



Enforcing Orders and Reducing Circumvention and Evasion (ENFORCE) Act White Paper

September 2015

I. Summary

The **Enforcing Orders and Reducing Circumvention and Evasion (ENFORCE) Act** was designed to improve enforcement of US trade laws by increasing transparency and timely investigations of allegations of evasion of antidumping and countervailing duty orders (collectively, AD/CVD orders).

This trade enforcement legislation does not alter the existing powers and authority of US Customs and Border Protection (CBP), or impose new responsibilities. Instead, it provides defined structures and reasonable timelines for critical determinations, and it increases transparency in the processes used to investigate duty evasion. The law would require that CBP make determinations on whether there is a reasonable basis to believe an importer is evading an AD/CVD order within 270 days after the submission of a properly supportable allegation. If an affirmative determination is made, the ENFORCE Act would require that AD/CVD penalties be collected.

II. Background

Domestic producers and industries may petition the US Commerce Department (Commerce) and the US International Trade Commission (ITC) to investigate imports which are believed to be sold at less than fair value or “dumped” in antidumping duty (AD) investigations or which benefit from unlawful government subsidies in countervailing duty (CVD) investigations. If Commerce finds that the imports are dumped or unfairly subsidized, and the ITC finds that these imports are a cause of material injury (or threaten material injury) to the US industry, Commerce will issue an AD and/or a CVD order imposing remedial duties on imports of these products to offset the amount of dumping or improper subsidies.

AD/CVD investigations and the resulting orders are the primary means by which US industries combat unfairly-traded imports. However, these remedies are only effective to the extent the orders are enforced and attempts to illegally evade the orders are stopped. Foreign exporters and US importers are increasingly using various schemes to evade payment of AD/CVD duties when goods are imported. These often involve transshipping products through a third country, sometimes repackaging or relabeling the product, and then using false documentation to declare that the third country is the country of origin. Importers also may deliberately misclassify imports, claiming that they are a different product or that they are excluded from the scope of the order.

Other common tactics to avoid AD/CVD duties include subjecting the products to minor alterations, or sending parts to a third country where minor or insignificant completion or

assembly operations are performed. Such products are then improperly identified as a product of the third country in blatant circumvention of the order.

These actions violate US law and deprive American companies of the relief which the AD/CVD laws are intended to provide. Evasion of existing duty orders causes continued financial harm to domestic industries and results in the loss of good-paying jobs for American workers. In addition, **the US Treasury loses hundreds of millions of dollars in uncollected duties annually** because products enter the US without paying the applicable, legally-required duties.

III. Status of Legislation

Senate: On May 12, the Senate passed the Trade Facilitation and Trade Enforcement Reauthorization Act (HR 644), which includes the language from Senator Wyden's Enforcing Orders and Reducing Circumvention Evasion (ENFORCE) Act, in Title IV. This bill is commonly called the Customs Reauthorization bill.

House: The House Ways and Means Committee approved a similar Customs Reauthorization Bill (HR 644) on April 23. However, with regard to this issue, the House version includes language from an earlier bill called PROTECT, along with some new provisions that would create a Commerce Department enforcement mechanism that had not been fully reviewed. Congresswoman Sanchez (CA) introduced an ENFORCE Act amendment to the House bill, during committee hearings, but withdrew it after receiving commitments from Chairman Ryan to support the ENFORCE language in conference. In addition, on the House floor when the bill was passed, Congressman Lou Barletta (PA) received similar commitments.

IV. AWPA's ASK

AWPA member companies ask their legislators to support the Senate-passed language of the ENFORCE Act. Congressmen and women are asked to talk with the House leadership and members of the Conference Committee for the Customs Reauthorization bills to urge this language be included in the final bill. Upon reconsideration of the bills in the House and Senate legislators are asked to vote for passage of this important measure.

V. Importance of This Bill to the Wire and Wire Products Industry and the US

A number of AWPA member companies have invested considerable time, resources and funds to stop the illegal dumping and subsidization of wire and wire products by foreign competitors. Our members have successfully obtained many AD/CVD orders against imported wire products that were found to be sold at dumped prices or unfairly subsidized by foreign governments. These companies have also experienced firsthand the effects of the illegal schemes used by foreign producers and US importers to evade the payment of lawfully-owed AD and CVD duties. These illegal schemes have caused further injury to these companies and have resulted in the loss of more American jobs.

AWPA member companies and their respective orders:

American Spring Wire—AD orders against prestressed concrete (PC) strand from China, Brazil, India, Japan, Korea, Mexico, and Thailand, and CVD orders against China and India

Heico Wire Group—AD orders against prestressed concrete rail tie wire from China and Mexico

Insteel Industries—AD/CVD orders against PC strand from China, Brazil, Japan, India, Korea, Mexico, and Thailand and CVD orders against China and India

Leggett & Platt, Incorporated—AD orders against innerspring units from China, Vietnam, and South Africa

M&B Metal Products, Inc.—AD orders against steel wire garment hangers from China, Taiwan, and Vietnam and a CVD order against Vietnam

Mid-Continent Nail—AD orders against steel nails from China, Korea, Malaysia, Oman, Taiwan, Vietnam, and the United Arab Emirates and a CVD order against Vietnam

Nashville Wire Products—AD/CVD orders against kitchen appliance shelving and racks from China

SSW Holding Company—AD/CVD orders against kitchen appliance shelving and racks from China

Sumiden Wire Products—AD orders against PC strand from China, Brazil, India, Japan, Korea, Mexico, Thailand, and CVD orders against China and India

Vulcan Threaded Products—AD order against steel threaded rod from China

The AD/CVD orders identified above represent just a small sample of the orders that are affected by illegal duty evasion. Scores of other industries across the country have AD/ CVD orders that are being undermined by illegal evasion. These include US producers of glycine, honey, diamond saw blades, and tissue paper products, to name just a few.

The enforcement tools embodied in the ENFORCE Act will help these AWPA members obtain effective, timely enforcement of their orders against dumped and subsidized imports. They will also help protect and promote American jobs and revenue owed to the US Treasury.