

116TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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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

## 2

- 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 IV—GENERAL PROVISIONS

- Sec. 501. Application to Canada and Mexico.
- Sec. 502. Effective date.



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 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

1 another country that are the subject of a suc-  
2 cessive investigation not more than 2 years be-  
3 fore the date of initiation of the successive in-  
4 vestigation.

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

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

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

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

18 “(1) under subsection (a), if—

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

22 “(B) imports of the same or similar class  
23 or kind of merchandise are or have been the  
24 subject of a concurrent investigation or recently  
25 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.**—Sec-  
5 tion 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           (1) by striking “A transaction” and inserting  
2           the following:

3                     “(A) IN GENERAL.—A transaction”; and

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

5                     “(B) TRANSACTIONS WITH CERTAIN ENTI-  
6           TIES.—

7                     “(i) IN GENERAL.—If an input for  
8                     subject merchandise is produced by or ac-  
9                     quired from a person or entity described in  
10                    clause (iii), the administering authority  
11                    shall disregard such production or acquisi-  
12                    tion as outside the ordinary course of  
13                    trade.

14                    “(ii) DETERMINATION OF AMOUNT.—  
15                    If the production or acquisition of an input  
16                    is disregarded under clause (i) and no  
17                    other transactions are available for consid-  
18                    eration, the determination of the amount  
19                    to be used to value the input shall be based  
20                    on the information available with respect  
21                    to what the amount would have been but  
22                    for the participation of the person or entity  
23                    described in clause (iii) in the market for  
24                    the input or based on any other calculation  
25                    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.”.

1                   **TITLE III—PREVENTING**  
2                   **CIRCUMVENTION**

3 **SEC. 301. MODIFICATION OF REQUIREMENTS IN CIR-**  
4                   **CUMVENTION INQUIRIES.**

5           (a) IN GENERAL.—Section 781 of the Tariff Act of  
6 1930 (19 U.S.C. 1677j) is amended by striking subsection  
7 (f) and inserting the following:

8           “(f) PROCEDURES FOR CONDUCTING CIRCUMVEN-  
9 TION INQUIRIES.—

10           “(1) INITIATION BY ADMINISTERING AUTHOR-  
11 ITY.—A circumvention inquiry shall be initiated  
12 whenever the administering authority determines,  
13 from information available to it, that a formal in-  
14 quiry is warranted into the question of whether the  
15 elements necessary for a determination under this  
16 section exist.

17           “(2) INITIATION BY INQUIRY REQUEST.—

18           “(A) IN GENERAL.—A circumvention in-  
19 quiry shall be initiated whenever an interested  
20 party files an inquiry request that alleges the  
21 elements necessary for a determination under  
22 this section, accompanied by information rea-  
23 sonably available to the requestor supporting  
24 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                 equate 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

1 to whether a particular type of merchandise is  
2 within the class or kind of merchandise de-  
3 scribed in an existing finding of dumping or an  
4 antidumping or countervailing duty order.

5 “(4) DETERMINATIONS.—

6 “(A) PRELIMINARY DETERMINATIONS.—

7 “(i) IN GENERAL.—Except as pro-  
8 vided in clause (ii), not later than 90 days  
9 after the date on which the administering  
10 authority initiates a circumvention inquiry  
11 under paragraph (1) or (3)(A), the admin-  
12 istering authority shall make a preliminary  
13 determination, based on the information  
14 available to it at the time of the determina-  
15 tion, of whether there is a reasonable basis  
16 to believe or suspect that the merchandise  
17 subject to the inquiry is circumventing an  
18 existing finding of dumping or an anti-  
19 dumping or countervailing duty order.

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

24 “(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 MERCHAN-**  
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 subsection  
24          (b)(1), the Commissioner shall calculate the amount of as-  
25          sets sufficient to pay all duties that may potentially be

1 applied to merchandise imported by a nonresident im-  
2 porter based on an amount that exceeds the amount, cal-  
3 culated using the fair market value of the merchandise,  
4 of all duties, fees, interest, taxes, or other charges, and  
5 all deposits for duties, fees, interest, taxes, or other  
6 charges, that would apply with respect to the merchandise  
7 if the merchandise were subject to the highest rate of duty  
8 applicable to such merchandise imported from any coun-  
9 try.

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.