

114TH CONGRESS
1ST SESSION

S. 735

To require that any trade agreement eligible for expedited consideration by Congress include requirements with respect to paying adequate wages and maintaining sustainable production methods, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2015

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

A BILL

To require that any trade agreement eligible for expedited consideration by Congress include requirements with respect to paying adequate wages and maintaining sustainable production methods, 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 “Level Playing Field
5 in Trade Agreements Act of 2015”.

1 **SEC. 2. INELIGIBILITY FOR EXPEDITED CONSIDERATION**
2 **BY CONGRESS OF CERTAIN TRADE AGREE-**
3 **MENTS.**

4 (a) IN GENERAL.—No trade agreement with a coun-
5 try or implementing bill with respect to a trade agreement
6 may receive expedited consideration by Congress under
7 any provision of law, including any limitation on amend-
8 ments or debate in either the Senate or the House of Rep-
9 resentatives (other than under rule XXII of the Standing
10 Rules of the Senate, as in effect on the date of the enact-
11 ment of this Act) unless the agreement—

12 (1) includes binding and enforceable require-
13 ments that all producers of merchandise exported to
14 the United States from that country pay adequate
15 wages and maintain sustainable production methods;
16 and

17 (2) provides that, for purposes of merchandise
18 from that country, the application of antidumping
19 duty laws under subtitle B of title VII of the Tariff
20 Act of 1930 (19 U.S.C. 1673 et seq.) shall be modi-
21 fied as provided under subsection (b).

22 (b) ADJUSTMENT OF NORMAL VALUE TO INCLUDE
23 THE COST OF PAYING ADEQUATE WAGES AND MAINTAIN-
24 ING SUSTAINABLE PRODUCTION METHODS.—

25 (1) IN GENERAL.—Except as provided in para-
26 graph (3), in determining the price of covered mer-

chandise under subsection (a)(1)(B) of section 773 of the Tariff Act of 1930 (19 U.S.C. 1677b) for purposes of determining the normal value of the covered merchandise under that section, the administering authority shall increase the price by the difference, if any, between—

(A) the actual cost of producing the covered merchandise; and

(B) the estimated cost of producing the covered merchandise if the producer paid its employees adequate wages and maintained sustainable production methods.

(2) DEMONSTRATION OF INJURY.—An interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Tariff Act of 1930 (19 U.S.C. 1677(9)) that files a petition under section 732(b)(1) of that Act (19 U.S.C. 1673a(b)(1)) with respect to covered merchandise that relies on calculations of normal value made under this subsection shall be presumed to demonstrate that the party is materially injured or threatened with material injury by reason of imports of the covered merchandise unless—

(A) the country from which the covered merchandise is exported is covered by a

1 precertification issued under paragraph
2 (3)(A)(ii); or

3 (B) the estimated cost of producing the
4 covered merchandise under paragraph (1)(B) is
5 equal to or greater than the cost of producing
6 the merchandise in the country in which the in-
7 terested party is located.

8 (3) PRECERTIFICATION.—

9 (A) IN GENERAL.—

10 (i) EXPORTER- OR PRODUCER-SPE-
11 CIFIC PRECERTIFICATION.—If an exporter
12 or producer of covered merchandise dem-
13 onstrates to the satisfaction of the admin-
14 istering authority that all such merchan-
15 dise, including significant components or
16 ingredients of the covered merchandise,
17 was or will be produced under conditions
18 under which all employees receive adequate
19 wages or sustainable production methods
20 are maintained, the administering author-
21 ity shall issue to that exporter or producer,
22 upon request, a precertification with re-
23 spect to wages, production methods, or
24 both, that covers all covered merchandise
25 by that exporter or producer.

(ii) COUNTRY PRECERTIFICATION.—

The administering authority may issue a precertification for all covered merchandise imported from a country if the government of that country maintains and enforces laws requiring all producers of such merchandise in that country to pay its employees adequate wages and to maintain sustainable production methods.

(B) SAFE HARBOR.—

(i) IN GENERAL.—If the administering authority has issued a precertification under subparagraph (A), covered merchandise to which the precertification applies shall not be subject to an antidumping duty solely because a petition filed under section 732(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673a(b)(1)) with respect to the covered merchandise alleges that the covered merchandise was not produced under conditions under which all employees receive adequate wages and sustainable production methods are maintained.

1 (ii) CHALLENGING

2 PRECERTIFICATION.—An interested party
3 described in subparagraph (C), (D), (E),
4 (F), or (G) of section 771(9) of the Tariff
5 Act of 1930 (19 U.S.C. 1677(9)) that files
6 a petition under section 732(b)(1) of that
7 Act (19 U.S.C. 1673a(b)(1)) with respect
8 to covered merchandise covered by a
9 precertification issued under subparagraph
10 (A) bears the burden of proving that the
11 covered merchandise was not produced
12 under conditions under which all employees
13 receive adequate wages, sustainable pro-
14 duction methods are maintained, or both,
15 depending on the scope of the
16 precertification.

17 (C) USE OF THIRD-PARTY STANDARDS.—

18 (i) IN GENERAL.—The administering
19 authority, the Secretary of Labor, and the
20 Administrator of the Environmental Pro-
21 tection Agency may jointly establish proce-
22 dures pursuant to which obtaining certifi-
23 cation from an organization described in
24 clause (ii) may demonstrate the eligibility
25 of an exporter or producer for a

1 precertification under subparagraph (A)(i)
 2 or the eligibility of a country for a
 3 precertification under subparagraph
 4 (A)(ii).

5 (ii) ORGANIZATION DESCRIBED.—An
 6 organization described in this clause is an
 7 independent third-party organization that
 8 sets standards with respect to adequate
 9 wages or sustainable production methods.

10 (D) GUIDANCE ON COMPLIANCE.—Not
 11 later than one year after the date of the enact-
 12 ment of this Act, the administering authority
 13 shall publish in the Federal Register guidance
 14 with respect to how persons producing covered
 15 merchandise for exportation to the United
 16 States or seeking to import covered merchan-
 17 dise into the United States may obtain a
 18 precertification under subparagraph (A).

19 (c) DEFINITIONS.—In this section:

20 (1) ADEQUATE WAGES.—The term “adequate
 21 wages”—

22 (A) means compensation for a regular
 23 work week that is sufficient to meet the basic
 24 needs of the employee and any dependents of

the employee, including providing reasonable discretionary income; and

(B) includes, at a minimum—

(i) the payment of the higher of the minimum wage or the appropriate prevailing wage;

(ii) compliance with all legal requirements relating to wages (including freedom of association relating to the bargaining relating to wages and related matters); and

(iii) the provision of such benefits as are required by law or contract.

(2) ADMINISTERING AUTHORITY.—The term “administering authority” has the meaning given that term in section 771(1) of the Tariff Act of 1930 (19 U.S.C. 1677(1)).

(3) COVERED MERCHANDISE.—The term “covered merchandise” means merchandise imported into the United States from a country described in subsection (a).

(4) SUSTAINABLE PRODUCTION METHODS.—The term “sustainable production methods”—

(A) means the application of technologies and methods that are necessary to provide for workplace safety, toxic waste control, control of

1 discharge of pollutants to air, water, and land,
2 and the reasonable conservation of energy and
3 natural resources, taking into account local
4 standards and conditions; and

5 (B) includes, at a minimum, the use of
6 technologies and methods that would be re-
7 quired for similar production facilities in the
8 United States.

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