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H.R. 644, Trade Facilitation and Trade Enforcement Act of 2015

FLOOR SITUATION

On Friday, June 12, 2015, the House will consider the House Amendment to the Senate Amendment to H.R. 644, *the Trade Facilitation and Trade Enforcement Act of 2015,* under a rule. The Senate replaced the text of the previously passed House bill (*the Fighting Hunger Incentive Act of 2015)* and approved the amended version of H.R. 644 by a vote of 78 to 20 on May 14, 2015.

SUMMARY

H.R. 644 authorizes U.S. Customs and Border Protection (CBP), which has been operating without authorization, provides tools to facilitate legitimate trade, improves customs enforcement, measures progress within CBP, strengthens Trade Promotion Authority (TPA) legislation, and bolsters U.S.-Israel trade and commercial ties. In order to fully offset the cost, the bill also increases customs user fees and penalties for failure to file a tax return. Additionally, the bill prohibits a trade agreement from changing U.S. immigration policy, or the way the U.S. issues visas, or altering U.S. law with respect to global warming or climate change.

Major provisions of the bill are as follows:

Title I—Trade Facilitation and Trade Enforcement

Title I provides for the continued modernization of CBP's automated tracking systems to ensure the successful pre-screening of cargo. CBP currently has two methods for exchanging information between the agency and importers; these systems track information and collect import duties and other trade-related fees. CPB uses the Automated Commercial System (ACS), created in 1984, and the Automated Commercial Environment (ACE). ACE was created in 2001 to begin "customs modernization," the eventual replacement of ACS, which is widely acknowledged to be outdated.[1]

The Title authorizes funding for ACE through 2018 and requires CBP to report to Congress on the development and implementation of ACE. The Title also establishes deadlines for agencies with

[1] See the Ways and Means Committee H.R. 644 section-by-section analysis at 1.

border responsibility to share information electronically so that all U.S. government import and export requirements are fulfilled through a single window, reducing costs and streamlining trade.[2]

Laws currently authorizing the trade facilitation and enforcement functions of CBP (as outlined in the Customs Modernization and Informed Compliance Act), emphasize a balanced relationship between CBP and the trade community based on the principles of "shared responsibility," "reasonable care," and "informed compliance."[3] Since the 9/11 terrorist attacks of 2001, Congress has placed greater emphasis on import security and CBP's role in preventing terrorist attacks at the border. [4]

Title II—Import Health and Safety

Title II establishes an interagency working group, chaired by the Secretary of Homeland Security, which is required to:

> (1) consult on the development of a joint import safety rapid response plan required under section 202;
>
> (2) evaluate Federal government and agency resources, plans, and practices to ensure the safety of U.S. imports and the expeditious entry of such merchandise;
>
> (3) review the engagement and cooperation of foreign governments and manufacturers;
>
> (4) consult with the private sector to identify best practices in import health and safety;
>
> (5) identify best practices to improve Federal, state, and local coordination in responding to import health and safety threats; and,
>
> (6) identify appropriate steps to improve domestic accountability and foreign government engagement with respect to imports.

The Title also requires the Secretary of Homeland Security, in consultation with the import safety working group, to develop and review a joint import safety rapid response plan that establishes protocols and practices CBP should use when responding to cargo that poses a threat to the health or safety of U.S. consumers, and requires the Commissioner to conduct exercises to test the plan in conjunction with federal, state, and local agencies.

Title III—Import-Related Protection of Intellectual Property Rights (IPR)

Title III amends the Tariff Act of 1930 by authorizing and directing CBP to share information with intellectual property rights (IPR) holders to help quickly ascertain whether a good crossing the U.S. border at a port of entry violates a copyright or trademark, except in such cases as would compromise an ongoing law enforcement investigation or national security. Specifically, the bill requires CBP to provide IPR right holders with samples to determine if imported products are counterfeit. The bill establishes the National Intellectual Property Rights Coordination Center within

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[2] Id. at 4
[3] Id. at 2.
[4] Id.

U.S. Immigration and Customs Enforcement to help secure intellectual property rights and enforce provisions in this bill.[5]

Titles IV and V—Antidumping and Countervailing Duty Laws

Titles IV and V strengthen the enforcement and administration of antidumping and countervailing duty laws and ensure that all distributions required by the Continued Dumping and Subsidy Offset Act of 2000 are made.

Specifically, the bill establishes the Trade Remedy Law Enforcement Division within CBP's Office of International Trade, dedicated to prevent and investigate trade remedy evasion and direct CBP activity concerning evasion. This division would coordinate information exchange and cooperation between CBP, ICE, and other agencies regarding evasion.

The bill also grants the Department of Commerce the authority to investigate evasion of antidumping and countervailing duty orders and establishes the procedures for such investigations and reports to Congress on investigations. The bill also allows the Department increased flexibility in initiating investigations in which they believe foreign producers have dumped products in the U.S.

Title VI—Additional Trade Enforcement Provisions

Title VI requires the Administration to identify, in close consultation with Congress, enforcement priorities and to more regularly consult with Congress on the Administration's enforcement strategy. This section directs the Administration to focus its enforcement actions on addressing practices that, if eliminated, would likely have the most significant potential to increase United States economic growth.

The Title allows the Administration, under certain conditions, to reinstate a retaliatory action if such action has terminated previously. To reinstate such action, the Administration must receive a request from an affected domestic industry and engage in a detailed analysis and robust consultations with Congress and the public.

The Title also requires the International Trade Commission to create a web-based import monitoring tool to provide data on the volume and value of imports, and requires the Department of Commerce to provide on a website periodic reports on quarterly changes in the volume and value of imports.

Title VII—Currency Manipulation

Title VII strengthens existing semi-annual currency reports by including clear criteria on what constitutes currency manipulation and directs the Treasury Department to take certain steps, if it believes currency manipulation may have occurred. The revised criterion is similar to existing International Monetary Fund standards for manipulation. The Title also creates an advisory committee to advise the Treasury Department on currency issues.[6]

Title VIII—Establishment of U.S. Customs and Border Protection (CBP)

[5] Id. at 4.
[6] Id. at 7.

Title VIII establishes CBP within the Department of Homeland Security. CBP has been operating without direct authorization since it was created on March 1, 2003. The Title authorizes various positions, programs, and functions within the agency.

Title IX: Miscellaneous Provisions

Title IX includes, among others, the following general provisions:

Section 901: Raises de minimis amounts from $200 to $800 to reduce paperwork burdens and facilitate the movement of cargo.

Section 907: Establishes reporting requirements for interagency programs led by the Office of the United States Trade Representative (USTR), including the Interagency Trade Enforcement Center, and for budgetary and staffing requirements in USTR's Annual Report, in conjunction with other reports USTR is already required to submit to Congress.

Section 908: Sets out U.S. policy identifying the importance of the bilateral U.S.-Israel trade relationship. This section states that among the principal U.S. trade negotiating objectives for trade agreements with foreign countries are to discourage actions to boycott, divest from, or sanction Israel. The section requires the President to report annually to Congress on politically motivated acts of boycott against, divestment from, and sanctions against Israel.

Section 909: Eliminates the "consumptive demand" exception to the prohibition on importing merchandise made by convict, forced or indentured labor, and requires the Commissioner to provide a report to Congress that includes: 1) the number of instances in which merchandise was denied entry pursuant to this section during the preceding 1-year period; 2) a description of the merchandise denied entry pursuant to the section, and 3) such other information the Commissioner considers appropriate with respect to monitoring and enforcing compliance with this section.

Section 912: Prohibits a trade agreement from changing U.S. immigration policy, changing the way the U.S. issues visa, or changing U.S. law with respect to global warming or climate change.

Section 915: Modifies the penalty under the Internal Revenue Code that applies to a taxpayer who fails to file a tax return within 60 days of the due date, which is currently equal to the lesser of $135 (indexed for inflation) or 100 percent of the amount required to be shown on the return. This section would increase the dollar threshold to $205. The provision would be effective for tax returns due to be filed (including extensions) after 2015.

BACKGROUND

International trade is a critical component of the U.S. economy, with U.S. merchandise imports amounting to $2.4 trillion and exports to $1.6 trillion in 2014. U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), is the primary agency charged with monitoring, regulating, and facilitating the flow of goods through U.S. ports of entry (POEs).[7]

CBP's trade enforcement efforts are focused on five priority trade issues (PTIs), or "high risk areas that can cause significant revenue loss, hurt the U.S. economy, or threaten the health and safety of

[7] See CRS report, *"U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security,"* May 18, 2015, at 2.

the American people." The five issues are antidumping and countervailing duties; import safety; intellectual property rights; textiles and apparel; and trade agreements.[8]

Intellectual property rights (IPR) are legal, private, enforceable rights that governments grant to inventors and artists. These include patents, copyrights, trademarks, and trade secrets.[9] According to the Congressional Research Service (CRS), IPRs are considered vitally important to U.S. economic growth and comparative advantage internationally, as a range of U.S. industries rely heavily on IPR protection. According to the Department of Commerce, in 2010, a subset of the most IP-intensive industries were estimated to account for nearly one-fifth of U.S. direct employment and two-thirds of U.S. merchandise exports.[10]

The use of trade policy as a framework for advancing IPR internationally emerged with the North American Free Trade Agreement (NAFTA)[11] and World Trade Organization (WTO) 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).[12]

"Two major U.S. trade remedies, each set out in Title VII of the Tariff Act of 1930, are antidumping (AD) law, which combats the sale of imported goods at less than their fair market value, and countervailing duty (CVD) law, which is aimed at offsetting foreign government subsidization of imported items. If dumped or subsidized imports are found to cause material injury, or threat, to a domestic industry, and the dumping margin or the net subsidy is not de minimis, antidumping or countervailing duties will be imposed. Both remedies are available when goods are imported from competitor countries that have free market policies. Since 1984, however, only AD law had been applied to goods from nonmarket or other "transitional" economies. With the continued economic growth of some of these economies, such as China and Vietnam, pressure has increased on the U.S. government to utilize both domestic trade remedies more aggressively against unfair imports from these countries."[13]

AD law has been used and amended several times since its inception with the Antidumping Act of 1921. CVD law has not been widely used, particularly against nonmarket or "transitional" economies (NMEs). World Trade Organization (WTO) agreements, together with the WTO Accession Protocols of China and Vietnam, acknowledge that AD and CVD duties may be imposed on these countries' goods, and that surrogate country data may be used to calculate dumping margins or subsidization.[14] This surrogate approach, codified in the Trade Act of 1974, allows comparable prices and costs from similarly situated third countries to be substituted for the NME country's data to determine fair market value.[15]

COST

The Congressional Budget Office (CBO) and the Joint Committee on Taxation estimate that enacting H.R. 644 will reduce the deficit by $3 million over the 2015 to 2025 period.

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[8] Id. at 26
[9] See CRS Report, *"Intellectual Property Rights (IPR) and International Trade,"* April 23, 2015 at 1.
[10] Id.
[11] See North American Free Trade Agreement (NAFTA) at Part Six, Chapter Seventeen.
[12] See CRS Report, *"Intellectual Property Rights (IPR) and International Trade,"* April 23, 2015 at 1.
[13] See CRS report, *"U.S. Trade Remedy Laws and Nonmarket Economies: A Legal Overview,"* January 31, 2013 at 1.
[14] Id. at 1.
[15] Id. at 2

STAFF CONTACT

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