

115TH CONGRESS
2D SESSION

S. 2566

To require that any trade agreement eligible for expedited consideration by Congress include enforceable standards requiring paying adequate wages and maintaining sustainable production methods, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2018

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 enforceable standards requiring 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 the Playing Field
5 in Global Trade Act of 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

3 (A) means compensation for a regular
4 work week that is sufficient to meet the basic
5 needs of the employee and any dependents of
6 the employee, including reasonable discretionary
7 income; and

8 (B) includes, at a minimum—

9 (i) the payment of the higher of the
10 minimum wage or the appropriate pre-
11 vailing wage;

12 (ii) compliance with all legal require-
13 ments relating to wages (including freedom
14 of association relating to the bargaining re-
15 lating to wages and related matters); and

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

18 (2) SUSTAINABLE PRODUCTION METHODS.—

19 The term “sustainable production methods”—

20 (A) means the application of technologies
21 and methods that are necessary to provide for
22 workplace safety, toxic waste control, control of
23 discharge of pollutants to air, water, and land,
24 and the reasonable conservation of energy and

1 natural resources, taking into account local
 2 standards and conditions; and

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

7 **SEC. 3. INELIGIBILITY FOR EXPEDITED CONSIDERATION**
 8 **BY CONGRESS OF CERTAIN TRADE AGREE-**
 9 **MENTS.**

10 (a) IN GENERAL.—No trade agreement with a coun-
 11 try may receive expedited consideration by Congress under
 12 the Bipartisan Congressional Trade Priorities and Ac-
 13 countability Act of 2015 (19 U.S.C. 4201 et seq.) or any
 14 other provision of law, including any limitation on amend-
 15 ments or debate in either the Senate or the House of Rep-
 16 resentatives (other than under rule XXII of the Standing
 17 Rules of the Senate, as in effect on the date of the enact-
 18 ment of this Act) unless the agreement includes binding
 19 and enforceable requirements that all producers of mer-
 20 chandise exported to the United States from that country
 21 pay adequate wages and maintain sustainable production
 22 methods.

23 (b) REQUIREMENTS.—For purposes of subsection
 24 (a), a trade agreement does not include binding and en-

1 enforcement requirements described in that subsection un-
 2 less the agreement includes provisions that—

3 (1) require the parties to treat as forms of
 4 dumping or subsidies the failure to produce mer-
 5 chandise under conditions under which all employees
 6 receive adequate wages and sustainable production
 7 methods are maintained;

8 (2) provide for enforcement procedures substan-
 9 tially similar to the enforcement procedures provided
 10 for under the United States antidumping and coun-
 11 tervailing duty laws described in subsection (c); and

12 (3) require the parties to establish a
 13 precertification system described in subsection (d).

14 (c) UNITED STATES ANTIDUMPING AND COUNTER-
 15 VAILING DUTY LAWS DESCRIBED.—The United States
 16 antidumping and countervailing duty laws described in
 17 this subsection are title VII of the Tariff Act of 1930 (19
 18 U.S.C. 1671 et seq.), modified as follows:

19 (1) CALCULATION OF NORMAL VALUE.—The
 20 normal value of merchandise calculated under sec-
 21 tion 773(a) of the Tariff Act of 1930 (19 U.S.C.
 22 1677b(a)) shall be increased by an amount equal to
 23 the estimated cost of producing the merchandise
 24 under conditions under which all employees receive

adequate wages and sustainable production methods are maintained.

(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 with respect to merchandise under section 732(b)(1) of that Act (19 U.S.C. 1673a(b)(1)) shall be presumed to demonstrate that the party is materially injured or threatened with material injury by reason of imports of the merchandise unless—

(A) the country from which the merchandise is exported is covered by a precertification issued under subsection (d); or

(B) the estimated cost under paragraph (1) of producing the merchandise under conditions under which all employees receive adequate wages and sustainable production methods are maintained is equal to or greater than the cost of producing the merchandise in the United States.

(d) PRECERTIFICATION SYSTEMS DESCRIBED.—

(1) IN GENERAL.—A precertification system is described in this subsection if the system provides for the following:

1 (A) EXPORTER- OR PRODUCER-SPECIFIC
2 PRECERTIFICATION.—If an exporter or pro-
3 ducer of merchandise imported into a country
4 that is a party to a trade agreement that meets
5 the requirements of subsection (a) from another
6 country or countries demonstrates to the satis-
7 faction of an appropriate official of the country
8 that is a party to the trade agreement that all
9 merchandise from such other country or coun-
10 tries, including significant components or ingre-
11 dients of the merchandise, was or will be pro-
12 duced under conditions under which all employ-
13 ees receive adequate wages and sustainable pro-
14 duction methods are maintained, the appro-
15 priate official shall issue to that exporter or
16 producer, upon request, a precertification that
17 covers all merchandise imported into the coun-
18 try that is a party to the trade agreement by
19 that exporter or producer from such other coun-
20 try or countries.

21 (B) COUNTRY PRECERTIFICATION.—The
22 appropriate official of a country that is a party
23 to a trade agreement that meets the require-
24 ments of subsection (a) may issue a
25 precertification for all merchandise imported

1 from another country if the government of that
2 other country maintains and enforces laws re-
3 quiring all producers of such merchandise in
4 that other country to pay employees adequate
5 wages and to maintain sustainable production
6 methods.

7 (C) SAFE HARBOR.—If the appropriate of-
8 ficial of a country that is a party to a trade
9 agreement that meets the requirements of sub-
10 section (a) issues a precertification under sub-
11 paragraph (A) or (B), merchandise to which the
12 precertification applies shall not be subject to
13 an antidumping duty solely because a petition
14 seeking the imposition of an antidumping duty
15 filed with respect to the merchandise alleges
16 that the merchandise was not produced under
17 conditions under which all employees receive
18 adequate wages and sustainable production
19 methods are maintained.

20 (D) CHALLENGING PRECERTIFICATION.—
21 An interested party that files a petition seeking
22 the imposition of an antidumping duty with re-
23 spect to merchandise covered by a
24 precertification issued under subparagraph (A)
25 or (B) bears the burden of proving that the

merchandise was not produced under conditions under which all employees receive adequate wages and sustainable production methods are maintained.

(2) USE OF THIRD-PARTY STANDARDS.—

(A) IN GENERAL.—In implementing a trade agreement that meets the requirements of subsection (a) with respect to the United States, the Secretary of Commerce, the Secretary of Labor, and the Administrator of the Environmental Protection Agency may jointly establish procedures pursuant to which obtaining certification from an organization described in subparagraph (B) may demonstrate the eligibility of an exporter or producer for a precertification described in paragraph (1)(A) or the eligibility of a country for a precertification described paragraph (1)(B).

(B) ORGANIZATION DESCRIBED.—An organization described in this subparagraph is an independent third-party organization that sets standards with respect to adequate wages or sustainable production methods.

(3) GUIDANCE ON COMPLIANCE.—Not later than one year after the date of the enactment of this

1 Act, the Secretary of Commerce shall publish in the
 2 Federal Register guidance with respect to how per-
 3 sons producing merchandise for exportation to the
 4 United States or seeking to import such merchan-
 5 dise into the United States may obtain a
 6 precertification described in subparagraph (A) or
 7 (B) of paragraph (1).

8 (4) APPROPRIATE OFFICIAL DEFINED.—In this
 9 subsection, the term “appropriate official” means—

10 (A) in the case of the United States, the

11 Secretary of Commerce; and

12 (B) in the case of any other country that

13 is a party to a trade agreement that meets the

14 requirements of subsection (a), an official des-

15 ignated by that country.

16 (e) DETERMINATION OF COMPLIANCE.—

17 (1) IN GENERAL.—The United States Inter-

18 national Trade Commission shall make a determina-

19 tion with respect to whether each trade agreement is

20 in compliance with this section.

21 (2) PUBLIC AVAILABILITY OF TRADE AGREE-

22 MENT.—The Commission shall make the full text of

23 each trade agreement available to the public.

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