S. 1631

To reauthorize customs facilitation and trade enforcement functions and programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. BAUCUS (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To reauthorize customs facilitation and trade enforcement functions and programs, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Customs Facilitation and Trade Enforcement Reauthorization Act of 2009”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—CUSTOMS FACILITATION
Subtitle A—Functions Other Than Investigative Functions

Sec. 101. Establishment of Agency; Commissioner.
Sec. 102. Officers and employees.
Sec. 103. Separate budget for U.S. Customs and Border Protection Agency.
Sec. 104. Revolving fund.
Sec. 105. Advances in foreign countries.
Sec. 106. Advances for enforcement of customs provisions.
Sec. 107. Certification of reason for advance.
Sec. 108. Payments in foreign countries; claims for reimbursement.
Sec. 109. Customs administration.
Sec. 110. Personnel.
Sec. 111. Authorization of appropriations.

Subtitle B—Investigative Functions

Sec. 121. Establishment of Agency.
Sec. 122. Separate budget for U.S. Immigration and Customs Enforcement Agency.
Sec. 123. Undercover investigative operations.
Sec. 124. Authorization of appropriations.

Subtitle C—Joint Strategic Plan

Sec. 131. Joint Strategic Plan.

TITLE II—CUSTOMS FACILITATION, TRADE ENFORCEMENT, AND TRANSPARENCY

Subtitle A—Customs Facilitation and Transparency

Sec. 201. Trade benefits under the Customs-Trade Partnership Against Terrorism.
Sec. 202. Customs Facilitation Partnership Program.
Sec. 203. Consultations with respect to mutual recognition agreements.
Sec. 204. Commercial Customs Operations Advisory Committee.
Sec. 205. Automated Commercial Environment computer system.
Sec. 206. International Trade Data System.
Sec. 207. Electronic submission of public comments.

Subtitle B—Trade Enforcement

CHAPTER 1—COMMERCIAL RISK ASSESSMENT TARGETING

Sec. 211. Commercial Targeting Division and National Targeting and Analysis Groups.
Sec. 212. Annual illegal drug control law enforcement strategy.
Sec. 213. Report on oversight of revenue protection and enforcement measures by the inspector general.
Sec. 214. Report on security and revenue measures with respect to merchandise transported in bond.
Sec. 215. Importer of record program.

CHAPTER 2—IMPORT HEALTH AND SAFETY

Sec. 221. Interagency Import Safety Working Group.
Sec. 222. Joint Import Safety Rapid Response Plan.
Sec. 223. Training.
CHAPTER 3—IMPORT-RELATED PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Sec. 231. Intellectual property rights.
Sec. 233. Joint strategic plan for the enforcement of intellectual property rights.
Sec. 234. Repeated import-related infringement of intellectual property rights.
Sec. 235. Personnel dedicated to the enforcement of intellectual property rights.
Sec. 236. Training with respect to the enforcement of intellectual property rights.
Sec. 237. Recordation of works for which a copyright is pending.
Sec. 238. Availability of samples to owners of copyrights and trademarks or persons injured by the importation of circumvention devices.
Sec. 239. Seizure of circumvention devices.
Sec. 240. Information for travelers regarding violations of intellectual property rights.
Sec. 241. International cooperation and information sharing.
Sec. 242. Sense of Congress regarding recordation process.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Consultation on trade and customs revenue functions.
Sec. 302. Drawback for exported merchandise.
Sec. 303. Penalties for customs brokers.
Sec. 304. Articles repaired or altered.
Sec. 305. Charter flights.
Sec. 306. Symposium fees.
Sec. 307. Pilot program for establishing 24-hour commercial land border ports of entry.
Sec. 308. Prohibition on importation of goods made with forced or indentured labor or by benefit of human trafficking.
Sec. 309. Honey transshipment.
Sec. 310. Contraband archaeological or ethnological materials.
Sec. 311. De minimis and informal entries.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE.—The term “Commercial Customs Operations Advisory Committee” means the Advisory Committee established pursuant to section 202 of this Act or any successor committee.
Means of the House of Representatives a report on that determination and the reasons for that determination.

(2) Termination.—If the President determines under paragraph (1) that operating a port of entry 24 hours a day does not provide a net economic benefit to the United States, that port of entry shall cease to operate 24 hours a day on the date on which the President submits the report under paragraph (1)(B).

SEC. 308. PROHIBITION ON IMPORTATION OF GOODS MADE WITH FORCED OR INDENTURED LABOR OR BY BENEFIT OF HUMAN TRAFFICKING.

(a) Goods Made With Forced Labor.—

(1) In general.—Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) is amended to read as follows:

"SEC. 307. PROHIBITION ON IMPORTATION OF GOODS MADE WITH FORCED OR INDENTURED LABOR OR BY BENEFIT OF HUMAN TRAFFICKING.

"(a) Prohibition on importation.—No good may be imported into the United States, if that good was produced, in whole or in part—

"(1) with convict labor, forced labor, or indentured labor under penal sanctions;"
“(2) by means of coercion (as defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)), including by means of an employer withholding the passport or other travel documents of a foreign worker in order to compel the production of that good; or

“(3) by 1 or more individuals who, at the time of the production were being subjected to a severe form of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)).

“(b) CIVIL PENALTIES.—

“(1) IN GENERAL.—Any person who violates any provision of this section or any regulation issued under this section may, in addition to any other civil or criminal penalty that may be imposed under this Act or title 18, United States Code, or any other provision of law, be assessed a civil penalty by the Secretary of Homeland Security of not more than—

“(A) for the first violation, an amount equal to 3 times the value of the goods imported or attempted to be imported in violation of this section; and

“(B) for the second and subsequent violations, an amount equal to 6 times the value of
the goods imported or attempted to be imported
in violation of this section.
“(2) DEBARMENT.—
“(A) IN GENERAL.—The Secretary may
prohibit a person from importing any good into
the United States, or exporting any good from
the United States, if the Secretary finds that
the person has engaged in a pattern or practice
of actions that has resulted in a final deter-
mination with respect to the assessment of civil
or criminal penalties for knowing and inten-
tional or grossly negligent violations of any pro-
vision of this section or any regulation issued
under this section.
“(B) REINSTATEMENT.—The Secretary
may retract a prohibition imposed with respect
to a person under subparagraph (A) if the Sec-
retary determines that changed circumstances
warrant such a retraction.
“(3) NOTICE.—No penalty may be assessed
under this section against a person for violating a
provision of this section or a regulation issued under
this section unless the person is given notice and op-
portunity for a hearing with respect to such violation
in accordance with section 554 of title 5, United States Code.

“(c) DEFINITIONS.—In this section:

“(1) CHILD LABOR.—The terms ‘forced labor’ and ‘indentured labor’ include forced or indentured child labor.

“(2) CONVICT LABOR.—The term ‘convict labor’ means work performed by an individual while imprisoned by a foreign government and without compensation.

“(3) FORCED LABOR.—The term ‘forced labor’ means all work or service that is exacted from any person under the menace of any penalty for non-performance and in which the person does not engage voluntarily.

“(4) GOODS.—The term ‘goods’ means goods, wares, articles, and merchandise.

“(5) INDENTURED LABOR UNDER PENAL SANCTIONS.—The term ‘indentured labor under penal sanctions’ means work performed under a contract if the contract can be enforced through the imposition of a penalty or imprisonment.

“(6) PRODUCED.—The term ‘produced’ means produced, mined, or manufactured.”.
(2) EFFECTIVE DATE.—The amendment made
by this subsection applies to goods entered, or with-
drawn from warehouse for consumption, on or after
the date that is 15 days after the date of the enact-
ment of this Act.

(b) MONITORING AND REPORTING.—

(1) ESTABLISHMENT OF OFFICE FOR LABOR
ENFORCEMENT.—

(A) IN GENERAL.—There is established
within the U.S. Immigration and Customs En-
forcement Agency of the Department of Home-
land Security an Office for Labor Enforcement
(in this subsection referred to as the “Office”) to coordinate enforcement of the prohibition on
importing goods described in section 307 of the
Tariff Act of 1930, as amended by this section.

(B) ASSISTANT DIRECTOR.—The Office
shall be headed by the Assistant Director for
Labor Enforcement who shall—

(i) be appointed by the Secretary of
Homeland Security, in consultation with
the Secretary of the Treasury; and

(ii) report to the Director of U.S. Im-
migration and Customs Enforcement.
(C) DUTIES.—The Assistant Director shall—

(i) oversee the investigations of the
U.S. Immigration and Customs Enforce-
ment Agency with respect to the prohibi-
tion on importing goods described in sec-
tion 307 of the Tariff Act of 1930;

(ii) coordinate efforts to enforce the
prohibition on importing goods described in
section 307 of the Tariff Act of 1930, and
centralize information collected with re-
spect to that prohibition, by—

(I) the U.S. Immigration and
Customs Enforcement Agency;

(II) the U.S. Customs and Bor-
der Protection Agency;

(III) the Department of the
Treasury;

(IV) the Department of State;

(V) the Department of Labor;

(VI) the Department of Com-
merce; and

(VII) the Foreign Agricultural
Service of the Department of Agri-
culture;
(iii) coordinate with foreign governments to prevent the exportation to the United States of goods prohibited under section 307 of the Tariff Act of 1930;

(iv) prepare and publish the list of producers described in paragraph (2); and

(v) report annually, as described in paragraph (3), to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(2) LIST OF PRODUCERS.—

(A) IN GENERAL.—The list described in this paragraph is a list compiled and regularly updated by the Assistant Director for Labor Enforcement that includes the name and country of each producer of goods the importation of which is prohibited under section 307 of the Tariff Act of 1930. The list and regular updates shall be published in the Federal Register.

(B) REMOVAL FROM LIST.—The Assistant Director may remove a producer from the list under subparagraph (A) if the Assistant Direc-
tor determines that changed circumstances warrant such a removal.

(3) REPORT.—The report required by paragraph (1)(C)(vi) is a report submitted 180 days after the date of the enactment of this Act, and annually thereafter, that contains the following:

(A) The volume and value of goods made with child labor, convict labor, forced labor, indentured labor under penal sanctions, or any other coercion (as such terms are defined in section 307 of the Tariff Act of 1930) that are seized upon arrival in the United States.

(B) A description of the goods described in subparagraph (A).

(C) An assessment of the extent to which child labor, convict labor, forced labor, indentured labor under penal sanctions, or any other coercion are used in producing goods destined for the United States.

(D) The progress being made in identifying and interdicting goods that are destined for the United States that are made with child labor, convict labor, forced labor, indentured labor under penal sanctions, or any other coercion.
(E) The most recent list of producers compiled pursuant to subsection (b)(2).

(4) OTHER DUTIES.—The Office shall also be responsible for investigations relating to fraud, gross negligence, and negligence under section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) with respect to violations of section 307 of such Act.

(c) CONFORMING AMENDMENT.—Section 501 of the U.S.-China Relations Act of 2000 (22 U.S.C. 6961) is repealed.

SEC. 309. HONEY TRANSSHIPMENT.

(a) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection shall direct appropriate personnel and resources of the U.S. Customs and Border Protection Agency to address concerns that honey is being imported into the United States in violation of the customs and trade laws of the United States.

(b) COUNTRY OF ORIGIN.—

(1) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection shall compile a database of the individual characteristics of honey produced in foreign countries to facilitate the verification of country of origin markings of imported honey.