

114TH CONGRESS
1ST SESSION

S. 2299

To amend the Tariff Act of 1930 to improve enforcement of the trade laws of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2015

Ms. KLOBUCHAR (for herself and Mr. FRANKEN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Tariff Act of 1930 to improve enforcement of the trade laws of the United States, 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 “Trade Enforcement
5 Improvement Act of 2015”.

1 **SEC. 2. MODIFICATION OF FACTORS CONSIDERED IN FINAL**
2 **DETERMINATION IN ANTIDUMPING OR COUN-**
3 **TERVAILING DUTY INVESTIGATION IN CASE**
4 **OF AN ALLEGATION OF CRITICAL CIR-**
5 **CUMSTANCES.**

6 (a) COUNTERVAILING DUTIES.—Clause (ii) of section
7 705(b)(4)(A) of the Tariff Act of 1930 (19 U.S.C.
8 1671d(b)(4)(A)) is amended to read as follows:

9 “(ii) LIKELY TO SERIOUSLY UNDER-
10 MINE THE REMEDIAL EFFECT OF A COUN-
11 TERVAILING DUTY ORDER.—

12 “(I) IN GENERAL.—The Commis-
13 sion shall find under clause (i) that
14 imports of subject merchandise sub-
15 ject to the affirmative determination
16 under subsection (a)(2) are likely to
17 undermine seriously the remedial ef-
18 fect of the countervailing duty order
19 to be issued under section 706 if the
20 Commission determines that imports
21 of such merchandise after the filing of
22 the petition under this subtitle sub-
23 stantially weaken the remedial effect
24 of any subsequent countervailing duty
25 order.

1 “(II) FACTORS IN DETERMINA-
2 TION.—In making a determination
3 under subclause (I) with respect to
4 imports of subject merchandise de-
5 scribed in that subclause, the Com-
6 mission shall consider, based on the
7 facts available, the following:

8 “(aa) An increase in the
9 market share in the United
10 States of imports of such mer-
11 chandise after the filing of the
12 petition.

13 “(bb) An increase in under-
14 selling of the domestic like prod-
15 uct by imports of such merchan-
16 dise, in terms of frequency or
17 magnitude, after the filing of the
18 petition.

19 “(cc) A significant buildup
20 of inventories of imports of such
21 merchandise in the United
22 States, whether held by United
23 States importers, purchasers, or
24 end users, after the filing of the
25 petition.

1 “(dd) A weakening of the in-
2 dustry of the domestic like prod-
3 uct after the filing of the peti-
4 tion.

5 “(ee) Any other cir-
6 cumstances indicating that, after
7 the filing of the petition, imports
8 of such merchandise substantially
9 weaken the remedial effect of the
10 countervailing duty order.

11 “(III) ASSESSMENT OF COMPETI-
12 TION.—The Commission shall con-
13 sider items (aa) through (ee) of sub-
14 clause (II) based on the particular
15 conditions of competition in the rel-
16 evant industry.

17 “(IV) TIME PERIOD.—The period
18 of time evaluated in making a deter-
19 mination under subclause (I) shall not
20 include any period after the issuance
21 of the preliminary determination by
22 the administering authority under sec-
23 tion 703(b) with respect to the subject
24 merchandise.”.

1 (b) ANTIDUMPING DUTIES.—Clause (ii) of section
2 735(b)(4)(A) of the Tariff Act of 1930 (19 U.S.C.
3 1673d(b)(4)(A)) is amended to read as follows:

4 “(ii) LIKELY TO SERIOUSLY UNDER-
5 MINE THE REMEDIAL EFFECT OF AN ANTI-
6 DUMPING DUTY ORDER.—

7 “(I) IN GENERAL.—The Commis-
8 sion shall find under clause (i) that
9 imports of subject merchandise sub-
10 ject to the affirmative determination
11 under subsection (a)(3) are likely to
12 undermine seriously the remedial ef-
13 fect of the antidumping duty order to
14 be issued under section 736 if the
15 Commission determines that imports
16 of such merchandise after the filing of
17 the petition under this subtitle sub-
18 stantially weaken the remedial effect
19 of any subsequent antidumping duty
20 order.

21 “(II) FACTORS IN DETERMINA-
22 TION.—In making a determination
23 under subclause (I) with respect to
24 imports of subject merchandise de-
25 scribed in that subclause, the Com-

1 mission shall consider, based on the
2 facts available, the following:

3 “(aa) An increase in the
4 market share in the United
5 States of imports of such mer-
6 chandise after the filing of the
7 petition.

8 “(bb) An increase in under-
9 selling of the domestic like prod-
10 uct by imports of such merchan-
11 dise, in terms of frequency or
12 magnitude, after the filing of the
13 petition.

14 “(cc) A significant buildup
15 of inventories of imports of such
16 merchandise in the United
17 States, whether held by United
18 States importers, purchasers, or
19 end users, after the filing of the
20 petition.

21 “(dd) A weakening of the in-
22 dustry of the domestic like prod-
23 uct after the filing of the peti-
24 tion.

1 “(ee) Any other cir-
2 cumstances indicating that, after
3 the filing of the petition, imports
4 of such merchandise substantially
5 weaken the remedial effect of the
6 antidumping duty order.

7 “(III) ASSESSMENT OF COMPETI-
8 TION.—The Commission shall con-
9 sider items (aa) through (ee) of sub-
10 clause (II) based on the particular
11 conditions of competition in the rel-
12 evant industry.

13 “(IV) TIME PERIOD.—The period
14 of time evaluated in making a deter-
15 mination under subclause (I) shall not
16 include any period after the issuance
17 of the preliminary determination by
18 the administering authority under sec-
19 tion 733(b) with respect to the subject
20 merchandise.”.

1 **SEC. 3. MODIFICATION OF DETERMINATION OF THREAT OF**
2 **MATERIAL INJURY BASED ON IMMINENT FU-**
3 **TURE IMPORTS IN ANTIDUMPING OR COUN-**
4 **TERVAILING DUTY INVESTIGATION.**

5 Section 771(7)(F) of the Tariff Act of 1930 (19
6 U.S.C. 1677(7)(F)) is amended by adding at the end the
7 following:

8 “(iv) EFFECT OF IMMINENT FUTURE
9 IMPORTS.—

10 “(I) IN GENERAL.—Subject to
11 subclauses (II) and (III), the Commis-
12 sion may determine under this sub-
13 paragraph that an industry in the
14 United States is threatened with ma-
15 terial injury by reason of imports (or
16 sales for importation) of the subject
17 merchandise notwithstanding the re-
18 sults of an evaluation under subpara-
19 graph (C)(iii) with respect to the ef-
20 fect of imports of the subject mer-
21 chandise on that industry if the Com-
22 mission determines that imminent fu-
23 ture imports of the subject merchan-
24 dise will likely lead to a change of cir-
25 cumstances concerning the state of
26 that industry.

1 “(II) FUTURE PERFORMANCE ES-
2 TIMATE.—The Commission shall de-
3 termine under this subparagraph that
4 an industry in the United States is
5 threatened with material injury if the
6 performance of that industry is likely
7 to be materially worse than it would
8 have been in the absence of the likely
9 volume of imports of subject merchan-
10 dise in the imminent future.

11 “(III) FOREIGN PROJECTIONS.—
12 With respect to considering economic
13 factors described in clause (i)(II), in a
14 case in which production capacity in
15 or exports to the United States from
16 the exporting country are projected by
17 foreign producers to decline in the im-
18 minent future and such projection is
19 contrary to information examined by
20 the Commission in the investigation,
21 such projection shall require
22 verification or independent corrobora-
23 tion before being considered under
24 this subparagraph.”.

1 **SEC. 4. PREVENTION OF DUTY EVASION THROUGH IDENTI-**
2 **FICATION OF PERSONS AND COUNTRIES RE-**
3 **SPONSIBLE FOR VIOLATIONS OF THE CUS-**
4 **TOMS LAWS.**

5 (a) IDENTIFICATION OF CERTAIN PERSONS WHO
6 VIOLATE THE CUSTOMS LAWS.—

7 (1) IN GENERAL.—The Secretary may publish
8 semi-annually in the Federal Register a list of any
9 producer, manufacturer, supplier, seller, exporter, or
10 other person located outside the customs territory of
11 the United States to which the Commissioner has
12 issued a penalty claim under section 592(b)(2) of
13 the Tariff Act of 1930 (19 U.S.C. 1592(b)(2)) citing
14 any of the violations of the customs laws described
15 in paragraph (3).

16 (2) EFFECT OF PETITION FOR REMISSION OR
17 MITIGATION.—If a person to which a penalty claim
18 described in paragraph (1) is issued files a petition
19 for remission or mitigation under section 618 of that
20 Act (19 U.S.C. 1618) with respect to the penalty
21 claim, the Secretary may not include the person on
22 a list published under paragraph (1) until a final de-
23 termination is made under such section 618.

24 (3) VIOLATIONS.—

1 (A) IN GENERAL.—The violations of the
2 customs laws described in this paragraph are
3 the following:

4 (i) Using documentation, or providing
5 documentation subsequently used by the
6 importer of record, that indicates a false or
7 fraudulent country of origin or source of
8 goods described in subparagraph (B) being
9 entered into the customs territory of the
10 United States.

11 (ii) Using counterfeit visas, licenses,
12 permits, bills of lading, commercial in-
13 voices, packing lists, certificates of origin,
14 or similar documentation, or providing
15 counterfeit visas, licenses, permits, bills of
16 lading, commercial invoices, packing lists,
17 certificates of origin, or similar documenta-
18 tion subsequently used by the importer of
19 record, with respect to the entry into the
20 customs territory of the United States of
21 goods described in subparagraph (B).

22 (iii) Manufacturing, producing, sup-
23 plying, or selling goods described in sub-
24 paragraph (B) that are falsely or fraudu-

1 lently labeled as to country of origin or
2 source.

3 (iv) Engaging in practices that aid or
4 abet the transshipment, through a country
5 other than the country of origin, of goods
6 described in subparagraph (B), in a man-
7 ner that conceals the true origin of the
8 goods or permits the evasion of quotas or
9 duties on, or voluntary restraint agree-
10 ments with respect to, imports of the
11 goods.

12 (B) GOODS DESCRIBED.—Goods described
13 in this subparagraph are—

14 (i) textile or apparel goods; or
15 (ii) goods subject to antidumping or
16 countervailing duty orders under title VII
17 of the Tariff Act of 1930 (19 U.S.C. 1671
18 et seq.).

19 (4) REMOVAL FROM LIST.—Any person in-
20 cluded on a list published under paragraph (1) may
21 petition the Secretary to be removed from the list.
22 If the Secretary finds that the person has not com-
23 mitted any violations of the customs laws described
24 in paragraph (3) for a period of not less than 3
25 years after the date on which the person was in-

1 cluded on the list, the Secretary shall remove the
2 person from the list as of the next publication of the
3 list under paragraph (1).

4 (5) REASONABLE CARE REQUIRED FOR SUBSE-
5 QUENT IMPORTS.—

6 (A) RESPONSIBILITY OF IMPORTERS AND
7 OTHERS.—After a person has been included on
8 a list published under paragraph (1), the Sec-
9 retary shall require any importer of record en-
10 tering, introducing, or attempting to introduce
11 into the commerce of the United States any
12 goods described in paragraph (3)(B) that were
13 either directly or indirectly produced, manufac-
14 tured, supplied, sold, exported, or transported
15 by the person on the list to show, to the satis-
16 faction of the Secretary, that such importer has
17 exercised reasonable care to ensure that those
18 goods are accompanied by documentation, pack-
19 aging, and labeling that are accurate as to the
20 origin of those goods. Such reasonable care
21 shall not include reliance solely on information
22 provided by the person on the list.

23 (B) FAILURE TO EXERCISE REASONABLE
24 CARE.—If the Commissioner determines that an
25 imported good is not from the country claimed

1 on the documentation accompanying the good,
2 the failure to exercise reasonable care described
3 in subparagraph (A) shall be considered when
4 the Commissioner determines whether the im-
5 porter of record is in violation of section 484(a)
6 of the Tariff Act of 1930 (19 U.S.C. 1484(a))
7 or regulations issued under that section.

8 (b) IDENTIFICATION OF HIGH-RISK COUNTRIES.—

9 (1) IN GENERAL.—The President may publish
10 annually in the Federal Register a list of coun-
11 tries—

12 (A) in which illegal activities have occurred
13 involving transshipped goods or activities de-
14 signed to evade quotas or duties of the United
15 States on goods; and

16 (B) the governments of which fail to dem-
17 onstrate a good faith effort to cooperate with
18 United States authorities in ceasing such activi-
19 ties.

20 (2) REMOVAL FROM LIST.—Any country that is
21 on the list published under paragraph (1) that sub-
22 sequently demonstrates a good faith effort to cooper-
23 ate with United States authorities in ceasing activi-
24 ties described in that paragraph shall be removed

1 from the list, and such removal shall be published in
2 the Federal Register as soon as practicable.

3 (3) REASONABLE CARE REQUIRED FOR SUBSE-
4 QUENT IMPORTS.—

5 (A) RESPONSIBILITY OF IMPORTERS OF
6 RECORD.—The Secretary of Homeland Security
7 shall require any importer of record entering,
8 introducing, or attempting to introduce into the
9 commerce of the United States goods indicated,
10 on the documentation, packaging, or labeling
11 accompanying such goods, to be from any coun-
12 try on the list published under paragraph (1) to
13 show, to the satisfaction of the Secretary, that
14 the importer, consignee, or purchaser has exer-
15 cised reasonable care to identify the true coun-
16 try of origin of the good.

17 (B) FAILURE TO EXERCISE REASONABLE
18 CARE.—If the Commissioner determines that a
19 good described in subparagraph (A) is not from
20 the country claimed on the documentation ac-
21 companying the good, the failure to exercise
22 reasonable care under that subparagraph shall
23 be considered when the Commissioner deter-
24 mines whether the importer of record is in vio-
25 lation of section 484(a) of the Tariff Act of

1 1930 (19 U.S.C. 1484(a)) or regulations issued
2 under that section.

3 (c) DEFINITIONS.—In this section:

4 (1) COMMISSIONER.—The term “Commis-
5 sioner” means the Commissioner responsible for
6 U.S. Customs and Border Protection.

7 (2) COUNTRY.—The term “country” means a
8 foreign country or territory, including any overseas
9 dependent territory or possession of a foreign coun-
10 try.

11 (3) SECRETARY.—The term “Secretary” means
12 the Secretary of Homeland Security.

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