

117TH CONGRESS  
1ST SESSION

# S. 1187

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

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IN THE SENATE OF THE UNITED STATES

APRIL 15, 2021

Mr. BROWN (for himself and Mr. PORTMAN) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## 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 “Eliminating Global Market Distortions To Protect Amer-  
6 ican Jobs Act of 2021”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 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 constructed value to include 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—GENERAL PROVISIONS

- Sec. 501. Application to Canada and Mexico.
- Sec. 502. 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), re-  
spectively;

(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 fol-  
lowing:

“(E) SPECIAL RULES FOR SUCCESSIVE IN-  
VESTIGATIONS.—

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

8                   “(bb) assess the effect of a  
9                   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) take into account and  
21                  include in the record any prior  
22                  injury determinations by the  
23                  Commission with respect to im-  
24                  ports of the merchandise, includ-  
25                  ing the volume, price effect, and

1 impact of those imports on the  
2 domestic industry as determined  
3 in a concurrent investigation or  
4 recently completed investigation.

5 “(II) EFFECT OF RECENT IM-  
6 PROVEMENT ON MATERIAL INJURY  
7 DETERMINATION.—For the purposes  
8 of this subparagraph, the Commission  
9 may not find that there is no material  
10 injury or threat of material injury to  
11 a domestic industry based on recent  
12 improvements in the industry’s per-  
13 formance, such as an increase in  
14 sales, market share, or profitability of  
15 domestic producers, that are related  
16 to relief granted pursuant to a con-  
17 current investigation or recently com-  
18 pleted investigation.

19 “(ii) RETROACTIVE APPLICATION OF  
20 FINAL DETERMINATION.—

21 “(I) IN GENERAL.—In making  
22 any finding under section  
23 705(b)(4)(A) or 735(b)(4)(A) in a  
24 successive investigation, the Commis-  
25 sion shall consider whether a concur-

1           rent investigation or recently com-  
2           pleted investigation contributes to the  
3           likelihood that the remedial effect of  
4           the countervailing duty order to be  
5           issued under section 706 or the anti-  
6           dumping duty order to be issued  
7           under section 736 will be seriously un-  
8           dermined.

9                   “(II) BURDEN OF PERSUA-  
10           SION.—The respondent in a successive  
11           investigation shall have the burden of  
12           persuasion with respect to whether—

13                   “(aa) imports subject to an  
14                   affirmative determination under  
15                   subsection (a) of section 705  
16                   have not met the standard for  
17                   retroactive application under sub-  
18                   section (b)(4)(A) of that section;  
19                   or

20                   “(bb) imports subject to an  
21                   affirmative determination under  
22                   subsection (a) of section 735  
23                   have not met the standard for  
24                   retroactive application under sub-

1 section (b)(4)(A) of that sec-  
2 tion.”.

3 (b) DEFINITIONS.—Section 771 of the Tariff Act of  
4 1930 (19 U.S.C. 1677) is amended by adding at the end  
5 the following:

6 “(37) TREATMENT OF SUCCESSIVE INVESTIGA-  
7 TIONS.—For purposes of sections 702(f), 732(f),  
8 771(7)(E), and 784:

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

18 “(B) RECENTLY COMPLETED INVESTIGA-  
19 TION.—The term ‘recently completed investiga-  
20 tion’ means a completed investigation in which  
21 an affirmative determination under section  
22 705(b) or 735(b) was issued by the Commission  
23 with respect to imports of a class or kind of  
24 merchandise that are the same or similar to im-  
25 ports of a class or kind of merchandise from

another country that are the subject of a successive investigation not more than 2 years before the date of initiation of the successive investigation.

“(C) SUCCESSIVE INVESTIGATION.—The term ‘successive investigation’ means an investigation that has been initiated by the administering authority following a petition filed pursuant to section 702(f) or 732(f).”.

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

(a) COUNTERVAILING DUTY INVESTIGATION.—Section 702 of the Tariff Act of 1930 (19 U.S.C. 1671a) is amended by adding at the end the following:

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

“(1) under subsection (a), if—

“(A) the requirements under that subsection are met with respect to imports of a class or kind of merchandise; and

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

1 “(2) under subsection (b), if—

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

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

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

13 “(f) INITIATION BY ADMINISTERING AUTHORITY OF  
14 SUCCESSIVE ANTIDUMPING DUTY INVESTIGATION.—A  
15 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   **SEC. 103. ISSUANCE OF DETERMINATIONS WITH RESPECT**  
 10           **TO SUCCESSIVE ANTIDUMPING AND COUN-**  
 11           **TERVAILING DUTY INVESTIGATIONS.**

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

15   **“SEC. 784. DETERMINATIONS RELATING TO SUCCESSIVE IN-**  
 16           **VESTIGATIONS.**

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

19           “(1) with respect to a successive investigation  
 20       under section 702(f)—

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

24           “(B) may not postpone under section  
 25       703(c) such deadline for the issuance of a pre-

1           liminary determination unless requested by the  
2           petitioner;

3           “(C) shall obtain the information required  
4           for a determination under section 703(e);

5           “(D) shall make a determination under  
6           section 703(e) with respect to the investigation;

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

11          “(F) shall extend the date of the final de-  
12          termination under section 705(a) if requested  
13          by the petitioner; and

14          “(2) with respect to a successive investigation  
15          under section 732(f)—

16               “(A) shall issue a preliminary determina-  
17               tion under section 733(b) not later than 85  
18               days after initiating the investigation;

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

23               “(C) shall obtain the information required  
24               for a determination under section 733(e);

1 “(D) shall make a determination under  
2 section 733(e) with respect to the investigation;

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

7 “(F) may extend the date of the final de-  
8 termination under section 735(a)(2).”.

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

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

## 12 **TITLE II—RESPONDING TO** 13 **MARKET DISTORTIONS**

### 14 **SEC. 201. ADDRESSING CROSS-BORDER SUBSIDIES IN** 15 **COUNTERVAILING DUTY INVESTIGATIONS.**

16 (a) DEFINITIONS.—

17 (1) COUNTERVAILABLE SUBSIDY.—Section 771  
18 of the Tariff Act of 1930 (19 U.S.C. 1677) is  
19 amended—

20 (A) in paragraph (5)(B)—

21 (i) in clause (i), by inserting after “fi-  
22 nancial contribution” the following: “or al-  
23 lows, explicitly or otherwise, another au-  
24 thority to provide a financial contribution”;  
25 and

1 (ii) in the flush text after clause (iii),  
2 by striking “the country” and inserting “a  
3 country”; and

4 (B) in paragraph (9)—

5 (i) in subparagraph (B), by inserting  
6 after “is exported” the following: “or the  
7 authority (as defined in paragraph (5)(B))  
8 alleged to have provided subsidies to a pro-  
9 ducer of an input of such merchandise”;

10 (ii) in subparagraph (F), by striking  
11 “, and” and inserting a semicolon;

12 (iii) in subparagraph (G), in the flush  
13 text after clause (iii), by striking the pe-  
14 riod at the end and inserting “, and”; and

15 (iv) by adding at the end the fol-  
16 lowing:

17 “(H) in any investigation or administrative  
18 review under this title involving an allegation  
19 that a subsidy is provided by an authority (as  
20 defined in paragraph (5)(B)) within the terri-  
21 tory of a country other than the country in  
22 which the subject merchandise is produced, a  
23 foreign manufacturer, producer, or exporter of  
24 an input used in the production of the merchan-  
25 dise.”.

1           (2) UPSTREAM SUBSIDY.—Section 771A(a)(1)  
 2           of the Tariff Act of 1930 (19 U.S.C. 1677–1(a)(1))  
 3           is amended by striking “in the same country as the  
 4           authority”.

5           (b) INITIATION OF INVESTIGATIONS.—Section  
 6 702(b)(4)(A)(i) of the Tariff Act of 1930 (19 U.S.C.  
 7 1671a(b)(4)(A)(i)) is amended by inserting after “named  
 8 in the petition” the following: “(or, in the case of a peti-  
 9 tion containing an allegation that a subsidy is provided  
 10 by an authority (as defined in section 771(5)(B)) within  
 11 the territory of a country other than the country in which  
 12 the subject merchandise is produced, the authority alleged  
 13 to have provided the 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 CON-**  
12 **STRUCTED VALUE TO INCLUDE DISTORTIONS**  
13 **OF COSTS THAT OCCUR IN FOREIGN COUN-**  
14 **TRIES.**

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

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

19 (2) in the flush text after subparagraph (C), by  
20 inserting before “For purposes” the following: “For  
21 purposes of subparagraph (A), if a particular market  
22 situation exists such that the cost of materials and  
23 fabrication or other processing of any kind does not  
24 accurately reflect the cost of production in the ordi-  
25 nary course of trade, the administering authority

1       may use another calculation methodology under this  
 2       subtitle or any other calculation methodology.”.

3       (b) MODIFICATION OF DEFINITION OF ORDINARY  
 4 COURSE OF TRADE TO INCLUDE ADJUSTED COSTS.—  
 5 Section 771(15)(C) of the Tariff Act of 1930 (19 U.S.C.  
 6 1677(15)(C)) is amended—

7           (1) by striking “that the particular market situ-  
 8       ation prevents” and inserting “that a particular  
 9       market situation exists that—

10                           “(i) prevents”;

11           (2) in clause (i), as designated by paragraph  
 12       (1), by striking the period at the end and inserting  
 13       “, relating to normal value determined under sub-  
 14       section (a) of section 773; or”; and

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

16                           “(ii) distorts certain costs of produc-  
 17       tion, relating to normal value determined  
 18       under subsections (b) and (e) of section  
 19       773.”.

20 **SEC. 205. SPECIAL RULES FOR CALCULATION OF COST OF**  
 21 **PRODUCTION AND CONSTRUCTED VALUE TO**  
 22 **ADDRESS DISTORTED COSTS.**

23       (a) IN GENERAL.—Section 773(f)(2) of the Tariff  
 24 Act of 1930 (19 U.S.C. 1677b(f)(2)) is amended—

(1) by striking “A transaction” and inserting the following:

“(A) IN GENERAL.—A transaction”; and

(2) by adding at the end the following:

“(B) TRANSACTIONS WITH CERTAIN ENTITIES.—

“(i) IN GENERAL.—If an input for subject merchandise is produced by or acquired from a person or entity described in clause (iii), the administering authority shall disregard such production or acquisition as outside the ordinary course of trade.

“(ii) DETERMINATION OF AMOUNT.—If the production or acquisition of an input is disregarded under clause (i) and no other transactions are available for consideration, the determination of the amount to be used to value the input shall be based on the information available with respect to what the amount would have been but for the participation of the person or entity described in clause (iii) in the market for the input or based on any other calculation methodology.

1 “(iii) PERSONS AND ENTITIES DE-  
2 SCRIBED.—A person or entity described in  
3 this clause is—

4 “(I) any person in a nonmarket  
5 economy country;

6 “(II) any person found to be re-  
7 ceiving a subsidy;

8 “(III) any person found to have  
9 sold the input referred to in clause (i)  
10 for less than fair market value into  
11 the exporting country or any other  
12 country;

13 “(IV) an authority (as defined in  
14 section 771(5)(B)) within the territory  
15 of the exporting country or any other  
16 country; or

17 “(V) a group of authorities de-  
18 scribed in subclause (IV) that collec-  
19 tively account for a meaningful share  
20 of the production of the input.”.

## **TITLE III—PREVENTING CIRCUMVENTION**

### **SEC. 301. MODIFICATION OF REQUIREMENTS IN CIRCUMVENTION INQUIRIES.**

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

“(f) PROCEDURES FOR CONDUCTING CIRCUMVENTION INQUIRIES.—

“(1) INITIATION BY ADMINISTERING AUTHORITY.—A circumvention inquiry shall be initiated whenever the administering authority determines, from information available to it, that a formal inquiry is warranted into the question of whether the elements necessary for a determination under this section exist.

“(2) INITIATION BY INQUIRY REQUEST.—

“(A) IN GENERAL.—A circumvention inquiry shall be initiated whenever an interested party files an inquiry request that alleges the elements necessary for a determination under this section, accompanied by information reasonably available to the requestor supporting those allegations.

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

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

14          “(3) ACTION WITH RESPECT TO INQUIRY RE-  
15          QUEST.—Not later than 20 days after the filing of  
16          an inquiry request under paragraph (2)(A), the ad-  
17          ministering authority shall—

18               “(A) initiate a circumvention inquiry;

19               “(B) dismiss the inquiry request as inad-  
20               equat and notify the requestor in writing of  
21               the reasons for the dismissal; or

22               “(C) notify all interested parties that the  
23               inquiry request will be addressed through a de-  
24               termination (other than a determination under  
25               this section) by the administering authority as

to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order.

“(4) DETERMINATIONS.—

“(A) PRELIMINARY DETERMINATIONS.—

“(i) IN GENERAL.—Except as provided in clause (ii), not later than 90 days after the date on which the administering authority initiates a circumvention inquiry under paragraph (1) or (3)(A), the administering authority shall make a preliminary determination, based on the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the merchandise subject to the inquiry is circumventing an existing finding of dumping or an antidumping or countervailing duty order.

“(ii) EXTENSION.—The administering authority may extend the deadline under clause (i) by a period not to exceed 45 days.

“(B) FINAL DETERMINATIONS.—

1                   “(i) IN GENERAL.—Except as pro-  
2                   vided in clause (ii), not later than 120  
3                   days after issuing a preliminary determina-  
4                   tion under subparagraph (A) with respect  
5                   to a circumvention inquiry, the admin-  
6                   istering authority shall make a final deter-  
7                   mination of whether the merchandise sub-  
8                   ject to the inquiry is circumventing an ex-  
9                   isting finding of dumping or an anti-  
10                  dumping or countervailing duty order.

11                  “(ii) EXTENSION.—The administering  
12                  authority may extend the deadline under  
13                  clause (i) by a period not to exceed 60  
14                  days.

15                  “(C) OTHER CLASS OR KIND DETERMINA-  
16                  TIONS.—If an inquiry request under paragraph  
17                  (2)(A) is addressed through a class or kind de-  
18                  termination described in paragraph (3)(C), the  
19                  administering authority shall make such deter-  
20                  mination not later than 335 days after the fil-  
21                  ing of the inquiry request.

22                  “(5) RULE OF CONSTRUCTION.—Nothing in  
23                  this section shall be construed to prevent the admin-  
24                  istering authority from simultaneously initiating a  
25                  circumvention inquiry under paragraph (1) or (3)(A)

1       and issuing a preliminary ruling under paragraph  
2       (4)(A).”.

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

7       “(g) SUSPENSION OF LIQUIDATION AND COLLECTION  
8 OF DEPOSITS OF ENTRIES SUBJECT TO CIRCUMVENTION  
9 INQUIRY.—

10           “(1) IN GENERAL.—If the administering au-  
11 thority initiates a circumvention inquiry under para-  
12 graph (1) or (3)(A) of subsection (f), the admin-  
13 istering authority shall order—

14                   “(A) the suspension, or continued suspen-  
15 sion, of liquidation of all entries of merchandise  
16 subject to the circumvention inquiry; and

17                   “(B) the posting of a cash deposit, at the  
18 prevailing all-others or country-wide rate, for  
19 each entry of merchandise described in subpara-  
20 graph (A).

21       “(2) 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 described in subsection (f)(3)(C).”.

1       (c) COUNTRY-WIDE APPLICATION OF CIRCUMVEN-  
 2       TION DETERMINATION.—Section 781 of the Tariff Act of  
 3       1930 is further amended by adding at the end the fol-  
 4       lowing:

5       “(h) COUNTRY-WIDE APPLICATION OF CIRCUMVEN-  
 6       TION DETERMINATION.—

7               “(1) IN GENERAL.—The administering author-  
 8       ity shall apply a determination described in para-  
 9       graph (2) on a country-wide basis unless it deter-  
 10      mines that application of that determination to par-  
 11      ticular producers or exporters is appropriate.

12              “(2) DETERMINATIONS DESCRIBED.—A deter-  
 13      mination described in this paragraph is any of the  
 14      following:

15              “(A) A determination under subsection (a)  
 16      with respect to merchandise completed or as-  
 17      sembled in the United States.

18              “(B) A determination under subsection (b)  
 19      with respect to merchandise completed or as-  
 20      sembled in a foreign country.

21              “(C) A determination under subsection (c)  
 22      with respect to minor alteration of merchandise.

23              “(D) A determination under subsection (d)  
 24      with respect to later-developed merchandise.”.

1 (d) PUBLICATION IN THE FEDERAL REGISTER.—  
2 Section 777(i) of the Tariff Act of 1930 is amended by  
3 adding at the end the following:

4 “(4) CIRCUMVENTION INQUIRIES.—Whenever  
5 the administering authority makes a determination  
6 under section 781 whether to initiate a circumven-  
7 tion inquiry or makes a preliminary or final deter-  
8 mination under subsection (f)(4) of that section, the  
9 administering authority shall publish the facts and  
10 conclusions supporting that determination and shall  
11 publish notice of that determination in the Federal  
12 Register.”.

13 (e) ADDING VERIFICATION RESPONSES IN CIR-  
14 CUMVENTION INQUIRIES.—Section 782(i) of the Tariff  
15 Act of 1930 (19 U.S.C. 1677m(i)) is amended—

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

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

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

21 “(4) a final determination in a circumvention  
22 inquiry conducted pursuant to section 781.”.

1 **SEC. 302. REQUIREMENT OF PROVISION BY IMPORTER OF**  
 2 **CERTIFICATION BY IMPORTER OR OTHER**  
 3 **PARTY.**

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

8 **“SEC. 785. REQUIREMENT FOR CERTIFICATION BY IM-**  
 9 **PORTER OR OTHER PARTY.**

10 “(a) REQUIREMENT.—

11 “(1) IN GENERAL.—For imports of merchan-  
 12 dise into the customs territory of the United States,  
 13 the administering authority may require an importer  
 14 or other party—

15 “(A) to provide a certification described in  
 16 paragraph (2) at the time of entry or with the  
 17 entry summary;

18 “(B) to maintain that certification; or

19 “(C) to otherwise demonstrate compliance  
 20 with the requirements for that certification.

21 “(2) CERTIFICATION DESCRIBED.—A certifi-  
 22 cation described in this paragraph is a certification  
 23 by the importer of the merchandise or other party,  
 24 as required by the administering authority, including  
 25 a certification that—

1           “(A) the merchandise is not subject to an  
2           antidumping or countervailing duty proceeding  
3           under this title; and

4           “(B) the inputs used in production, trans-  
5           formation, or processing of the merchandise are  
6           not subject to an antidumping or countervailing  
7           duty under this title.

8           “(3) AVAILABLE UPON REQUEST.—A certifi-  
9           cation required by the administering authority under  
10          paragraph (1), if not already provided, shall be made  
11          available upon request to the administering author-  
12          ity or the Commissioner of U.S. Customs and Bor-  
13          der Protection (in this section referred to as the  
14          ‘Commissioner’).

15          “(b) AUTHORITY TO COLLECT CASH DEPOSITS AND  
16          TO ASSESS DUTIES.—

17               “(1) IN GENERAL.—If the administering au-  
18               thority requires an importer or other party to pro-  
19               vide a certification described in paragraph (2) of  
20               subsection (a) for merchandise imported into the  
21               customs territory of the United States pursuant to  
22               paragraph (1) of that subsection, and the importer  
23               or other party does not provide that certification or  
24               that certification contains any false, misleading, or  
25               fraudulent statement or representation or any mate-

1       rial omission, the administering authority shall in-  
2       struct the Commissioner—

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

4               “(B) to require that the importer or other  
5       party post a cash deposit in an amount equal  
6       to the antidumping duty or countervailing duty  
7       applicable to the merchandise; and

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

10       “(2) ASSESSMENT RATE.—If no rate of duty  
11      for an entry is available at the time of assessment  
12      under paragraph (1)(C), the administering authority  
13      shall identify the applicable cash deposit rate to be  
14      applied to the entry, with the applicable duty rate to  
15      be provided as soon as the duty rate becomes avail-  
16      able.

17       “(c) PENALTIES.—If the administering authority re-  
18      quires an importer or other party to provide a certification  
19      described in paragraph (2) of subsection (a) for merchan-  
20      dise imported into the customs territory of the United  
21      States pursuant to paragraph (1) of that subsection, and  
22      the importer or other party does not provide that certifi-  
23      cation or that certification contains any false, misleading,  
24      or fraudulent statement or representation or any material  
25      omission, the importer of the merchandise may be subject

1 to a penalty pursuant to section 592 of this Act, section  
 2 1001 of title 18, United States Code, or any other applica-  
 3 ble provision of law.”.

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

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

8 **SEC. 303. CLARIFICATION OF AUTHORITY FOR DEPART-**  
 9 **MENT OF COMMERCE REGARDING MERCHANT-**  
 10 **DISE COVERED BY ANTIDUMPING AND COUN-**  
 11 **TERVAILING DUTY PROCEEDINGS.**

12 (a) COVERAGE BY ANTIDUMPING OR COUNTER-  
 13 VAILING DUTY PROCEEDING.—To determine whether  
 14 merchandise imported into the United States is covered  
 15 by an antidumping or countervailing duty proceeding  
 16 under title VII of the Tariff Act of 1930 (19 U.S.C. 1671  
 17 et seq.), the administering authority may use any reason-  
 18 able method and is not bound by the determinations of  
 19 any other Federal agency, including tariff classification  
 20 and country of origin marking rulings issued by the Com-  
 21 missioner of U.S. Customs and Border Protection.

22 (b) ORIGIN OF MERCHANDISE.—To determine the or-  
 23 igin of merchandise for purposes of an antidumping or  
 24 countervailing duty proceeding under title VII of the Tar-  
 25 iff Act of 1930 (19 U.S.C. 1671 et seq.), the administering

1 authority may apply any reasonable method and may con-  
 2 sider relevant factors, including—

3 (1) whether the upstream and downstream  
 4 products are within the same class or kind of mer-  
 5 chandise;

6 (2) whether the merchandise, or an essential  
 7 component thereof, is substantially transformed in  
 8 the country of exportation;

9 (3) the extent to which the merchandise is proc-  
 10 essed; or

11 (4) any other factors that the administering au-  
 12 thority considers appropriate.

13 (c) ADMINISTERING AUTHORITY DEFINED.—In this  
 14 section, the term “administering authority” has the mean-  
 15 ing given that term in section 771(1) of the Tariff Act  
 16 of 1930 (19 U.S.C. 1677(1)).

17 **SEC. 304. ASSET REQUIREMENTS APPLICABLE TO NON-**  
 18 **RESIDENT IMPORTERS.**

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

22 **“SEC. 484c. ASSET REQUIREMENTS APPLICABLE TO NON-**  
 23 **RESIDENT IMPORTERS.**

24 “(a) DEFINITIONS.—In this section:

1           “(1) IMPORTER; NONRESIDENT IMPORTER.—  
 2       The terms ‘importer’ and ‘nonresident importer’  
 3       have the meanings given those terms in section  
 4       641(i).

5           “(2) RESIDENT IMPORTER.—The term ‘resident  
 6       importer’ means any importer other than a non-  
 7       resident importer.

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

11           “(1) require a nonresident importer that im-  
 12      ports merchandise into the United States to main-  
 13      tain assets in the United States sufficient to pay all  
 14      duties that may potentially be applied to the mer-  
 15      chandise; and

16           “(2) require a bond with respect to the mer-  
 17      chandise in an amount sufficient to ensure full liabil-  
 18      ity on the part of a nonresident importer and the  
 19      surety of the importer based on the amount of assets  
 20      the Commissioner determines to be sufficient under  
 21      subsection (c).

22           “(c) DETERMINATION OF AMOUNT OF ASSETS RE-  
 23      QUIRED TO BE MAINTAINED.—For purposes of sub-  
 24      section (b)(1), the Commissioner shall calculate the  
 25      amount of assets sufficient to pay all duties that may po-

1 tentially be applied to merchandise imported by a non-  
 2 resident importer based on an amount that exceeds the  
 3 amount, calculated using the fair market value of the mer-  
 4 chandise, of all duties, fees, interest, taxes, or other  
 5 charges, and all deposits for duties, fees, interest, taxes,  
 6 or other charges, that would apply with respect to the mer-  
 7 chandise if the merchandise were subject to the highest  
 8 rate of duty applicable to such merchandise imported from  
 9 any country.

10 “(d) MAINTENANCE OF ASSETS IN THE UNITED  
 11 STATES.—

12 “(1) IN GENERAL.—For purposes of subsection  
 13 (b)(1), a nonresident importer of merchandise meets  
 14 the requirement to maintain assets in the United  
 15 States if the importer has clear title, at all times be-  
 16 tween the entry of the merchandise and the liquida-  
 17 tion of the entry, to assets described in paragraph  
 18 (2) with a value equal to the amount determined  
 19 under subsection (c).

20 “(2) ASSETS DESCRIBED.—An asset described  
 21 in this paragraph is—

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

1           “(B) an interest in an entity organized  
2           under the laws of the United States or any ju-  
3           risdiction within the United States; or

4           “(C) an interest in real or personal prop-  
5           erty located in the United States or any terri-  
6           tory or possession of the United States.

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

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

14          “(2) if the Commissioner is satisfied, based on  
15          certified information supplied by the importer and  
16          any other relevant evidence, that the Commissioner  
17          has the same or equivalent ability to collect all du-  
18          ties that may potentially be applied to merchandise  
19          imported by the importer as the Commissioner  
20          would have if the importer were a resident importer.

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

24          “(g) PENALTIES.—

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

4           “(2) CIVIL PENALTIES.—Any person who vio-  
5           lates paragraph (1) shall be liable for a civil penalty  
6           of \$50,000 for each such violation.

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

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

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

20          (c) EFFECTIVE DATE.—Section 484c of the Tariff  
21          Act of 1930, as added by subsection (a)—

22                  (1) takes effect on the date of the enactment of  
23          this Act; and

24                  (2) applies with respect to merchandise entered,  
25          or withdrawn from warehouse for consumption, on

1 or after the date that is 180 days after such date  
 2 of enactment.

## 3 **TITLE IV—COUNTERING** 4 **CURRENCY UNDERVALUATION**

### 5 **SEC. 401. INVESTIGATION OR REVIEW OF CURRENCY** 6 **UNDERVALUATION UNDER COUNTERVAILING** 7 **DUTY LAW.**

8 Section 702(c) of the Tariff Act of 1930 (19 U.S.C.  
 9 1671a(c)) is amended by adding at the end the following:

10 “(6) CURRENCY UNDERVALUATION.—For pur-  
 11 poses of a countervailing duty investigation under  
 12 this subtitle in which the determinations under  
 13 clauses (i) and (ii) of paragraph (1)(A) are affirma-  
 14 tive and the petition includes an allegation of cur-  
 15 rency undervaluation by the government of a coun-  
 16 try or any public entity within the territory of a  
 17 country that meets the requirements of clause (i) of  
 18 that paragraph, or for purposes of a review under  
 19 subtitle C with respect to a countervailing duty  
 20 order involving such an allegation, the administering  
 21 authority shall examine in its investigation or review  
 22 whether currency undervaluation by the government  
 23 of a country or any public entity within the territory  
 24 of a country is providing, directly or indirectly, a  
 25 countervailable subsidy.”.

1 **SEC. 402. DETERMINATION OF BENEFIT WITH RESPECT TO**  
2 **CURRENCY UNDERVALUATION.**

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

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

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

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

10 “(v) in the case of a transaction in-  
11 volving currency, if there is a difference be-  
12 tween the amount of currency received in  
13 exchange for United States dollars and the  
14 amount of currency that the recipient  
15 would have received absent an undervalued  
16 currency.”; and

17 (4) in the flush text following clause (v), as  
18 added by paragraph (3), by adding at the end the  
19 following: “For purposes of clause (v), a determina-  
20 tion of the existence and amount of a benefit from  
21 the exchange of an undervalued currency shall take  
22 into account a comparison of the exchange rates de-  
23 rived from a methodology determined by the admin-  
24 istering authority to be appropriate in light of the  
25 facts and circumstances to the relevant actual ex-  
26 change rates. That determination shall rely on au-

1       thoritative information that is on the administrative  
2       record.”.

## 3   **TITLE V—GENERAL PROVISIONS**

### 4   **SEC. 501. APPLICATION TO CANADA AND MEXICO.**

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

### 9   **SEC. 502. EFFECTIVE DATE.**

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

20       (b) APPLICABILITY.—

21               (1) IN GENERAL.—The amendments made by  
22   this Act apply to—

23                       (A) investigations or reviews under title  
24                       VII of the Tariff Act of 1930 pending on the  
25                       date of the enactment of this Act if the date on

1 which the fully extended preliminary determina-  
 2 tion is scheduled is not earlier than 45 days  
 3 after such date of enactment;

4 (B) circumvention inquiries initiated under  
 5 section 781 of such Act before and pending on  
 6 such date of enactment; and

7 (C) circumvention inquiries requested  
 8 under section 781 of such Act but not initiated  
 9 before such date of enactment.

10 (2) DEADLINES FOR CIRCUMVENTION INQUIR-  
 11 IES.—

12 (A) DETERMINATIONS.—In this case of a  
 13 circumvention inquiry described in paragraph  
 14 (1)(B), subsection (f)(4) of section 781 of the  
 15 Tariff Act of 1930, as amended by section  
 16 301(a), shall be applied and administered—

17 (i) in subparagraph (A)(i), by sub-  
 18 stituting “the date of the enactment of the  
 19 Eliminating Global Market Distortions To  
 20 Protect American Jobs Act of 2021” for  
 21 “the date on which the administering au-  
 22 thority initiates a circumvention inquiry  
 23 under paragraph (1) or (3)(A)”; and

24 (ii) in subparagraph (C), by sub-  
 25 stituting “the date of the enactment of the

1           Eliminating Global Market Distortions To  
 2           Protect American Jobs Act of 2021” for  
 3           “the filing of the inquiry request”.

4           (B) ACTIONS WITH RESPECT TO INQUIRY  
 5           REQUESTS.—In this case of a circumvention in-  
 6           quiry described in paragraph (1)(C), the admin-  
 7           istering authority (as defined in section 771(1)  
 8           of the Tariff Act of 1930 (19 U.S.C. 1677(1)))  
 9           shall, not later than 20 days after the date of  
 10          the enactment of this Act, take an action de-  
 11          scribed in subsection (f)(3) of section 781 of  
 12          the Tariff Act of 1930, as amended by section  
 13          301(a), with respect to the inquiry.

14          (c) RETROACTIVE APPLICATION OF MODIFICATION  
 15          OF SALES BELOW COST PROVISION.—Section 773(b)(3)  
 16          of the Tariff Act of 1930 (19 U.S.C. 1677b(b)(3)), as  
 17          amended by section 204(a), applies to—

18           (1) antidumping duty investigations initiated  
 19           under subtitle B of title VII of the Tariff Act of  
 20           1930 (19 U.S.C. 1673 et seq.) on or after June 29,  
 21           2015;

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

1           (3) resulting actions by U.S. Customs and Bor-  
2       der Protection; and

3           (4) civil actions, criminal proceedings, and other  
4       proceedings before a Federal court relating to pro-  
5       ceedings referred to in paragraphs (1) or (2) or ac-  
6       tions referred to in paragraph (3) in which final  
7       judgment has not been entered on the date of the  
8       enactment of this Act.

○