

111TH CONGRESS
1ST SESSION

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Customs Facilitation and Trade Enforcement Reauthor-
6 ization Act of 2009”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 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. 232. National Intellectual Property Rights Coordination Center.
 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.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

- 3 (1) **COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE.**—The term “Commercial Customs
 4 Operations Advisory Committee” means the Advisory
 5 Committee established pursuant to section 202
 6 of this Act or any successor committee.
 7

1 Means of the House of Representatives a report
 2 on that determination and the reasons for that
 3 determination.

4 (2) TERMINATION.—If the President deter-
 5 mines under paragraph (1) that operating a port of
 6 entry 24 hours a day does not provide a net eco-
 7 nomic benefit to the United States, that port of
 8 entry shall cease to operate 24 hours a day on the
 9 date on which the President submits the report
 10 under paragraph (1)(B).

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

14 (a) GOODS MADE WITH FORCED LABOR.—

15 (1) IN GENERAL.—Section 307 of the Tariff
 16 Act of 1930 (19 U.S.C. 1307) is amended to read
 17 as follows:

18 **“SEC. 307. PROHIBITION ON IMPORTATION OF GOODS**
 19 **MADE WITH FORCED OR INDENTURED LABOR**
 20 **OR BY BENEFIT OF HUMAN TRAFFICKING.**

21 **“(a) PROHIBITION ON IMPORTATION.—No good may**
 22 **be imported into the United States, if that good was pro-**
 23 **duced, in whole or in part—**

24 **“(1) with convict labor, forced labor, or inden-**
 25 **tured labor under penal sanctions;**

1 “(2) by means of coercion (as defined in section
2 103 of the Trafficking Victims Protection Act of
3 2000 (22 U.S.C. 7102)), including by means of an
4 employer withholding the passport or other travel
5 documents of a foreign worker in order to compel
6 the production of that good; or

7 “(3) by 1 or more individuals who, at the time
8 of the production were being subjected to a severe
9 form of trafficking in persons (as defined in section
10 103 of the Trafficking Victims Protection Act of
11 2000 (22 U.S.C. 7102)).

12 “(b) CIVIL PENALTIES.—

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

20 “(A) for the first violation, an amount
21 equal to 3 times the value of the goods im-
22 ported or attempted to be imported in violation
23 of this section; and

24 “(B) for the second and subsequent viola-
25 tions, an amount equal to 6 times the value of

1 the goods imported or attempted to be imported
2 in violation of this section.

3 “(2) DEBARMENT.—

4 “(A) IN GENERAL.—The Secretary may
5 prohibit a person from importing any good into
6 the United States, or exporting any good from
7 the United States, if the Secretary finds that
8 the person has engaged in a pattern or practice
9 of actions that has resulted in a final deter-
10 mination with respect to the assessment of civil
11 or criminal penalties for knowing and inten-
12 tional or grossly negligent violations of any pro-
13 vision of this section or any regulation issued
14 under this section.

15 “(B) REINSTATEMENT.—The Secretary
16 may retract a prohibition imposed with respect
17 to a person under subparagraph (A) if the Sec-
18 retary determines that changed circumstances
19 warrant such a retraction.

20 “(3) NOTICE.—No penalty may be assessed
21 under this section against a person for violating a
22 provision of this section or a regulation issued under
23 this section unless the person is given notice and op-
24 portunity for a hearing with respect to such violation

1 in accordance with section 554 of title 5, United
2 States Code.

3 “(c) DEFINITIONS.—In this section:

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

7 “(2) CONVICT LABOR.—The term ‘convict labor’
8 means work performed by an individual while im-
9 prisoned by a foreign government and without com-
10 pensation.

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

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

18 “(5) INDENTURED LABOR UNDER PENAL SANC-
19 TIONS.—The term ‘indentured labor under penal
20 sanctions’ means work performed under a contract if
21 the contract can be enforced through the imposition
22 of a penalty or imprisonment.

23 “(6) PRODUCED.—The term ‘produced’ means
24 produced, mined, or manufactured.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by this subsection applies to goods entered, or with-
3 drawn from warehouse for consumption, on or after
4 the date that is 15 days after the date of the enact-
5 ment of this Act.

6 (b) MONITORING AND REPORTING.—

7 (1) ESTABLISHMENT OF OFFICE FOR LABOR
8 ENFORCEMENT.—

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

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

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

23 (ii) report to the Director of U.S. Im-
24 migration and Customs Enforcement.

1 (C) DUTIES.—The Assistant Director
2 shall—

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

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

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

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

17 (III) the Department of the
18 Treasury;

19 (IV) the Department of State;

20 (V) the Department of Labor;

21 (VI) the Department of Com-
22 merce; and

23 (VII) the Foreign Agricultural
24 Service of the Department of Agri-
25 culture;

1 (iii) coordinate with foreign govern-
2 ments to prevent the exportation to the
3 United States of goods prohibited under
4 section 307 of the Tariff Act of 1930;

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

7 (v) report annually, as described in
8 paragraph (3), to the Committee on Fi-
9 nance of the Senate and the Committee on
10 Ways and Means of the House of Rep-
11 resentatives.

12 (2) LIST OF PRODUCERS.—

13 (A) IN GENERAL.—The list described in
14 this paragraph is a list compiled and regularly
15 updated by the Assistant Director for Labor
16 Enforcement that includes the name and coun-
17 try of each producer of goods the importation
18 of which is prohibited under section 307 of the
19 Tariff Act of 1930. The list and regular up-
20 dates shall be published in the Federal Reg-
21 ister.

22 (B) REMOVAL FROM LIST.—The Assistant
23 Director may remove a producer from the list
24 under subparagraph (A) if the Assistant Direc-

1 tor determines that changed circumstances war-
2 rant such a removal.

3 (3) REPORT.—The report required by para-
4 graph (1)(C)(vi) is a report submitted 180 days
5 after the date of the enactment of this Act, and an-
6 nually thereafter, that contains the following:

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

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

15 (C) An assessment of the extent to which
16 child labor, convict labor, forced labor, inden-
17 tured labor under penal sanctions, or any other
18 coercion are used in producing goods destined
19 for the United States.

20 (D) The progress being made in identi-
21 fying and interdicting goods that are destined
22 for the United States that are made with child
23 labor, convict labor, forced labor, indentured
24 labor under penal sanctions, or any other coer-
25 cion.

1 (E) The most recent list of producers com-
2 piled pursuant to subsection (b)(2).

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

8 (c) CONFORMING AMENDMENT.—Section 501 of the
9 U.S.-China Relations Act of 2000 (22 U.S.C. 6961) is re-
10 pealed.

11 **SEC. 309. HONEY TRANSSHIPMENT.**

12 (a) IN GENERAL.—The Commissioner of U.S. Cus-
13 toms and Border Protection shall direct appropriate per-
14 sonnel and resources of the U.S. Customs and Border Pro-
15 tection Agency to address concerns that honey is being
16 imported into the United States in violation of the customs
17 and trade laws of the United States.

18 (b) COUNTRY OF ORIGIN.—

19 (1) IN GENERAL.—The Commissioner of U.S.
20 Customs and Border Protection shall compile a
21 database of the individual characteristics of honey
22 produced in foreign countries to facilitate the
23 verification of country of origin markings of im-
24 ported honey.