

Eliminating Global Market Distortions to Protect Americans Jobs Act

Title I: Short Title and Table of Contents

Section 101: Short Title and Table of Contents

Title II: Successive Investigations

Section 201: Establishment of Special Rules for Determination of Material Injury in the Case of Successive Antidumping and Countervailing Duty investigations

This section establishes the concept of successive investigations under antidumping and countervailing duty laws. A successive investigation refers to two types of AD/CVD investigations. The first type is the concurrent investigation, or antidumping or countervailing duty trade cases that cover the same class or kind of merchandise imports and are being investigated at the same time (but involve two or more separately filed cases). The second type of successive investigation is the recently completed investigation, which is defined as a completed investigation in which the International Trade Commission (ITC) made an affirmative definition in a case involving the same class or kind of merchandise imports within the last two years.

This section instructs the ITC to take into account certain criteria when making a determination in a successive investigation. Those criteria are: 1) whether the volume of imports considered in the successive investigation will replace the volume of imports covered in an earlier investigation, disregarding whether the total volume of imports will increase; 2) whether the imports in the successive investigation are being sold at price levels that will prevent the domestic industry from restoring prices to a level that will provide relief to the industry; 3) whether the domestic industry will continue to face material injury or the threat of material injury or see their financial performance affected due to imports covered by the concurrent investigation, or recently completed investigation; 4) whether the remedial effect of a countervailing duty or antidumping order will be undermined given the existence of a concurrent or recently completed investigation. Under these criteria, the ITC will be better able to take into account the cumulative impact of dumped and subsidized imports on domestic industries. As a result, trade remedy laws will be better capable of responding to repeat offenders and serial cheaters who may simply move production to another country or otherwise take action to get around existing antidumping or countervailing duty orders. Moreover, U.S. producers will not be disadvantaged by ITC's injury analysis if they are required to file multiple antidumping or countervailing duty petitions to address unfairly-traded imports, even if they have received relief in previous cases.

Section 202: Initiation of Successive Antidumping and Countervailing Duty Investigations

This section establishes the concept of a successive antidumping or countervailing duty investigation at the Department of Commerce. By creating the successive investigation category, antidumping and countervailing duty laws will be more effective in tackling repeat offenders, which preclude U.S. producers from obtaining effective trade remedy relief.

Section 203: Issuance of Determinations with Respect to Successive Antidumping and Countervailing Duty Investigations

This section requires Commerce to issue a preliminary determination in a successive antidumping or countervailing duty investigation within 85 days. That deadline may be extended only if an extension is requested by the petitioner. In addition, final determinations in successive investigations must be issued within 75 days of the preliminary determination, and that deadline may be extended only if the petitioner requests an extension. These timelines for successive investigations are the same as the timelines for non-successive investigations, which are routinely extended by months. By establishing deadlines and limiting both the circumstances and the length of extensions, this section will help U.S. producers more quickly receive relief as the result of preliminary and final determinations in successive antidumping and countervailing duty investigations.

Title III: Responding to Market Distortions

Section 301: Addressing Cross-Border Subsidies in Countervailing Duty Investigations.

Under current law, in a countervailing duty proceeding, the Department of Commerce only investigates and countervails subsidies being offered in the country under investigation by the government(s) of that same country. This section authorizes Commerce to consider and address subsidies offered to producers in the country under investigation by a government located elsewhere. This would allow the agency to ensure that the countervailing duty law applies where a government supports overseas production by companies organized or based within its territory. For example, it would allow Commerce to ensure that the countervailing duty laws apply to China's Belt and Road Initiative subsidies, which benefit China-based or China-operated companies operating in countries outside of China.

Section 302: 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

In antidumping investigations, Commerce must calculate the normal value of a sale of the foreign product in order to determine whether the same class or kind of good is being dumped in the United States. Normal value should be calculated by using sales that are made in the ordinary course of trade, i.e., not distorted in any way. This section further clarifies that sales of low quantities of product at unusually high prices shall be considered outside the ordinary course of trade and should not be used in the calculation of normal value for the purpose of the antidumping investigation. By clarifying that sales of insufficient quantities are outside the ordinary course of trade, this section will prevent exporters from further cheating by making unrepresentative sales in small quantities to boost the normal value and reduce the likelihood their products will be found to be dumped.

Section 303: Modification of Adjustments to Export Price and Constructed Export Price With Respect to Duty Drawback

In an antidumping investigation, the Department of Commerce must determine the export price and the constructed export price. Under current trade remedy law, Commerce is required to increase the export price by any amount of duties that have been rebated or not collected by the exporting country, known as a duty drawback. This section ensures that any price used by

Commerce takes into account differences between the cost of production and the export price created solely by the imposition of import duties, which could increase the cost of raw materials needed to make the product in the home market. In some instances, however, the imports in question have used inputs from both domestic and foreign sources, which means the duty has not been factored into the cost of production in all cases. This section instructs Commerce to calculate the duty drawback amount only when the duty is included in the cost of production and constructed value. This will ensure duty drawback amounts are calculated accurately and do not improperly affect antidumping margins.

Section 304: Modification of Determination of Constructed Value to Include Distortion of Costs That Occur in Other Foreign Countries

In antidumping investigations, Commerce may determine that there is a “particular market situation” if the conditions in the foreign market mean the cost of materials and fabrication or processing of any kind do not accurately reflect the cost of production in the ordinary course of trade. When Commerce finds a “particular market situation” to exist, the agency can use another calculation methodology to establish the normal value. This section allows Commerce to find that there is a “particular market situation” when subsidies in another country are distorting the costs of production in the export country. For example, Commerce may determine there is a “particular market situation” if a Turkish pipe and tube sector is using subsidized Chinese steel slab to manufacture pipe and tube products that are dumped in the U.S. market. This section allows Commerce to ensure that repeat offenders, like Chinese steel producers, do not continue to undermine U.S. producers simply by shipping the steel slab to pipe and tube producers in Turkey instead of the U.S. directly.

Section 305: Special Rules for Calculation of Cost of Production and Constructed Value to Address Distorted Costs

Currently, U.S. law authorizes the Department of Commerce to disregard costs that do not reasonably reflect the cost of producing the merchandise under consideration over a reasonable period of time, when calculating production costs and constructed value. However, the statute gives little guidance as to what types of costs should be considered not reasonably reflective of market costs of production. This section amends the law to specify that Commerce is authorized to disregard costs for inputs obtained from non-market economies, subsidized input costs, costs for inputs that have themselves been found dumped, or that are purchased from government sellers.

Title IV: Preventing Circumvention

Section 401: Modification of Requirements in Circumvention Inquiries

This section amends the statute to address the process by which the Department of Commerce should initiate a circumvention inquiry. In addition, this section requires Commerce to respond to any circumvention inquiry request within 20 days. Preliminary determinations of circumvention must be made within 90 days, and Commerce may extend that deadline by 45 days. Final determinations of circumvention are required within 120 days, and the agency may extend that deadline by not more than 60 days. Currently there are no statutory process or timelines for circumvention inquiries. This section also requires Commerce to determine within 335 days whether a circumvention inquiry request should be addressed by clarifying that the imported good falls within the scope of an existing antidumping or countervailing duty order.

Importantly, this section instructs Commerce to order the suspension of liquidation and the posting of a cash deposit for all merchandise subject to a circumvention inquiry. The section also clarifies that Commerce shall apply a circumvention determination on a country-wide basis, unless it is more appropriate to apply the determination to particular producers or exporters. By codifying and expediting relief provided through circumvention inquiries, this section strengthens enforcement against repeat offenders and serial cheaters.

Section 402: Requirement of Provision by Importer of Certification by Importer or Other Party

This section allows the Department of Commerce to require importers to provide a certification upon entry of an article into the United States that states that the imported article is not subject to an antidumping or countervailing duty order. Importers must be able to provide the certification upon request of Commerce or Customs and Border Protection (CBP). If the importer does not provide the certification or if the certification contains any false, misleading, or fraudulent statements, this section gives Commerce the authority to order CBP to suspend liquidation of the entry, or require the importer to post a cash deposit equal to the antidumping or countervailing duty or duties applicable to the merchandise. In addition, this section clarifies that any importer that does not provide the certification upon request or makes a false, misleading, or fraudulent statement in the certification, may be subject to other penalties. This section will help to crack down on importers that are attempting to evade antidumping or countervailing duties.

Section 403: Clarification of Authority for Department of Commerce Regarding Merchandise Covered by Antidumping and Countervailing Duty Proceedings

The Department of Commerce often must determine whether imported merchandise is covered by an antidumping or countervailing duty order. This section codifies Commerce's current practice. Specifically, this section states that Commerce may use any reasonable method to determine whether an imported article falls within the scope of an antidumping or countervailing duty order and clarifies that Commerce's determination is not bound by rulings on the matter made by any other agency, including Customs and Border Protection. The section provides a list of criteria Commerce may take into consideration when making a scope determination, including whether upstream and downstream products are within the same class or kind of merchandise, whether the merchandise is substantially transformed in the country of exportation, the extent to which the merchandise is processed, and any other factors it deems appropriate.

Section 404: Asset Requirements Applicable to Nonresident Importers

Currently, non-resident importers are not required to maintain any U.S. assets, which complicates Customs and Border Protection's (CBP) ability to collect where an importer is found, after importation, to have entered goods subject to a higher duty rate than that which is claimed at entry. Such importers often default entirely on their obligations, and they often also have bonds in place that are insufficient to cover their liabilities. This section amends current law to provide that nonresident importers must have sufficient U.S.-based assets to cover their liabilities to CBP, as well as customs bonds in place to make the agency whole in the case of the importer's default.

Title V: Countering Currency Undervaluation

Section 501: Investigation or Review of Currency Undervaluation Under Countervailing Duty Law

This section requires the Department of Commerce to investigate allegations of currency undervaluation as a countervailable subsidy if those allegations meet the requirements required under existing law. The purpose of this section is to remove from Commerce the discretion to not investigate currency undervaluation allegations when those allegations meet the criteria for investigation.

Section 502: Determination of Benefit With Respect to Currency Undervaluation

This section instructs Commerce to determine whether currency undervaluation is providing a benefit to the recipient and to measure that benefit by using established methodologies that allow for the comparison of the exchange rate to the relevant actual exchange rate. Calculations of currency undervaluation can vary dramatically, and this section ensures Commerce will use appropriate methodologies to calculate any subsidy conferred as a result of currency undervaluation.

Title VI: Effective Date and Conforming Amendment

Section 601: Application to Canada and Mexico

This section makes clear that this law will be applied in a method consistent with U.S. obligations under the USMCA.

Section 602: Effective Date

This section provides clarity on how the legislation's changes to statute will take effect for cases that have already been initiated when it is enacted. Specifically, this section provides that the legislation will apply to cases that have already been initiated in which a preliminary determination was not made more than 45 days earlier than the effective date. It also clarifies that the legislation will apply to all investigations, reviews, and inquiries initiated after the date of enactment.