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PL 114-125 [HR 644]

February 24, 2016

TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015

An Act To reauthorize trade facilitation and trade enforcement functions and activities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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Sec. 307. Personnel dedicated to the enforcement of intellectual property rights.

Sec. 308. Training with respect to the enforcement of intellectual property rights.

Sec. 309. International cooperation and information sharing.

Sec. 310. Report on intellectual property rights enforcement.

Sec. 311. Information for travelers regarding violations of intellectual property rights.

TITLE IV—PREVENTION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS

Sec. 401. Short title.

Sec. 402. Definitions.

Sec. 403. Application to Canada and Mexico.

Subtitle A—Actions Relating to Enforcement of Trade Remedy Laws

Sec. 411. Trade remedy law enforcement division.

Sec. 412. Collection of information on evasion of trade remedy laws.

Sec. 413. Access to information.

Sec. 414. Cooperation with foreign countries on preventing evasion of trade remedy laws.

Sec. 415. Trade negotiating objectives.

Subtitle B—Investigation of Evasion of Trade Remedy Laws

Sec. 421. Procedures for investigating claims of evasion of antidumping and countervailing duty orders.

Subtitle C—Other Matters

Sec. 431. Allocation and training of personnel.

Sec. 432. Annual report on prevention and investigation of evasion of antidumping and countervailing duty orders.

Sec. 433. Addressing circumvention by new shippers.

TITLE V—SMALL BUSINESS TRADE ISSUES AND STATE TRADE COORDINATION

Sec. 501. Short title.

Sec. 502. Outreach and input from small businesses to trade promotion authority.

Sec. 503. State Trade Expansion Program.

Sec. 504. State and Federal Export Promotion Coordination.

Sec. 505. State trade coordination.

TITLE VI—ADDITIONAL ENFORCEMENT PROVISIONS

Sec. 601. Trade enforcement priorities.

Sec. 602. Exercise of WTO authorization to suspend concessions or other obligations under trade agreements.

Sec. 603. Trade monitoring.

Sec. 604. Establishment of Interagency Center on Trade Implementation, Monitoring, and Enforcement.

Sec. 605. Inclusion of interest in certain distributions of antidumping duties and countervailing duties.

Sec. 606. Illicitly imported, exported, or trafficked cultural property, archaeological or ethnological materials, and fish, wildlife, and plants.

Sec. 607. Enforcement under title III of the Trade Act of 1974 with respect to certain acts, policies, and practices.

Sec. 608. Honey transshipment.

Sec. 609. Establishment of Chief Innovation and Intellectual Property Negotiator.

Sec. 610. Measures relating to countries that deny adequate protection for intellectual property rights.

Sec. 611. Trade Enforcement Trust Fund.

#### TITLE VII—ENGAGEMENT ON CURRENCY EXCHANGE RATE AND ECONOMIC POLICIES

Sec. 701. Enhancement of engagement on currency exchange rate and economic policies with certain major trading partners of the United States.

Sec. 702. Advisory Committee on International Exchange Rate Policy.

#### TITLE VIII—MATTERS RELATING TO U.S. CUSTOMS AND BORDER PROTECTION

##### Subtitle A—Establishment of U.S. Customs and Border Protection

Sec. 801. Short title.

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Sec. 802. Establishment of U.S. Customs and Border Protection.

##### Subtitle B—Preclearance operations

Sec. 811. Short title.

Sec. 812. Definitions.

Sec. 813. Establishment of preclearance operations.

Sec. 814. Notification and certification to Congress.

Sec. 815. Protocols.

Sec. 816. Lost and stolen passports.

Sec. 817. Recovery of initial U.S. Customs and Border Protection preclearance operations costs.

Sec. 818. Collection and disposition of funds collected for immigration inspection services and preclearance activities.

Sec. 819. Application to new and existing preclearance operations.

#### TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. De minimis value.

Sec. 902. Consultation on trade and customs revenue functions.

Sec. 903. Penalties for customs brokers.

Sec. 904. Amendments to chapter 98 of the Harmonized Tariff Schedule of the United States.

Sec. 905. Exemption from duty of residue of bulk cargo contained in instruments of international traffic previously exported from the United States.

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Sec. 909. United States-Israel trade and commercial enhancement.

Sec. 910. Elimination of consumptive demand exception to prohibition on importation of goods made with convict labor, forced labor, or indentured labor; report.

Sec. 911. Voluntary reliquidations by U.S. Customs and Border Protection.

Sec. 912. Tariff classification of recreational performance outerwear.

Sec. 913. Modifications to duty treatment of protective active footwear.

Sec. 914. Amendments to Bipartisan Congressional Trade Priorities and Accountability Act of 2015.

Sec. 915. Trade preferences for Nepal.

Sec. 916. Agreement by Asia-Pacific Economic Cooperation members to reduce rates of duty on certain environmental goods.

Sec. 917. Amendment to Tariff Act of 1930 to require country of origin marking of certain castings.

Sec. 918. Inclusion of certain information in submission of nomination for appointment as Deputy United States Trade Representative.

Sec. 919. Sense of Congress on the need for a miscellaneous tariff bill process.

Sec. 920. Customs user fees.

Sec. 921. Increase in penalty for failure to file return of tax.

Sec. 922. Permanent moratorium on Internet access taxes and on multiple and discriminatory taxes on electronic commerce.

<< 19 USCA § 4301 >>

## **SEC. 2 DEFINITIONS.**

In this Act:

(1) **AUTOMATED COMMERCIAL ENVIRONMENT.**—The term “Automated Commercial Environment” means the Automated Commercial Environment computer system authorized under section 13031(f)(4) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(4)).

the transit of small packages and an identification of \*155 the volume, value, and type of merchandise seized for infringing intellectual property rights as a result of such efforts.

(5) A summary of training relating to the enforcement of intellectual property rights conducted under section 308 and expenditures for such training.

<< 19 USCA § 4350 >>

**SEC. 311 INFORMATION FOR TRAVELERS REGARDING VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS.**

(a) IN GENERAL.—The Secretary of Homeland Security shall develop and carry out an educational campaign to inform travelers entering or leaving the United States about the legal, economic, and public health and safety implications of acquiring merchandise that infringes intellectual property rights outside the United States and importing such merchandise into the United States in violation of United States law.

(b) DECLARATION FORMS.—The Commissioner shall ensure that all versions of Declaration Form 6059B of U.S. Customs and Border Protection, or a successor form, including any electronic equivalent of Declaration Form 6059B or a successor form, printed or displayed on or after the date that is 30 days after the date of the enactment of this Act include a written warning to inform travelers arriving in the United States that importation of merchandise into the United States that infringes intellectual property rights may subject travelers to civil or criminal penalties and may pose serious risks to safety or health.

T. 19 ch. 28 subch. IV prec. § 4301

**TITLE IV—PREVENTION OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS**

**SEC. 401. SHORT TITLE.**

<< 19 USCA § 4301 NOTE >>

This title may be cited as the “Enforce and Protect Act of 2015”.

<< 19 USCA § 4361 >>

**SEC. 402 DEFINITIONS.**

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Finance and the Committee on Appropriations of the Senate; and

(B) the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives.

(2) COVERED MERCHANDISE.—The term “covered merchandise” means merchandise that is subject to—

(A) a countervailing duty order issued under section 706 of the Tariff Act of 1930 (19 U.S.C. 1671e); or

(B) an antidumping duty order issued under section 736 of the Tariff Act of 1930 (19 U.S.C. 1673e).

(3) ELIGIBLE SMALL BUSINESS.—

(A) IN GENERAL.—The term “eligible small business” means any business concern that, in the judgment of the Commissioner, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and submitting for consideration allegations of evasion.

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(B) NONREVIEWABILITY.—Any agency decision regarding whether a business concern is an eligible small business for purposes of section 411(b)(4)(E) is not reviewable by any other agency or by any court.

(4) ENTER; ENTRY.—The terms “enter” and “entry” refer to the entry, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States.

(5) EVADE; EVASION.—The terms “evade” and “evasion” refer to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

(6) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(7) TRADE REMEDY LAWS.—The term “trade remedy laws” means title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq.).

<< 19 USCA § 4362 >>

#### **SEC. 403 APPLICATION TO CANADA AND MEXICO.**

Pursuant to article 1902 of the North American Free Trade Agreement and section 408 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3438), this title and the amendments made by this title shall apply with respect to goods from Canada and Mexico.

T. 19 ch. 28 subch. IV pt. 1 prec. § 4371

**Subtitle A—Actions Relating to Enforcement of Trade Remedy Laws**

<< 19 USCA § 4371 >>

**SEC. 411 TRADE REMEDY LAW ENFORCEMENT DIVISION.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Homeland Security shall establish and maintain within the Office of Trade established under section 4 of the Act of March 3, 1927 (44 Stat. 1381, chapter 348; 19 U.S.C. 2071 et seq.), as added by section 802(h) of this Act, a Trade Remedy Law Enforcement Division.

(2) COMPOSITION.—The Trade Remedy Law Enforcement Division shall be composed of—

(A) headquarters personnel led by a Director, who shall report to the Executive Assistant Commissioner of the Office of Trade; and

(B) a National Targeting and Analysis Group dedicated to preventing and countering evasion.

(3) DUTIES.—The Trade Remedy Law Enforcement Division shall be dedicated—

(A) to the development and administration of policies to prevent and counter evasion, including policies relating to the implementation of section 517 of the Tariff Act of 1930, as added by section 421 of this Act;

(B) to direct enforcement and compliance assessment activities concerning evasion;

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(C) to the development and conduct of commercial risk assessment targeting with respect to cargo destined for the United States in accordance with subsection (c);

(D) to issuing Trade Alerts described in subsection (d); and

(E) to the development of policies for the application of single entry and continuous bonds for entries of covered merchandise to sufficiently protect the collection of antidumping and countervailing duties commensurate with the level of risk of noncollection.

(b) DUTIES OF DIRECTOR.—The duties of the Director of the Trade Remedy Law Enforcement Division shall include—

(1) directing the trade enforcement and compliance assessment activities of U.S. Customs and Border Protection that concern evasion;

(2) facilitating, promoting, and coordinating cooperation and the exchange of information between U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and other relevant Federal agencies regarding evasion;

(3) notifying on a timely basis the administering authority (as defined in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1))) and the Commission (as defined in section 771(2) of the Tariff Act of 1930 (19 U.S.C. 1677(2))) of any finding, determination, civil action, or criminal action taken by U.S. Customs and Border Protection or other Federal agency regarding evasion;

(4) serving as the primary liaison between U.S. Customs and Border Protection and the public regarding activities concerning evasion, including activities relating to investigations conducted under section 517 of the Tariff Act of 1930, as added by section 421 of this Act, which include—

(A) receiving allegations of evasion from parties, including allegations described in section 517(b)(2) of the Tariff Act of 1930, as so added;

(B) upon request by the party or parties that submitted such an allegation of evasion, providing information to such party or parties on the status of U.S. Customs and Border Protection's consideration of the allegation and decision to pursue or not pursue any administrative inquiries or other actions, such as changes in policies, procedures, or resource allocation as a result of the allegation;

(C) as needed, requesting from the party or parties that submitted such an allegation of evasion any additional information that may be relevant for U.S. Customs and Border Protection determining whether to initiate an administrative inquiry or take any other action regarding the allegation;

(D) notifying on a timely basis the party or parties that submitted such an allegation of the results of any administrative, civil, or criminal actions taken by U.S. Customs and Border Protection or other Federal agency regarding evasion as a direct or indirect result of the allegation;

(E) upon request, providing technical assistance and advice to eligible small businesses to enable such businesses to prepare and submit such an allegation of \*158 evasion, except that the Director may deny technical assistance if the Director concludes that the allegation, if submitted, would not lead to the initiation of an administrative inquiry or any other action to address the allegation;

(F) in cooperation with the public, the Commercial Customs Operations Advisory Committee established under section 109, the Trade Support Network, and any other relevant parties and organizations, developing guidelines on the types and nature of information that may be provided in such an allegation of evasion; and

(G) consulting regularly with the public, the Commercial Customs Operations Advisory Committee, the Trade Support Network, and any other relevant parties and organizations regarding the development and implementation of regulations, interpretations, and policies related to countering evasion.

(c) PREVENTING AND COUNTERING EVASION OF THE TRADE REMEDY LAWS.—In carrying out its duties with respect to preventing and countering evasion, the National Targeting and Analysis Group dedicated to preventing and countering evasion shall—

(1) establish targeted risk assessment methodologies and standards—

(A) for evaluating the risk that cargo destined for the United States may constitute evading covered merchandise; and

(B) for issuing, as appropriate, Trade Alerts described in subsection (d); and

(2) to the extent practicable and otherwise authorized by law, use information available from the Automated Commercial System, the Automated Commercial Environment, the Automated Targeting System, the Automated Export System, the International Trade Data System established under section 411(d) of the Tariff Act of 1930 (19 U.S.C. 1411(d)), and the TECS (formerly known as the “Treasury Enforcement Communications System”), and any similar and successor systems, to administer the methodologies and standards established under paragraph (1).

(d) TRADE ALERTS.—Based upon the application of the targeted risk assessment methodologies and standards established under subsection (c), the Director of the Trade Remedy Law Enforcement Division shall issue Trade Alerts or other such means of notification to directors of United States ports of entry directing further inspection, physical examination, or testing of merchandise to ensure compliance with the trade remedy laws and to require additional bonds, cash deposits, or other security to ensure collection of any duties, taxes, and fees owed.

<< 19 USCA § 4372 >>

**SEC. 412 COLLECTION OF INFORMATION ON EVASION OF TRADE REMEDY LAWS.**

(a) **AUTHORITY TO COLLECT INFORMATION.**—To determine whether covered merchandise is being entered into the customs territory of the United States through evasion, the Secretary, acting through the Commissioner—

(1) shall exercise all existing authorities to collect information needed to make the determination; and

(2) may collect such additional information as is necessary to make the determination through such methods as the \*159 Commissioner considers appropriate, including by issuing questionnaires with respect to the entry or entries at issue to—

(A) a person who filed an allegation with respect to the covered merchandise;

(B) a person who is alleged to have entered the covered merchandise into the customs territory of the United States through evasion; or

(C) any other person who is determined to have information relevant to the allegation of entry of covered merchandise into the customs territory of the United States through evasion.

(b) **ADVERSE INFERENCE.**—

(1) **USE OF ADVERSE INFERENCE.**—

(A) **IN GENERAL.**—If the Secretary finds that a person described in subparagraph (B) has failed to cooperate by not acting to the best of the person's ability to comply with a request for information under subsection (a), the Secretary may, in making a determination whether an entry or entries of covered merchandise may constitute merchandise that is entered into the customs territory of the United States through evasion, use an inference that is adverse to the interests of that person in selecting from among the facts otherwise available to determine whether evasion has occurred.

(B) **PERSON DESCRIBED.**—A person described in this subparagraph is—

(i) a person who filed an allegation with respect to covered merchandise;

(ii) a person alleged to have entered covered merchandise into the customs territory of the United States through evasion;  
or

(iii) a foreign producer or exporter of covered merchandise that is alleged to have entered into the customs territory of the United States through evasion.

(C) APPLICATION.—An inference described in subparagraph (A) may be used under that subparagraph with respect to a person described in clause (ii) or (iii) of subparagraph (B) without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought by the Secretary, such as import or export documentation.

(2) ADVERSE INFERENCE DESCRIBED.—An adverse inference used under paragraph (1)(A) may include reliance on information derived from—

(A) the allegation of evasion of the trade remedy laws, if any, submitted to U.S. Customs and Border Protection;

(B) a determination by the Commissioner in another investigation, proceeding, or other action regarding evasion of the unfair trade laws; or

(C) any other available information.

#### SEC. 413 ACCESS TO INFORMATION.

<< 19 USCA § 1677f >>

(a) IN GENERAL.—Section 777(b)(1)(A)(ii) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)(1)(A)(ii)) is amended by inserting “negligence, gross negligence, or” after “regarding”.

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<< 19 USCA § 4373 >>

(b) ADDITIONAL INFORMATION.—Notwithstanding any other provision of law, the Secretary is authorized to provide to the Secretary of Commerce or the United States International Trade Commission any information that is necessary to enable the Secretary of Commerce or the United States International Trade Commission to assist the Secretary to identify, through risk assessment targeting or otherwise, covered merchandise that is entered into the customs territory of the United States through evasion.

<< 19 USCA § 4374 >>

**SEC. 414 COOPERATION WITH FOREIGN COUNTRIES ON PREVENTING EVASION OF TRADE REMEDY LAWS.**

**(a) BILATERAL AGREEMENTS.—**

(1) **IN GENERAL.**—The Secretary shall seek to negotiate and enter into bilateral agreements with the customs authorities or other appropriate authorities of foreign countries for purposes of cooperation on preventing evasion of the trade remedy laws of the United States and the trade remedy laws of the other country.

(2) **PROVISIONS AND AUTHORITIES.**—The Secretary shall seek to include in each such bilateral agreement the following provisions and authorities:

(A) On the request of the importing country, the exporting country shall provide, consistent with its laws, regulations, and procedures, production, trade, and transit documents and other information necessary to determine whether an entry or entries exported from the exporting country are subject to the importing country's trade remedy laws.

(B) On the written request of the importing country, the exporting country shall conduct a verification for purposes of enabling the importing country to make a determination described in subparagraph (A).

(C) The exporting country may allow the importing country to participate in a verification described in subparagraph (B), including through a site visit.

(D) If the exporting country does not allow participation of the importing country in a verification described in subparagraph (B), the importing country may take this fact into consideration in its trade enforcement and compliance assessment activities regarding the compliance of the exporting country's exports with the importing country's trade remedy laws.

**(b) CONSIDERATION.**—The Commissioner is authorized to take into consideration whether a country is a signatory to a bilateral agreement described in subsection (a) and the extent to which the country is cooperating under the bilateral agreement for purposes of trade enforcement and compliance assessment activities of U.S. Customs and Border Protection that concern evasion by such country's exports.

**(c) REPORT.**—Not later than December 31 of each calendar year beginning after the date of the enactment of this Act, the Secretary shall submit to the appropriate congressional committees a report summarizing—

(1) the status of any ongoing negotiations of bilateral agreements described in subsection (a), including the identities of the countries involved in such negotiations;

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(2) the terms of any completed bilateral agreements described in subsection (a); and

(3) bilateral cooperation and other activities conducted pursuant to or enabled by any completed bilateral agreements described in subsection (a).

<< 19 USCA § 4375 >>

**SEC. 415 TRADE NEGOTIATING OBJECTIVES.**

The principal negotiating objectives of the United States shall include obtaining the objectives of the bilateral agreements described under section 414(a) for any trade agreements under negotiation as of the date of the enactment of this Act or future trade agreement negotiations.

**Subtitle B—Investigation of Evasion of Trade Remedy Laws**

**SEC. 421 PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.**

(a) IN GENERAL.—The Tariff Act of 1930 is amended by inserting after section 516A (19 U.S.C. 1516a) the following:

<< 19 USCA § 1517 >>

**“SEC. 517 PROCEDURES FOR INVESTIGATING CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.**

“(a) DEFINITIONS.—In this section:

“(1) ADMINISTERING AUTHORITY.—The term ‘administering authority’ has the meaning given that term in section 771(1).

“(2) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of U.S. Customs and Border Protection.

“(3) COVERED MERCHANDISE.—The term ‘covered merchandise’ means merchandise that is subject to—

“(A) an antidumping duty order issued under section 736; or

“(B) a countervailing duty order issued under section 706.

“(4) ENTER; ENTRY.—The terms ‘enter’ and ‘entry’ refer to the entry, or withdrawal from warehouse for consumption, of merchandise into the customs territory of the United States.

“(5) EVASION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘evasion’ refers to entering covered merchandise into the customs territory of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.

“(B) EXCEPTION FOR CLERICAL ERROR.—

“(i) IN GENERAL.—Except as provided in clause (ii), the term ‘evasion’ does not include entering covered merchandise into the customs territory of the United States by means of—

“(I) a document or electronically transmitted data or information, written or oral statement, \*162 or act that is false as a result of a clerical error; or

“(II) an omission that results from a clerical error.

“(ii) PATTERNS OF NEGLIGENT CONDUCT.—If the Commissioner determines that a person has entered covered merchandise into the customs territory of the United States by means of a clerical error referred to in subclause (I) or (II) of clause (i) and that the clerical error is part of a pattern of negligent conduct on the part of that person, the Commissioner may determine, notwithstanding clause (i), that the person has entered such covered merchandise into the customs territory of the United States through evasion.

“(iii) ELECTRONIC REPETITION OF ERRORS.—For purposes of clause (ii), the mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

“(iv) RULE OF CONSTRUCTION.—A determination by the Commissioner that a person has entered covered merchandise into the customs territory of the United States by means of a clerical error referred to in subclause (I) or (II) of clause (i) rather than through evasion shall not be construed to excuse that person from the payment of any duties applicable to the merchandise.

“(6) INTERESTED PARTY.—

“(A) IN GENERAL.—The term ‘interested party’ means—

“(i) a foreign manufacturer, producer, or exporter, or the United States importer, of covered merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise;

“(ii) a manufacturer, producer, or wholesaler in the United States of a domestic like product;

“(iii) a certified union or recognized union or group of workers that is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product;

“(iv) a trade or business association a majority of the members of which manufacture, produce, or wholesale a domestic like product in the United States;

“(v) an association a majority of the members of which is composed of interested parties described in clause (ii), (iii), or (iv) with respect to a domestic like product; and

“(vi) if the covered merchandise is a processed agricultural product, as defined in section 771(4)(E), a coalition or trade association that is representative of either—

“(I) processors;

“(II) processors and producers; or

“(III) processors and growers.

“(B) DOMESTIC LIKE PRODUCT.—For purposes of subparagraph (A), the term ‘domestic like product’ means a product that is like, or in the absence of like, most \*163 similar in characteristics and uses with, covered merchandise.

“(b) INVESTIGATIONS.—

“(1) IN GENERAL.—Not later than 15 business days after receiving an allegation described in paragraph (2) or a referral described in paragraph (3), the Commissioner shall initiate an investigation if the Commissioner determines that the information provided in the allegation or the referral, as the case may be, reasonably suggests that covered merchandise has been entered into the customs territory of the United States through evasion.

“(2) ALLEGATION DESCRIBED.—An allegation described in this paragraph is an allegation that a person has entered covered merchandise into the customs territory of the United States through evasion that is—

“(A) filed with the Commissioner by an interested party; and

“(B) accompanied by information reasonably available to the party that filed the allegation.

“(3) REFERRAL DESCRIBED.—A referral described in this paragraph is information submitted to the Commissioner by any other Federal agency, including the Department of Commerce or the United States International Trade Commission, that reasonably suggests that a person has entered covered merchandise into the customs territory of the United States through evasion.

“(4) CONSIDERATION BY ADMINISTERING AUTHORITY.—

“(A) IN GENERAL.—If the Commissioner receives an allegation under paragraph (2) and is unable to determine whether the merchandise at issue is covered merchandise, the Commissioner shall—

“(i) refer the matter to the administering authority to determine whether the merchandise is covered merchandise pursuant to the authority of the administering authority under title VII; and

“(ii) notify the party that filed the allegation, and any other interested party participating in the investigation, of the referral.

“(B) DETERMINATION; TRANSMISSION TO COMMISSIONER.—After receiving a referral under subparagraph (A)(i) with respect to merchandise, the administering authority shall determine whether the merchandise is covered merchandise and promptly transmit that determination to the Commissioner.

“(C) STAY OF DEADLINES.—The period required for any referral and determination under this paragraph shall not be counted in calculating any deadline under this section.

“(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the authority of an interested party to commence an action in the United States Court of International Trade under section 516A(a)(2) with respect to a determination of the administering authority under this paragraph.

“(5) CONSOLIDATION OF ALLEGATIONS AND REFERRALS.—

“(A) IN GENERAL.—The Commissioner may consolidate multiple allegations described in paragraph (2) and referrals described in paragraph (3) into a single investigation \*164 if the Commissioner determines it is appropriate to do so.

“(B) EFFECT ON TIMING REQUIREMENTS.—If the Commissioner consolidates multiple allegations or referrals into a single investigation under subparagraph (A), the date on which the Commissioner receives the first such allegation or referral shall be used for purposes of the requirement under paragraph (1) with respect to the timing of the initiation of the investigation.