

113TH CONGRESS
1ST SESSION

H. R. 22

To provide for the exchange of information related to trade enforcement,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2013

Mr. POE of Texas (for himself, Ms. LOFGREN, Mr. CHABOT, Mr. McKEON,
Mr. KEATING, Ms. LINDA T. SÁNCHEZ of California, and Mr. McCAUL)
introduced the following bill; which was referred to the Committee on the
Judiciary

A BILL

To provide for the exchange of information related to trade
enforcement, 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.**

4 This Act may be cited as the “Foreign Counterfeit
5 Merchandise Prevention Act”.

6 **SEC. 2. EXCHANGE OF INFORMATION RELATED TO TRADE**
7 **ENFORCEMENT.**

8 Section 1905 of title 18, United States Code, is
9 amended—

1 (1) by striking “Whoever” and inserting “(a)
2 IN GENERAL.—Whoever”; and

3 (2) by adding at the end the following:

4 “(b) PROVISION OF INFORMATION RELATING TO
5 MERCHANDISE PRESENTED TO CUSTOMS.—It shall not be
6 a violation of this section for an officer or employee of
7 U.S. Customs and Border Protection, upon detention and
8 thereafter, to provide to the owner of a copyright or a reg-
9 istered mark, or to any person who may be injured by a
10 violation of section 1201 of title 17—

11 “(1) any information appearing on the mer-
12 chandise, including its retail packaging,

13 “(2) a sample of the merchandise and its retail
14 packaging, or

15 “(3) digital images of the merchandise and its
16 retail packaging,

17 as it was presented to U.S. Customs and Border Protec-
18 tion, without redaction, whether imported into or exported
19 from the United States, or attempted to be exported from
20 the United States, for purposes of determining whether
21 the merchandise or its retail packaging infringes the copy-
22 right, bears or consists of a counterfeit mark of the reg-
23 istered mark, or is in violation of section 1201 of title 17,
24 as the case may be.

1 “(c) PROVISION OF INFORMATION RELATING TO
2 SEIZED MERCHANDISE.—It shall not be a violation of this
3 section for an officer or employee of U.S. Customs and
4 Border Protection, after seizing merchandise pursuant to
5 a determination that the merchandise is in violation of sec-
6 tion 1201 of title 17, to provide, to persons injured by
7 the violation, information with respect to the merchandise,
8 including, but not limited to, the following:

9 “(1) The date of importation.

10 “(2) The port of entry.

11 “(3) The description of the merchandise from
12 the entry.

13 “(4) The quantity involved.

14 “(5) The country of origin of the merchandise.

15 “(6) The name and address of the foreign man-
16 ufacturer.

17 “(7) The name and address of the exporter.

18 “(8) The name and address of the importer.

19 “(9) Photographic or digital images of the mer-
20 chandise.

21 “(d) DEFINITIONS.—As used in this section—

22 “(1) the term ‘registered mark’ has the mean-
23 ing given that term in section 45 of the Lanham Act
24 (15 U.S.C. 1127);

1 “(2) the term ‘Lanham Act’ has the meaning
2 given that term in section 2320(f) of this title;

3 “(3) the term ‘counterfeit mark’ has the mean-
4 ing given that term in section 2320(f) of this title;
5 and

6 “(4) the term ‘without redaction’ means, with
7 respect to merchandise, without removing, revising,
8 or otherwise obscuring any information, codes,
9 marks, numbers, or any other markings that appear
10 on the merchandise or its retail packaging.

11 “(e) RULE OF CONSTRUCTION.—Subsections (b), (c),
12 and (d) apply only with respect to tangible goods pre-
13 sented to U.S. Customs and Border Protection for impor-
14 tation into, or exportation from, the United States.”.

15 **SEC. 3. PREVENTION OF IMPORTATION OF MANUFAC-**
16 **TURED GOODS BEARING INFRINGING MARKS.**

17 (a) IN GENERAL.—Section 42 of the Lanham Act (15
18 U.S.C. 1124), is amended—

19 (1) in the first sentence, by striking “Except
20 as” and inserting “(a) IN GENERAL.—Except as”;

21 (2) by striking “of the Treasury” each place it
22 appears and inserting “of Homeland Security”; and

23 (3) by adding at the end the following:

24 “(b) DETENTION OF CRITICAL MERCHANDISE.—
25 With respect to critical merchandise that bears a reg-

1 istered trademark recorded under subsection (a), if U.S.
 2 Customs and Border Protection detains the merchandise
 3 because the merchandise is suspected of bearing a coun-
 4 terfeit mark, then, upon such detention, the Secretary—

5 “(1) shall provide to the owner of the registered
 6 trademark any information on the critical merchan-
 7 dise and its packaging and labels, including, without
 8 redaction, photographs or digital images of the crit-
 9 ical merchandise, packaging, and labels; and

10 “(2) may, at any time, subject to any applicable
 11 bonding and return requirements, provide to the
 12 owner of the registered trademark samples of the
 13 critical merchandise, without redaction.

14 “(c) DEFINITIONS.—In this section:

15 “(1) CRITICAL MERCHANDISE.—

16 “(A) IN GENERAL.—The term ‘critical
 17 merchandise’ includes—

18 “(i) aircraft engines, appliances, pro-
 19 pellers, and spare parts;

20 “(ii) motor vehicle equipment;

21 “(iii) semiconductors; and

22 “(iv) any other article of manufacture
 23 that the Secretary determines could, if per-
 24 mitted entry into the United States in vio-
 25 lation of the laws of the United States pose

1 a danger to the health, safety, or welfare
2 of consumers, or to the national security of
3 the United States.

4 “(B) OTHER DEFINITIONS.—For purposes
5 of subparagraph (A)—

6 “(i) the terms ‘aircraft engine’, ‘appli-
7 ance’, ‘propeller’, and ‘spare part’ have the
8 meanings given those terms in section
9 40102(a) of title 49, United States Code;

10 “(ii) the term ‘motor vehicle equip-
11 ment’ has the meaning given that term in
12 section 30102(a) of title 49, United States
13 Code; and

14 “(iii) the term ‘semiconductor’ means
15 ‘semiconductor chip product’ as defined in
16 section 901 of title 17, United States
17 Code.

18 “(2) SECRETARY.—The term ‘Secretary’ means
19 the Secretary of Homeland Security.

20 “(3) WITHOUT REDACTION.—The term ‘without
21 redaction’ means, with respect to merchandise, with-
22 out removing, revising, or otherwise obscuring any
23 information, codes, marks, numbers, or any other
24 markings that appear on the merchandise or its re-
25 tail packaging.

1 “(d) RULE OF CONSTRUCTION.—This section applies
2 only with respect to tangible goods presented to U.S. Cus-
3 toms and Border Protection for importation into the
4 United States.”.

5 (b) DEFINITION.—In this section, the term “Lanham
6 Act” means the Act entitled “An Act to provide for the
7 registration and protection of trademarks used in com-
8 merce, to carry out the provisions of certain international
9 conventions, and for other purposes”, approved July 5,
10 1946 (15 U.S.C. 1051 et seq.).

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect upon the expiration of the
13 60-day period beginning on the date of the enactment of
14 this Act.

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