

111TH CONGRESS
2D SESSION

H. R. 5393

To provide U.S. Customs and Border Protection with authority to more aggressively enforce trade laws relating to textile or apparel articles, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2010

Mr. KISSELL (for himself, Mr. JONES, Mr. SPRATT, Mr. COBLE, Mr. BOUCHER, Mr. HARE, Mr. SCHAUER, Mr. CARNEY, Mr. DUNCAN, Mr. MCHENRY, Mr. MICHAUD, Mr. ADERHOLT, Mr. MCINTYRE, Mr. ETHERIDGE, Mr. ROGERS of Alabama, Mr. MCCOTTER, Ms. FOXX, Mr. INGLIS, Ms. SUTTON, Mrs. MYRICK, Mr. LIPINSKI, Ms. LINDA T. SÁNCHEZ of California, Ms. KAPTUR, and Mr. HOLDEN) 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 provide U.S. Customs and Border Protection with authority to more aggressively enforce trade laws relating to textile or apparel articles, 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 AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Textile Enforcement and Security Act of 2010”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title and table of contents.
 Sec. 2. Textile or apparel article defined.

TITLE I—ADDITIONAL AUTHORITIES FOR U.S. CUSTOMS AND
 BORDER PROTECTION

- Sec. 101. Findings.
 Sec. 102. Seizure and forfeiture of certain textile or apparel articles and use
 of amounts from fines, penalties, and forfeitures.
 Sec. 103. Increase in certain TAPP positions and Import Specialist positions
 and biennial review of staff levels.
 Sec. 104. Implementation report.
 Sec. 105. Definitions.

TITLE II—AMENDMENTS TO THE TARIFF ACT OF 1930

- Sec. 201. Additional requirements for importation of textile or apparel articles.
 Sec. 202. Definition of person for penalties for fraud, gross negligence, and
 negligence relating to import documentation.
 Sec. 203. Special provisions regarding certain violations relating to import docu-
 mentation.
 Sec. 204. Electronic preference verification system for origin of textile or ap-
 parel articles under CAFTA, NAFTA, and other free trade
 agreements.
 Sec. 205. Nonresident importer declaration program for textile or apparel arti-
 cles.

TITLE III—MISCELLANEOUS PROVISIONS

- Sec. 301. Establishment of Office of Textile and Apparel Trade Enforcement
 within the Department of Justice.

3 **SEC. 2. TEXTILE OR APPAREL ARTICLE DEFINED.**

4 (a) IN GENERAL.—In this Act, the term “textile or
 5 apparel article” means any of the following:

6 (1) Any good classifiable in chapters 50
 7 through 63 of the HTS.

8 (2) Any good classifiable under one of the fol-
 9 lowing HTS headings or subheadings:

10 (A) 3005.90.

11 (B) 3921.12.15.

- 1 (C) 3921.13.15.
- 2 (D) 3921.90.2550.
- 3 (E) 4202.12.40–80.
- 4 (F) 4202.22.40–80.
- 5 (G) 4202.32.40–95.
- 6 (H) 4202.92.05.
- 7 (I) 4202.92.15–30.
- 8 (J) 4202.92.60–90.
- 9 (K) 6405.20.60.
- 10 (L) 6406.10.77.
- 11 (M) 6406.10.90.
- 12 (N) 6406.99.15.
- 13 (O) 6501.
- 14 (P) 6502.
- 15 (Q) 6504.
- 16 (R) 6505.90.
- 17 (S) 6601.10–99.
- 18 (T) 7019.19.15.
- 19 (U) 7019.19.28.
- 20 (V) 7019.40–59.
- 21 (W) 8708.21.
- 22 (X) 8804.
- 23 (Y) 9113.90.40.
- 24 (Z) 9404.90.
- 25 (AA) 9612.10.9010.

1 (b) HTS DEFINED.—In subsection (a), the term
2 “HTS” means the Harmonized Tariff Schedule of the
3 United States.

4 **TITLE I—ADDITIONAL AUTHORI-**
5 **TIES FOR U.S. CUSTOMS AND**
6 **BORDER PROTECTION**

7 **SEC. 101. FINDINGS.**

8 The Congress finds the following:

9 (1) The Textile and Apparel Policy and Pro-
10 grams division of the Office of International Trade
11 within U.S. Customs and Border Protection (herein-
12 after in this title referred to as the “TAPP”) has,
13 with respect to textile or apparel articles, the author-
14 ity to direct the implementation and enforcement of
15 free trade agreements, multilateral agreements, bi-
16 lateral textile agreements, preference programs, and
17 all other trade legislation affecting textiles and ap-
18 parel articles.

19 (2) The primary focus of the TAPP is to ensure
20 the effective implementation of all trade enforcement
21 activities involving textile or apparel articles, includ-
22 ing preventing origin fraud, preventing circumven-
23 tion of the requirements to obtain preferential trade
24 treatment under free trade agreements and trade
25 preference programs in order to avoid quotas or du-

1 ties, providing for the collection of appropriate du-
2 ties, and providing for the correct valuation of arti-
3 cles.

4 (3) The TAPP headquarters office is currently
5 below its optimal staffing levels and the TAPP per-
6 sonnel efforts should be targeted at retaining senior
7 staff and hiring new qualified personnel so that the
8 division is brought up to optimal staffing levels.
9 These positions should be designated as not only pol-
10 icy positions, but enforcement positions as well.

11 (4) The TAPP should implement special oper-
12 ations, Textile Product Verification Teams (herein-
13 after in this title referred to as “TPVTs”), and
14 other actions under U.S. Customs and Border Pro-
15 tection authority to ensure enforcement of trade
16 laws relating to imports of textile or apparel articles
17 in a timely manner as concerns arise, specifically as
18 they relate to enforcement of the North American
19 Free Trade Agreement, the Dominican Republic-
20 Central America-United States Free Trade Agree-
21 ment, and all other free trade agreements and pref-
22 erence programs, in order to prevent transshipments
23 and origin fraud.

24 (5) U.S. Customs and Border Protection should
25 ensure that seizures, detentions, special operations,

1 and TPVTs remain the primary focus of its textile
2 or apparel articles enforcement efforts.

3 **SEC. 102. SEIZURE AND FORFEITURE OF CERTAIN TEXTILE**
4 **OR APPAREL ARTICLES AND USE OF**
5 **AMOUNTS FROM FINES, PENALTIES, AND**
6 **FORFEITURES.**

7 (a) SEIZURE AND FORFEITURE.—The following pen-
8 alties shall apply with respect to an importation of a tex-
9 tile or apparel article:

10 (1) In the case of importation for which a trade
11 preference has been claimed and with respect to
12 which the textile or apparel article has been either
13 misdescribed on entry as to country of origin or for
14 which the importer of record does not verify actual
15 country of origin, for purposes of avoiding a duty or
16 other obligation to the United States Government,
17 the textile or apparel article shall be subject to sei-
18 zure and forfeiture consistent with United States
19 customs laws.

20 (2) In the case of importation by an importer
21 of record who provides false information with respect
22 to the physical address of the importer or who does
23 not meet the requirements of section 484(a)(2)(B)
24 of the Tariff Act of 1930 (19 U.S.C. 1484
25 (a)(2)(B)), the textile or apparel article shall be sub-

1 ject to seizure and forfeiture consistent with United
2 States customs laws.

3 (b) USE OF AMOUNTS FROM FINES, PENALTIES,
4 AND FORFEITURES.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of law, the Secretary of Homeland Security
7 or the Secretary of the Treasury—

8 (A) shall use amounts from fines, pen-
9 alties, and forfeitures of property for violations
10 of any law regarding the import of textile or ap-
11 parel articles enforced by the Secretary of
12 Homeland Security to pay for expenses directly
13 related to investigations of, and civil or criminal
14 enforcement proceedings on, violations of any
15 law regarding the import of textile or apparel
16 articles, including any necessary expenses for
17 equipment, training, travel, witnesses, and con-
18 tracting services directly related to such inves-
19 tigations or proceedings; and

20 (B) may use amounts from fines, penalties,
21 and forfeitures of property for violations of any
22 law regarding the import of textile or apparel
23 articles enforced by the Secretary of Homeland
24 Security to pay for a reward of not less than 20
25 percent of the amount of the fine, penalty, or

1 forfeiture of property collected or \$20,000,
2 whichever is the lesser amount, to any person
3 who furnishes information that leads to an ar-
4 rest, conviction, civil penalty assessment, or for-
5 feiture of property for any violation of any law
6 regarding the import of textile or apparel arti-
7 cles enforced by the Secretary.

8 (2) LIABILITY FOR STORAGE AND DISPOSAL
9 COSTS.—Any person found in an administrative or
10 judicial proceeding to have violated a law regarding
11 the import of textile or apparel articles enforced by
12 the Secretary of Homeland Security or the Secretary
13 of the Treasury shall be liable for the cost incurred
14 in the storage and disposal of any textile or apparel
15 articles seized in connection with the violation.

16 (3) RULE OF CONSTRUCTION.—Amounts from
17 fines, penalties, and forfeitures of property for viola-
18 tions of any law regarding the import of textile or
19 apparel articles enforced by the Secretary of Home-
20 land Security or the Secretary of the Treasury to
21 pay for expenses described in paragraph (1)(A) or a
22 reward described in paragraph (1)(B) are in addi-
23 tion to amounts otherwise available for such pur-
24 poses.

1 **SEC. 103. INCREASE IN CERTAIN TAPP POSITIONS AND IM-**
2 **PORT SPECIALIST POSITIONS AND BIENNIAL**
3 **REVIEW OF STAFF LEVELS.**

4 (a) INCREASE IN CERTAIN TAPP POSITIONS.—As
5 soon as practicable after the date of the enactment of this
6 Act, the Commissioner shall ensure that—

7 (1) the Textile Operations Branch (or any suc-
8 cessor or related Branch) of the TAPP shall consist
9 of, at a minimum, one Branch Chief and seven Op-
10 erations Staff, of which not less than one Operations
11 Staff shall be assigned to each of three different
12 CAFTA–DR countries and not less than one Oper-
13 ations Staff shall be assigned to the People’s Repub-
14 lic of China for purposes of Customs services and
15 textile or apparel preference verification;

16 (2) the Textile/Apparel Policy Branch (or any
17 successor or related Branch) of the TAPP shall con-
18 sist of, at a minimum, one Branch Chief and three
19 Operations Staff and two textile trade analysts; and

20 (3) the Quota Branch (or any successor or re-
21 lated Branch) of the TAPP shall consist of, at a
22 minimum, one Branch Chief and four Operations
23 Staff.

24 (b) INCREASE IN CERTAIN IMPORT SPECIALIST POSI-
25 TIONS.—As soon as practicable after the date of the enact-
26 ment of this Act, the Commissioner shall allocate, to the

1 15 largest (by value of entries) United States ports of
2 entry for textile or apparel articles, Import Specialists that
3 are trained in fraud relating to imports of textile or ap-
4 parel articles so that the level of Import Specialist posi-
5 tions is not less than 150 percent of the level of Import
6 Specialist positions (as of the date of the enactment of
7 this Act) at such ports of entry.

8 (c) BIENNIAL REVIEW OF STAFF LEVELS.—Not
9 later than two years after the date of the enactment of
10 this Act, and every two years thereafter, the Commissioner
11 shall review the TAPP staff levels and determine whether
12 there is need for additional staff to carry out the duties
13 of the TAPP.

14 (d) CAFTA–DR COUNTRY DEFINED.—In this sec-
15 tion, the term “CAFTA–DR country” has the meaning
16 given the term in section 3(2) of the Dominican Republic-
17 Central America-United States Free Trade Agreement
18 Implementation Act (19 U.S.C. 4002(2)).

19 **SEC. 104. IMPLEMENTATION REPORT.**

20 Not later than one year after the date of the enact-
21 ment of this Act, the Commissioner shall transmit to Con-
22 gress a report on the implementation of this title.

23 **SEC. 105. DEFINITIONS.**

24 For purposes of this title:

1 (1) COMMISSIONER.—The term “Commis-
2 sioner” means the Commissioner responsible for
3 U.S. Customs and Border Protection.

4 (2) ENTER; ENTRY.—The terms “enter” and
5 “entry” refer to the entry, or withdrawal from ware-
6 house for consumption, in the customs territory of
7 the United States.

8 (3) IMPORTER OF RECORD.—The term “im-
9 porter of record” has the meaning given the term in
10 section 484 of the Tariff Act of 1930 (19 U.S.C.
11 1484).

12 (4) SPECIAL OPERATIONS.—The term “special
13 operations” means an initiative that is—

14 (A) implemented to address specific in-
15 stances of transactions that do not comply with
16 United States trade laws with respect to textile
17 or apparel articles;

18 (B) used to address any import violations
19 involving textile or apparel articles, including
20 fraud, quota requirements, revenue collection,
21 trade preferences or requirements under free
22 trade agreements, product safety, anti-dumping
23 and countervailing duties, or intellectual prop-
24 erty rights; or

1 (C) initiated to address a singular instance
2 or a pattern of high-risk behavior, involving a
3 particular commodity or other trade issue, in-
4 cluding valuation, origin fraud, or trade pref-
5 erence violation, on the part of a country, im-
6 porter, or manufacturer.

7 (5) TAPP.—The term “TAPP” means the Tex-
8 tile and Apparel Policy and Programs division of the
9 Office of International Trade within U.S. Customs
10 and Border Protection.

11 (6) TPVTs.—The term “TPVTs” means Tex-
12 tile Product Verification Teams.

13 **TITLE II—AMENDMENTS TO THE**
14 **TARIFF ACT OF 1930**

15 **SEC. 201. ADDITIONAL REQUIREMENTS FOR IMPORTATION**
16 **OF TEXTILE OR APPAREL ARTICLES.**

17 (a) AFFIDAVIT REQUIREMENT.—Section 484(a) of
18 the Tariff Act of 1930 (19 U.S.C. 1484(a)) is amended
19 by adding at the end the following:

20 “(3) AFFIDAVIT REQUIREMENT.—

21 “(A) IN GENERAL.—The documentation or
22 information required under paragraph (1) with
23 respect to imported textile or apparel articles
24 shall include an affidavit with respect to each

1 importation of such merchandise that includes
2 the information described in subparagraph (B).

3 “(B) REQUIRED INFORMATION.—The in-
4 formation described in this paragraph is the fol-
5 lowing:

6 “(i) The physical address of the man-
7 ufacturer.

8 “(ii) The contact person’s name and
9 complete contact information.

10 “(iii) A description of the articles,
11 such as fiber content, yarn content, fabric
12 type.

13 “(iv) The purchase order or invoice
14 number issued for the sale with quantities
15 included.

16 “(v) The date of sale or shipment of
17 the articles.

18 “(vi) If available, the container num-
19 ber and bill of lading number for the arti-
20 cles delivered to the customer.

21 “(C) FORM.—The affidavit required under
22 this paragraph may be submitted to U.S. Cus-
23 toms and Border Protection in electronic form.

24 “(D) DEFINITION.—In this paragraph, the
25 term ‘textile or apparel article’ has the meaning

1 given the term in section 2 of the Textile En-
2 forcement and Security Act of 2010.”.

3 (b) BONDING REQUIREMENT.—Section 623(b) of the
4 Tariff Act of 1930 (19 U.S.C. 1623(b)) is amended by
5 adding at the end the following:

6 “(5) In the case of importation of textile or ap-
7 parel articles, the Secretary of the Treasury shall by
8 regulation or specific instruction require, or author-
9 ize Customs officers to require, the amount of the
10 bond to include amounts equal to any duties, fees,
11 and penalties estimated to be payable on such arti-
12 cles. For purposes of this paragraph, amounts equal
13 to any penalties estimated to be payable on such ar-
14 ticles shall be based on a risk assessment of the im-
15 porter. In this paragraph, the term ‘textile or ap-
16 parel article’ has the meaning given the term in sec-
17 tion 2 of the Textile Enforcement and Security Act
18 of 2010.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 subsections (a) and (b) shall apply with respect to articles
21 entered, or withdrawn from warehouse for consumption,
22 on or after the date that is 180 days after the date of
23 the enactment of this Act.

1 **SEC. 202. DEFINITION OF PERSON FOR PENALTIES FOR**
2 **FRAUD, GROSS NEGLIGENCE, AND NEG-**
3 **LIGENCE RELATING TO IMPORT DOCU-**
4 **MENTATION.**

5 (a) IN GENERAL.—Section 592(a)(1) of the Tariff
6 Act of 1930 (19 U.S.C. 1592(a)(1)) is amended in the
7 matter preceding subparagraph (A) by striking “no per-
8 son” and inserting “no producer, manufacturer, supplier,
9 seller, importer, exporter, or other person”.

10 (b) CONFORMING AMENDMENT.—Section 592A(a)(1)
11 of the Tariff Act of 1930 (19 U.S.C. 1592a(a)(1)) is
12 amended by inserting “importer,” after “exporter,”.

13 **SEC. 203. SPECIAL PROVISIONS REGARDING CERTAIN VIO-**
14 **LATIONS RELATING TO IMPORT DOCUMENTA-**
15 **TION.**

16 (a) PUBLICATION OF NAMES OF CERTAIN VIOLA-
17 TIONS.—Section 592A(a)(1) of the Tariff Act of 1930 (19
18 U.S.C. 1592a(a)(1)), as amended by this Act, is further
19 amended in the matter preceding subparagraph (A) by
20 striking “is authorized to” and inserting “shall”.

21 (b) LIST OF HIGH-RISK COUNTRIES.—Section
22 592A(b)(1) of the Tariff Act of 1930 (19 U.S.C.
23 1592a(b)(1)) is amended in the first sentence—

24 (1) by striking “is authorized to” and inserting
25 “shall”; and

1 (2) by inserting after “quotas” the following:
2 “or duties”.

3 **SEC. 204. ELECTRONIC PREFERENCE VERIFICATION SYS-**
4 **TEM FOR ORIGIN OF TEXTILE OR APPAREL**
5 **ARTICLES UNDER CAFTA, NAFTA, AND OTHER**
6 **FREE TRADE AGREEMENTS.**

7 (a) ESTABLISHMENT.—Not later than 180 days after
8 the date of the enactment of this Act, the President, act-
9 ing through the Commissioner responsible for U.S. Cus-
10 toms and Border Protection and in coordination with the
11 head of the Office of Textiles and Apparel of the Depart-
12 ment of Commerce, shall establish an electronic
13 verification system for tracking textile or apparel articles
14 imported or exported under the Dominican Republic-Cen-
15 tral America-United States Free Trade Agreement, the
16 North American Free Trade Agreement, or any other free
17 trade agreement to which the United States is a party to
18 ensure compliance with the respective requirements of
19 such agreements.

20 (b) IMPLEMENTATION.—The President shall seek to
21 enter into consultations and agreements as appropriate
22 with the government of each foreign country that is party
23 to any agreement described in subsection (a) for purposes
24 of implementing the system established under subsection
25 (a).

1 (c) CONFIDENTIALITY.—The system established
2 under subsection (a) shall ensure that proprietary infor-
3 mation, such as information about supply chain partici-
4 pants, are coded so that only U.S. Customs and Border
5 Protection and the Office of Textiles and Apparel per-
6 sonnel can access such information.

7 (d) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that the President should seek to make the integra-
9 tion of the system established under subsection (a) in fu-
10 ture free trade agreements a priority in negotiations for
11 such agreements.

12 **SEC. 205. NONRESIDENT IMPORTER DECLARATION PRO-**
13 **GRAM FOR TEXTILE OR APPAREL ARTICLES.**

14 (a) ESTABLISHMENT OF PROGRAM.—The President
15 shall establish and maintain a nonresident importer dec-
16 laration program with respect to the importation of textile
17 or apparel articles. The program shall require nonresident
18 importers of textile or apparel articles to provide the infor-
19 mation required under subsection (b) and declare the in-
20 formation required under subsection (c), and require that
21 such information accompany the entry summary docu-
22 mentation for such textile or apparel articles.

23 (b) INFORMATION REQUIRED.—The President shall
24 require the following information to be submitted by any

1 nonresident importer seeking to import textile or apparel
2 articles:

3 (1) An identification of a resident agent in the
4 State in which the port of entry is located who is au-
5 thorized to accept service of process against the non-
6 resident importer in connection with the importation
7 of the textile or apparel articles.

8 (2) A certification that the resident agent de-
9 scribed in paragraph (1) has assets in the United
10 States in sufficient amounts for the purpose of en-
11 suring the payment of any additional loss of revenue
12 not covered by any surety bond or for any civil pen-
13 alties levied by the Federal Government in connec-
14 tion with the importation of the textile or apparel
15 articles.

16 (3) A copy of the commercial invoice accom-
17 panying the shipment of the textile or apparel arti-
18 cles, including the name, address, and contact infor-
19 mation for each person in the transaction, such as
20 the trading house, the freight forwarder, and the ul-
21 timate purchaser of the goods.

22 (c) DECLARATIONS REQUIRED.—Pursuant to proce-
23 dures prescribed by the President, any nonresident im-
24 porter seeking to import textile or apparel articles shall
25 declare the following:

1 (1) The nonresident importer has secured a
2 bond in connection with the importation of the tex-
3 tile or apparel articles as required by section
4 623(b)(5) of the Tariff Act of 1930 (as added by
5 section 201(b) of this Act).

6 (2) The nonresident importer has established a
7 power of attorney in connection with the importation
8 of the textile or apparel articles.

9 (d) PENALTIES.—

10 (1) IN GENERAL.—It shall be unlawful for any
11 person to import into the United States textile or
12 apparel articles in knowing violation of this section.

13 (2) CIVIL PENALTIES.—Any person who vio-
14 lates paragraph (1) shall be liable for a civil penalty
15 of not more than \$50,000 for each such violation.

16 (3) OTHER PENALTIES.—In addition to the
17 penalties provided for in paragraph (2), any viola-
18 tion of this section that violates any other customs
19 law of the United States shall be subject to any ap-
20 plicable civil and criminal penalty, including seizure
21 and forfeiture, that may be imposed under such cus-
22 toms law or title 18, United States Code, with re-
23 spect to the importation of textile or apparel articles.

24 (e) NONRESIDENT IMPORTER DEFINED.—In this
25 section, the term “nonresident importer” means—

1 (1) an individual that is not a citizen of the
2 United States or an alien lawfully admitted for per-
3 manent residence in the United States; or

4 (2) a partnership, corporation, or other com-
5 mercial entity that is not organized under the laws
6 of a jurisdiction within the customs territory of the
7 United States (as such term is defined in General
8 Note 2 of the Harmonized Tariff Schedule of the
9 United States) or in the Virgin Islands of the United
10 States.

11 **TITLE III—MISCELLANEOUS** 12 **PROVISIONS**

13 **SEC. 301. ESTABLISHMENT OF OFFICE OF TEXTILE AND AP-** 14 **PAREL TRADE ENFORCEMENT WITHIN THE** 15 **DEPARTMENT OF JUSTICE.**

16 (a) **ESTABLISHMENT.**—The Attorney General shall
17 establish within the Department of Justice the Office of
18 Textile and Apparel Trade Enforcement.

19 (b) **TIMING.**—The Attorney General shall establish
20 the Office by not later than the end of the 180-day period
21 beginning on the date of the enactment of this Act.

22 (c) **STAFF.**—The Office shall have a director, at least
23 three attorneys, and such other staff as may be necessary.

1 (d) FUNCTIONS.—The Office shall be responsible for
2 carrying out all functions of the Department of Justice
3 relating to relevant enforcement cases.

4 (e) VENUE.—Notwithstanding the provisions of chap-
5 ter 87 of title 28, United States Code, relating to venue,
6 a relevant enforcement case may be prosecuted only in the
7 United States District Court for the Middle District of
8 North Carolina.

9 (f) RELEVANT ENFORCEMENT CASES.—In this sec-
10 tion, a case is a “relevant enforcement case” if the case—

11 (1) is referred to the Department of Justice by
12 the Department of Homeland Security; and

13 (2) relates to the enforcement of laws with re-
14 spect to the importation of textile or apparel articles.

○