

112TH CONGRESS
2D SESSION

H. R. 6654

To provide for the exchange of information related to trade enforcement,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2012

Mr. POE of Texas (for himself, Mr. CHABOT, Ms. ZOE LOFGREN of California,
and Ms. LINDA T. SÁNCHEZ of California) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To provide for the exchange of information related to trade
enforcement, 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 “Foreign Counterfeit
5 Merchandise Prevention Act”.

6 **SEC. 2. EXCHANGE OF INFORMATION RELATED TO TRADE**
7 **ENFORCEMENT.**

8 Section 1905 of title 18, United States Code, is
9 amended—

1 (1) by striking “Whoever” and inserting “(a)
2 IN GENERAL.—Whoever”; and

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

4 “(b) PROVISION OF INFORMATION RELATING TO
5 MERCHANDISE PRESENTED TO CUSTOMS.—It shall not be
6 a violation of this section for an officer or employee of
7 U.S. Customs and Border Protection, at the time that
8 merchandise is presented for examination and thereafter,
9 to provide to the owner of a copyright or a registered
10 mark, or to any person who may be injured by a violation
11 of section 1201 of title 17—

12 “(1) any information appearing on the mer-
13 chandise, including its retail packaging,

14 “(2) a sample of the merchandise and its retail
15 packaging, or

16 “(3) digital images of the merchandise and its
17 retail packaging,

18 as it was presented to U.S. Customs and Border Protec-
19 tion, without redaction, whether imported into or exported
20 from the United States, or attempted to be exported from
21 the United States, for purposes of determining whether
22 the merchandise or its retail packaging infringes the copy-
23 right, bears or consists of a counterfeit mark of the reg-
24 istered mark, or is in violation of section 1201 of title 17,
25 as the case may be.

1 “(c) PROVISION OF INFORMATION RELATING TO
2 SEIZED MERCHANDISE.—It shall not be a violation of this
3 section for an officer or employee of U.S. Customs and
4 Border Protection, after seizing merchandise pursuant to
5 a determination that the merchandise is in violation of sec-
6 tion 1201 of title 17, to provide, to persons injured by
7 the violation, information with respect to the merchandise,
8 including, but not limited to, the following:

9 “(1) The date of importation.

10 “(2) The port of entry.

11 “(3) The description of the merchandise from
12 the entry.

13 “(4) The quantity involved.

14 “(5) The country of origin of the merchandise.

15 “(6) The name and address of the foreign man-
16 ufacturer.

17 “(7) The name and address of the exporter.

18 “(8) The name and address of the importer.

19 “(9) Photographic or digital images of the mer-
20 chandise.

21 “(d) DEFINITIONS.—As used in this section—

22 “(1) the term ‘registered mark’ has the mean-
23 ing given that term in section 45 of the Lanham Act
24 (15 U.S.C. 1127);

1 “(2) the term ‘Lanham Act’ has the meaning
2 given that term in section 2320(e) of this title;

3 “(3) the term ‘counterfeit mark’ has the mean-
4 ing given that term in section 2320(e) of this title;
5 and

6 “(4) the term ‘without redaction’ means, with
7 respect to merchandise, without removing, revising,
8 or otherwise obscuring any information, codes,
9 marks, numbers, or any other markings that appear
10 on the merchandise or its retail packaging.

11 “(e) RULE OF CONSTRUCTION.—Subsections (b), (c),
12 and (d) apply only with respect to tangible goods pre-
13 sented to U.S. Customs and Border Protection for impor-
14 tation into, or exportation from, the United States.”.

15 **SEC. 3. PREVENTION OF IMPORTATION OF MANUFAC-**
16 **TURED GOODS BEARING INFRINGING MARKS.**

17 (a) IN GENERAL.—Section 42 of the Lanham Act (15
18 U.S.C. 1124), is amended—

19 (1) in the first sentence, by striking “Except
20 as” and inserting “(a) IN GENERAL.—Except as”;

21 (2) by striking “of the Treasury” each place it
22 appears and inserting “of Homeland Security”; and

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

24 “(b) DETENTION OF CRITICAL MERCHANDISE.—
25 With respect to critical merchandise that bears a reg-

1 istered trademark recorded under subsection (a), if U.S.
2 Customs and Border Protection detains the merchandise
3 because the merchandise is suspected of bearing a coun-
4 terfeit mark, then, upon such detention, the Secretary—

5 “(1) shall provide to the owner of the registered
6 trademark any information on the critical merchan-
7 dise and its packaging and labels, including, without
8 redaction, photographs or digital images of the crit-
9 ical merchandise, packaging, and labels; and

10 “(2) may, at any time, subject to any applicable
11 bonding and return requirements, provide to the
12 owner of the registered trademark samples of the
13 critical merchandise, without redaction.

14 “(c) DEFINITIONS.—In this section:

15 “(1) CRITICAL MERCHANDISE.—

16 “(A) IN GENERAL.—The term ‘critical
17 merchandise’ includes—

18 “(i) aircraft engines, appliances, pro-
19 pellers, and spare parts;

20 “(ii) children’s sleepwear;

21 “(iii) cosmetics;

22 “(iv) devices;

23 “(v) drugs;

24 “(vi) food;

25 “(vii) motor vehicle equipment;

1 “(viii) pesticide chemicals;

2 “(ix) semiconductors;

3 “(x) tobacco products;

4 “(xi) any item on the United States
5 Munitions List established under section
6 38(a) of the Arms Export Control Act (22
7 U.S.C. 2778(a)); and

8 “(xii) any other article of manufacture
9 that the Secretary determines could, if per-
10 mitted entry into the United States in vio-
11 lation of the laws of the United States pose
12 a danger to the health, safety, or welfare
13 of consumers, or to the national security of
14 the United States.

15 “(B) OTHER DEFINITIONS.—For purposes
16 of subparagraph (A)—

17 “(i) the terms ‘aircraft engine’, ‘appli-
18 ance’, ‘propeller’, and ‘spare part’ have the
19 meanings given those terms in section
20 40102(a) of title 49, United States Code;

21 “(ii) the term ‘children’s sleepwear’
22 has the meaning given that term in sec-
23 tions 1615.1 and 1616.2 of title 16, Code
24 of Federal Regulations, or successor regu-
25 lations;

1 “(iii) the terms ‘cosmetic’, ‘device’,
2 ‘drug’, ‘food’, ‘pesticide chemical’, and ‘to-
3 bacco product’ have the meanings given
4 those terms in section 201 of the Federal
5 Food, Drug, and Cosmetic Act (21 U.S.C.
6 321);

7 “(iv) the term ‘motor vehicle equip-
8 ment’ has the meaning given that term in
9 section 30102(a) of title 49, United States
10 Code; and

11 “(v) the term ‘semiconductor’ means
12 ‘semiconductor chip product’ as defined in
13 section 901 of title 17.

14 “(2) SECRETARY.—The term ‘Secretary’ means
15 the Secretary of Homeland Security.

16 “(3) WITHOUT REDACTION.—The term ‘without
17 redaction’ means, with respect to merchandise, with-
18 out removing, revising, or otherwise obscuring any
19 information, codes, marks, numbers, or any other
20 markings that appear on the merchandise or its re-
21 tail packaging.

22 “(d) RULE OF CONSTRUCTION.—This section applies
23 only with respect to tangible goods presented to U.S. Cus-
24 toms and Border Protection for importation into the
25 United States.”.

1 (b) DEFINITION.—In this section, the term “Lanham
2 Act” means the Act entitled “An Act to provide for the
3 registration and protection of trademarks used in com-
4 merce, to carry out the provisions of certain international
5 conventions, and for other purposes”, approved July 5,
6 1946 (15 U.S.C. 1051 et seq.).

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect upon the expiration of the
9 60-day period beginning on the date of the enactment of
10 this Act.

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