

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

August 6, 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:

As associations representing manufacturers in the U.S. that have been harmed by unfairly traded imports that are now subject to antidumping and/or countervailing duty (AD/CVD) orders, we urge Congress to move quickly to put in place 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).

The ENFORCE Act seeks to address the growing and injurious practice engaged in by foreign competitors seeking to evade U.S. AD/CVD orders, oftentimes by transshipping the product through a third country and/or misclassifying the true origin of imports entering the U.S. While Customs and Border Protection (CBP) has long served as the sole U.S. government agency charged with collecting all import tariffs, including AD/CVD, and ensuring compliance with all U.S. import requirements, it has failed to address this harmful practice in a timely, transparent or effective manner. The ENFORCE Act, therefore, seeks to provide CBP with parameters to investigate AD/CVD evasion occurring at the border in a transparent and accountable matter so that manufacturers, already found to be injured by such foreign imports, are accorded the remedial action provided under the law.

Recent criticism of the ENFORCE Act is unfounded and ignores existing legal obligations under U.S. customs and trade-remedy laws, as well as disregards CBP's role in issuing regulations to establish procedures implementing the ENFORCE Act once enacted. In reviewing this legislation, we urge you to consider the following key points:

- **Importers of merchandise are already accorded under existing law and will continue to be accorded full due process rights under the ENFORCE Act.** The ENFORCE Act expressly ensures that importers can seek *de novo* administrative review within 30 days of an affirmative determination and can seek judicial review as well. While importers already have many of these due process rights under existing law, domestic manufacturing industries do not. The ENFORCE Act, therefore, would create a more fair system for domestic manufacturers to allege that AD/CVD orders are being evaded.

- **Importers of merchandise subject to AD/CVD orders are already required to pay duties on subject merchandise even if they did not intentionally or knowingly engage in evasion, which is all the ENFORCE Act requires.** Duties apply to all imported products that fall within the scope of AD/CVD orders that are produced in a country covered by an order. Under current customs laws, importers can be subject to additional duty liability even if they are “innocent,” exercised “reasonable care” or otherwise are “blameless,” if the imported product should have been classified at a higher rate or is subject to AD/CVD. Since the ENFORCE Act is only focused on the proper classification of imported goods, not any questions of fraud or penalties (for which CBP already has jurisdiction), it creates no new liability for importers, but rather improves the mechanism for the enforcement of existing law.
- **The ENFORCE Act creates no conflict with the Trusted Traders program.** Trusted traders receive many benefits under CBP programs, but avoidance of lawfully owed duties, including AD/CVD, is not one of them. For example, participants in the importer self-assessment (ISA) program are still required to pay AD/CVD when owed, in addition to self-disclosing information or responding to CBP requests to self-disclose. Nothing about ENFORCE undermines any trusted trader benefit, but simply requires all who import merchandise subject to AD/CVD to pay the appropriate duties.
- **The ENFORCE Act provides for meaningful judicial review for both domestic manufacturing industries and importers.** The ENFORCE Act expressly provides for judicial review of both substantive and procedural aspects of ENFORCE proceedings on the same basis as is already provided under the Administrative Procedure Act. Such judicial review is vital to ensure accountability and fairness to all interested parties.
- **The ENFORCE Act does not expand CBP’s jurisdiction or permit “forum shopping.”** The ENFORCE Act makes no changes to scope rulings that are properly within the jurisdiction of the Department of Commerce or provide any ability for forum shopping. To the contrary, the ENFORCE Act seeks to require CBP to exercise its existing authority in a more timely and accountable manner. The House-proposed PROTECT Act, by contrast, would create a wholesale change in jurisdiction, effectively requiring the Commerce Department to make import classification determinations, which is the sole jurisdiction of CBP.

The ENFORCE Act was developed and appropriately seeks to ensure that CBP is undertaking its current responsibilities in a more timely, transparent and accountable manner in the face of a massive growth in the evasion of fully adjudicated AD/CVD orders. Without this legislation, manufacturers in the U.S. are left without any recourse to address the continued injury that unfairly traded imports are having to industries across the U.S. We urge Congress to act quickly to pass this important legislation.

Sincerely,

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