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## [Conference Report to H.R. 644, Trade Facilitation and Trade Enforcement Act of 2015](#)

### FLOOR SITUATION

On Friday, December 11, 2015, the House will consider the Conference Report 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. The House then passed an amendment to the Senate amendment on June 12, 2015, by a vote of [240 to 190](#).

### SUMMARY

The Conference Report to H.R. 644 authorizes U.S. Customs and Border Protection (CBP), which has been operating without authorization; provides tools to facilitate legitimate trade; improves trade enforcement; measures progress within CBP; strengthens Trade Promotion Authority (TPA) legislation, including by prohibiting 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 greenhouse gases; and bolsters U.S.-Israel trade and commercial ties. In order to fully offset the cost, the bill also extends customs user fees and increases penalties for failure to file a tax return. .

Major provisions of the Conference Report include:

**Establishment of U.S. Customs and Border Protection (CBP)**—The bill establishes CBP within the Department of Homeland Security.<sup>1</sup> CBP has been operating without direct authorization since it was created on March 1, 2003.

**Enhancing the Flow of Legitimate Trade**—The bill provides for the continued modernization of CBP's automated tracking systems to ensure the facilitation of legitimate trade and enforcement of U.S. customs laws. CBP is currently transitioning from the Automated Commercial System (ACS) to the Automated Commercial Environment (ACE) for exchanging information between the agency and importers.

<sup>1</sup> See [Conference Report to H.R. 644, Title VIII](#) at 206.

The bill authorizes funding for completing the development and transition to ACE through 2018 and requires CBP to report to Congress on the development and implementation of ACE.<sup>2</sup> The bill also establishes deadlines for agencies with 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.<sup>3</sup>

**Intellectual Property Rights (IPR) Enforcement**—The bill 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 U.S. Immigration and Customs Enforcement to help secure intellectual property rights and enforce provisions in this bill.<sup>4</sup>

**Currency Manipulation Enforcement**—The bill 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 bill also creates an advisory committee to advise the Treasury Department on currency issues.<sup>5</sup>

**Antidumping and Countervailing Duty Law Enforcement**—The bill strengthens the enforcement and administration of antidumping and countervailing duty laws and ensures that all distributions required by the Continued Dumping and Subsidy Offset Act of 2000 are made.<sup>6</sup>

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, Immigration and Customs Enforcement (ICE), and other agencies regarding evasion.<sup>7</sup>

The bill also grants the CBP the authority to investigate evasion of antidumping and countervailing duty orders and establishes the procedures and deadlines for such investigations, with judicial review, and reports to Congress on investigations. The bill also enables the Department of Commerce to ensure that antidumping and countervailing duties are not based on sham or illegitimate sales.<sup>8</sup>

**Strengthens Trade Promotion Authority (TPA)**— The bill reaffirms that trade agreements must not include obligations for the U.S. regarding greenhouse gas emissions<sup>9</sup> measures, reaffirms such agreements may not alter U.S. immigration law or expand visa access, enhances efforts to combat human trafficking, and establishes trading priorities to hamper illegal fishing activities. Click [here](#) for the Legislative Digest for H.R. 2146, the Trade Priorities and Accountability Act of 2015, which was enacted on June 29, 2015, and includes provisions commonly referred to as “Trade Promotion Authority”.

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<sup>2</sup> See [Joint Explanatory Statement on the Conference Committee for H.R. 644](#) at 6.

<sup>3</sup> Id. at 4

<sup>4</sup> Id. at 21.

<sup>5</sup> Id. at 53.

<sup>6</sup> Id. at 30.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id. at 77.

**Offsets**—The bill fully offsets its cost by extending existing authorization to the Secretary of the Treasury to charge and collect fees to offset the cost of certain customs services<sup>10</sup> and by increasing certain penalties for failure to file a tax return.<sup>11</sup>

**Bolsters U.S.-Israel Trade**—The bill combats politically motivated acts of boycott against, divestment from, and sanctions against Israel. Specifically, the bill states that it is a U.S. trade objective to discourage politically motivated actions to boycott, divest from, or sanction Israel; requires the President to report annually to Congress on politically motivated trade actions against Israel; and prohibits U.S. courts from recognizing or enforcing any judgment by a foreign court against a U.S. person who is merely conducting business within Israel.<sup>12</sup>

**Permanent Internet Tax Freedom Act**—The bill makes permanent the ban on states and localities taxing Internet access or placing multiple and discriminatory taxes on Internet commerce, but allows grandfathered states and localities through June 2020 to phase-out existing taxes.<sup>13</sup> This provision is similar to [H.R. 235](#), the Permanent Internet Tax Freedom Act, which passed the House by voice vote on June 9, 2015. The Senate has not act on the House-passed bill.

**Supports Recovery in Nepal**—The bill provides additional trade preferences to promote economic recovery in Nepal. The program requires Nepal to satisfy the eligibility criteria of the Africa Growth and Opportunity Act to be eligible for duty-free treatment of certain articles imported from Nepal. According to the Committee, this provision was included in response to the recent earthquakes in Nepal.<sup>14</sup>

**Promotes Small Business Exports**— The bill authorizes State Trade Expansion Program grants at \$30 million per year until fiscal year 2020, which is a program that makes matching-fund awards to states to assist small businesses enter and succeed in the international marketplace.<sup>15</sup> The bill also improves state and federal export promotion coordination.<sup>16</sup>

**Consumptive Demand**—The bill eliminates the “consumptive demand”<sup>17</sup> exception to the prohibition on importing merchandise made by convict, forced, or indentured labor. This ensures that no goods produced through such means are permitted to be imported into the United States.<sup>18</sup>

**Sense of Congress on the Need for a Miscellaneous Tariff Bill**—The bill includes a sense of Congress reaffirming commitment to advancing a miscellaneous tariff bill legislative process with consultation and consistent with House and Senate Rules.

Click [here](#) for the previous Legislative Digest on the House-passed version of H.R. 644 and [here](#) for a summary of the Conference Report, provided by the Committee on Ways and Means.

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<sup>10</sup> Id. at 80.

<sup>11</sup> Id. at 81.

<sup>12</sup> Id. at 73.

<sup>13</sup> See Ways and Means Committee, [Trade Facilitation and Trade Enforcement Act of 2015 Summary Fact Sheet](#)

<sup>14</sup> See [Joint Explanatory Statement on the Conference Committee for H.R. 644](#) at 78.

<sup>15</sup> See Small Business Administration website, [Office of International Trade | Resources State Trade and Export Promotion \(STEP\)](#)

<sup>16</sup> See [Joint Explanatory Statement on the Conference Committee for H.R. 644](#) at 41.

<sup>17</sup> See [19 U.S.C. 1307](#)

<sup>18</sup> See [Joint Explanatory Statement on the Conference Committee for H.R. 644](#) at 74.

## 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).<sup>19</sup>

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 the American people." The five issues are antidumping and countervailing duties; import safety; intellectual property rights; textiles and apparel; and trade agreements.<sup>20</sup>

Intellectual property rights (IPR) are legal, private, enforceable rights that governments grant to inventors and artists. These include patents, copyrights, trademarks, and trade secrets.<sup>21</sup> 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.<sup>22</sup>

According to Ways and Means Committee Chairman Kevin Brady, "Expanding trade is key to our pro-growth agenda for America. Our bipartisan agreement turns the page on impractical, outdated customs and border policies that have hurt American workers and job creators for decades. By replacing inefficiency with innovation, this bill will make it easier for Americans to compete and win in marketplaces around the world. In addition, strong enforcement provisions will also level the playing field and help ensure that other countries follow the same rules. This conference report fulfills our commitment to members of Congress during the discussion of TPA to make sure the President enforces trade agreements, not just negotiates them."<sup>23</sup>

## COST

The Congressional Budget Office (CBO) [estimates](#) that enacting H.R. 644 would decrease the budget deficits by \$116 million over the 2016 to 2025 period.

## STAFF CONTACT

For questions or further information please contact [John Huston](#) with the House Republican Policy Committee by email or at 6-5539.

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<sup>19</sup> See CRS report, ["U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security."](#) May 18, 2015, at 2.

<sup>20</sup> Id. at 26

<sup>21</sup> See CRS Report, ["Intellectual Property Rights \(IPR\) and International Trade,"](#) April 23, 2015 at 1.

<sup>22</sup> Id.

<sup>23</sup> See Ways and Means Committee Press Release, ["Hatch, Brady, Wyden Announce Deal on Bipartisan Customs Legislation,"](#) December 9, 2015.