

118TH CONGRESS  
1ST SESSION

# S. 805

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

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IN THE SENATE OF THE UNITED STATES

MARCH 15, 2023

Mr. BROWN (for himself and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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”.

6 **SEC. 2. INCREASE IN CIVIL PENALTIES FOR FRAUDULENT**  
7 **AND GROSSLY NEGLIGENT VIOLATIONS OF**  
8 **UNITED STATES CUSTOMS LAWS.**

9 Section 592 of the Tariff Act of 1930 (19 U.S.C.  
10 1592) is amended—

1 (1) in subsection (a)—

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

4 (B) by inserting after paragraph (1) the  
5 following:

6 “(2) PRESUMPTION.—

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

18 “(B) AFFILIATED PERSON DEFINED.—In  
19 subparagraph (A), the term ‘affiliated person’  
20 has the meaning given that term in section  
21 771(33).”; and

22 (2) in subsection (c)—

23 (A) in paragraph (1)—

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

1           “(A) IN GENERAL.—A fraudulent viola-  
2           tion”;

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

6                   (iii) by adding at the end the fol-  
7                   lowing:

8           “(B) ADDITIONAL PENALTIES.—A per-  
9           son—

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

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

22           “(C) AFFILIATED PERSON DEFINED.—In  
23           subparagraph (B)(ii), the term ‘affiliated per-  
24           son’ has the meaning given that term in section  
25           771(33).’”; and

1 (B) in paragraph (2)—

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

4 “(A) IN GENERAL.—A grossly negligent  
5 violation”;

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

8 “(i) the lesser of—”;

9 (iii) by striking “(i) the domestic  
10 value” and inserting the following:

11 “(I) three times the domestic  
12 value”;

13 (iv) by striking “(ii) four times” and  
14 inserting the following:

15 “(II) 10 times”;

16 (v) by striking “(B) if the violation”  
17 and inserting the following:

18 “(ii) if the violation”;

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

22 (vii) by adding at the end the fol-  
23 lowing:

24 “(B) ADDITIONAL PENALTIES.—A per-  
25 son—

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

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

13 “(C) AFFILIATED PERSON DEFINED.—In  
 14 subparagraph (B)(ii), the term ‘affiliated per-  
 15 son’ has the meaning given that term in section  
 16 771(33).”.

17 **SEC. 3. PRIVATE ENFORCEMENT ACTION FOR CUSTOMS**  
 18 **FRAUD.**

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

21 **“SEC. 592B. PRIVATE ENFORCEMENT ACTION FOR CUS-**  
 22 **TOMS FRAUD.**

23 “(a) CIVIL ACTION.—An interested party the busi-  
 24 ness, property, or other financial interest of which is in-  
 25 jured by a fraudulent or grossly negligent violation of sec-

1 tion 592(a) may bring a civil action against any person  
2 that causes such injury, or any person that aids or abets  
3 that person in violating section 592(a), in any United  
4 States District Court located in a district in which the in-  
5 terested party has suffered injury, without regard to the  
6 amount in controversy.

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

12 “(1)(A) recover compensatory damages equal to  
13 the amount of such injury plus an additional penalty  
14 equal to three times the amount of compensatory  
15 damages; and

16 “(B) be granted such equitable relief as may be  
17 appropriate, which may include an injunction  
18 against further importation into the United States  
19 of the merchandise imported into the United States  
20 in violation of section 592(a); and

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

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

24 “(1) IN GENERAL.—The court shall permit the  
25 United States to intervene in an civil action brought

1 under subsection (a), as a matter of right. The  
2 United States shall have all the rights of a party.

3 “(2) SHARING OF INFORMATION.—Upon a rea-  
4 sonable request by the United States Government,  
5 any interested party that brings a civil action under  
6 subsection (a) shall provide to the United States  
7 Government—

8 “(A) a copy of the complaint;

9 “(B) any memoranda of law or briefing  
10 filed with a court in support of the complaint  
11 as of the date of the request; and

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

19 “(d) NULLIFICATION OF ORDER IN NATIONAL  
20 EMERGENCIES.—An order by a court under this section  
21 is subject to nullification by the President under the au-  
22 thority provided by section 203 of the International Emer-  
23 gency Economic Powers Act (50 U.S.C. 1702).

24 “(e) INTERESTED PARTY DEFINED.—

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

3           “(A) a manufacturer, producer, or whole-  
4 saler in the United States of like merchandise  
5 or competing merchandise;

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

11           “(C) a trade or business association a ma-  
12 jority of the members of which manufacture,  
13 produce, or wholesale like merchandise or com-  
14 peting merchandise in the United States.

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

20           “(3) LIKE MERCHANDISE.—For purposes of  
21 paragraph (1), the term ‘like merchandise’ means  
22 merchandise that is like, or in the absence of like,  
23 most similar in characteristics and uses with, mer-  
24 chandise being imported into the United States in  
25 violation of section 592(a).”.

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

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

8 (1) by redesignating subsections (c) and (d) as  
9 subsection (d) and (e), respectively; and

10 (2) by inserting after subsection (b) the fol-  
11 lowing:

12 “(c) EXCLUSION.—

13 “(1) IN GENERAL.—The following persons shall  
14 be ineligible to participate in the importer of record  
15 program:

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

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

24 “(2) REVOCATION.—The Secretary shall revoke  
25 the importer of record number assigned to any per-  
26 son under the importer of record program if the Sec-

1       retary subsequently determines that the person is a  
2       person described in subparagraph (A) or (B) of  
3       paragraph (1).

4               “(3) AFFILIATED PERSON DEFINED.—

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

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

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