

107TH CONGRESS
2^D SESSION

H. R. 5619

To require the Secretary of the Treasury to take certain actions with respect to the prevention of illegal transshipments, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 2002

Mr. HAYES introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require the Secretary of the Treasury to take certain actions with respect to the prevention of illegal transshipments, 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 “Illegal Transshipments
5 Enforcement Act of 2002”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) The United States textile and apparel sec-
2 tor, which employs approximately 1,000,000 work-
3 ers, is being seriously hurt by smuggling and trans-
4 shipment of textile and apparel products.

5 (2) Tens of thousands of United States textile
6 workers have lost their jobs because of these illegal
7 activities.

8 (3) According to industry and government esti-
9 mates, illegal textile and apparel smuggling and
10 transshipment totals billions of dollars per year.

11 (4) China and other major Asian exporting
12 countries have a decades-long history of illegally
13 shipping textile and apparel goods to the United
14 States.

15 (5) A new avenue of illegal trade which involves
16 the evasion of duties using countries that have free
17 trade agreements with the United States has devel-
18 oped and is particularly harmful to the United
19 States textile and apparel industry.

20 (6) This new avenue of trade takes advantage
21 of lax regulatory and enforcement administration of
22 the in-transit or in bond programs administered by
23 the Customs Service.

1 (7) The 1999 Report of the Interagency Com-
2 mission on Crime and Security in U.S. Seaports
3 found that—

4 (A) these goods “pose the largest risk”
5 and that “federal officials do not receive suffi-
6 cient information to make admissibility deci-
7 sions on this cargo”;

8 (B) “in-bond procedures of the United
9 States Customs Service deny the federal gov-
10 ernment detailed information on cargo that is
11 transiting the United States”;

12 (C) “existing statutes, regulations and sen-
13 tencing guidelines do not provide sufficient
14 cause to deter criminal or civil violations related
15 to the import and export of goods and contra-
16 band”;

17 (D) “existing criminal sanctions (for illegal
18 fraud schemes) provide no deterrent value” and
19 that “violators view the sentences as minor
20 roadblocks and a cost of doing business”;

21 (E) “criminals can bypass the federal
22 clearance and inspection process through under-
23 reporting, mis-reporting, or not reporting at
24 all”;

1 (F) “the number of inspectors and crimi-
2 nal investigations has simply not kept pace with
3 the trade volume”;

4 (G) “the lack of effective cargo control
5 . . . has significant negative economic con-
6 sequences, ranging from lost duty and tax reve-
7 nues to the United States, to failure to enforce
8 international trade agreements and restrictions
9 on import or export cargo”; and

10 (H) “due to short staffing and limited
11 technology, inspectors look at only about one
12 percent of containers.”

13 (b) PURPOSE.—The purpose of this Act, and the
14 amendments made by this Act, is to establish new admin-
15 istrative and regulatory guidelines which will enable the
16 Customs Service to effectively deter commercial fraud in
17 the United States, particularly concerning textile and ap-
18 parel products.

19 **SEC. 3. CUSTOMS ENFORCEMENT FOR IN-TRANSIT GOODS**
20 **AND CARGO THEFT.**

21 Notwithstanding any other provision of law, the Sec-
22 retary of the Treasury shall require that the following ac-
23 tions are taken:

24 (1) Not less than 1 out of every 10 containers
25 imported into the United States, including con-

1 tainers to be sent to bonded warehouses and foreign-
2 trade zones, shall be inspected, including through
3 the use of electronic and x-ray screening equipment.

4 (2) Prearrival electronic filing of documentation
5 equivalent to the current entry package not later
6 than 72 hours prior to arrival shall be required as
7 a condition for release from the custody of the Cus-
8 toms Service for goods that are in-transit or in
9 bond.

10 (3) Technology for screening of goods that are
11 entered into the United States for consumption shall
12 be applied to all in-transit goods.

13 (4) All information in documents filed for ex-
14 portation of in-transit goods, including documents
15 from bonded warehouses and foreign-trade zones,
16 are physically verified.

17 (5) The Commissioner of the Customs Service
18 shall establish procedures to physically verify that
19 in-transit goods that are declared to be exiting the
20 United States are in fact actually exported from the
21 United States. In addition, the Commissioner shall
22 coordinate systems with other foreign Customs Serv-
23 ices, particularly those in Mexico and Canada, to as-
24 sist in verifying the exportation of goods referred to
25 in the preceding sentence and to assist those coun-

1 tries in ensuring that such goods, upon importation,
2 are not declared to be products of the United States.

3 (6) Random inspections of at least 1 out of
4 every 10 containers carried on rail cars, barges,
5 pipelines and trucks after importation shall be re-
6 quired, including importation into bonded ware-
7 houses and foreign-trade zones, and before expor-
8 tation of in-transit goods.

9 (7) Security and background investigations of
10 all employees of all freight forwarders, booking han-
11 dlers, and bonded carriers, including bonded ware-
12 housemen and operators of foreign-trade zones, in-
13 volved in the import or export of in-transit goods
14 shall be undertaken.

15 (8) Ensure that penalties imposed for any viola-
16 tion of any law or regulation arising from trans-
17 actions involving in-transit and in-bond textile and
18 clothing goods and declarations regarding textile and
19 apparel products made on vessel manifests are not
20 mitigated.

21 (9) Establish that a mis-description of a textile
22 or apparel product, either regarding the quantity or
23 the nature of the product, on an entry document, a
24 manifest or in-bond or in-transit documentation is
25 considered a purposeful and intentional act and con-

1 stitutes fraud. The penalty, which shall not be miti-
2 gated by the port director or Customs Headquarters,
3 for such an act is the domestic value of the goods
4 in question.

5 (10) Increase the total number of field agents,
6 import specialists, and inspectors dedicated to fraud
7 and cargo enforcement to equal 25 percent of total
8 number of employees of the Customs Service.

9 (11) Establish cargo enforcement teams con-
10 sisting of agents, inspectors, and import specialists
11 whose sole function is the detection of cargo thefts,
12 frauds, and diversions, including those thefts,
13 frauds, and diversions occurring in bonded ware-
14 houses and foreign-trade zones.

15 (12) Establish a cargo fraud enforcement unit
16 in the headquarters of the Customs Service that is
17 composed of special agents, inspectors, and import
18 specialists whose sole function is to manage, direct,
19 and provide oversight of the program and which in-
20 cludes goods destined for bonded warehouses and
21 foreign-trade zones.

22 (13) Conduct all inspections at ports and elimi-
23 nate centralized inspection stations outside of ports.
24 Establish rail inspection facilities within proximity of
25 the border at all rail entry points. Ensure that con-

1 tainer rail traffic is inspected to the same extent as
2 container port traffic.

3 **SEC. 4. PUNISHMENT OF CARGO THEFT.**

4 (a) IN GENERAL.—Section 659 of title 18, United
5 States Code, is amended—

6 (1) by striking “with intent to convert to his
7 own use” each place that term appears;

8 (2) in the first undesignated paragraph—

9 (A) by inserting “trailer,” after
10 “motortruck,”;

11 (B) by inserting “air cargo container,”
12 after “aircraft,”; and

13 (C) by inserting “, or from any intermodal
14 container, trailer, container freight station,
15 warehouse, or freight consolidation facility,”
16 after “air navigation facility”;

17 (3) in the fifth undesignated paragraph, by
18 striking “one year” and inserting “3 years”;

19 (4) in the penultimate undesignated paragraph,
20 by inserting after the first sentence the following:
21 “For purposes of this section, goods and chattel
22 shall be construed to be moving as an interstate or
23 foreign shipment at all points between the point of
24 origin and the final destination (as evidenced by the
25 waybill or other shipping document of the shipment),

1 regardless of any temporary stop while awaiting
2 transshipment or otherwise.’; and

3 (5) by adding at the end the following:

4 “‘It shall be an affirmative defense (on which the de-
5 fendant bears the burden of persuasion by a preponder-
6 ance of the evidence) to an offense under this section that
7 the defendant bought, received, or possessed the goods,
8 chattels, money, or baggage at issue with the sole intent
9 to report the matter to an appropriate law enforcement
10 officer or to the owner of the goods, chattels, money, or
11 baggage.’”.

12 (b) FEDERAL SENTENCING GUIDELINES.—Pursuant
13 to section 994 of title 28, United States Code, the United
14 States Sentencing Commission shall review the Federal
15 sentencing guidelines under section 659 of title 18, United
16 States Code, as amended by this section and, upon com-
17 pletion of the review, promulgate amendments to the Fed-
18 eral Sentencing Guidelines to provide appropriate en-
19 hancement of the applicable guidelines.

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