

American Iron and Steel Institute
American Wire Producers Association
Coalition to Enforce Antidumping and Countervailing Duty Orders
National Association of Manufacturers

June 29, 2015

The Honorable Paul Ryan
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Orrin Hatch
Chairman
Committee on Finance
U.S. Senate
Washington, DC 20510

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Ron Wyden
Ranking Member
Committee on Finance
U.S. Senate
Washington, DC 20510

Dear Chairmen Ryan and Hatch and Ranking Members Levin and Wyden:

In the face of growing efforts to evade U.S. trade laws, our organizations appreciate the bipartisan and bicameral commitment to include the Enforcing Orders and Reducing Customs Evasion (ENFORCE) Act, as contained in Title IV of the Senate-passed Trade Facilitation and Trade Enforcement Act (H.R. 644), in the conference report on H.R. 644 and urge the quick implementation of these provisions.

As associations representing tens of thousands of small, medium and large manufacturers in every industrial sector in all 50 states, we have long championed a robust manufacturing U.S. trade policy that opens foreign markets and eliminates barriers overseas, advances the competitiveness of manufacturers in the United States, and ensures the strong enforcement of the rules of the trading system at home and by our trading partners.

Unfortunately, U.S. enforcement of our own longstanding U.S. trade rules has been under assault. A variety of entities seek to and are evading antidumping (AD) and countervailing (CVD) orders that have been put in place in accordance with longstanding U.S. laws to remedy injury to domestic manufacturers as a result of unfairly traded imports. As detailed recently by the Office of the United States Trade Representative (USTR) to the World Trade Organization (WTO)¹, “the United States has witnessed a dramatic increase in activities expressly designed to evade the application of antidumping duties.” As the predominate users of the trade remedy laws, this evasion has had its most harmful impact on the manufacturing sector.

In recent years, manufacturers have spent significant time and resources to utilize the trade remedy rules to obtain remedial AD and CVD orders only to find importers and other entities that are evading these orders. Despite ongoing efforts by affected industries to work alongside the U.S. Government and in particular Customs & Border Protection (CBP) to seek the proper classification of entries, reviews often go on for years with no resolution. In many cases, U.S. manufacturers have collected and presented overwhelming evidence of wrongdoing to CBP and other agencies only to watch that information disappear into a black hole of government bureaucracy. CBP’s failure to enforce trade-remedy orders in a timely and effective

¹ “Antidumping Duty ‘Evasion Services,” Paper from the United States to the WTO Committee on Anti-Dumping Practices, Informal Group on Anti-Circumvention (17 Mar. 2015), accessed at <http://documents.nam.org/IEA/G-ADP-IG-W-54.pdf>.

way has left no remedy for domestic manufacturers that already have been injured by unfair trade.

This growing threat requires stronger enforcement by CBP, the agency charged with enforcing tariff classifications at the U.S. border. For this reason, our organizations that represent vast majority of the industries that rely on U.S. trade remedy laws strongly support the ENFORCE Act legislation which will ensure a transparent, regularized and fair process to ensure improved enforcement of U.S. trade remedy laws that help manufacturers address government-subsidized and other unfair competition. The Senate ENFORCE Act provisions are the most appropriate way to address this issue, and are strongly supported by members in both the House and Senate on both sides of the aisle. Key provisions of the Senate ENFORCE Act include:

- Enhancing CBP Tools. The Senate ENFORCE Act designates CBP as the lead agency to conduct evasion investigations. CBP, not the Commerce Department, is the entity charged with collecting AD and CVD duties at the border and enforcing all other tariff and border issues. CBP is the only appropriate entity to engage in these activities, which it has already undertaken to a limited degree. House proposals to move this border enforcement function to the Commerce Department ignore the CBP border enforcement role and would undermine the Commerce Department's ability to conduct original investigations and administrative reviews. Notably, the Senate ENFORCE Act allocates resources and regulatory changes so that CBP will be able to improve its border enforcement activities, as well as language ensuring that regulations will be issued to ensure the proper coordination between CBP and the Commerce Department.
- Time-Limited Investigations. The Senate ENFORCE Act provisions require CBP to initiate, investigate, and make determinations on allegations of evasion within one year so that this problem can be reviewed carefully but in a timely manner. Already, domestic industries spend more than a year bringing the original AD or CVD case, which is reviewed in an open and transparent and time limited manner by the U.S. Department of Commerce and U.S. International Trade Commission.
- Judicial Review. The Senate ENFORCE Act requires that CBP's decisions on evasion allegations be appealable to the Court of International Trade. Judicial review is a common feature in customs trade classifications and trade remedy actions to ensure that U.S. government agencies are accountable and processes are undertaken in a fair manner consistent with statutory requirements. Final determinations by the U.S. Department of Commerce (Commerce) and U.S. International Trade Commission (ITC) in antidumping and countervailing duty cases are explicitly subject to judicial review by both the petitioning domestic industries and importers of the allegedly dumped or subsidized products. Moreover, extensive *de novo* judicial review is already provided to importers into the United States if they disagree with CBP's classification of imports. All of those rights would still be available under existing law to importers under the ENFORCE Act if CBP reclassified the entry of products. Judicial review is vital for domestic manufacturing industries seeking strong enforcement of AD/CVD orders. If judicial review is not provided with respect to ENFORCE Act determinations, domestic manufacturing industries would be denied any opportunity to ensure that CBP acted appropriately and in accordance with law. Given importers' existing rights to judicial review, failing to provide judicial review of CBP evasion determinations would provide importers of goods into the U.S. with greater legal rights than our own domestic manufacturers that have already been found to be injured by unfairly traded imports.

It is long past time for Congress to address the growing evasion threats that are undermining America's ability to remedy unfair trade practices that injure our nation's

manufacturers. We appreciate the strong bipartisan and bicameral support for the inclusion of the ENFORCE Act in the conference on H.R. 644 and urge the expeditious enactment of this legislation to improve the United States' ability to enforce fully U.S. trade remedy rules.

Sincerely,

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Cc: Members of the Senate Committee on Finance
Members of the House Committee on Ways and Means