

118TH CONGRESS
1ST SESSION

H. R. 2667

To amend the Tariff Act of 1930 to increase civil penalties for, and improve enforcement with respect to, customs fraud, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 2023

Mr. BOST (for himself, Ms. SEWELL, Mr. MURPHY, Mr. MRVAN, and Ms. TENNEY) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Tariff Act of 1930 to increase civil penalties for, and improve enforcement with respect to, customs fraud, 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 “Fighting Trade Cheats
5 Act of 2023”.

1 **SEC. 2. INCREASE IN CIVIL PENALTIES FOR FRAUDULENT**
2 **AND GROSSLY NEGLIGENT VIOLATIONS OF**
3 **UNITED STATES CUSTOMS LAWS.**

4 Section 592 of the Tariff Act of 1930 (19 U.S.C.
5 1592) is amended—

6 (1) in subsection (a)—

7 (A) by redesignating paragraph (2) as
8 paragraph (3); and

9 (B) by inserting after paragraph (1) the
10 following:

11 “(2) PRESUMPTION.—

12 “(A) IN GENERAL.—For purposes of para-
13 graph (1)(B), if a person purchases merchan-
14 dise from two or more affiliated persons after
15 such persons are determined by U.S. Customs
16 and Border Protection or a court of competent
17 jurisdiction to have violated subsection (a) by
18 means of fraud or gross negligence, there shall
19 be a presumption that the purchaser had knowl-
20 edge of such violation with respect to purchases
21 from the second or subsequent such affiliated
22 person.

23 “(B) AFFILIATED PERSON DEFINED.—In
24 subparagraph (A), the term ‘affiliated person’
25 has the meaning given that term in section
26 771(33).”; and

1 (2) in subsection (c)—

2 (A) in paragraph (1)—

3 (i) by striking “A fraudulent viola-
4 tion” and inserting the following:

5 “(A) IN GENERAL.—A fraudulent viola-
6 tion”;

7 (ii) in subparagraph (A) (as so des-
8 ignated), by inserting before “the domestic
9 value” the following: “three times”; and

10 (iii) by adding at the end the fol-
11 lowing:

12 “(B) ADDITIONAL PENALTIES.—A per-
13 son—

14 “(i) that commits a fraudulent viola-
15 tion of subsection (a) shall be prohibited
16 from importing merchandise into the
17 United States during a period of five years
18 beginning on the date of entry of a final
19 judgment with respect to such violation;
20 and

21 “(ii) that is an affiliated person of a
22 person described in clause (i) shall be pro-
23 hibited from importing merchandise into
24 the United States during the period de-
25 scribed in such clause.

1 “(C) AFFILIATED PERSON DEFINED.—In
2 subparagraph (B)(ii), the term ‘affiliated per-
3 son’ has the meaning given that term in section
4 771(33).’; and

5 (B) in paragraph (2)—

6 (i) by striking “A grossly negligent
7 violation” and inserting the following:

8 “(A) IN GENERAL.—A grossly negligent
9 violation”;

10 (ii) by striking “(A) the lesser of—”
11 and inserting the following:

12 “(i) the lesser of—”;

13 (iii) by striking “(i) the domestic
14 value” and inserting the following:

15 “(I) three times the domestic
16 value”;

17 (iv) by striking “(ii) four times” and
18 inserting the following:

19 “(II) 10 times”;

20 (v) by striking “(B) if the violation”
21 and inserting the following:

22 “(ii) if the violation”;

23 (vi) in clause (ii) of subparagraph (A)
24 (as so redesignated), by striking “40 per-
25 cent of” and inserting “three times”; and

1 (vii) by adding at the end the fol-
2 lowing:

3 “(B) ADDITIONAL PENALTIES.—A per-
4 son—

5 “(i) that commits a grossly negligent
6 violation of subsection (a) shall be prohib-
7 ited from importing merchandise into the
8 United States during a period of two years
9 beginning on the date of entry of a final
10 judgment with respect to such violation;
11 and

12 “(ii) that is an affiliated person of a
13 person described in clause (i) shall be pro-
14 hibited from importing merchandise into
15 the United States during the period de-
16 scribed in such clause.

17 “(C) AFFILIATED PERSON DEFINED.—In
18 subparagraph (B)(ii), the term ‘affiliated per-
19 son’ has the meaning given that term in section
20 771(33).”.

21 **SEC. 3. PRIVATE ENFORCEMENT ACTION FOR CUSTOMS**
22 **FRAUD.**

23 The Tariff Act of 1930 is amended by inserting after
24 section 592A (19 U.S.C. 1592a) the following:

1 **“SEC. 592B. PRIVATE ENFORCEMENT ACTION FOR CUS-**
2 **TOMS FRAUD.**

3 “(a) CIVIL ACTION.—An interested party the busi-
4 ness, property, or other financial interest of which is in-
5 jured by a fraudulent or grossly negligent violation of sec-
6 tion 592(a) may bring a civil action against any person
7 that causes such injury, or any person that aids or abets
8 that person in violating section 592(a), in any United
9 States District Court located in a district in which the in-
10 terested party has suffered injury, without regard to the
11 amount in controversy.

12 “(b) RELIEF.—Upon proof by an interested party in
13 a civil action brought under subsection (a) that the busi-
14 ness, property, or other financial interest of the interested
15 party has been injured by a fraudulent or grossly negligent
16 violation of section 592(a), the interested party shall—

17 “(1)(A) recover compensatory damages equal to
18 the amount of such injury plus an additional penalty
19 equal to three times the amount of compensatory
20 damages; and

21 “(B) be granted such equitable relief as may be
22 appropriate, which may include an injunction
23 against further importation into the United States
24 of the merchandise imported into the United States
25 in violation of section 592(a); and

1 “(2) recover the costs of bringing the civil ac-
2 tion, including reasonable attorney’s fees.

3 “(c) INTERVENTION BY THE UNITED STATES.—

4 “(1) IN GENERAL.—The court shall permit the
5 United States to intervene in an civil action brought
6 under subsection (a), as a matter of right. The
7 United States shall have all the rights of a party.

8 “(2) SHARING OF INFORMATION.—Upon a rea-
9 sonable request by the United States Government,
10 any interested party that brings a civil action under
11 subsection (a) shall provide to the United States
12 Government—

13 “(A) a copy of the complaint;

14 “(B) any memoranda of law or briefing
15 filed with a court in support of the complaint
16 as of the date of the request; and

17 “(C) if the United States Government
18 agrees to reimburse the interested party for all
19 reasonable costs and expenses associated with
20 responding to the request, any information ob-
21 tained by the interested party through discovery
22 processes in the civil action as of the date of
23 the request.

24 “(d) NULLIFICATION OF ORDER IN NATIONAL
25 EMERGENCIES.—An order by a court under this section

1 is subject to nullification by the President under the au-
2 thority provided by section 203 of the International Emer-
3 gency Economic Powers Act (50 U.S.C. 1702).

4 “(e) INTERESTED PARTY DEFINED.—

5 “(1) IN GENERAL.—In this section, the term
6 ‘interested party’ means—

7 “(A) a manufacturer, producer, or whole-
8 saler in the United States of like merchandise
9 or competing merchandise;

10 “(B) a certified union or recognized union
11 or group of workers that is representative of an
12 industry engaged in the manufacture, produc-
13 tion, or wholesale in the United States of like
14 merchandise or competing merchandise; or

15 “(C) a trade or business association a ma-
16 jority of the members of which manufacture,
17 produce, or wholesale like merchandise or com-
18 peting merchandise in the United States.

19 “(2) COMPETING MERCHANDISE.—For pur-
20 poses of paragraph (1), the term ‘competing mer-
21 chandise’ means merchandise that competes with or
22 is a substitute for merchandise being imported into
23 the United States in violation of section 592(a).

24 “(3) LIKE MERCHANDISE.—For purposes of
25 paragraph (1), the term ‘like merchandise’ means

1 merchandise that is like, or in the absence of like,
2 most similar in characteristics and uses with, mer-
3 chandise being imported into the United States in
4 violation of section 592(a).”.

5 **SEC. 4. EXCLUSION OF PERSONS THAT HAVE COMMITTED**
6 **FRAUDULENT OR GROSSLY NEGLIGENT VIO-**
7 **LATIONS OF UNITED STATES CUSTOMS LAWS**
8 **FROM PARTICIPATION IN THE IMPORTER OF**
9 **RECORD PROGRAM.**

10 Section 114 of the Trade Facilitation and Trade En-
11 forcement Act of 2015 (19 U.S.C. 4320) is amended—

12 (1) by redesignating subsections (c) and (d) as
13 subsection (d) and (e), respectively; and

14 (2) by inserting after subsection (b) the fol-
15 lowing:

16 “(c) EXCLUSION.—

17 “(1) IN GENERAL.—The following persons shall
18 be ineligible to participate in the importer of record
19 program:

20 “(A) Any person determined by U.S. Cus-
21 toms and Border Protection or a court of com-
22 petent jurisdiction to have committed a fraudu-
23 lent or grossly negligent violation of section
24 592(a) of the Tariff Act of 1930 (19 U.S.C.
25 1592(a)).

1 “(B) Any person that is an affiliated per-
2 son of a person described in subparagraph (A).

3 “(2) REVOCATION.—The Secretary shall revoke
4 the importer of record number assigned to any per-
5 son under the importer of record program if the Sec-
6 retary subsequently determines that the person is a
7 person described in subparagraph (A) or (B) of
8 paragraph (1).

9 “(3) AFFILIATED PERSON DEFINED.—

10 “(A) IN GENERAL.—For purposes para-
11 graph (1)(B), the term ‘affiliated person’ has
12 the meaning given that term in section 771(33)
13 of the Tariff Act of 1930 (19 U.S.C. 1677(33)).

14 “(B) DEEMED AFFILIATED PERSONS.—In
15 order to prevent commercial fraud, protect the
16 revenue, and help prevent the use of shell com-
17 panies by importers that seek to evade the cus-
18 toms and trade laws of the United States, a
19 person may be deemed to be an affiliated per-
20 son for purposes of paragraph (1)(B) based
21 upon information declared to U.S. Customs and
22 Border Protection suggesting a formal or ongo-
23 ing relationship between that person and a per-
24 son described in paragraph (1)(A), including
25 similarities in imported merchandise (including

1 article classification upon importation), common
2 declared exporters and shippers, and historical
3 import volumes.”.

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