U.S.C. 1517), as amended by section 502(a),
11 is further amended by adding at the end the following:

12 “(i) APPLICATION OF PROVISIONS RELATING TO
13 CERTAIN PROPRIETARY INFORMATION.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), subsections (b), (c), and (d) of section
16 777, relating to information submitted in connection
17 with proceedings under title VII, shall apply with re-
18 spect to information submitted in connection with
19 proceedings under this section to the same extent
20 and in the same manner as those subsections may
21 apply to information submitted in connection with
22 proceedings under title VII.

23 “(2) EXCEPTIONS.—In carrying out paragraph
24 (1), subsections (b), (c), and (d) of section 777 shall
25 be applied and administered as follows:

1 “(A) By substituting ‘the Commissioner’
2 for each of the following terms each place those
3 terms appear:

4 “(i) ‘the administering authority or
5 the Commission’.

6 “(ii) ‘the administering authority and
7 the Commission’.

8 “(iii) ‘the administering authority’.

9 “(B) Paragraphs (1)(A) and (3) of such
10 subsection (b) shall not apply.

11 “(C) The second and third sentences of
12 such subsection (c)(1)(A) shall not apply.

13 “(D) In such subsection (c)—

14 “(i) in paragraph (1)—

15 “(I) in subparagraph (B), by
16 substituting ‘determine to be appro-
17 priate’ for ‘determine to be appro-
18 priate, including disbarment from
19 practice before the agency’; and

20 “(II) in subparagraph (C)—

21 “(aa) in clause (i), by sub-
22 stituting ‘14 days’ for ‘14 days
23 (7 days if the submission per-
24 tains to a proceeding under sec-
25 tion 703(a) or 733(a)’; and

1 “(bb) in the text following
 2 clause (ii)(II), by substituting ‘30
 3 days’ for ‘30 days (10 days if the
 4 submission pertains to a pro-
 5 ceeding under section 703(a) or
 6 733(a)’; and

7 “(ii) in paragraph (2), by substituting
 8 ‘United States Court of International
 9 Trade’ for ‘United States Customs
 10 Court’.”.

11 (b) REGULATIONS.—The Commissioner of U.S. Cus-
 12 toms and Border Protection shall prescribe such regula-
 13 tions as may be necessary to implement subsection (i) of
 14 section 517 of the Tariff Act of 1930 (19 U.S.C. 1517),
 15 as added by subsection (a).

16 (c) EFFECTIVE DATE.—The amendment made by
 17 subsection (a) shall take effect on the date that is 180
 18 days after the date of the enactment of this Act.

19 **TITLE VI—GENERAL**
 20 **PROVISIONS**

21 **SEC. 601. APPLICATION TO CANADA AND MEXICO.**

22 Pursuant to section 418 of the United States-Mexico-
 23 Canada Agreement Implementation Act (19 U.S.C. 4588),
 24 the amendments made by this Act apply with respect to
 25 goods from Canada and Mexico.

1 **SEC. 602. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided by subsection
3 (b) or (c), the amendments made by this Act apply to
4 countervailing duty investigations initiated under subtitle
5 A of title VII of the Tariff Act of 1930 (19 U.S.C. 1671
6 et seq.), antidumping duty investigations initiated under
7 subtitle B of title VII of such Act (19 U.S.C. 1673 et
8 seq.), reviews initiated under subtitle C of title VII of such
9 Act (19 U.S.C. 1675 et seq.), and circumvention inquiries
10 requested under section 781 of such Act (19 U.S.C.
11 1677j), on or after the date of the enactment of this Act.

12 (b) APPLICABILITY.—

13 (1) IN GENERAL.—Except as provided in sub-
14 section (c), the amendments made by this Act apply
15 to—

16 (A) investigations or reviews under title
17 VII of the Tariff Act of 1930 (19 U.S.C. 1671
18 et seq.) pending on the date of the enactment
19 of this Act if the date on which the fully ex-
20 tended preliminary determination is scheduled
21 is not earlier than 45 days after such date of
22 enactment;

23 (B) circumvention inquiries initiated under
24 section 781 of such Act (19 U.S.C. 1677j) be-
25 fore and pending on such date of enactment;
26 and

1 (C) circumvention inquiries requested
2 under section 781 of such Act but not initiated
3 before such date of enactment.

4 (2) DEADLINES FOR CIRCUMVENTION INQUIR-
5 IES.—

6 (A) DETERMINATIONS.—In this case of a
7 circumvention inquiry described in paragraph
8 (1)(B), subsection (f)(4) of section 781 of the
9 Tariff Act of 1930 (19 U.S.C. 1677j), as
10 amended by section 301(a), shall be applied and
11 administered—

12 (i) in subparagraph (A)(i), by sub-
13 stituting “the date of the enactment of the
14 Leveling the Playing Field 2.0 Act” for
15 “the date on which the administering au-
16 thority initiates a circumvention inquiry
17 under paragraph (1) or (3)(A)”; and

18 (ii) in subparagraph (C), by sub-
19 stituting “the date of the enactment of the
20 Leveling the Playing Field 2.0 Act” for
21 “the filing of the inquiry request”.

22 (B) ACTIONS WITH RESPECT TO INQUIRY
23 REQUESTS.—In the case of a circumvention in-
24 quiry described in paragraph (1)(C), the admin-
25 istering authority (as defined in section 771(1)

1 of the Tariff Act of 1930 (19 U.S.C. 1677(1)))
2 shall, not later than 20 days after the date of
3 the enactment of this Act, take an action de-
4 scribed in subsection (f)(3) of section 781 of
5 the Tariff Act of 1930 (19 U.S.C. 1677j), as
6 amended by section 301(a), with respect to the
7 inquiry.

8 (c) RETROACTIVE APPLICATION OF PROVISION ON
9 DETERMINATION OF NORMAL VALUE TO ACCOUNT FOR
10 DISTORTIONS OF COSTS THAT OCCUR IN FOREIGN COUN-
11 TRIES.—The amendments made by section 204 apply to—

12 (1) antidumping duty investigations initiated
13 under subtitle B of title VII of the Tariff Act of
14 1930 (19 U.S.C. 1673 et seq.) on or after June 29,
15 2015;

16 (2) reviews initiated under subtitle C of title
17 VII of such Act (19 U.S.C. 1675 et seq.) on or after
18 June 29, 2015;

19 (3) actions by U.S. Customs and Border Pro-
20 tection resulting from an investigation specified in
21 paragraph (1) or a review specified in paragraph
22 (2); and

23 (4) civil actions, criminal proceedings, and other
24 proceedings before a Federal court relating to pro-
25 ceedings specified in paragraph (1) or (2) or actions

1 specified to in paragraph (3) in which final judg-
2 ment has not been entered on or before the date of
3 the enactment of this Act.

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