

112TH CONGRESS
1ST SESSION

S. 1830

To improve enforcement of intellectual property rights, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2011

Ms. STABENOW introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve enforcement of intellectual property rights, 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 “Protect American Innovation Act of 2011”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—STRENGTHENING ENFORCEMENT OF INTELLECTUAL
PROPERTY RIGHTS

Subtitle A—Definitions

Sec. 101. Definitions.

Subtitle B—Coordination of Enforcement of Intellectual Property Rights

- Sec. 111. Director of Intellectual Property Rights Enforcement.
- Sec. 112. U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement intellectual property rights coordinators.

Subtitle C—Regulatory and Policy Improvements With Respect to Combating Counterfeiting and Piracy

- Sec. 121. Identification of certain unlawful goods.
- Sec. 122. Training in new technologies.
- Sec. 123. Disclosure of information and samples of shipments to intellectual property owners.
- Sec. 124. Improvements to recordation process.
- Sec. 125. Identification of low-risk importers.
- Sec. 126. “Watch List” database.
- Sec. 127. Civil fines for importation of pirated or counterfeit goods.
- Sec. 128. Report on effective collection techniques.

Subtitle D—Training Enhancements

- Sec. 131. International training and technical assistance enhancements.

Subtitle E—New Legal Tools for Border Enforcement

- Sec. 141. Expanded prohibitions on importation, exportation, and transshipment of counterfeit or pirated goods.
- Sec. 142. Declarations regarding counterfeit and infringing merchandise.
- Sec. 143. Seizure and forfeiture of devices designed to circumvent intellectual property rights protections.
- Sec. 144. Authority of Chief Counsel of U.S. Customs and Border Protection to represent the United States in certain forfeiture proceedings.

Subtitle F—Administrative Provisions

- Sec. 151. Advisory Committee on Import Safety and Intellectual Property Enforcement.
- Sec. 152. Staffing enhancements at U.S. Customs and Border Protection.
- Sec. 153. Staffing enhancements at U.S. Immigration and Customs Enforcement.
- Sec. 154. Regulatory authority.

TITLE II—INCREASED PENALTIES FOR CERTAIN UNFAIR TRADE PRACTICES

- Sec. 201. Increased penalties for certain unfair trade practices.

1 **TITLE I—STRENGTHENING EN-**
2 **FORCEMENT OF INTELLEC-**
3 **TUAL PROPERTY RIGHTS**

4 **Subtitle A—Definitions**

5 **SEC. 101. DEFINITIONS.**

6 In this title:

7 (1) **ADVISORY COMMITTEE.**—The term “Advi-
8 sory Committee” means the Advisory Committee on
9 Import Safety and Intellectual Property Rights En-
10 forcement established pursuant to section 151.

11 (2) **COMMISSIONER.**—The term “Commis-
12 sioner” means the Commissioner responsible for
13 U.S. Customs and Border Protection.

14 (3) **COUNTERFEITING; COUNTERFEIT GOODS.**—

15 (A) **COUNTERFEITING.**—The term “coun-
16 terfeiting” means activities related to produc-
17 tion of or trafficking in goods, including pack-
18 aging, that bear a spurious mark or designation
19 that is identical to or substantially indistin-
20 guishable from a mark or designation protected
21 under the trademark laws or related laws.

22 (B) **COUNTERFEIT GOODS.**—The term
23 “counterfeit goods” means goods described in
24 subparagraph (A).

1 (4) DIRECTOR.—The term “Director” means
2 the Director of Intellectual Property Rights Enforce-
3 ment of the Department of the Treasury established
4 under section 111.

5 (5) ENFORCEMENT OF INTELLECTUAL PROP-
6 ERTY RIGHTS.—The term “enforcement of intellec-
7 tual property rights” means activities to enforce—

8 (A) copyrights, patents, trademarks, and
9 other forms of intellectual property, including
10 activities to control counterfeiting and piracy;
11 and

12 (B) exclusion orders issued by the United
13 States International Trade Commission by rea-
14 son of any of subparagraphs (B) through (E) of
15 subsection (a)(1) of section 337 of the Tariff
16 Act of 1930 (19 U.S.C. 1337(a)(1) (B) through
17 (E)).

18 (6) EXCLUSION ORDER.—The term “exclusion
19 order” means an order of the United States Inter-
20 national Trade Commission issued under section 337
21 (d) or (e) of the Tariff Act of 1930 (19 U.S.C. 1337
22 (d) and (e)) to exclude goods from entry into the
23 United States.

24 (7) PIRACY; PIRATED GOODS.—

1 (A) PIRACY.—The term “piracy” means
2 activities related to production of or trafficking
3 in unauthorized copies or phonorecords of
4 works protected under title 17, United States
5 Code, or related laws.

6 (B) PIRATED GOODS.—The term “pirated
7 goods” means copies or phonorecords described
8 in subparagraph (A).

9 (8) SECRETARY.—Except as otherwise provided,
10 the term “Secretary” means the Secretary of the
11 Treasury.

12 (9) TRANSSHIPMENT.—The term “trans-
13 shipment” means the shipment of goods through one
14 country that is an intermediate destination to an-
15 other country that is the final destination of the
16 goods.

17 **Subtitle B—Coordination of En-**
18 **forcement of Intellectual Prop-**
19 **erty Rights**

20 **SEC. 111. DIRECTOR OF INTELLECTUAL PROPERTY RIGHTS**
21 **ENFORCEMENT.**

22 (a) ESTABLISHMENT.—There is established within
23 the Department of the Treasury the position of Director
24 of Intellectual Property Rights Enforcement.

1 (b) APPOINTMENT.—The Director shall be appointed
2 by the Secretary, and shall be responsible to and shall re-
3 port directly to the Deputy Secretary of the Treasury.

4 (c) DUTIES.—The Director shall—

5 (1) coordinate all activities of the Department
6 of the Treasury involving the enforcement of intel-
7 lectual property rights and coordinate with U.S.
8 Customs and Border Protection and U.S. Immigra-
9 tion and Customs Enforcement with respect to such
10 enforcement;

11 (2) coordinate the policy and regulatory
12 changes set forth in this title;

13 (3) serve as staff representative of the Depart-
14 ment of the Treasury in interagency bodies with re-
15 sponsibility for coordination of activities involving
16 the enforcement of intellectual property rights;

17 (4) conduct an evaluation of the effectiveness of
18 the organizational structure of U.S. Customs and
19 Border Protection for reducing the entry into the
20 United States of counterfeit or pirated goods, goods
21 in violation of exclusion orders, and other goods in
22 violation of other intellectual property rights; and

23 (5) carry out other duties, as assigned by the
24 Secretary or Deputy Secretary of the Treasury, to
25 improve the effectiveness of the efforts of the De-

1 partment of the Treasury under the laws within its
2 jurisdiction with respect to the enforcement of intel-
3 lectual property rights.

4 **SEC. 112. U.S. CUSTOMS AND BORDER PROTECTION AND**
5 **U.S. IMMIGRATION AND CUSTOMS ENFORCE-**
6 **MENT INTELLECTUAL PROPERTY RIGHTS CO-**
7 **ORDINATORS.**

8 (a) U.S. CUSTOMS AND BORDER PROTECTION IN-
9 TELLECTUAL PROPERTY RIGHTS COORDINATOR.—

10 (1) APPOINTMENT.—The Commissioner shall
11 appoint a U.S. Customs and Border Protection coor-
12 dinator of intellectual property rights enforcement
13 activities (in this subtitle referred to as the “U.S.
14 Customs and Border Protection Intellectual Prop-
15 erty Rights Coordinator”), who shall report directly
16 to the Commissioner.

17 (2) DUTIES.—The U.S. Customs and Border
18 Protection Intellectual Property Rights Coordinator
19 shall—

20 (A) coordinate all efforts, at all ports of
21 entry and elsewhere, carried out by U.S. Cus-
22 toms and Border Protection with respect to the
23 enforcement of intellectual property rights, in-
24 cluding training and staffing;

1 (B) supervise the implementation of those
2 aspects of the regulatory and policy reforms set
3 out in this title that involve U.S. Customs and
4 Border Protection and submit a report on such
5 activities to the Director annually; and

6 (C) carry out such other duties, as as-
7 signed by the Commissioner, the purpose of
8 which are to improve the performance of U.S.
9 Customs and Border Protection with respect to
10 the enforcement of intellectual property rights.

11 (b) U.S. IMMIGRATION AND CUSTOMS ENFORCE-
12 MENT INTELLECTUAL PROPERTY RIGHTS COORDI-
13 NATOR.—

14 (1) APPOINTMENT.—The Assistant Secretary
15 for U.S. Immigration and Customs Enforcement
16 shall appoint a U.S. Immigration and Customs En-
17 forcement coordinator of intellectual property en-
18 forcement activities (in this subtitle referred to as
19 the “U.S. Immigration and Customs Enforcement
20 Intellectual Property Rights Coordinator”), who
21 shall report directly to the Assistant Secretary for
22 U.S. Immigration and Customs Enforcement.

23 (2) DUTIES.—The U.S. Immigration and Cus-
24 toms Enforcement Intellectual Property Rights Co-
25 ordinator shall—

1 (A) coordinate all efforts carried out by
2 U.S. Immigration and Customs Enforcement
3 with respect to the enforcement of intellectual
4 property rights, including training and staffing;

5 (B) supervise the implementation of those
6 aspects of the regulatory and policy reforms set
7 out in this title that involve U.S. Immigration
8 and Customs Enforcement; and

9 (C) carry out such other duties, as as-
10 signed by the Assistant Secretary for U.S. Im-
11 migration and Customs Enforcement, the pur-
12 pose which are to improve the performance of
13 U.S. Immigration and Customs Enforcement
14 with respect to the enforcement of intellectual
15 property rights.

16 **Subtitle C—Regulatory and Policy**
17 **Improvements With Respect to**
18 **Combating Counterfeiting and**
19 **Piracy**

20 **SEC. 121. IDENTIFICATION OF CERTAIN UNLAWFUL GOODS.**

21 Not later than 180 days after the date of the enact-
22 ment of this Act, the Secretary, acting through the Com-
23 missioner, shall prescribe regulations to apply risk assess-
24 ment modeling techniques to border enforcement activities

1 with respect to combating counterfeiting and piracy. Such
2 efforts shall include—

3 (1) preparing a report on and evaluation of the
4 pilot project of U.S. Customs and Border Protection
5 with respect to shipments of counterfeit or pirated
6 products;

7 (2) expanding the pilot project to allow for the
8 use of the Automated Targeting System in risk as-
9 sessment modeling; and

10 (3) developing a plan for the development, test-
11 ing, evaluation, and continuous improvement of risk
12 assessment modeling techniques to facilitate the en-
13 forcement of intellectual property rights.

14 **SEC. 122. TRAINING IN NEW TECHNOLOGIES.**

15 (a) TRAINING OF PERSONNEL.—The Commissioner
16 shall consult with the Advisory Committee to determine
17 the feasibility of training U.S. Customs and Border Pro-
18 tection personnel in the use of new technological means
19 for detecting and identifying, at ports of entry, counterfeit
20 and pirated goods, and goods that are subject to exclusion
21 orders, whether for entry into the United States or for
22 transshipment to other destinations.

23 (b) IDENTIFICATION OF TECHNOLOGIES AND
24 SOURCES OF TRAINING.—In consultation with the Advi-
25 sory Committee, the Commissioner shall identify—

1 (1) cost-effective technologies for detecting and
2 identifying goods described in subsection (a) at ports
3 of entry; and

4 (2) economical sources for training U.S. Cus-
5 toms and Border Protection personnel in the use of
6 such technologies.

7 (c) REGULATORY AND POLICY CHANGES.—The
8 Comptroller General of the United States shall submit to
9 Congress a report analyzing the costs and benefits of mak-
10 ing regulatory and policy changes to enable the receipt of
11 donations of hardware, software, equipment, and similar
12 technologies, and the acceptance of training and other
13 support services, from the private sector, to facilitate the
14 training of personnel of U.S. Customs and Border Protec-
15 tion under subsection (a).

16 **SEC. 123. DISCLOSURE OF INFORMATION AND SAMPLES OF**
17 **SHIPMENTS TO INTELLECTUAL PROPERTY**
18 **OWNERS.**

19 The Commissioner shall prescribe regulations to—

20 (1) improve the process of making samples of
21 shipments of goods suspected of violating intellectual
22 property rights available to the owners of copyrights,
23 trademarks, patents, and other forms of intellectual
24 property, in an efficient and cost-effective manner,

1 for the purpose of inspection or analysis, including
2 by developing a process under which—

3 (A) a requirement that such an owner post
4 a bond to receive such a sample may be waived
5 if the value of the sample is less than \$100; or

6 (B) such an owner may elect to obtain a
7 continuous bond with respect to such samples;
8 and

9 (2) increase disclosure to owners of copyrights,
10 trademarks, patents, and other forms of intellectual
11 property of information about shipments of goods
12 that have been detained at ports of entry on sus-
13 picion that the importation into, or transshipment
14 through, the United States of those goods would vio-
15 late the intellectual property rights of such owners,
16 including—

17 (A) providing a detailed description of the
18 goods, including information on the packaging
19 of the goods such as expiration dates and
20 model, lot, batch, part, or serial numbers or
21 universal product codes (UPC);

22 (B) providing photographs of the goods
23 that do not mask identifying information about
24 the goods;

1 (C) disclosing the identities and contact in-
2 formation of all parties involved in the ship-
3 ments, including importers, exporters, declar-
4 ants, consignees, freight forwarders, and ware-
5 house owners;

6 (D) identifying points of origin and des-
7 tination of the shipments; and

8 (E) providing any other documents relat-
9 ing to the shipments.

10 **SEC. 124. IMPROVEMENTS TO RECORDATION PROCESS.**

11 (a) IMPROVEMENTS IN RECORDATION PROCESS.—

12 The Commissioner shall prescribe regulations to ensure
13 that the system for recordation of copyrights, trademarks,
14 patents, and other forms of intellectual property that may
15 be subject to recordation, does not impede the rapid sei-
16 zure of goods that violate the rights of the owners of such
17 copyrights, trademarks, patents, and other forms of intel-
18 lectual property.

19 (b) SIMULTANEOUS RECORDATION.—

20 (1) IN GENERAL.—In consultation with the
21 Under Secretary of Commerce for Intellectual Prop-
22 erty and Director of the United States Patent and
23 Trademark Office, and the Register of Copyrights,
24 the Commissioner shall develop a system pursuant to
25 which—

1 (A) trademarks may be recorded with U.S.
2 Customs and Border Protection simultaneously
3 with the issuance of trademark registration;
4 and

5 (B) copyrights of audiovisual works and
6 sound recordings may be recorded with U.S.
7 Customs and Border Protection simultaneously
8 with the filing of an application for a certificate
9 of copyright registration or an application for
10 registration of another intellectual property
11 right under title 17, United States Code.

12 (2) DEFINITIONS.—In this subsection, the
13 terms “audiovisual works” and “sound recordings”
14 have the meanings given those terms in section 101
15 of title 17, United States Code.

16 **SEC. 125. IDENTIFICATION OF LOW-RISK IMPORTERS.**

17 (a) IN GENERAL.—The Commissioner shall develop
18 a voluntary certification program for importers that have
19 taken specific measures to strengthen and protect their
20 supply chains to prevent the infiltration into the inter-
21 national supply chain of counterfeit and pirated goods,
22 goods that are the subject to exclusion orders, and goods
23 that violate other forms of intellectual property rights.

24 (b) SELF-CERTIFICATION.—The voluntary certifi-
25 cation program developed under subsection (a) shall rely

1 primarily on self-certification by importers in determining
2 the eligibility of importers for the program.

3 (c) **THIRD-PARTY VERIFICATIONS.**—The Commis-
4 sioner shall identify any circumstances, such as importa-
5 tion from any country with a history of being identified
6 under section 182 of the Trade Act of 1974 (19 U.S.C.
7 2242) as denying adequate and effective protection of in-
8 tellectual property rights, under which third-party veri-
9 fications shall be required to determine the eligibility of
10 importers for the voluntary certification program.

11 (d) **BENEFITS.**—An importer determined to be eligi-
12 ble for the voluntary certification program and to have
13 taken the measures required under subsection (a) may re-
14 ceive benefits with respect to customs requirements, such
15 as reduced inspections from U.S. Customs and Border
16 Protection.

17 (e) **DEFINITION.**—In this section, the term “inter-
18 national supply chain” has the meaning given that term
19 in section 2 of the Security and Accountability for Every
20 Port Act of 2006 (6 U.S.C. 901).

21 **SEC. 126. “WATCH LIST” DATABASE.**

22 (a) **IN GENERAL.**—The Secretary, acting through the
23 Commissioner, shall develop and implement a database of
24 importers, shippers, freight forwarders, and other partici-
25 pants in the import, export, and transshipment process,

1 whose activities the Commissioner determines merit spe-
2 cial scrutiny at ports of entry because of the risk of impor-
3 tation, exportation, or transshipment of goods that violate
4 intellectual property rights or exclusion orders.

5 (b) PLAN.—Not later than 180 days after the date
6 of the enactment of this Act, the Secretary, acting through
7 the Commissioner, shall develop a plan to implement the
8 database required under subsection (a). The plan shall—

9 (1) identify legitimate information sources to be
10 used in determining whether to place persons on the
11 database from—

12 (A) within U.S. Customs and Border Pro-
13 tection;

14 (B) other law enforcement sources; and

15 (C) the private sector;

16 (2) establish criteria under which the database
17 should be made available—

18 (A) to qualified officers of U.S. Customs
19 and Border Protection and other law enforce-
20 ment agencies;

21 (B) for intelligence purposes; and

22 (C) for use in identifying shipments for en-
23 hanced inspection;

24 (3) identify any regulatory or policy changes
25 that are necessary to make the database operational;

1 (4) contain any recommendations for statutory
2 changes to improve the effectiveness of the database;

3 (5) include an estimate of the resources nec-
4 essary to implement and operate the database and to
5 evaluate its effectiveness; and

6 (6) include a timetable for implementation of
7 the database.

8 (c) CONSULTATIONS WITH ADVISORY COMMITTEE.—

9 The Commissioner shall consult with the Advisory Com-
10 mittee on the development of criteria for the database.

11 **SEC. 127. CIVIL FINES FOR IMPORTATION OF PIRATED OR**
12 **COUNTERFEIT GOODS.**

13 (a) LIMITATION ON MITIGATION, DISMISSAL, AND
14 VACATION OF FINES.—Unless otherwise ordered by a
15 court of competent jurisdiction, any civil fine imposed pur-
16 suant to section 526(f) of the Tariff Act of 1930 (19
17 U.S.C. 1526(f))—

18 (1) may not be mitigated, except pursuant to
19 regulations issued by the Commissioner; and

20 (2) may not be dismissed or vacated, except
21 pursuant to regulations issued by the Commissioner
22 that require the specific approval of the Commis-
23 sioner or the Commissioner's designee for such dis-
24 missal or vacation.

1 (b) EXTRAORDINARY CASES.—In issuing regulations
2 under subsection (a), the Commissioner shall ensure that
3 the mitigation, dismissal, or vacation of civil fines for in-
4 volvement in the importation, exportation, or trans-
5 shipment of pirated or counterfeit goods is limited to ex-
6 traordinary cases in which the interests of justice will
7 clearly be served by such action.

8 **SEC. 128. REPORT ON EFFECTIVE COLLECTION TECH-**
9 **NIQUES.**

10 (a) IN GENERAL.—The Commissioner shall submit to
11 the Committee on Finance of the Senate and the Com-
12 mittee on Ways and Means of the House of Representa-
13 tives a report on—

14 (1) the extent to which U.S. Customs and Bor-
15 der Protection uses effective collection techniques for
16 collecting civil fines imposed on persons that import,
17 export, or transship pirated or counterfeit goods;

18 (2) any recommendations with respect to im-
19 proving the use of such techniques by U.S. Customs
20 and Border Protection;

21 (3) any recommendations with respect to
22 whether—

23 (A) owners of copyrights or trademarks
24 should be authorized to pursue and collect fines

1 imposed as a result of activities that violate
2 such copyrights or trademarks; and

3 (B) such owners should be allowed to re-
4 tain some or all of any funds so collected; and

5 (4) any other recommendations for statutory,
6 regulatory, or policy changes not under the control
7 of U.S. Customs and Border Protection to improve
8 the agency's ability—

9 (A) to impose civil fines on persons that
10 import, export, or transship pirated or counter-
11 feit goods, at levels that would deter such im-
12 portation, exportation, and transshipment; and

13 (B) to collect such fines.

14 (b) EFFECTIVE COLLECTION TECHNIQUES.—In this
15 section, the term “effective collection techniques” in-
16 cludes—

17 (1) confiscation of the proceeds of actions for
18 which civil fines can be imposed;

19 (2) seizure of property acquired with such pro-
20 ceeds;

21 (3) imposition of liens on the real or personal
22 property of persons upon whom civil fines are im-
23 posed;

24 (4) use of bonds to secure full payment of fines;

1 (5) in any case in which an entity is liable and
2 has no assets or is no longer in business, holding lia-
3 ble any person who—

4 (A) was an officer or director of the entity;

5 (B) in the case of a corporation, held at
6 least 5 percent (by vote or value) of the capital
7 structure of the corporation; or

8 (C) in the case of any other entity, held in-
9 terests representing at least 5 percent of the
10 capital structure of the entity; and

11 (6) engaging private sector entities to collect
12 civil fines imposed.

13 **Subtitle D—Training** 14 **Enhancements**

15 **SEC. 131. INTERNATIONAL TRAINING AND TECHNICAL AS-** 16 **SISTANCE ENHANCEMENTS.**

17 The Secretary shall take the necessary steps—

18 (1) to increase staffing and resources of offices
19 of U.S. Customs and Border Protection and U.S.
20 Immigration and Customs Enforcement engaged in
21 providing training and technical assistance to the
22 customs services and enforcement agencies of other
23 countries in order to improve the effectiveness of
24 such customs services and enforcement agencies with
25 respect to—

1 (A) detecting and intercepting the expor-
2 tation, importation, and transshipment of coun-
3 terfeit or pirated goods, goods that are the sub-
4 ject to exclusion orders, and goods that violate
5 other forms of intellectual property rights; and

6 (B) imposing penalties on persons that ex-
7 port, import, or transship counterfeit or pirated
8 goods at levels that will deter such exportation,
9 importation, and transshipment; and

10 (2) to ensure that the Director, in order to
11 make the most efficient and effective use of training
12 and technical assistance resources—

13 (A) coordinates the international training
14 and technical assistance activities of U.S. Cus-
15 toms and Border Protection and U.S. Immigra-
16 tion and Customs Enforcement as part of the
17 Director's coordination responsibilities under
18 section 111;

19 (B) gives priority to international training
20 and technical assistance activities in countries
21 in which such activities can be carried out most
22 effectively and with the greatest benefit to pro-
23 tecting the intellectual property rights of United
24 States persons;

1 (C) takes steps to minimize duplication,
 2 overlap, or inconsistency of international train-
 3 ing and technical assistance efforts; and

4 (D) coordinates such activities of the De-
 5 partment of the Treasury with international
 6 training and technical assistance activities
 7 against counterfeiting and piracy carried out by
 8 other agencies, and enhances the participation
 9 of Department of the Treasury personnel in
 10 interagency training and technical assistance
 11 activities in this field.

12 **Subtitle E—New Legal Tools for** 13 **Border Enforcement**

14 **SEC. 141. EXPANDED PROHIBITIONS ON IMPORTATION, EX-** 15 **PORTATION, AND TRANSSHIPMENT OF COUN-** 16 **TERFEIT OR PIRATED GOODS.**

17 (a) IN GENERAL.—Section 526 of the Tariff Act of
 18 1930 (19 U.S.C. 1526) is amended—

19 (1) in the section heading, by inserting “**OR**
 20 **PROTECTED BY COPYRIGHT**” after “**TRADE-**
 21 **MARK**”;

22 (2) in subsection (e), by striking “Any such
 23 merchandise” and all that follows through “15
 24 U.S.C. 1124),” and inserting “Any merchandise
 25 bearing a counterfeit mark (as defined in section

1 2320(e) of title 18, United States Code) that is im-
2 ported into the United States, exported out of the
3 United States, or transshipped through the United
4 States”; and

5 (3) in subsection (f)—

6 (A) by striking paragraph (1) and insert-
7 ing the following:

8 “(1) Any person who engages in, directs, assists fi-
9 nancially or otherwise, or aids and abets the importation,
10 exportation, or transshipment of merchandise that is
11 seized under subsection (e) of this section, or under regu-
12 lations issued pursuant to section 603(e) of title 17,
13 United States Code, shall be subject to a civil fine.”;

14 (B) by redesignating paragraph (4) as
15 paragraph (5); and

16 (C) by inserting after paragraph (3) the
17 following:

18 “(4) When the seizure of merchandise that results in
19 the imposition of a civil fine is made under circumstances
20 indicating that the importation, exportation, or trans-
21 shipment of the merchandise was for the purpose of sale
22 or public distribution of the merchandise, the maximum
23 fine amounts set forth in paragraphs (2) and (3) shall be
24 tripled.”.

1 (b) CONFORMING AMENDMENTS.—Title 17, United
2 States Code, is amended—

3 (1) in section 501(a), by inserting “, exports
4 copies or phonorecords from the United States, or
5 transships copies or phonorecords through the
6 United States” after “into the United States”;

7 (2) in section 506(c), by inserting
8 “, exports, or transships” after “imports”;

9 (3) in section 511(a), by inserting “, exporting,
10 or transshipping” after “importing”;

11 (4) in section 602—

12 (A) in the section heading, by striking “**or**
13 **exportation**” and inserting “, **expor-**
14 **tation, or transshipment**”; and

15 (B) in subsection (a)—

16 (i) in paragraph (2)—

17 (I) in the paragraph heading, by
18 striking “OR EXPORTATION” and in-
19 serting “, EXPORTATION, OR TRANS-
20 SHIPMENT”; and

21 (II) by striking “or exportation
22 from the United States” and inserting
23 “, exportation from the United States,
24 or transshipment through the United
25 States”; and

1 (ii) in paragraph (3)—

2 (I) in subparagraph (A), by strik-
3 ing “or exportation” and inserting “,
4 exportation, or transshipment”; and

5 (II) in subparagraph (B), by
6 striking “or exportation, for the pri-
7 vate use of the importer or exporter”
8 and inserting “, exportation, or trans-
9 shipment, for the private use of the
10 importer, exporter, or person trans-
11 shipping copies or phonorecords”;

12 (5) in section 603—

13 (A) in the section heading, by striking
14 “**Importation prohibitions**” and inserting
15 “**Prohibitions on importation, expor-**
16 **tation, and transshipment**”;

17 (B) in subsection (a), by inserting
18 “, exportation, and transshipment” after “im-
19 portation”;

20 (C) in subsection (b), by inserting
21 “, exportation, or transshipment” after “impor-
22 tation” each place it appears; and

23 (D) in subsection (c)—

1 (i) by inserting “, exported, or trans-
 2 shipped” after “imported” each place it
 3 appears; and

4 (ii) by inserting “, exportation, or
 5 transshipped” after “importation”;

6 (6) by amending the chapter heading for chap-
 7 ter 6 to read as follows:

8 **“CHAPTER 6—MANUFACTURING REQUIRE-**
 9 **MENTS, IMPORTATION, EXPORTATION,**
 10 **AND TRANSSHIPMENT”;**

11 (7) in the table of sections for chapter 6, by
 12 amending the items relating to sections 602 and 603
 13 to read as follows:

“602. Infringing importation, exportation, and transshipment of copies or
 phonorecords.

“603. Prohibitions on importation, exportation, and transshipment: Enforcement
 and disposition of excluded articles.”;

14 and

15 (8) in the table of chapters, by amending the
 16 item relating to chapter 6 to read as follows:

“6. Manufacturing Requirements, Importation, Expor-
tation, and Transshipment 601”.

17 **SEC. 142. DECLARATIONS REGARDING COUNTERFEIT AND**
 18 **INFRINGING MERCHANDISE.**

19 (a) DECLARATIONS.—Section 485(a) of the Tariff
 20 Act of 1930 (19 U.S.C. 1485(a)) is amended—

21 (1) in paragraph (1), by striking “Whether”
 22 and inserting “whether”;

1 (2) in paragraph (2), by striking “That” and
2 inserting “that”;

3 (3) in paragraph (3)—

4 (A) by striking “That” and inserting
5 “that”; and

6 (B) by striking “and” after the semicolon;

7 (4) in paragraph (4)—

8 (A) by striking “That” and inserting
9 “that”; and

10 (B) by striking the period and inserting a
11 semicolon; and

12 (5) by adding at the end the following:

13 “(5) that the merchandise being imported does
14 not bear a counterfeit mark (as defined in section
15 2320(e) of title 18, United States Code);

16 “(6) that the merchandise is not an infringing
17 copy or phonorecord or one whose making would
18 have constituted an infringement of copyright if title
19 17, United States Code, had applied; and

20 (7) that the merchandise does not—

21 “(A) violate an exclusion order of the
22 United States International Trade Commission
23 under section 337 (d) or (e) by reason of any
24 of subparagraphs (B) through (E) of subsection
25 (a)(1) of section 337; or

1 “(B) infringe any other intellectual prop-
2 erty right not covered by subparagraph (A) or
3 by paragraph (5) or (6).”.

4 (b) REGULATIONS.—The Secretary shall issue regula-
5 tions requiring that the declarations required by para-
6 graphs (5), (6), and (7) of section 485(a) of the Tariff
7 Act of 1930, as added by subsection (a) of this section,
8 be made by all persons arriving in the United States with
9 respect to articles carried on their person or contained in
10 their baggage.

11 **SEC. 143. SEIZURE AND FORFEITURE OF DEVICES DE-**
12 **SIGNED TO CIRCUMVENT INTELLECTUAL**
13 **PROPERTY RIGHTS PROTECTIONS.**

14 Section 596(c)(2) of the Tariff Act of 1930 (19
15 U.S.C. 1595a(c)(2)) is amended—

- 16 (1) in subparagraph (E), by striking “or”;
17 (2) in subparagraph (F), by striking the period
18 and inserting “; or”; and
19 (3) by adding at the end the following:

20 “(G) it is a technology, product, service,
21 device, component, or part thereof the importa-
22 tion of which is prohibited under section
23 1201(a)(2) of title 17, United States Code.”.

1 **SEC. 144. AUTHORITY OF CHIEF COUNSEL OF U.S. CUSTOMS**
2 **AND BORDER PROTECTION TO REPRESENT**
3 **THE UNITED STATES IN CERTAIN FOR-**
4 **FEITURE PROCEEDINGS.**

5 Title V of the Tariff Act of 1930 (19 U.S.C. 1500
6 et seq.) is amended by inserting after section 529 the fol-
7 lowing:

8 **“SEC. 530. AUTHORITY OF CHIEF COUNSEL OF U.S. CUS-**
9 **TOMS AND BORDER PROTECTION TO REP-**
10 **RESENT THE UNITED STATES IN CERTAIN**
11 **FORFEITURE PROCEEDINGS.**

12 “(a) IN GENERAL.—Subject to subsection (b), the
13 Chief Counsel of U.S. Customs and Border Protection
14 may commence, defend, or intervene in, and supervise the
15 litigation of, any civil forfeiture proceeding under section
16 2320(b) of title 18, United States Code, or section 526(e)
17 of this Act.

18 “(b) PROCEDURE FOR EXERCISE OF AUTHORITY TO
19 LITIGATE OR APPEAL.—

20 “(1) IN GENERAL.—Prior to commencing, de-
21 fending, or intervening in any civil forfeiture pro-
22 ceeding referred to in subsection (a), the Chief
23 Counsel shall submit a written notification to the At-
24 torney General with respect to the proposed pro-
25 ceeding.

1 “(2) FAILURE TO RESPOND.—If, not later than
2 120 days after the date on which the Chief Counsel
3 submits the notification to the Attorney General
4 under paragraph (1), the Attorney General has
5 failed to commence, defend, or intervene in the pro-
6 posed proceeding, the Chief Counsel may commence,
7 defend, or intervene in, and supervise the litigation
8 of, the proceeding and any appeal of the proceeding
9 in the name of the Chief Counsel.

10 “(3) AUTHORITY OF ATTORNEY GENERAL TO
11 INTERVENE.—Nothing in this subsection precludes
12 the Attorney General from intervening on behalf of
13 the United States in any civil forfeiture proceeding
14 under section 2320(b) of title 18, United States
15 Code, or in any appeal of such a proceeding, as may
16 be otherwise provided by law.”.

17 **Subtitle F—Administrative** 18 **Provisions**

19 **SEC. 151. ADVISORY COMMITTEE ON IMPORT SAFETY AND** 20 **INTELLECTUAL PROPERTY ENFORCEMENT.**

21 (a) ESTABLISHMENT.—

22 (1) IN GENERAL.—The Secretary, acting
23 through the Commissioner and the Assistant Sec-
24 retary for U.S. Immigration and Customs Enforce-
25 ment, shall establish an advisory committee which

1 shall be known as the Advisory Committee on Im-
2 port Safety and Intellectual Property Rights En-
3 forcement.

4 (2) MEMBERSHIP.—The Advisory Committee
5 shall consist of 20 members appointed by the Sec-
6 retary. In making appointments to the Advisory
7 Committee, the Secretary shall ensure that—

8 (A) the membership of the Advisory Com-
9 mittee is representative of the individuals and
10 organizations affected by the enforcement of
11 import safety standards and intellectual prop-
12 erty rights by U.S. Customs and Border Pro-
13 tection and U.S. Immigration and Customs En-
14 forcement;

15 (B) at least one member of the Advisory
16 Committee is a representative of organized
17 labor;

18 (C) at least one member of the Advisory
19 Committee is a representative of consumer
20 groups; and

21 (D) not more than 10 members of the Ad-
22 visory Committee belong to the same political
23 party.

24 (b) DUTIES.—The Advisory Committee shall—

1 (1) provide advice to the Secretary, the Com-
2 missioner, and the Assistant Secretary for U.S. Im-
3 migration and Customs Enforcement on all matters
4 involving the enforcement of import safety standards
5 and intellectual property rights by U.S. Customs
6 and Border Protection and U.S. Immigration and
7 Customs Enforcement; and

8 (2) submit an annual report to the Committee
9 on Finance of the Senate and the Committee on
10 Ways and Means of the House of Representatives
11 that shall—

12 (A) describe the operations of the Advisory
13 Committee during the preceding year; and

14 (B) set forth any recommendations of the
15 Advisory Committee with respect the enforce-
16 ment of import safety standards and intellec-
17 tual property rights by U.S. Customs and Bor-
18 der Protection and U.S. Immigration and Cus-
19 toms Enforcement.

20 (c) PRESIDING OFFICERS.—The Commissioner and
21 the Assistant Secretary for U.S. Immigration and Cus-
22 toms Enforcement shall jointly preside over meetings of
23 the Advisory Committee.

1 **SEC. 152. STAFFING ENHANCEMENTS AT U.S. CUSTOMS AND**
2 **BORDER PROTECTION.**

3 There are authorized to be appropriated to U.S. Cus-
4 toms and Border Protection such funds as may be nec-
5 essary for additional personnel (as determined in accord-
6 ance with the Resource Allocation Model established pur-
7 suant to section 301(h) of the Customs Procedural Reform
8 and Simplification Act of 1978 (19 U.S.C. 2075(h)) to
9 carry out the additional responsibilities of U.S. Customs
10 and Border Protection under this title regarding the im-
11 portation, transshipment, and exportation of counterfeit
12 or pirated goods, goods that are the subject to exclusion
13 orders, and goods that violate other forms of intellectual
14 property rights.

15 **SEC. 153. STAFFING ENHANCEMENTS AT U.S. IMMIGRATION**
16 **AND CUSTOMS ENFORCEMENT.**

17 There are authorized to be appropriated to U.S. Im-
18 migration and Customs Enforcement such funds as may
19 be necessary for additional personnel to carry out the ad-
20 ditional responsibilities of U.S. Immigration and Customs
21 Enforcement under this title regarding the enforcement
22 of intellectual property rights, including for developing
23 and implementing a training program with respect to the
24 enforcement of intellectual property rights for each U.S.
25 Immigration and Customs Enforcement attaché office out-
26 side the United States.

1 **SEC. 154. REGULATORY AUTHORITY.**

2 The Secretary may issue such regulations as are nec-
3 essary to carry out this title.

4 **TITLE II—INCREASED PEN-**
5 **ALTIES FOR CERTAIN UNFAIR**
6 **TRADE PRACTICES**

7 **SEC. 201. INCREASED PENALTIES FOR CERTAIN UNFAIR**
8 **TRADE PRACTICES.**

9 (a) **EXPANDED EXCLUSION ORDERS.**—Section
10 337(d) of the Tariff Act of 1930 (19 U.S.C. 1337(d)) is
11 amended to read as follows:

12 “(d) **EXCLUSION OF ARTICLES FROM ENTRY.**—

13 “(1) **FIRST EXCLUSION ORDER.**—Except as
14 provided in paragraph (6), if the Commission deter-
15 mines, as a result of an investigation under this sec-
16 tion, that a person has violated this section, the
17 Commission shall direct that the articles that were
18 the subject of the investigation and are imported by
19 that person be excluded from entry into the United
20 States.

21 “(2) **SECOND EXCLUSION ORDER; VIOLATION**
22 **OF EXCLUSION ORDER.**—Except as provided in para-
23 graph (6), if the Commission determines that a per-
24 son with respect to which the Commission issued an
25 exclusion order under paragraph (1) engages in a
26 second violation of this section or violates that exclu-

1 sion order, the measures described in paragraph (4)
2 shall apply for a period of 1 year after the date of
3 the Commission’s determination under this subpara-
4 graph.

5 “(3) THIRD EXCLUSION ORDER; SUBSEQUENT
6 VIOLATIONS OF EXCLUSION ORDERS.—Except as
7 provided in paragraph (6), if the Commission deter-
8 mines that a person with respect to which the Com-
9 mission issued an exclusion order under paragraph
10 (1) or (2) engages in a third violation of this section,
11 a second violation of an exclusion order issued under
12 paragraph (1), or violates an exclusion order issued
13 under paragraph (2), the measures described in
14 paragraph (4) shall apply on and after the date of
15 the Commission’s determination under this subpara-
16 graph.

17 “(4) MEASURES DESCRIBED.—The measures
18 described in this paragraph are the following:

19 “(A) EXPANDED EXCLUSION ORDER.—The
20 Commission shall direct that articles excluded
21 pursuant to an exclusion order under this sub-
22 section, or that were the subject of an investiga-
23 tion relating to a second or third violation of
24 this section, be excluded from entry into the
25 United States if the articles are imported by—

1 “(i) the person that violated this sec-
2 tion or an exclusion order issued under
3 this subsection;

4 “(ii) any officer or member of the
5 board of directors of a person described in
6 clause (i); or

7 “(iii) any person that owns or con-
8 trols, or is owned or controlled by, a per-
9 son described in clause (i).

10 “(B) VISA BAN.—The Secretary of State
11 shall deny a visa to, and the Secretary of
12 Homeland Security shall exclude from the
13 United States, any alien that is any officer or
14 member of the board of directors of the person
15 that violated this section or an exclusion order
16 issued under this subsection.

17 “(5) LIMITATIONS.—The authority of the Com-
18 mission to order an exclusion from entry of articles
19 under paragraph (1), (2), or (3) shall be limited to
20 articles imported by persons specified in paragraph
21 (1), (2), or (3), as the case may be, unless the Com-
22 mission determines that—

23 “(A) a general exclusion from entry of ar-
24 ticles is necessary to prevent circumvention of

1 an exclusion order limited to articles of named
2 persons; or

3 “(B) there is a pattern of violation of this
4 section and it is difficult to identify the source
5 of infringing articles.

6 “(6) EXCEPTION.—If the Commission deter-
7 mines that articles should not be excluded from
8 entry into the United States under paragraph (1),
9 (2), or (3), after considering the effect of the exclu-
10 sion of such articles on the public health and wel-
11 fare, competitive conditions in the United States
12 economy, the production of like or directly competi-
13 tive articles in the United States, and United States
14 consumers—

15 “(A) the Commission shall not be required
16 to direct that such articles be excluded from
17 entry; and

18 “(B) in case of a determination that arti-
19 cles should not be excluded from entry under
20 paragraph (2) or (3), the Secretary of State
21 shall not be required to deny a visa to, and the
22 Secretary of Homeland Security shall not be re-
23 quired to exclude from the United States, an
24 alien pursuant to paragraph (2) or (3), as the
25 case may be.

1 “(7) NOTIFICATION TO OTHER AGENCIES.—

2 “(A) EXCLUSION OF ARTICLES.—The
3 Commission shall promptly notify the Commis-
4 sioner responsible for U.S. Customs and Border
5 Protection of a determination of the Commis-
6 sion under paragraph (1), (2), or (3) to direct
7 articles to be excluded from the United States
8 and, upon receipt of such notice, the Commis-
9 sioner shall refuse the entry of the articles.

10 “(B) VISA BANS.—The Commission shall
11 promptly notify the Secretary of State and the
12 Secretary of Homeland Security of a determina-
13 tion under paragraph (2) or (3) and, upon re-
14 ceipt of such notice, the Secretary of State shall
15 deny a visa to, and the Secretary of Homeland
16 Security shall exclude from the United States,
17 any alien excluded from entry into the United
18 States pursuant to paragraph (2) or (3), as the
19 case may be.”.

20 (b) PENALTIES FOR VIOLATING CEASE AND DESIST
21 ORDERS.—Section 337(f) of the Tariff Act of 1930 (19
22 U.S.C. 1337(f)) is amended—

23 (1) in paragraph (1), by striking “, or in lieu
24 of,”; and

1 (2) in paragraph (2), by striking “\$100,000,
2 twice” and inserting “\$500,000 or three times”.

3 (c) CONFORMING AMENDMENT.—Section 337(k) of
4 the Tariff Act of 1930 (19 U.S.C. 1337(k)) is amended
5 by inserting “paragraphs (2) and (3) of subsection (e)
6 and” after “Except as provided in”.

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